

## FEMALE FOETICIDE IN INDIA WITH SPECIAL REFERENCE TO STATE OF JAMMU AND KASHMIR

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### *Abstract*

Violence against women is often a cycle of abuse that manifests itself in many forms throughout their lives. Even at the very beginning of her life, a girl may be the target of sex-selective abortion or female infanticide in cultures where son preference is prevalent. Globally, at least one in three women has experienced some form of gender based abuse during her life time. Violence against women and girls can begin before birth and continue throughout their lives into old age. The modern science and technology is also used for the exploitation of the women. Now the tests are being carried out in order to determine the fate of the child in the mother womb. If the foetus is that of the female child, then, it is destroyed. The girl child is most socially disadvantaged. At every stage of her life cycle from conception to adulthood, she is vulnerable to human rights abuse. It is necessary to protect the rights of the girl child particularly her right to be born, her right to remain alive, her right to protection from neglect and abuse, and her right to a secure family environment. Female Foeticide is a grave social evil. There is a serious decline in the number of females in state of Jammu and Kashmir. The census report of 2011 revealed that the sex ratio of the population of Jammu and Kashmir has shown decline in the number of females over the past years. The figures - has dwindled from 900 in 2001 to 883 in 2011. The aim of this paper is to highlight the issue of female foeticide in India with special reference to state of Jammu and Kashmir and to discuss causes consequences and legal provisions relating to Female Foeticide.

**Keywords:** Census, Foeticide, Sex Ratio, Sex Determination, Violence.

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## Introduction

The girl children in India have been the most vulnerable for centuries and, are even today, vulnerable to the insults of deprivation as well as discrimination. Whatever the natural biological laws of human reproduction had given mankind for balancing its natural sex ratio, has been taken away by man made laws, customs, traditions, religious beliefs and sophisticated medical technology, resulting in a lower status in society for girls as well as women. For too long have they been left on the back burner, facing discrimination throughout their entire journey from cradle to the grave. In particular, peculiar to South Asia, and certainly to India, tradition, values and customs encrusted over time have resulted in the insatiable desire for sons, with families having totally marginalized the joy and pleasure in giving birth to a baby girl. It is agonizing to know that the gender bias and deep-rooted prejudice and discrimination against girl child, which have been there down the centuries, are now found to begin in the womb itself. The girl child in the womb faces the peril of pre birth elimination i.e. female foeticide. Female foeticide refers to the elimination of female foetus through abortions. It means unlawful expulsion of foetus. It is also called “criminal abortion” or causing miscarriage”, when used in the legal sense, it includes both abortion and premature labour. As per medical sense, premature labour means expulsion of a child that has attained viability. The term “abortion” or “miscarriage” signify the expulsion of foetus or ovum at an earlier period<sup>1</sup>.

The latest advances in modern medical sciences - the tests like amniocentesis and ultrasonography which were originally designed for the detection of gender related congenital abnormality of the foetus are now being abused particularly in India and Asian countries primarily to detect the sex of the foetus with the intention of getting it aborted if it happens to be that of a female. Such foetus is considered to be “suffering from the very disease of being a female foetus<sup>2</sup>”.

<sup>1</sup> Weddel, L.A., (1914). Lyons Medical jurisprudence for India, V<sup>th</sup> edition, Thacker Spink & Co., Calcutta and Shimla. 288.

<sup>2</sup> Kumari, Ranjana, (2006) 'Female Infanticide & Foeticide: The Declining ratio'. Paper presented at the National Seminar on Violence Against the Girl Child, Jaipur., <http://people.stfx.ca/accamero/Gender%20and%20Health/Violence/Violence%20against%20the%20girl%20child.pdf>

## History

History is witness to the fact that in pre islamic arab society girls were buried alive. This barbaric practice was stopped by the advent of islam. The situation in ancient India was also not favourable for women. In 1871, when India's first census survey was conducted by the British, the scope of the problem of infanticide became visible. The sex ratio was 940 females to 1000 males in pre-independence India. British statisticians and survey conductors noted that this rate was the inverse of the rate as prevalent in England and other countries. In most developed countries, sex ratio has been more favorable to the females. The British passed an act banning infanticide (Female Infanticide Act 1870). But this act was difficult to implement or put into practice because most births happened at home, and registration of births was not common. Hence the number of mysterious child mortality cases remained unaccounted. Autopsies were not performed except in unusual cases, and hence it was always difficult to ascertain the cause of the death of a child. This law led to the practice being carried out away from public eye. Technology changed the mode of getting rid of a girl child. Female infanticide took the form of female foeticide. Amniocentesis first started in India in 1974 as a part of a sample survey conducted at the All India Institute of Medical Sciences (AIIMS), New Delhi, to detect foetal abnormalities. These tests were later stopped by the Indian Council of Medical Research (ICMR), but their value had leaked out by then and 1979 saw the first sex determination clinic opening in Amritsar, Punjab. Even though women organizations across the country took up cudgels to put a stop to this new menace, but were helpless because of the Medical Termination of Pregnancy Act. This is because the amniocentesis test was claimed to be used for detection of foetal abnormalities, which were permitted by the MTP Act. According to the MTP Act, if any abnormality is detected between 12 to 18 weeks of gestational period in the foetus, an abortion can be legally carried out up to 20 weeks of pregnancy. In the absence of any law, all that the government could do was to issue circulars prior to 1985, banning the misuse of medical technology for sex determination in all government institutions. This, however, led to the mushrooming of private clinics all over the country. In 1986, the Forum Against Sex Determination and Sex Pre-selection (FASDSP), a social action group in Mumbai, initiated a campaign. Succumbing to public pressure, the Maharashtra government enacted the Maharashtra Regulation of Pre-Natal Diagnostic Techniques Act 1988, the first anti sex determination drive in the country. Both these were however repealed by the enactment of a central legislation, the

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 28 September 1994<sup>3</sup>.

## Causes behind Female Foeticide

### a) The Social Causes

The social causes emanate from religious beliefs, sanctions and practices. The majority of the people who follow Hindu faith believe that a son alone can perform the last rites, which ensure salvation of the soul after death. It is the son who carries the family name and lineage.

### b) The economic cause

The economic causes are the reasons, which are primarily materialistic in nature. It is often difficult to separate economic causes from social causes. A brief listing of the economic causes is given below.

- Sons provide the workforce as they bring in a bride seen as “an extra pair of hands”.
- Sons are the source of family income and have to provide for parents in their old age.
- Daughters do not stay with the family. Hence parents do not profit from any investments made in the daughter. Daughters do not become the support for parents in their old age<sup>4</sup>. Parents are considered to be the “trustees” of their daughters, who belongs to ‘another family’ and in reality, is only a ‘guest’ till she is married off into her matrimonial home.
- The practice of dowry is an economic burden on the parental family and further reduces the status of women and the desire to have a daughter<sup>5</sup>. In India, the age old custom of dowry system puts a damper on the parents’ spirits who are ‘blessed’ with a girl child. Right then and there, begin the

<sup>3</sup> Shukla.A.,(2013).Female Sex Ratio in India: A Sociological Study as per Census 2011 Research Journal of Social and Life Sciences ISSN 0973-3914, Vol.-XIV- II, 79.

<sup>4</sup> Supra note 2.

<sup>5</sup>Supra note 2

calculations associated with marriage expenses, which may happen after a couple of decades, following the child's first breath. A lump sum paid to the daughter in twenty years when the currency value may depreciate and inflation may skyrocket is seen as a tragedy waiting to happen. It would be so much better to get rid of them with just a fraction of the amount.

- The issue of inheritance rights is a sensitive one. The large female foeticide taking place in primarily agricultural areas is attributed to the fact that with equal inheritance rights given to the girls, families fear that agricultural land would get fragmented as the daughter marries and moves away. The Hindu Property Act, which was meant to elevate the status of women, only made matters worse. As per this act, a daughter has an equal share in the property of her parents, even though after marriage she became an integral part of her husband's family. In order to ensure that hard earned property is not frittered away to a different family, female foeticide was the best course available<sup>6</sup>.
- Labour market discriminations are an important form of economic discrimination. Women are less likely to work in as high positions as compared to their male colleagues. Women are often paid lesser than their male counterparts even when they are more productive than their male colleagues.

### c. Technology-related Causes

Foeticide is a natural corollary of infanticide, a result of the introduction of technology. Compared to infanticide, foeticide was a more acceptable means of disposing of the unwanted girl child. Infanticide was an overtly barbaric and inhuman practice. Foeticide on the other hand, was and is carried out by skilled professionals. It is a 'medical' practice, an oft-given justification. It uses scientific techniques, hardware and skills, and reduces tremendously, the guilt factor associated with the entire exercise. According to an observation made by the UNICEF, the problem of female foeticide has been rising, as technology has been improving. The different technologies for sex determination are increasingly being available in rural areas

<sup>6</sup> Gurung Madhu, Female Foeticide, [www.womenstudies.in](http://www.womenstudies.in).

also, and this is fuelling fears that sex-determined abortions will only increase in the future. These circumstances make the agenda of bioethics pivotal<sup>7</sup>.

#### d. Causes due to Governance and Policies

The policy reasons pertain to the governance-related factors that have accelerated the problem of foeticide. India was one of the first nations in the world to have a family planning policy (1952). The two-child norm has been inculcated to the people through public awareness campaigns, rather than through coercion. As urbanization has taken place and families have been becoming increasingly nuclear, there is a realization of the economic benefits of the small family. But at the same time, the ingrained values such as son preference have remained in tact. In urban India, where by and large people adopt a small family number female foeticide often is practiced to limit the size of the family<sup>8</sup>.

#### e. Foul Medical Ethics

Techno-doctors who promote non-reproductive technologies for commercial reasons cash in on anti-women biases that reduce the Indian women to a “male child producing machine” They treat a healthy woman as raw material, not as a human being, converting her into a pathological case. They violate the code of medical ethics by violating women’s dignity and bodily integrity and also become a party to aiding and abetting the process<sup>9</sup>. With the legalization of abortion in India, illegal sex determination and termination of pregnancies has become an everyday reality. The professionals in the medical field are only too glad to help parents realize their dream of a healthy baby boy. Female feticide is openly discussed amongst many in the healing fraternity and even pin boards outside certain clinics read, ‘Pay Rs.500 (\$ 10) today to save the expense of Rs. 500 000 (\$ 10 000) in the future’. The initial meager sum is the cost of a pregnancy termination, while the bigger amount specified in comparison, is the expense that the family will be burdened with in the form of dowry for the girl. Recently, incidences of female foeticide were reported from Beed district in Maharashtra where women used to come to a doctor’s clinic to get their female child aborted for Rs 2000. Just think for a moment about the doctor’s connivance in this illegal act. Doctors, whose aim is to save the lives of people, happily kill the foetus for a

<sup>7</sup> Supra note 2.

<sup>8</sup> Supra note 2.

<sup>9</sup> Tandon .L.S. ,and Sharma.R,2006, Female Foeticide and Infanticide in India: An Analysis of Crimes against Girl Children, *International Journal of Criminal Justice Sciences* ( 1 ) .

meagre two thousand bucks! And more heart wrenching is the fact that the aborted foetuses were very often fed to dogs<sup>10</sup>. A study in Mumbai revealed that a majority of doctors performing sex-selective abortions stated that they did so in order to control population growth<sup>11</sup>. In a case the Allahabad High Court<sup>12</sup> has said the law against it has not been effectively enforced in states like Uttar Pradesh, "The number of deaths of female children in the womb (female foeticide) in the last decade has exceeded the total deaths in the first and the second world war", a Division Bench comprising Justices Sunil Ambwani and Manoj Kumar Gupta said in a judgement dated May 17, 2013 that "it is unfortunate that in a civilised country like India some people, for their petty gains, are using modern technology for sex determination which ultimately leads to abortion of female foetus, the court said, adding it was pained to observe" that many "qualified and registered doctors" were involved in such practices. The court expressed dismay over the fact that in the last one decade, doctors in the country "have been responsible for abortions of 10 million women, killing female children in the womb". This "mass carnage of female foetuses in womb has made Indian doctors responsible for the crime which has no parallel in the history of modern medical science".

### Consequences

As Newton's Third Law of Motion states, 'For every action, there is an equal and opposite reaction', the after effects of this genocide are fatal and far-reaching. Blinded by the need for an assertive gender to rule the house after the parents' demise, the majority are often ignorant of the disaster they unwittingly invite by indulging in female foeticide.

**Skewed Sex Ratio:** In India, the number of girls per 1000 boys is declining with each passing decade. From 962 and 945 girls for every 1000 boys in the years 1981 and 1991 respectively, the sex ratio had plummeted to an all time low of 927 girls for 1000 boys in 2001. In 2011 Census, Sex ratio in India increased to 940 from 934 recorded in the 2001 Census.

<sup>10</sup> Panwar. P., 2012, Female foeticide: Death before birth, <http://www.Zeenews.india.com>. Accessed on 2 April 2014

<sup>11</sup> FRCH study cited in Gupta Jyotsna Agnihotri. *New Reproductive Technologies, Women's Health and Autonomy: Freedom or Dependency?*, Sage, New Delhi 2000, p.521.

<sup>12</sup> HC calls female foeticide "mass Carnage", 2013, The Indian Express

**Female/Women Trafficking:** The steep decline in the number of girls makes them scarce for the teeming number of males eligible for marriage. As a solution to this issue, illegal trafficking of women has become commonplace in many regions. This is a graver matter than the ideology of mail order brides. Women, often young girls who've just crossed the threshold of puberty, are compelled to marry for a price fixed by the groom-to be. They are usually bought in from neighboring areas, where the number of girls might not be as miniscule as the host region. Child marriages become a rage and child pregnancies, a devastating consequence. The moment when a land participates in the trade off of its women population, it is a sure path laid ahead with pitfalls.

**Increase in Rape and Assault:** Once women become an endangered species, it is only a matter of time before the instances of rape, assault and violence become widespread. In the backdrop of fewer available females, the surviving ones will be faced with the reality of handling a society driven by a testosterone high. The legal system may offer protection, but as is the situation today, many cases might not even surface for fear of isolation and humiliation on the girl's part.

**Population Decline:** With no mothers or wombs to bear any child (male or female), there would be fewer births, leading to a decline in the country's population. Though a control in the demographic statistics is currently the goal of many nations like China and India, a total wipeout of one sex is not the way to achieve this target. Science would then have to look up solutions to do away with the swarming number of men, should such a worst case scenario happen<sup>13</sup>.

#### **Impact on health of female.**

Foeticide leads to unsafe motherhood due to complications of abortion like sepsis, shock, haemorrhage, oliguria, anuria, Infertility, Chronic Pelvic Inflammation, etc. Due to this, in India, abortion deaths per year have risen to about 20,000 and morbidity has increased 100 fold<sup>14</sup>.

<sup>13</sup> Female Feticide: Causes, Effects and Solutions, www.hub pages.com

<sup>14</sup> DR. D.S.BHULLAR, and DR. S.S.OBEROI, et al, 2003, FORENSIC MEDICINE SPECIALIST AND FEMALE FOETICIDE. Journal of Punjab academe of medicine & Toxicology, [http://pafmat.com/2003\\_3.htm](http://pafmat.com/2003_3.htm).



## Magnitude

Female foeticide is an extreme manifestation of violence against women. As a result of selective abortion, between 35 and 40 million girls and women are missing from the Indian population. It is estimated that more than 10 million female foetuses have been illegally aborted in India. Researchers for the *Lancet* journal based in Canada and India stated that 500,000 girls were being lost annually through sex-selective abortions<sup>15</sup>.

A significant effort to estimate the occurrence of female foeticide was undertaken by the researchers from the University of Toronto in Canada and the Institute of Medical Education in Chandigarh, India, who studied almost 134,000 births in 1997 among 6 million people living in 1.1 million households who are part of the ongoing Indian National Survey. Based on the natural sex ratio from other countries, the researchers estimated that 13.6 to 13.8 million girls should have been born in India in 1997 but the actual number was 13.1 million. The deficit amounts to between 590,000 and 740,000 female births. Therefore, the scientists conservatively estimate that prenatal sex determination and selective abortion accounts for 500,000 missing girls yearly. If this practice has been common for most of the past two decades since access to ultrasound became widespread, then a figure of 10 million missing female births would not be unreasonable<sup>16</sup>. The research team found that when the first birth was a girl, at the second birth there were 759 girls born to every 1,000 boys. At the third birth, the sex ratio declined further to 719 girls to every 1,000 boys when the first two births were girls. By contrast, when the first or second child was a boy, the number of girls born at second or subsequent births exceeded the number of boys<sup>17</sup>.

The sex ratio has altered consistently in favour of boys since the 20<sup>th</sup> century to still continue (see Table). In India, the 2011 census reveals that the overall sex ratio is 940 females for every 1000 males, showing a marginal increase of 7 points from the 2001 census of 933. However, this is a very sorry state indeed and we are doing much worse than over a hundred years ago when the sex ratio was 972 in 1901, 946 in 1951 till the 940 today.

<sup>15</sup> BBC News2006, India 'loses 10m female births' [http://news.bbc.co.uk/1/hi/world/south\\_asia/4592890.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4592890.stm)  
Assessed 20 December 2013.

<sup>16</sup> The Indian Express. Monday, January 09, 2006

<sup>17</sup> Ibid.

Census Year	Sex Ratio No. of Female/7000 (male in India)
1901	972
1911	964
1921	955
1931	950
1941	945
1951	946
1961	941
1971	930
1981	934
1991	927
2001	933
2011	940

**Source:** GOI Census of India, 2001

Jammu & Kashmir, which was once hailed by United Nations Children's Fund (UNICEF) in its 1994-96 study as a place where no female foeticide took place, has suddenly become averse to the fairer sex. Jammu and Kashmir has shown a decline in the number of females over the past years. The figures - has dwindled from 900 in 2001 to 883 in 2011. Primary abstract of 2011 census, has indicated an alarming level of female foeticide in Jammu and Kashmir as a drastic decrease of 79 females per thousand of children has been noticed in the basic age group of 0 to 6 years. In each unit of 2,000 children, there were 941 females and 1059 males in 2001. The ratio has been found to have fallen to 862 females: 1138 males in 2011. This phenomenal decline has brought J&K down to the bottom of the list among all Indian States with just Haryana and Punjab behind it<sup>18</sup>.

In a Survey conducted on female foeticide in 2007 by University of Kashmir law faculty Gul Afroz Jan, found that 13 percent of the diagnostic centres in the Valley carried out gender determination tests despite it being illegal. Of the 100 respondents, about 10 percent said they have gone for such tests. Of those, 30 percent had done the test for the second time and had

<sup>18</sup> The Hindu.

already aborted a girl child<sup>19</sup>. The reasons for aborting the girl child, Jan says, were pressure from the husband (in 30 percent of the cases), pressure from in-laws (40 percent), joint decision of the couple (20 percent) and the wife's choice (10 percent)<sup>20</sup>. Another study was conducted on Muslim doctors of Jammu district by Dr. Shashi Manhas and Jabina Banoo<sup>21</sup> of Department of Home science, University of Jammu, which revealed that all the doctors responded that female foeticide in Muslim community do happen which is due to lack of religious knowledge, preference of son, lack of awareness regarding status of women in Islam and also due to discrimination with girls.

#### JUDICIAL APPROACH

In Centre for Enquiry into Health and Allied Themes (CEHAT) and others v. Union of India and Others<sup>22</sup>, petition was filed for implementation of the PCPNDT Act by an NGO. The SC held that prima facie it appeared that despite PNDT Act being enacted by the Parliament five years back, neither the State Govts. nor the Central Government had taken appropriate actions for its implementation. Directions were given to the Central Government, Central Supervisory Board, State Government, Union Territories and appropriate authorities for effective implementation of the Act. These included Creating public awareness against the practice of female foeticide, furnishing quarterly returns, to appoint by notification fully empowered appropriate authorities at district and sub-district levels and also advisory committees to aid and advise the appropriate authority in discharge of its functions etc. In further directions given in the case, the Supreme Court in its order dated 31st March 2003<sup>23</sup> provided for appointment of State Supervisory Boards. The Supreme Court also directed that the National Monitoring and Inspection Committee constituted by the Central Government for conducting periodic inspection be continued to function till the Act is effectively implemented. The SC order also provided that the

<sup>19</sup>

<sup>20</sup> Jan Gul Afroz, 2007, Female Foeticide: A socio Legal Analysis, KULR, 206-224.

<sup>21</sup> Manhas .S. , .Banoo J., 2013, Perceptions related to female foeticide among doctors from Muslim community in Jammu, J&K. (India). Ssmrae 4( 40 )jan 2013 .

<sup>22</sup> . (2001) 5 SCC 577

<sup>23</sup> (2003)8 SCC 398

records maintained by different bodies constituted under the Act should be made accessible to the public.

In *Qualified Private Medical Practitioners and Hospitals Association v. State of Kerala*<sup>24</sup> the question that arose for consideration before the Kerala High Court was whether hospitals which were equipped with ultrasound scanning equipment for purposes other than conducting any Pre-Natal Diagnostic test, required registration and whether such hospitals come within the purview of the PCPNDT Act.

The High Court held that so long as the petitioners do not conduct any Pre-Natal diagnostic tests using any techniques including ultrasonography, they cannot be compelled to be registered under section 18 of the Act. Registration would be compulsory only in case of genetic counseling centres, genetic clinics, genetic laboratories etc. which were used for conducting Pre-Natal diagnostic procedures or tests. However, if any of the hospitals were found using such pre-natal diagnostic techniques and/or did any act in violation of the provisions contained in the PCPNDT Act; necessarily the authorities would have the power to proceed in accordance with the law.

In *Vinod Sure and Another v. Union of India*<sup>25</sup> the petitioners a married couple challenged the constitutional validity of the PCPNDT Act on the ground that it violated article 21 of the Constitution. The SC held that the right to life or personal liberty cannot be expanded to mean that the right of personal liberty includes personal liberty to determine the sex of a child which may come into existence.

In *Malpani Infertility Clinic (P) Ltd. v. Appropriate Authority PNDT Act*<sup>26</sup> the petitioner sought to challenge the order, issued under the provisions of the pre-conception and pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PNDT) suspending the registration of the petitioners Diagnostic Centre. The petitioner's contention was that no notice and no hearing was given to them and therefore the impugned order was bad in law. The respondents relied upon

<sup>24</sup> . 2006(4)KarLJ 81 -

<sup>25</sup> 2005 Cri LJ 3408

<sup>26</sup> AIR 2005 Bom 26

section 20(3) which dispenses with the requirement of giving notice and hearing, if it is expedient to do so in public interest. The only condition laid down in section 20(3) is that reasons for dispensing with the notice and hearing have to be recorded in writing. The contention of petitioner was that reasons for dispensing with the notice were not sufficient. The court, observed that in an earlier writ petition filed by CEHAT, an NGO (writ petition was filed against the slackness in the implementation of the PCPNDT Act), Malpani clinic (respondents in the CEHAT case) had filed an affidavit and defended sex determination on the ground of 'family balancing'. Later they filed another affidavit in the court in which an apology was tendered. However, prosecution against the petitioner was started for violation of the PCPNDT Act.

The court observed that the appropriate authority in passing its suspension order on the petitioner's clinic relied on the prosecution started against the petitioner. The court held that the reference to prosecution was sufficient reason to suspend the license of the clinic.

In *Chitra Agarwal (Dr.) v. State of Uttaranchal*<sup>27</sup>, the petitioner, a practising doctor having a Ultrasound Centre was registered under the PNDT Act, 1994. The registration of the petitioner was first suspended and then cancelled. There was also criminal proceeding pending against the Ultrasound Centre. Appeal was filed against decisions of District level Appropriate Authority of cancelling the registration. The petitioner was informed that his appeal cannot be entertained in view of pending criminal proceeding. This refusal was challenged in the present writ petition.

The court while giving its decision laid that the initiation of criminal proceeding against the Ultrasound Centre or pendency of such criminal proceedings before Court is no bar for deciding the appeal against cancellation of its registration. It cannot be a ground for refusing to entertain and decide the appeal filed by petitioner under rule 19 of the PNDT Rules. Cancellation of registration is for violation of the provisions of the PNDT Act and the rules. The action is directed against registration of Ultrasound Centre and not against owner of the Centre. Both actions are independent and can be proceeded simultaneously. The pendency of criminal proceeding should not deter the appellate authority from deciding the appeal filed against the cancellation of registration.

<sup>27</sup> AIR 2006 Utt 78.

## Legal Framework

### Female Foeticide/Female Infanticide

#### 6.4.1.1. The Medical Termination of Pregnancy ACT, 1971

- Abortion in India has been legalized since the year 1971.
- The medical practitioners under the following circumstances could perform abortion up to 20 weeks of gestation.
- If the doctor is of the opinion that continuance of the pregnancy would involve a risk to the life of the pregnant woman or would cause grave injury to her physical or mental health.
- If the continuation of pregnancy caused substantial risk that if the child were born it would suffer such physical or mental abnormalities as to be seriously handicapped.
- If the pregnancy is caused by rape and the anguish caused by such pregnancy is presumed to constitute a grave injury to the mental health of the pregnant woman
- If the pregnancy occurs as a result of failure of family planning device, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman
- No pregnancy shall be terminated without the consent of the pregnant woman.
- If the pregnancy is twelve weeks old, the opinion of one registered medical practitioner is sufficient; for pregnancy of between twelve and twenty four weeks, the opinion of two registered medical practitioner is required.
- Termination of pregnancy shall be made only in the hospital established or maintained by the government or such other places as approved by the government.

But in practice this act has provided license to everyone to terminate pregnancy with out any check. In the mid eighties matter became a major campaign issue. A concerted campaign in Mumbai under the banner of 'Forum against sex determination and sex pre selection', supported by groups in other states, led to the formulation of Bill in 1988 which ultimately was passed in 1994 as the Prenatal Diagnostic Techniques (regulation and Prevention of Misuse) Act, 1994

which was amended in 2002 and now it stands as The Preconception and Prenatal Diagnostic Techniques (Prohibition of sex selection) Act, 1994(57 of 1994).

### **The Preconception and Prenatal Diagnostic Techniques (Prohibition of sex selection) Act, 2003**

- There are three main objectives to the PC&PNDT Act.
  - The first is to prohibit sex selection before or after conception.
  - The second objective is to regulate pre-natal diagnostic practices so they are only used to detect genetic, metabolic, or chromosomal abnormalities, and
  - the third objective is to prevent the misuse of these techniques for sex determination, which could lead to sex determination and sex selection (female foeticide).
- According to the act, a prenatal diagnostic procedure includes any medical procedure such as ultrasonography, foetoscopy, or sampling of amniotic fluid, chorionic villi, blood, any tissue or fluid, which is sent to a genetic laboratory or clinic for pre-natal analysis or diagnostic tests for sex selection. Pre-natal analysis could include any tests conducted on pregnant women to detect genetic disorders, metabolic disorders, chromosomal abnormalities, congenital anomalies, haemoglobinopathies, and sex-linked diseases.
- “The PC&PNDT Act defines sex selection as any procedure, technique, or test that is conducted for the purpose for ensuring or increasing the probability that an embryo will be of a particular sex. This law applies to any centre that provides genetic counseling to patients. This includes any institute, hospital, nursing home, or clinic, which is used for pre-natal diagnostic techniques. Even a vehicle that has any equipment that could be used for determining the sex of a foetus comes under this law. All genetic centres are required to display prominently a notice in English and in the local language or languages that conduct of sex-determination tests/disclosure of sex of the foetus is prohibited.

- An important aspect of the law is that it permits the use of prenatal diagnostic techniques if tests are being conducted to diagnose medical conditions such as genetic diseases, chromosomal abnormalities, or any other disease that can be diagnosed through conducting prenatal tests. This law only prohibits the use of prenatal tests for sex selection purposes. While prenatal tests are permitted for detecting specific disorders, there are certain conditions that women must have in order to qualify for prenatal diagnostic practices. Prenatal techniques can be used on pregnant women if they are above 35 years, have undergone two or more spontaneous abortions or foetal loss, have been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals, or if the pregnant women or their spouses have a family history of mental retardation or physical deformities such as spasticity or any other genetic disease.
- Any medical personnel conducting a prenatal test must brief the woman on any potential risks or side effects of the test and must gain written consent from the woman before conducting the tests. In addition, anyone conducting the prenatal diagnostic must declare on each report that he/she has neither detected nor disclosed the sex of foetus to any body, and any pregnant woman undergoing ultrasonography/image scanning must declare that she does not want to know the sex of her foetus.
- The Act also places prohibitions on people, including relatives and the husband of the pregnant woman. These prohibitions extend to family members or the husband of the pregnant woman encouraging or seeking the use of prenatal techniques for the purpose of sex selection. In addition, no person including the specialist or family member will communicate to the pregnant woman, her relatives, or any other person the sex of the foetus by words, signs or in any other manner.
- Any person who acts contrary to this law and seeks the aid of prenatal tests to be conducted on a pregnant woman for the purpose of sex selection will be liable to be punished to up to three years imprisonment and pay a fine up to Rs.50,000. However, in case of a doctor violating this act, his/her name will be reported to the State Medical



Council, who will take appropriate actions, including suspension of the doctor's practicing license<sup>28</sup>.

The state of Jammu and Kashmir is governed by the law which is known as **J&K Preconception and Prenatal Sex Selective/Determination Techniques (Prohibition and Regulation) Act, 2002**. This law is Like the Central Law regulates the pre conception and prenatal sex selection and determination of sex before the birth of Foetus.

#### 6.4.1.3. Provisions under IPC

##### Section 312. Causing miscarriage

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall he punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation- A woman who causes herself to miscarry, is within the meaning of this section.

##### Section 313. Causing miscarriage without woman's consent

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

##### Section 314. Death caused by act done with intent to cause miscarriage

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term may extend to ten years, and shall also be liable to fine; If act done without woman's consent- And if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

<sup>28</sup> *Lea Goelnitz(2012)* Pre-Conception and Prenatal Diagnostic techniques Act: What the Law States, Center for Social Research, [www.csr.org](http://www.csr.org).

Explanation- It is not essential to this offence that the offender should know that the act is likely to cause death.

### **Section 315. Act done with intent to prevent child being born alive or to cause it to die after Birth**

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

### **Section 316. Causing death of quick unborn child by act amounting to culpable homicide**

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **Section 317. Exposure and abandonment of child under twelve years, by parent or person having care of it**

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation- This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

### **Section 318. Concealment of birth by secret disposal of dead body**

Whoever, by secretly burying or otherwise disposing of the death body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors' to conceal

the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### Conclusion

To conclude, the law which is applicable to state and the rest of the country is good law but the question is about its implementation. We all have to restore dignity of women in the society and should stop this killing. By giving equal value, respect and opportunity to girls and women we can model and influence change. Stress should be laid on spreading awareness, gender equality and also on keeping a check on alleged hospitals, who are involved in heinous practice of sex selection. Religious and political leaders should be involved for spreading awareness against the every kind of women discrimination and also engage local sarpanchs and panchs as they deal public at gross root level. Various ultrasound clinics in the State should be sealed at the earliest and initiate legal proceedings against people involved while violating the PNDT Act. It is the need of the hour to start a vigorous campaign against female infanticide so that people desist from such harmful activity.