

FEMALE FOETICIDE AND INFANTICIDE: JURISPRUDENTIAL AND LEGAL EXEGESIS

*Rajni Malhotra Dhingra**
*and Neeru Nakra***

I. INTRODUCTION

The essence of patriarchy lies in continued male dominance and subordination of women. The Indian society is an epitome of patriarchy and the religion, customs and social institutions provide adequate impetus thereby institutionalising gender discriminatory norms and practices and devised various modes and mechanisms, throughout human history, to oppress, exploit, and subjugate women. Female infanticide is one such abominable practice which reflects the devalued status accorded to women.

In most parts of the country female infanticide has been replaced by female foeticide and it has prevalence into those areas also where traditionally there were no instances of female infanticide. India is a land where the age old preference for sons is motivated by economic, religious, social and emotional desires and norms that favour males and make females less desirable. Parents expect sons to provide financial and emotional care, especially in their old age. Sons are believed to add wealth and property to family while daughters seem to drain it through dowries; sons continue the family lineage while daughters are married away to another household; sons perform important religious roles and defend or exercise the family's power while daughters have to be defended and protected, creating a perceived burden on the household. This stereo-type notion of women as "burden" is one of the main reasons behind female foeticide and infanticide.

This problem has assumed alarming proportion in India. It is evident from a report of United Nations Population Fund that up to 50 million girls and women are missing from population as a result of systematic gender discrimination in India. The problem of foeticide is increasing with no sign, so far, of reversing course.¹

* Associate Professor, Vivekananda Law School, VIPS (Affiliated to GGSIPU), New Delhi.

** Associate Professor, Vivekananda Law School, VIPS (Affiliated to GGSIPU), New Delhi.

¹ REPORT ON SEX RATIO IMBALANCE IN INDIA, UNFPA, 2007.

This Article examines the reason why parents clandestinely opt for female infanticide or foeticide, legal provisions to deal with this problem, lacunae in the existing legal provisions and judicial response towards this problem. An attempt is made to suggest some reform in the existing social and legal scenario.

Before discussing the legal provisions to deal with this issue let us have a peep into the existing male female ratio in the different region according to their religion and age group. This will help to understand the gravity of the problem. It has long been accepted by demographers that a link exists between female foeticide, infanticide and the widening sex ratio. In international demographic terms, a “high sex-ratio” society is defined as one that has disproportionately more males, and a “low sex-ratio” society that has disproportionately less females. The declining sex-ratio in India indicates that the number of females is getting disproportionately less.

II. CENSUS INFORMATION 2011²

POPULATION	Persons	1,21,01,93,422	
	Males	62,37,24,248	
	Females	58,64,69,174	
DECADAL POPULATION GROWTH 2001-2011		Absolute	Percentage
	Persons	18,14,55,986	17.64
	Males	9,15,01,158	17.19
	Females	8,99,54,828	18.12
DENSITY OF POPULATION² (per sq. km.)		382	
SEX RATIO (females per 1000 males)		940	
POPULATION IN THE AGE GROUP 0-6¹		Absolute	Percentage to total population
	Persons	15,87,89,287	13.12
	Males	8,29,52,135	13.30
	Females	7,58,37,152	12.93
LITERATES¹		Absolute	Literacy rate
	Persons	77,84,54,120	74.04
	Males	44,42,03,762	82.14
	Females	33,42,50,358	65.46

² CENSUS OF INDIA: CENSUS DATA 2011: INDIA AT A GLANCE, RELIGIOUS COMPOSITION, Office of the Registrar General and Census Commissioner, India, Retrieved November 3, 2011.

III. LEGAL MECHANISM

Before 1971 the Indian Penal Code, 1860 was the only legislation which allowed the 'legal abortion' without criminal intent and in good faith for the express purpose of saving the life of the mother.³ Abortions were considered illegal in our country and in fact, the same could be punishable under the Indian Penal Code.

The reason behind the liberalisation of abortion law is rooted in the idea of equality among the sexes. Liberalisation of abortion laws was also advocated as one of the measures of population control. This equality extends to total being of both men and women, together with the power over their mind and body. This right was bestowed upon her by the Medical Termination of Pregnancy Act, 1971 (MTP).⁴ This law was conceived as a tool to let the pregnant women decide on the number and frequency of children. The MTP Act is an enabling statute which aims to improve the maternal health scenario by preventing large number of unsafe abortions and consequent high incidence of maternal mortality and morbidity, legalizes abortion, promotes access to safe abortion services to women, decriminalizes the abortion seeker and to offer protection to medical practitioners who otherwise would be penalized under the Indian Penal

³ Section 312, I.P.C, 1860 deals with the law regarding miscarriage: "whoever 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 women, 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 quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

⁴ Deficiency in the I.P.C as regarding termination of pregnancy or abortion was noticed in the Statement of Objects and Reasons of MTP in the following words: "The provisions regarding the termination of pregnancy in the I.P.C. which were enacted a century ago were drawn up in keeping with the then British law on the subject. Abortion was made a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother."

Code (sections 315-316).⁵ The MTP Act (hereinafter the Act) was passed to provide for the termination of certain pregnancies by registered medical practitioners (as defined under the MTP Act). Thus it is clear that abortion is not provided for in all cases of pregnancy but only in case of certain pregnancies. Under the Act, termination of pregnancy is possible where:

- the length of the pregnancy does not exceed twelve weeks;
- if the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, the opinion of two registered medical practitioners in favour of the termination of the pregnancy is essential⁶:
 - (i) if the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health⁷; or
 - (ii) if there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.⁸

It has been clarified under the Act that where the pregnancy is alleged to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.⁹ Thus, pregnancy due to rape can be validly terminated.

⁵ Section 315, I.P.C, 1860 deals with the 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 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 deals with 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."

⁶ MTP Act, section 3(a) & (b).

⁷ *Id.*, section 3 (i).

⁸ *Id.*, section 3 (ii).

⁹ *Id.*, explanation 1 to Section 3.

Further, where the pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.¹⁰ Thus, failure of methods of family planning could also give rise to a ground for termination of the pregnancy. While considering whether the continuance of pregnancy would involve risk or injury to the health of the pregnant woman, account may be taken of the pregnant woman's actual or reasonable foreseeable environment.¹¹

There is another provision under which the pregnancy can be terminated validly irrespective of the length of the pregnancy on the opinion of two registered medical practitioners. In this case, the registered medical practitioner should be of the opinion, formed in good faith that the termination of the pregnancy is immediately necessary to save the life of the pregnant woman.¹² The opinion of the registered medical practitioners should be formed in good faith. Such opinion has to be certified in Form I under the MTP Regulations, 1975 framed under the Act¹³. In this Form, the reasons for forming the opinion also have to be stated. Further, every registered medical practitioner who terminates any pregnancy is required within three hours from the termination of the pregnancy to certify such termination in the said Form¹⁴ where again the reason for terminating the pregnancy has to be specified.

This enactment has been hailed as a major landmark in social legislation and a far-reaching measure assuring the women in India freedom from undesirable and unwanted pregnancies. It recognises the exclusive right of a woman to take decisions about her body. The consent of the pregnant woman is sufficient for the medical termination of the pregnancy. Her husband's consent is not required.¹⁵ The Legislators, however, never dreamt that the provisions enacted for the welfare of women would be

¹⁰ *Id.*, explanation 2 to Section 3.

¹¹ *Ibid.*

¹² *Id.*, section 5.

¹³ Regulation 3 (1) under the MTP Regulations.

¹⁴ *Id.*, Regulation 3 (2).

¹⁵ MTP Act, section 4(b).

used for the violation of their right only. These good intentioned steps were being used to force women to abort the female child. These provisions have been used to such an extent that equilibrium of the nature has been at the stake. Sex –determination has become the preferred application of the modern technology. Depending on the expertise of ultrasonologist chances of a correct prediction are 95-96%, with greater accuracy as the pregnancy advances. If the foetus is female, a second trimester, even a third trimester abortion is carried out either by a doctor or a quack.

The three chief pre-natal diagnostic tests that are being used to determine the sex of a foetus are amniocentesis, chronic villi biopsy (CVB) and ultrasonography. Amniocentesis is meant to be used in high-risk pregnancies, on women over 35 years. This embryonic pre-natal test requires the removal of 15-20 ml of amniotic fluid. The cells have to be cultured for three weeks, or else there is an inaccuracy rate of 10-20%. CVB is meant to diagnose inherited diseases like thalassaemia, cystic fibrosis and muscular dystrophy. Ultrasonography is the most commonly used technique. It is non-invasive and can identify up to 50% of abnormalities related to the central nervous system of the foetus.

The increase in female foeticide has seen the proportionate decrease in female sex ratio, especially in the 0-6 age group and if this decline is not checked, the very delicate equilibrium of nature will be permanently destroyed. With the female-male ratio having already declined to 933 per 1000 males, we are sitting on a virtual time bomb, which can spell social disaster. Whilst the earlier primitive methods of female foeticide were still relatively confined to a limited section of the population, however, by using the modern scientific and relatively covert methods, sex selection has become a rampant phenomenon which has affected every strata of society.

This compelled the legislators to do away with lacunae inherent in previous legislation. After intensive public debate all over India the Parliament enacted the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act on 20th September 1994 (hereinafter referred to as the PNDT) for the purpose of: the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital mal-formations or sex linked disorders; for the prevention of the misuse of such techniques for the purpose of

pre-natal sex determination leading to female foeticide; and for matters connected there with or incidental thereto.

The Act prohibited determination of sex of the foetus and stated punishment for the violation of the provisions. It also provided for mandatory registration of genetic counseling centres, clinics, hospitals, nursing homes, etc.

No pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely chromosomal abnormalities; genetic metabolic diseases; haemoglobinopathies; sex-linked genetic diseases; congenital anomalies and any other abnormalities or diseases as may be specified by the Central Supervisory Board. These techniques can be used at the registered place only by registered medical practitioner having prescribed qualification after the satisfaction that any of the following conditions are fulfilled, namely:—

- (i) age of the pregnant woman is above thirty-five years;
- (ii) the pregnant woman has undergone of two or more spontaneous abortions or foetal loss;
- (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
- (iv) the pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease;
- (v) any other condition as may be specified by the Central Supervisory Board;

Once the person conducting the test is satisfied, he has to take the consent of the pregnant woman in writing explaining all known side and after effects of such procedures to the pregnant woman concerned in the language which she understands. A copy of her written consent obtained under clause (b) should be given to the pregnant woman.

These techniques cannot be used by any clinic or person for the determination of the sex of the foetus. No person, being a relative or the husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her. The person conducting pre-natal diagnostic procedures shall not communicate to the pregnant woman concerned or her relatives the sex of the foetus by words, signs or in any

other manner. Registration of Genetic Counseling Centres, Genetic Laboratories or Genetic Clinics is must and it can be cancelled or suspended by the appropriate authority after giving a reasonable hearing to these centres, if they violate the provisions of the Act.¹⁶

If any person acts contrary to the provisions of the Act, he will be liable to be punished with the imprisonment which may extend to 3 years and fine which may extend to Rs.10,000/- to 50,000/.¹⁷ Any subsequent conviction entails imprisonment which may extend to 5 years and fine which may extend to Rs.50,000/- to Rs. 1,00,000/.¹⁸ The offences under the Act shall be cognizable, non-bailable and non-compoundable.

Thus, both these laws were meant to protect the child-bearing right of the women and legitimize the purpose for which pre-natal tests and abortions could be carried out. In practice, however, we find that these provisions have been misused and are going against the interest of females. Technology is moving faster than the law. Inventions of new technology make it possible to decide about the sex before conception. To meet with the challenge created by these inventions an amendment was made in the year 2003 and the word pre-conception was added to the existing PNDT Act. It is true and admitted fact that law cannot remain constant but does it mean that with each and every new invention, a new Act or amendment is required to deal with a social problem or an attempt should be made to deal with the root cause of the problem? The need of the hour is effective implementation of existing provisions than that of new laws. For this along with the executive commitments, the active involvement of judiciary and non-governmental organisations is also required. To certain extent judiciary is performing its responsibility. The following judgments will explain the attitude of the judiciary towards this social problem.

IV. JUDICIAL RESPONSE

The right to life is the most important of all the rights as we can enjoy other rights only when right to life is served. The right to life has not only been a core issue among human rights but also a constitutional guarantee

¹⁶ PNDT Act, section 20.

¹⁷ *Id.*, sections 22 (3), 23 (1) and 23 (3).

¹⁸ *Id.*, section 23 (1).

in the Constitution of India under Article 21. Although the Article itself does not speak much in concrete terms yet the Indian judiciary has played pivotal role in adding much to this article by expanding its scope to all the possible areas including the rights of women.

While deciding the constitutionality of the PCPNDT Act on the ground that this Act violates Article 21 of the Constitution, the Bombay High Court in *Vinod Soni v. Union of India*¹⁹ held that the PCPNDT Act does not violate but expand the scope of Article 21. It is a right of every child to full development. A child conceived is, therefore, entitled to under Article 21, to full development whatever be the sex of that child. The determination whether at pre conception stage or otherwise is the denial of a child, the right to expansion, or if it can be so expanded right to come into existence. Apart from that, the present legislation is confined only to prohibit selection of sex of the child before or after conception.

On the argument that the personal liberty of a citizen of India includes the liberty of choosing the sex of the offspring, it was observed that the right to life or personal liberty cannot be expanded to mean that the right of personal liberty includes the personal liberty to determine the sex of a child which may come into existence. The conception is a physical phenomenon. It need not take place on copulation of every capable male and female. Even if both are competent and healthy to give birth to a child, conception need not necessarily follow. That is a factual medical position. But the claim to choose the sex of a child which has to come into existence as a right is to do or not to do something which cannot be called a right. The right to personal liberty cannot expand by any stretch of imagination, to liberty to prohibit coming into existence of a female foetus or male foetus which shall be for the Nature to decide. Right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself is a right.

It is further observed that the enactment proposes to control and ban the use of this selection technique both prior to conception as well as its misuse after conception and it does not totally ban these procedures or tests. Sub section 2 says that no prenatal diagnostic techniques can be conducted except for the purposes of detection of any of the (1)

¹⁹ 2005 CrLJ 3408.

chromosomal abnormalities, (2) genetic metabolic diseases, (3) haemoglobinopathies, (4) sex-linked genetic diseases, (5) congenital anomalies and (6) any other abnormalities or diseases as may be specified by the Central Supervisory Board. Thus, the enactment permits such tests if they are necessary to avoid abnormal child coming into existence. Apart from that such cases are permitted as mentioned in sub clause 3 of section 4 where certain dangers to the pregnant woman are noticed. A perusal of these conditions makes it clear that the enactment does not bring about total prohibition of any such tests. It intends to thus prohibit user and indiscriminate user of such tests to determine the sex at preconception stage or post conception stage.

In *Vijay Sharma v. Union of India*²⁰ it was held that the provisions of the PCPNDT Act are clear, unambiguous and in tune with their avowed object. There is no uncertainty in any of the provisions as alleged in the petition.

The object of the Medical Termination of Pregnancy Act was discussed in detail in *Nand Kishore Sharma v. Union of India*²¹. It was held in this case that the object of the Act is to save the life of the pregnant woman or relieve her of any injury to her physical and mental health, and no other thing. It would appear that the Act is rather in consonance with Article 21 of the Constitution of India. There can not be two opinion that where continuance of pregnancy is likely to involve risk to the life of the pregnant woman or cause grave injury to her physical and mental health, it would be in her interest to terminate the pregnancy.

It was also held that the Act does not give a carte blanche to any person, even a medical practitioner, to cause termination of pregnancy. Section 3 of the Act provides the guidelines or limitations within which the pregnancy could be terminated by a registered medical practitioner.

In *Center for Enquiry into Health and Allied Themes (CEHAT) v. Union of India*²² the Supreme Court issued remarkable directions, if followed would bring a sea change in the mind set of the society at large. In this case non-governmental organisations approached the Court for implementation of the Pre-natal Diagnostic Techniques (Regulation and

²⁰ AIR 2008 Bom 31.

²¹ AIR 2006 Raj 166.

²² AIR 2003 SC 3309.

Prevention of Misuse) Act, 1994 renamed after amendment as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (hereinafter referred to as 'the PNDT Act') which is the normal function of the Executive. In this petition, it was *inter alia* prayed that as the Pre-natal Diagnostic Techniques contravene the provisions of the PNDT Act, the Central Government and the State Governments be directed to implement the provisions of the PNDT Act (a) by appointing appropriate authorities at State and District levels and the Advisory Committees; (b) the Central Government be directed to ensure that Central Supervisory Board meets every 6 months as provided under the PNDT Act; and (c) for banning of all advertisements of pre-natal sex selection including all other sex determination techniques which can be abused to selectively produce only boys either before or during pregnancy. The Court passed the following order:-

It is unfortunate that for one reason or the other, the practice of female infanticides still prevails despite the fact that gentle touch of a daughter and her voice has soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of female infanticide whereby female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advance medical techniques. Unfortunately, developed medical science is misused to get rid of a girl child before birth. Knowing fully well that it is immoral and unethical as well as it may amount to an offence, foetus of a girl child is aborted by qualified and unqualified doctors or compounders. This has affected overall sex ratio in various States where female infanticide is prevailing without any hindrance.

With this observation that *prima facie* it appears that despite the PNDT Act being enacted by the Parliament five years ago, neither the State Governments nor the Central Government has taken appropriate actions for its implementation, Court issued the directions to the central government, state government and the appropriate authority for the proper implementation of the PNDT Act.

On 19th September, 2001 the Supreme Court passed the order that at the outset, we may state that there is total slackness by the administration in implementing the Act. It was pointed out that even though the genetic counseling center, genetic laboratories or genetic clinics are not registered, no action is taken as provided under Section 23 of the Act, but only a warning is issued. In view of the Court, those centers which are not registered are required to be prosecuted by the authorities under the provisions of the Act and there is no question of issue of warning and to permit them to continue their illegal activities. It was further ordered that appropriate authorities are not only empowered to take criminal action, but to search and seize documents, records, objects etc. of unregistered bodies under Section 30 of the Act.

The Central Government/State Governments and Union Territories are further directed that for effective implementation of the Act, information should be published by way of advertisements as well as on electronic media. This process should be continued till there is awareness in public that there should not be any discrimination between male and female child.

Here a story of Sunita Aralikal can be an eye-opener. Sunita was buried alive by her illiterate father when she was just 16 days old in the village Latur, Maharashtra. It was her fortune that her maternal grandfather pulled her out of the grave just in time and now she is an author and a well-known social activist in Latur, passionately fighting against evils such as female infanticide to which she nearly fell victim.²³ Female foeticide in Maharashtra has become a major concern. The political parties have come together to revolt against female foeticide as it shows no signs of abatement in the absence of stringent laws.²⁴

In *Dr. Pradeep Ohri v. State Of Punjab*,²⁵ it has been clearly observed that if the statute fixes criminal liability for contravention of the prohibition or the command which is made applicable to transactions which have taken place before the date of its enactment, the protection of Article 20(1) of the Constitution may be attracted, but Section 25-

²³ Vijay Singh, "Buried as a baby, she fights for Girls", THE TIMES OF INDIA, March 8, 2011 at 1.

²⁴ Available at <http://www.radianceweekly.com>, web edition (21.03.2010) visited on 02.03.2011.

²⁵ AIR 2008 P&H 108.

FFF (1) neither imposes a prohibition nor a command. In the instant case sub-section (2) of Section 23 of the PNDDT Act clearly imposes a penalty of removal of the name of a medical practitioner from the State Medical Register in case he is convicted for violating the provisions of the PNDDT Act. Therefore, it attracts the rigour of Article 20(1) of the Constitution of India.

V. SUGGESTIONS FOR SOCIAL AND LEGAL CHANGES

Female foeticide is one of the most despicable crimes on this earth. Despite the spread of education, economic and technological development, plethora of social legislations and the commitment of the judiciary, the secondary status and subjugation of female could not be changed. The most abominable element that is attached with this social crime is that the people who commit crime mostly belong to the educated class. Gross misuse of reproductive technology in a society characterised by a strong bias against the female child is increasing day by day despite national and international concern. Techniques like Pre-implantation Genetic Diagnosis (PGD) have widened the gap in the already skewed sex ratio. New reproductive technologies are unleashing havoc in an already gender-biased system. The argument that sex selection be given as a choice does not hold good as the majority of people, especially women, have little choice in any matter that relates to the sex selection of their child.

The need of the hour is to make laws more effective. One mode to make law more effective was suggested by Austin. He propounded that law is the command of the sovereign backed by sanction. According to this theory law will be effective if backed by sanctions. But this is also not true in all the cases. PNDDT is backed by the sanctions but still the compliance by the society at large is missing, an important essential for the success of any legislation. Then the question is how else we can make the law more effective.

There is no dearth of laws, rather plethora of laws have been made and implemented to elevate the status of women as well as to make the society feel that a girl child is equally important. The Laadli Yojna is a big step towards strengthening the war against female foeticide. But, unfortunately, the monetary consideration has played a bigger role than the respect for daughters.

One suggestion, therefore, to solve this social problem along with the legal mechanism and judicial activism, participation of the society is

obligatory. Without changing the mind set of the people, the object of the social legislation can never be achieved. The pernicious acts of female foeticide and insidious abortions can be stopped by changing the orthodox views regarding women. Long back Savigny propounded this view that legislation should conform to existing traditional law and popular consciousness, or it will be doomed. It is not that he was against the reforms in the existing social set up but at the same time he knew that reform, which went against the stream of a nation's consciousness, would be meaningless. He also warned that the legislators should look before they leap into reform. If we ignore the suggestions and warning given by Savigny, this legislation will have to face the same fate like other social legislations. The need of the hour is to change this popular consciousness i.e. the preference of a son over the daughter. Unfortunately, it is the woman who does not know the worth of self and she is the one who becomes instrumental in female foeticide. It becomes imperative that it is high time a woman should also realize her own worth. This is not an easy task as for this we have to find out the reasons for this desire and then make a try to eliminate it one by one. Among the various reasons one is dowry and dowry related tortures and deaths. To tackle this problem we have the Dowry Prohibition Act, 1961. Proviso of Section 3 of Dowry Prohibition Act, 1961 should be amended and it should be added that no gift can be exchanged at the time of marriage or if the law wants to permit the exchange of the gifts at the time of marriage then upper limit according to the income of the family should be fixed. It can only be done if the societal conservative norms of exchanging gifts and having a lavish wedding reception are discarded.

Along with this a legal change in section 125 Cr.P.C.²⁶ is required to transform the social attitude. It should be added to the existing section that every female is not only bound to maintain her parents but also to pay a fix monthly sum to them in all the circumstances. All these changes would be helpful to improve the status of the women, if there is an active participation of the women in the decision making especially when it is to cater to the need and demand of the women as only the wearer knows where the shoe is pinching. Roscoe Pound also believes that sociological jurisprudence should ensure that the making, interpretation and application

²⁶ The Criminal Procedure Code, 1973, Section 125(1).

of law take account of social facts and developed the “social engineering” balancing the conflicting interests of the society. Towards achieving this end there should be:

- (a) social investigation as preliminaries to legislation; in this investigation the observation, vision and mission of the woman organisations and NGOs should be considered.
- (b) constant study of the means for making law more effective;
- (c) allowance for the possibility of a just and reasonable solution of individual cases.

To find out the solution to tackle with the problem of foeticide and infanticide the following questions should be answered.

- (i) What is the social fact?
- (ii) Which type of social investigation is required to enact PNDT?
- (iii) How the law can be more effective?

The pre-dominantly patriarchal, social, cultural and religious set up based on the foundation that the family line runs through a male has contributed extensively to the secondary status of women in India. This has led to strong desire to avoid the birth of a female child in the family resulting in decline in the child sex ratio at an alarming rate in some of the States and Union Territories.²⁷

Social investigation will include that why this social fact becomes the popular consciousness. It will also include the reason behind the social fact and the consequences of the social fact on the society at large. The impact on society should not be underestimated. As per the 2001 Census of India, the ratio between male and female is 1000:933 and in Punjab only 1000:790. According to the research conducted by the UNFPA, a society with a preponderance of unmarried young men is prone to particular dangers. More women are likely to be exploited as sex workers.²⁸ Increase in cases of molestation and rape is an obvious result. The sharp rise in sex crimes in Delhi have been attributed to the unequal sex ratio.

²⁷ ANNUAL REPORT ON IMPLEMENTATION OF THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, PNDT Division, Ministry of Health and Family Welfare, Government of India, *New Delhi*, 2005.

²⁸ *Supra* n. 1.

Answer of the third question has already been given. Nothing but the change in the attitude and mindset can bring the desired change. Women's interests, identities and issues should be taken seriously; and recognize women's ways of being, thinking and doing, as valuable as those of men. People have to admit that if there is a clash between the public interest and private interest, priority should be given to public interest. Pound also propounded this view. According to him there are three types of interests

- (i) private interests
- (ii) public interests
- (iii) social interests

PRIVATE INTEREST \longrightarrow PUBLIC AND SOCIAL INTEREST
 (Desire to have son) (Protect the equilibrium of the nature)

It is true that every human being has a right to determine its family affairs and that includes deciding the number of children they want to have according to their wishes. They also have the freedom to know the sex or even to determine the sex of the child in the womb itself. But this private interest has a direct conflict with the social and public interest if the decision is taken after knowing the sex of the foetus only if it is the case of female. In this scenario the balance should be maintained by the legislators, judges and the advocates. The problem that is enfolded so firmly can be grappled not only with the enactment of one Act i.e. PCPNDT but can be tackled with the support of all legal and societal actors. The road ahead is tough and one alone does not have the capacity to march on. The cooperation of all the limbs of the government along with the active participation from all the societal actors is required to remove the black scar from the humanity. This social, cultural, religious and traditionally deep rooted problem can not be deracinated in day one or two. There is no magic wand. No law, no convention has the supreme power to do the miracle with the blink of the eye. Only the social campaign against this vicious problem with the help of strict and strong legal support can bring the desired result. This road is tough and full of thorns. But the journey can not be halted under this fear that in our life we could not see the light of the freedom. The march should be on for the fight that will be won after hundred or more years in the hope that we will be victorious one

day. This generation does something positive for the welfare of the future generations so that they can remember us for the healthy legacy and not for the skewed sex ratio.

VI. CONCLUSION

We often think that a heinous act like killing the girl child in the foetus might be the prerogative of the uneducated and poor masses. However, statistics prove that this is not the case. The well-educated and rich classes perpetrate this crime with equal aplomb. The basic problem is that, despite our worship of Goddess Durga or Kali, or claim that there were educated, erudite women like Maitri, in the Vedic period, we as a society hold no respect for women. This lack of respect often gets translated to the act which ensures no value on the life of a girl child. Besides issue like preference for a son – very common in upper class, educated Hindus, factors like dowry come into play when there are considerations regarding a girl child. For the economically downtrodden, dowry might be a factor, but for the others its mostly a rigid, narrow-minded, blinkered preference for a son – often stemming from religious considerations – that lead to female foeticide. For the poor, feeding or educating a girl child is an economic burden. The death knell comes in the form of dowry. The society as a whole does not really believe that girls and boys are equal, that an educated girl with a job is as good as a son and able to take up family responsibilities because of the ‘paraya dhan’ concept. It is accepted that the girl belongs to her husband’s family and this deep-rooted social belief is the next most important factor, after religious preference for a son, which leads to the killing of the girl child.

Neither education nor economic progress or plethora of welfare legislations can change this phenomenon. This change can only be brought about if the deep-rooted social norms related to women and girls change. Equal treatment of boys and girls has to start at home. The clichéd, girls in the kitchens and boys in school or going to work concept has to be erased. The ‘paraya dhan’ concept has to be wiped out. Marriage should not be mandatory for girls - the society should evolve out of the mould where the herd-mentality believes that an unmarried girl is an oddity. Once the pressure of marriage on girls or their families ease off, the other things will fall into place. The moment a girl is considered as an equal earning member to the son, the whole foeticide, and dowry phenomena will stop being a threat.

Secondly, the onus is on the mothers to stop foeticide. Ninety nine per cent of the girls are killed with the connivance or the helplessness of their mothers who are too weak and insecure to take a stand to save their foetus because of the societal pressures or their husbands or in-laws. None of them feel confident about taking recourse to law because of the tangled legalities involved or their own dependent economic status. Only if the mother gathers the courage to protect her baby can the girl child survive in this country and the men should be taught as boys that the girls are in no way inferior to them, the grim picture of the society might change in future.