

## GENDER JUSTICE AND FEMALE FOETICIDE IN INDIA: AN OVERVIEW

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### ABSTRACT

*The evil practice of female foeticide is not new in India. Although this practice was prevalent in ancient period too, but with development people have found new ways of satisfying their obsessions. Before technological development it was prevalent in the name of infanticide but science has provided impetus to this practice now it is known as foeticide. Legislature has made law to ensure right use of reproductive technology but we are unable to check this practice. In fact Indian judiciary is also gender sensitive under constitutional mandate but as for this issue concern public opinion is not behind it. Now question may arise whether public opinion should be chosen over this social evil? The answer will be negative because we can not justify this practice only on the ground of public opinion. There is a great gap between paper law and living law .This evil practice is against not only the women but it is against the whole humanity. We can not imagine the existence of life without help of one another. All the legal provision at international and national level prohibits discrimination on the basis of sex but real fact is somewhat different. This sensitive issue is more relevant in present because we are enjoying so many rights in the name of fundamental rights and human rights in a democracy but how these rights may be fruitful if we kill a child before birth? There fore this paper is an attempt to search the real cause and forces behind this evil practice in India.*

**KEYWORDS:** Infanticide, Foeticide, Paper law, Living law, Fundamental rights, Human rights.

### INTRODUCTION-

*"Killer of a Woman" child, Brahmin and Cow, being the greatest sinner is condemned to hell for a period as long as the tenure of fourteen Indras (the ruler of heaven)"*

**Vara Purana**

The above verse shows that the problem of female foeticide is not a current issue. It is originated with the origin of the mankind but it was in form of

female infanticide while in present due to technological development it is in form of foeticide. It is a serious evil practice which is against the interest of the human being. The practice of foeticide is not only against the woman but it is against the interest of the humanity which includes both the sexes.

Women constitute near about half population in the world, but they does not enjoy right equal to men. Attempt has been done at international and national level through different enactment to provide equal right but we are not

able to achieve desired result because we are unable to search real cause for such evil practice.

Indian society has witnessed great discrimination for the women. It is a well known fact the certain families in India did not like the daughters to be added to their families. The daughters were killed immediately after their birth by dashing their heads with force against the stones or rocks. That system has gone but still there are examples when for the family it is a great occasion for a son's birth but not for a daughter's. These days an alarming factors has emerged of pre-natal sex determination and consequent termination if the child in the womb is not owe the sex as desired by the parents. The concept of male-child dominating the society is so deep rooted that in certain families the boys are provided better facilities than the girls despite the fact that the daughters may prove to be more faithful and loving to their parents and families.

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The present scenario about the status of women is different. We do not need to delve into any voluminous books to answer this question. We have a long and unhappy tradition of discrimination against women and our society is replete with examples of appalling practices against women. There is a consistent devaluation of their worth and

gender discrimination is prevalent throughout of society even today. No one can fail to see the evidence which is all around us, and it is a manifestation of this discrimination that parents choose sons over daughters. According to such parents bearing a girl is an added financial burden, and they are required to spend money on her education, dowry, marriage, and they believe that this expenditure is worthless as it benefits another family once the daughter leaves upon her marriage. Additionally these parents favor a son as they believe that he will stay and take care of them in their old age. Investing in a daughter they say in like "watering your neighbor's lawn".

The modern and independent India realizing the inequality and discrimination against women has incorporated in the Constitution, the law of the land, several provisions which unequivocally declare that women should be treated at par with men at all walks of life and their should be no discrimination and specific provisions are laid down for their up-liftment. The Legislature has also not lagged behind and has come from time to time with various welfare legislations specifically directed towards the women and their protection keeping in mind the various needs and facilities they require. Also with the changing needs of the society, several existing laws have been amended so as to enable the women to keep pace with the progress. Thus, we can see laws n almost all fields to suit the requirements of women. Family laws have been amended, new provisions have been incorporated in our criminal laws, labor and industrial laws have suitable placed women giving priority to their welfare measures and several other social welfare legislation to protect the dignity of women have been enacted. Judiciary, is also placing the women at high places and coming out with landmark decisions to protect the interest of women thereby adopting a soft approach towards the various problems they face in the society.

## HISTORY OF ITS CONTROL

Although the attempt to eradicate this social phenomenon is continue from its origin by various

social activists as by religious priest in ancient time but attempt in form of enactment in India done by British Govt. by The Bengal Regulatory Act XXI of 1795 and Regulation Act VI of 1802 declared the practice of female infanticide as murder. Almost our century after the official discovery of the cases of female infanticide in India, an Act abolishing its practice was passed. This Act was known as the Act VIII of 1870 and was popularly known as 'Female infanticide Act'. Later on the Act was actively enforced during the period 1876 to 1906.

Then after it deals by the Provisions of I.P.C. 1860 before 1970. The Indian Penal code 1860 prevented 'legal abortions without criminal intent and in good faith for the express purpose of serving the life of mother. Liberalization of abortion laws was also advocated as one of the measure of population control. With these considerations, the Medical Termination of Pregnancy Act was passed in July 1971, which into force in April 1972.

The MTP Act was passed in 1971 which legalized abortion under specific conditions such as danger to the health of the mother and /or the child. Section 3 of the Act facilitates a pregnant woman to terminate her pregnancy voluntarily (if she is a minor or lunatic written consent of the guardian is necessary) by a registered medical practitioner if the length of Pregnancy is of twelve weeks. In case the length of pregnancy is between twelve and twenty weeks, then the concurring opinion of two medical registered practitioners is needed. An abortion is permitted if the pregnancy would endanger the life of pregnant women or would affect her physical or mental health seriously or there is substantial risk of the child being born with physical or mental abnormalities or handicaps. The Act allows MTP facility not only to protect the mental health of the raped victim but also to a women whose pregnancy is the outcome of the failure of a contraceptive device. Further a woman can seek an abortion on the ground of her "actual or reasonably foreseeable environment" being not conducive to her pregnancy.

Thus, the MTP Act of 1971 laid down liberal grounds through which women obtained the right to

safe, scientific and legal abortions. The MTP Act has been held a landmark social legislation, which confers on women the right of privacy and freedom of choice. It would put a stop to illegal and unsafe abortions performed by non-qualified, untrained and ill equipped medical practitioners under unhealthy conditions.

The Act has been termed as a milestone in the modernization of Indian society through the instrumentality of law. It has a direct imput on population control and in achieving economic and social development and would play a role in the emancipation of women from the age old fear of abortion being considered as a sinful and criminal act.

The problem of female foeticide became so acute that activists group, media persons and intellectuals demanded State intervention. In 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 formation of an investigation committee and later the formulation of Bill in 1988 which ultimately was passed in 1994 as the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act .It came into force on January 1, 1996.

As from above Para we can say that it is requirement of time to change the attitude of the people in this regard. If we take liberal view then we can justify abortion on the ground of family planning but how can we justify the female foeticide? Why the victim of family planning and national policy is always girl child?

I think abortion should be permitted to the women but it should not be permitted after the sex selection.

Although the law made by the legislature is the very good but it is failing to achieve the objective for which it is made because the public opinion is not behind it

## INSTITUTION OF DISCRIMINATION

In a patriarchal civilization, every institution which is expected to uphold and protect women's rights and interests, to whom they took hopefully for their well being, operates in discriminatory and very often in oppressive fashion. These institutions are the family, religion. Law, society and government as well as educational institutions.

### **Discrimination by Family -**

Preference for the son is almost universal. This leads to discriminatory welcome of a girl child in her natal home (if she is lucky enough to survive foeticide and infanticide). She is nurtured in a discriminatory environment. For example, her health needs are almost inadequately addressed notwithstanding the fact that she is the main provider and broker of family and community health. She has little access to health care.<sup>i</sup>

In patriarchal society there is strong son preference. The desire is in line with aspirations emerging from an increasingly consumerist culture leading to practice of female foeticide. People believe that son is preferred to save parent from 'Punnai Narakam.' Strong preference for male child is reflected in health care. The birth of a male child is a cause for celebration while the birth of female child is a state of commensuration. Thus, son preference leads to low sex ratio in India.

Food is not always equally distributed among family members. In some regions, male members of the family eat first; whatever is left then is shared by the female members. Mostly the latter eat less food of inferior quality and nutritive value. As a result, female children in these regions are four times more likely to be malnourished than boys.<sup>ii</sup> In some Amazon communities over twice as many women suffer from malnutrition as men.<sup>iii</sup> This is a common phenomenon in India especially in rural areas. This practice is aggravated when family income shrinks.

One of the most universal daily forms of discrimination

within the family is double day worked by women—doing household work as well as a full day work outside the home. Men, on the other hand, whose working day ends with their return from the job, contribute only a negligible amount of time to household work. Under the burden of multiple responsibilities. Overworked women often do not have time to rest and routinely neglect their health. It is not uncommon for women to ignore treatment until they are gravely ill due to the lack of time to visit a health centre. Her health is not taken seriously either by her family members.

### **Discrimination by Religion -**

In absolute sense no religion is discriminatory. Every religion believes that everything living or non-living is the creation of one and the same God. Every religion preaches love, kindness, service and mercy for every living being. Notwithstanding this fact, religious books and prescriptive of every religion contain elements which are highly degrading and discriminatory or at best may be interpreted to this effect. They frequently portray women as the source of evil or chaos. They have lasting influence on the social culture and social psyche. The people continue to follow these norms blindly in the name of religion. Let us see here some examples.

### **Hinduism**

Hindu religion believes in the presence of one and the same God (Param Brahma) in every living being. It believes Param Brahma (the male form of God) and Prakriti (the female form of God)—the 'Param Brahma' or God incarnate as creator of the universe or srishti, Param Purush divides himself in three male forms—Brahma, Vishnu, Mahesh for the purpose of creation, maintenance and destruction (at the end). Prakriti too takes three different forms Saraswati, Lakshmi and Parvati or Durga to assist the Trinity of Brahma, Vishnu, Mahesh, respectively in their specific tasks. These

Goddesses are believed to be the former's 'Shakti' or strength, power and source of energy; the trinity cannot perform their tasks without their co-operation or assistance. Thus goddesses have very high place in Hindu religion. It is the only religion of the world in which God is worshipped in female form whether they name her Durga, Kali, Lakshmi, Sarawati or parvati. Besides no religious rite or ceremony such as Yajna is supposed to be complete or fruitful without the partaking of the wife. However, it is an irony that in matters of the depiction of woman's nature, status, norms of conduct, Hindu religious books especially of post-Vedic period are greatly biased and discriminatory. Gender bias is reflected even in the following verse of Rig Veda:

*"Indra Himself hath said that the mind of woman brooks not discipline; her intellect hath little weight."*

**(Rigveda, VIII-3-17)**

Religious books like Puranas prohibit women from reading Vedas. As far as 'Shudras' (the lowest serving caste) or ignorant Brahmins, who cannot get salvation? The only means available to a woman to get her salvation is to adhere her husband, by heart, mind and deeds. We have already discussed this in proceeding chapter. This is evident that these religious books got substance from the patriarchal of the holy books (which except Vedas women read more than men during their routine prayer) bias the minds of the followers, generation after generation, imposed discriminatory restrictions on women, validate discriminatory marital loyalties and make husbands, in many cases, take to 'Sanyas' throwing to winds not only the vows which they had taken before the holy fire at the time of marriage but also the life, the emotions and the future of the dependent wife. In 19<sup>th</sup> century some great social reformers, such as Swami Dayanand Saraswati and Vivekanand tried to rein state Hindu religion in true perspective liberating it from the evils that

had crept into it over the centuries. Declaring Vedas as the source of Hinduism, they refused to accept the credibility and norms laid down by later Hindu religious books or their orthodox Brahmanic versions. Since Vedas did not discriminate between man and woman and conferred equal status to both, these social reformers tried to give equal and respectable status to women in society, organizations like Arya Samaj has the credit of doing away with many injustices done to women in the name of religion. Despite this, orthodox Hindu religious prescriptive still have a lot of influence on the way of life and customs, beliefs and norms of Hindu society.

### Buddhism

Buddhism was a reaction against orthodox Brahmanism. It accepted equality between male and female in religious affairs. Lord Buddha gave Dhamma to both the sexes without making any individual distinction (Anguttar Nikaya, 11-57).

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Buddhism tried to elevate the status of women by declaring the equality of two sexes. However this proclaimed equality could not survive long in the patriarchal culture. Patriarchal social values sneaked into Buddhism. As a result, monks began to get precedence or superiority over the nuns. It was believed that it was more rewarding to donate to the Sangh of monks than to the Sangh of nuns. Discrimination got its way in Buddhist religious norms such as these - a monk can preach in the assembly of nuns but a nun cannot preach in the assembly of monks; a nun must always greet a monk even if he is younger to her in age.

### **Jainism**

Jainism preaches self-restraint, self-denial and self-effacing both for male and female. According to Jain tenets, any man or woman who strictly follows five great vows can become Sadhu (monk) or Sadhvi (nun). In the Acharanga Sutra II, we read certain uniform rules for monks and nuns with regard to 'begging of food, begging for a couch, begging of clothes, begging of bowl, walking, and modes of speech and regulation of procession'.

Yet in the religious order women have their own marks of inferiority. In Jain Sutras there are clear indications that in the matter of general status female ascetics are looked upon as subordinate to men. In the fifth chapter of the Kalpa Sutta it is unequivocally laid down that a junior male ascetic should be down before a senior one and a female ascetic even of one hundred years standing, should bow down before a male ascetic, though just initiated. Arguing for this queer procedure, it is further laid down that in the matters of religion, predominance is vested in man. Man is always senior to woman. Therefore a man should never bow down before a woman, for womankind is a low and mean creation.

In many Jain writings' woman is condemned as seductive, corrupt, fickle-minded, deceptive, weak, unreliable and treacherous. The specific objective behind depicting woman in such a way is to warn the monk to keep away from the women so as to be able to maintain his self-control (Brahmacharya). But its discriminatory attitude towards women is reflected in the fact that it does not condemn the men in any way so as to warn the Sadhvvis (nuns) in like manner to keep away from the men to maintain their celibacy.

The orthodox sect of Jainism - Digambara - believes that there is no Nirvana (salvation) for women without re-birth as a man, According to the illiberal injunctions of this school of thought, women are held as capable of mounting only up to the fifth, out of

the fourteen steps to complete liberation. The rival school of Shvetambaras, however, gives an allowance of three more steps and goes to the extent of declaring that in rare cases women can reach even Siddhaship.

Again, Rishabh Deva, the most venerable Tirthankar of the Jains is said to have taught men 72 Arts and women only 64 for they have only to be skilled in domestic and not in literacy.

Jainism does not object to polygamy but it does certainly forbids widow- remarriage.

### **Islam**

Islam gives equal status to both man and woman so far as the question of relation with God is concern. Neither does it take woman as an obstruction in the path of man's spiritual realization, nor the cause of the fall of man. But the Shariah law which originated and developed in past few centuries put woman in very inconvenient position in a number matters. The reason was that the verses of the Quran and preaching of Prophet Mohammed were interpreted in the light of the cultural value of the Middle Ages. These values are unsuited in the contemporary world. Some of the discriminatory practices, which grew as a result of such interpretations:

A woman can become neither Imam nor Kazi. She is not allowed to participate in public religious activities. A man's most meritorious prayers are said to be in congregation in a mosque, especially on Fridays and during festivals but a woman should normally pray alone at home. Women should not attend mosques during daytime. They cannot lead public prayers. They should pray silently behind the rows of men.

Emphasis on modesty, decency, bodily concealment and regulation of sexual urge in the Quran led to the practice of veiling and seclusion of Muslim women which ultimately become the cause of their backwardness, ignorance and consequent lower status in family and society,

Again, Islam stresses on the difference in the type of education meant for man and woman. A woman's sphere of activity is the home", says Maududi, "Therefore she should be trained primarily in those branches of knowledge which make her more useful in the sphere'.

### **Christianity**

The mythological story of Eve who persuaded Adam to eat the forbidden fruit has left a lasting impact on the popular mind that woman is the cause of the fall of man. So a husband should keep his wife under control. In Ten Commandments (EX.20/17) a wife, a servant, a maid servant, an ass has been kept in the same category. Deuteronomy (22.2.99) says: if after marriage, it is found that the wife is not a virgin she must be thrown before her father's house and stoned.

No such rule has been prescribed for a man. Again according to Deuteronomy (24/-14.) only husband has the right divorce his wife. Even the New Testament does not have a liberal view about woman. According to Genesis (3/16) "the first crime on earth was committed by a woman and that all evil spring from woman. St. Augustine argued that man, not woman was made in the image of God. He added, "A woman is not permitted to have dominion over her husband, nor can she be a witness, nor give security, nor act in court.<sup>iv</sup>

### **Parsi Religion**

Parsi religion is one of the oldest religions of the world. In matters of gender equality, it is broadly devoid of the lacunaes, which are found in other religions. However, it too is discriminatory in the sense that a child of a Parsi father and non Parsi –mother can be initiated in Parsi religion by a special rite called 'Navjīt' but a child of a Parsi mother and a non-Parsi father cannot be initiated in Parsi religion by any sacred rite or law.<sup>v</sup>

## **Discrimination Against Women as Decision-Makers in Religious Bodies**

In a number of religions today, there is a serious debate over women's role as leaders. Despite the prominence of priestesses in many ancient religions as well as the participation of women as deacons and leaders of congregations in early Christianity, religious authorities worldwide remain predominantly male. Where religion is identified with the state, as it has generally been historically and still is in several countries, it tends to compound many problems of women's access to power. Vast majority of religious institutions/re1igions have excluded women from leadership. 'We do not find a lady Shankaracharya or Mathadhisth in Hindu community, neither a lady Maulvi or Kazi in Islam. Even in some Christian societies, where women have been successful in making an entry into decision-making bodies, discrimination is visible. For example, of the 33 Christian denominations that make up the National Council or Churches of USA, 21 protestant Churches ordain women as clergy. Even in those, however, gender discrimination persists in one or the other form. In the Episcopal Church, which now numbers seven women among its bishops, male priests earn an average 5,000 US dollars a year more than their female counterparts. Inadequacy or absence of representation of women in the leadership of religious institutions tend to perpetuate gender insensitivity.

### **Discrimination by Law**

Law is an instrument of economic and social change in all-democratic societies. Economic and social legislation particularly meant for the betterment of the deprived, neglected and exploited class. It also provides it protection against the exploitation by the powerful ones. So women can well expect the law for the protection and furtherance of their interests.

But in a patriarchal culture, often law, too, reflects gender bias and sustains gender discrimination. This is more so in case of personal law concerning marriage, property and inheritance rights.

The existing legal system has a tilt towards patriarchal social system despite broad declaration by the constitution about the equality of every citizen before law, equality of status of every individual irrespective of his/her sex, caste, race etc. and prohibition against discrimination on any such ground. The constitutional provision of respect for the personal laws of various communities has resulted in perpetuating unequal status of women in various religious communities. The personal laws of Hindus, Muslims, Parsi and Christians etc. Directly affect woman's lives and status. These laws seem to have a deep rooted bias against woman as they do not look, at her as a complete individual, but as a dependent identity 'supported by the male crutches father, husband or son. Different communities give different rights to women. Thus, legal status of women in different communal groups is not the same, Particularly the Muslim personal law has often come under fire.

A Mohammedan man can have as many as four wives at the same time. Marriage with the fifth one, while the marriage with other four wives is subsisting is merely irregular. But a woman who has living husband and who has not been divorced cannot remarry. In most of the Muslim countries necessary legal reforms have been made to do away with the evil Politic of bigamy. But in India it still survives. As in no other personal law in the country bigamous marriage is allowed, the men belonging to other communities take recourse to conversion in Islam merely to avail the facility of bigamous marriage.<sup>vi</sup>

Further, in Mohammedan personal law, a woman cannot file a suit for the, restoration of her conjugal rights.

She can merely cease to co-habit with her husband for any of these reasons-

(i) Cruelty,

- (ii) Non-performance of the obligations imposed by marriage contract.
- (iii) Non-payment of prompt dower,
- (iv) False charge of adultery, and
- (v) Expulsion from the caste.

Under Muslims personal law, a husband has an absolute and unlimited right to divorce his wife without the intervention of court. There are various forms in which the contract of marriage can be dissolved at his will. A wife does not have any such right, though she can get divorce on certain specific grounds.<sup>vii</sup> With the intervention of court or by mutual consent without the intervention of court.

Similarly, according to Muslim law of succession among Shias and Sunnis, a female is entitled to inherit the property of the deceased but her share is generally lower than that of a similarly related man.

Such a discrimination is also visible in Parsi succession law. The property of a male Parsi dying intestate is divided in a manner that his widow and each son would get a share which is double the share of each daughter. In case he leaves behind his parents, the father would receive half the share of a son and mother would receive half the share of a daughter.<sup>viii</sup>

The law governing the succession in Christians and some other communities.<sup>ix</sup> Though follows the principle of equality between the two sexes in the matter of intestate succession, is too discriminatory in the sense that if the deceased intestate leaves behind no lineal descendants, one half of his property is divided among his kindred while the other half goes to the widow/widower. The division of property among the kindred is such that the father gets the whole property while the mother shares along with the brothers and sister's of the deceased in equal measure.

Similarly gender discrimination is visible in the Travancore Christian Succession Act and the Cochin Christian Succession Act. According to the former, a daughter is entitled to get only 'Stri-Dhanam' which is one-fourth of the share of a son or Rs. 5,000 whichever is less.<sup>x</sup>

Cochin Act provides that if a person dies without making a will, leaving behind sons and daughters the share of the daughter will be one-third of the share of the son.<sup>xi</sup> Under both these acts, a woman can be deprived of inheritance because the will-maker can make a will for his/her whole property without giving her anything.

One section of Akalis (Sikhs) has also demanded separate personal law for Sikhs. Main features of the proposed law are:

- (i) Abolition of divorce,
- (ii) Deprivation of daughters from the right of inheritance,
- (iii) Chadar Andezi or Remarriage of widow with her brother-in-law whether she agrees for it or not.

Besides these personal laws, there are hundreds of customary laws which are prevalent in rural and tribal areas. Based on feudal values, they are highly discriminatory. Tribal law does not provide for property to be passed to daughters, for example, among the Kol community of Bundelkhand region of Uttar Pradesh, women have traditionally been debarred from land rights. Petitions have been filed against such laws in Maharashtra and Bihar courts (Jai Singh, 1985).

Though feminist groups have been demanding' a uniform civil code for a long time, yet no government has so far been able to provide it because of the multiplicity of regions in the country and lack of political will.

There are certain laws, which though directly do not discriminate on the ground of sex, yet they are helpful in maintaining discriminatory status of women. Bigamy is an offence under Hindu Civil Law, but bigamous marriages are still prevalent among Hindus. Under the present law, only an aggrieved person can initiate proceedings for bigamy, which means the husband or the wife: In case of wife, the complaint may be made on her behalf by one of her family members, Quite often an economically dependent woman who is also uneducated has neither the knowledge nor the means to go to court. Generally women are

reluctant to appear in court and face social criticism. There is also generally reluctance among the family members of the aggrieved woman to lodge a complaint against the son law or brother-in-law. The attitude of the parents and relations in most of these cases is unsympathetic. On the other hand no outsider is allowed to lodge a complaint on her behalf. So she suffers life-long.

The existing penal provision against bigamy is further defeated in a considerable number of cases because of a technical construction placed on Section 17 of Hindu Marriage Act .The Supreme Court in Bhaurao v. State of Maharashtra case held that the offence of bigamy was not proved unless it was established that the second marriage was' celebrated with proper ceremonies and due form. The conclusion was arrived at on the basis that the section used the word 'solemnized'. So unless the marriage is celebrated or performed with proper ceremonies and due form, it cannot be said to be solemnized and until it is 'solemnized Sec. 494 of IPC remains inapplicable.

As the law requires no specific ceremonies, but recognizes ceremonies of marriage according to custom it becomes extremely difficult to determine which ceremony' or ceremonies are really essential. The result of this interpretation is that a difficult burden is cast on the prosecution to show that the second marriage is performed with all formalities difficulty lies in the fact that second marriage during the subsistence of a prior marriage are seldom performed with usual pomp and show.

Besides, the judicial interpretation facilitates widespread conclusion of law. A person intending to take a second wife may deliberately undergo a defective form of marriage, to defend himself against a possible prosecution. Moreover, the relatives and friends of second wife may commit perjury and say that the marriage is not properly solemnized, depriving the first wife from legal redressal.

Similarly, wife-beating has not been made an offence per se either in the Indian Penal Code or in any other law for fear that any outside interference in marital relationship may further aggravate the tension and situation. Legal remedies in such cases may lead to the disintegration of family. Besides, it is also generally believed that rapprochement is reached at in such disputes after some time. But it is the flaw in the law which escalates domestic violence.

Another such example is Dowry Prohibition Act (Amendment, 1984). According to this Act, presents given at or about the time of marriage must be entered in a list maintained in accordance with the rule made under the Act in the present should be of customary nature and should not be or excessive value. This Act just sets some limits on dowry, but does not prohibit it all together. Obviously the Act not only fails in eradicating the evil, but also helps in sustaining the gender bias, which looks at woman as a burden and hence indirectly suggests that to shoulder her responsibility all through the life, the groom must be compensated with dowry.

In the same way, the marital rape is not an offence under Indian Criminal Law. Thus the law, too, indirectly support the popular patriarchal belief that the husband has full authority over the body of his wife and he can use it at his will with or without the consent of the latter. These lacunae in law accords but inferior status to woman.

## GROUND REALITIES

Although the constitution of India is the Supreme law in the country and it ensure equal right and justice to men and women but in reality is different. We can see the real picture in following information-

- There is an adverse sex ratio for female. Although there is slight improvement in the 2001 census.<sup>xii</sup>
- Female motility rate is higher when compared to male.

- Literacy rate among females is lower than males.
- Employment of women in organize sector is lesser than men<sup>xiii</sup>
- Women participation in trade unions (6.0%) and political parties (9.0%) and decision-making processes are lesser than those of men.<sup>xiv</sup>
- The percentage of Female of the M.P. is presently (9.2%) in 2004.<sup>xv</sup>
- Property holding by women are nominal.
- More women suffer from malnutrition than men.
- Crime against women are on the rise.
- Very few women can exercise their reproductive choices.
- In total Literate State Kerala, 50% women have to take permission before going outside the home.<sup>xvi</sup>
- In the age group 6 to 14 only 74% girls goes to school while in case of Bihar the percentage is 54%.<sup>xvii</sup>

This is not suggest that there has been no improvement, but despite that the scene remains dismal. Here we can say that even in present time also there is discrimination persist in the society. As in this chapter different institutions of discrimination, which has been given is the result of so many factors i.e. social, cultural, economical, psychological etc., which lastly resulted into the social evil, like female foeticide.

The practice of elimination unwanted girls and selecting desirable boys has been aided and facilitated by the misuse of medical technologies or reproductive technologies. Commercial minded and unethical doctors have been abusing these advanced scientific techniques for selective elimination of female fetuses through sex determination.

Although this practice was prevalent in ancient period but with growing development people

have found new ways of satisfying their obsessions. The aim of the technological development to ensure the health of the diseased mother and baby but this technique misused by parents and doctors for the purpose

of sex determination. There is a direct relation between the technology and female foeticide. This table is the recent evidence of this problem<sup>xviii</sup>-

Districts	Total population (in lakh)	Ultrasound Center	Female Child/ 1000 male child
Kushinagar	28.93	10	955
Saharanpur	28.96	49	872

It means there is direct relation between sex determining center and sex ratio.

Although there is a good law to protect the misuse of sex selection technologies but why it is failing in enforcement. We can find out the answer himself as law is Ahead of Public Opinion in India which is not so in the western countries. In that countries the law come after the public opinion while it is not so in developing countries like India. The eradication of this problem is not possible only through the law. There is a need to mobiles the public attitude in favour of female. A number of social legislations enacted in the post-independence era sought to revolutionise the position of women in India. But social attitudes and thinking remained deep-rooted in antiquated and irrational customs, traditions, and prejudices. As long as the basic perceptions of the society and the law-enforcing agencies remained anti-women gender justice cannot be promoted by paper enactments. This was the experience of the legislators who tried to be more progressive in social matters, and move ahead of the prevailing public opinion. Their enthusiasm soon turned into pessimism they had to slow down their speed, make compromises, after diluting the spirit of the statutes or pass token and weak legislation. Conservative social values hampered the proper enforcement of these laws reducing them to mere paper statutes without any transformative capacity.

There is so many causes for this social evil which mix together resulted into this social evil. So

there is no single cause. Some have questioned liberal abortion ways as being responsible for the extent of sex-selective feticide.<sup>xix</sup> They say that abortion has been made too easy. While I cannot deny that stricter abortion laws may play a role in limiting female feticide, I cannot believe that it will get to the root of the problem. Sex selection is the root to the problem and not the actual abortion, and sex-selective feticide has grown as a substitute to female infanticide. In these circumstances, the thrust of any plan of action must necessarily attack the foundation such discrimination.

[Here we can also analyse the working of PC- PNDT Act.]

The act foeticide only on amniocentesis an ignore all other blatantly misuse pre-natal sex determination test use for female foeticide. It gives more emphasis on technological implementation and ignores all social factors which resulted into this evil. This act shies away from stating the specific disorders for which these tests will be permitted. It only makes sweeping Generalization and other short comings as given in chapter-IV.

We cannot ignore the role of judiciary in gender sensitive issue like female foeticide. The Indian judiciary has given a number of decision in favour of women which shows that the constitutional mandate is followed by the Supreme Court in a judgment has come out heavily on the counseling centers who are conducting such tests leading to the selection of sex which ultimately

results in the foeticide of female child. There is need to aware the people in this issue so that they can go in court.

## SUGGESTIONS

We have a great task in front of us, the task of changing the mindset of doctors and clients, creating socio-cultural milieu that is conducive for the girl child's survival and monitoring the activities of commercial minded techno-docs thriving on sexist prejudices. Then only will we be able to halt the process of the declining sex ratio resulting in the phenomenon of missing girls. To correct a gender-imbalanced society we will have to convince doctors and clients, state and civil society that 'Daughters are not for slaughter.'

Unfortunately various schemes out by many states as used as at the Central level (PC-PNDT) Act have been in effective in reducing the extent f this problem. At this stage removal of this practice must involve.

## FOCUS

- Focus on the humanist, as well as scientific and national approach and a move away from the traditional teachings which support such a practice;
- Empowerment of women and measures to deal with other discriminatory practices such as dowry, etc,
- Ensuring development of and access to good health care services;

- Simpler methods for complaint registration for all women, particularly those who are most vulnerable;
- Publicity for the cause through the media and increasing awareness amongst the people through NGOs and other organizations;
- Regular appraisal and assessment of the indicators of the status of women such as sex ratio, female mortality, literacy and economic participation.

Of course, we must recognize that foeticide (as it was in form of infanticide in ancient time) is a crime of murder and punishment should be given to both parents. There ought to be stricter control over clinics that offer to identify the sex of a foetus and stronger check on abortions to ensure that they are not performed for the wrong reasons. Doctors must also be sensitized and strong punitive measures must be taken against those who violate the law. To conclude, I would just like to say that this is not so much a legal problem as it is a social disease. We need to truly rid ourselves of this son-obsession and understand that our lives would be just as fulfilling, if not more, if our children were to be girls. This is not to say that the law can play no role. We must all work together to ensure that each and every baby girl is given her due.

So here is need to change the mind set up of the people towards the female gender. The discriminatory provisions which are present in religious book, statutory provisions must be replaced, the pattern of education and content of the book which are derogatory to the dignity and interest of women must be excluded.

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- <sup>ii</sup> Notes for Speakers, UN Dept. or Public Information, DPI/989, 1989 ,P. 76
- <sup>iii</sup> 'Women 2000, review and Appraisal 1990, Division for the Advancement of Women, No, 2, 1990, p.-6'
- <sup>iv</sup> Shukla , Bhanu Pratap Aur Is Per Bhi Ve Nari Mukti Ke Mantradata Hain , Amar Ujala, (Hindi Daily), Dehradun, 10 May, 1999 p. 5
- <sup>v</sup> Samta Ki Or' (Towards equality), Report on the Status of Women in India, Social Welfare Dept, Ministry of Education and social Welfare, Govt, of India, December. 1979, p. 45.
- <sup>vi</sup> Recently, the Supreme Court of Inda in a landmark vedict declared four such marriages null and void and asked the Government to make a uniform civil code.
- <sup>vii</sup> Dr. Swarn Lata Sharma 'Gender discrimination and human rights', K..K. publication, New Delhi, 2000 p. 78
- <sup>viii</sup> Indian section Act, 1925, Section , 50, 56.
- <sup>ix</sup> Dr. Swarn Lata Sharma 'Gender discrimination and human rights', K..K. publication, New Delhi, 2000 p. 78
- <sup>x</sup> The Travancore Christian Succession Act, 1092, Section 20.
- <sup>xi</sup> Ibid Section 120 (B)
- <sup>xii</sup> G.O.I. Census Report 2001
- <sup>xiii</sup> National Sample survey Report No.458.
- <sup>xiv</sup> Hindustan Lucknow March,8, 2008 p. 9
- <sup>xv</sup> Hindustan March 8, 2008 Lucknow p. 9
- <sup>xvi</sup> Hindustan March 8, 2008 Lucknow p. 9
- <sup>xvii</sup> International Institute of population sciente , 2000, National Family Health Survey.
- <sup>xviii</sup> The Times of India, Lucknow, Feb.12, 2008
- <sup>xix</sup> Panan Nair, "Are Liberal Abortion Laws Responsible for Female Feticide?" 5<sup>th</sup> October 2005,