

FEMALE FOETICIDE: A MEDICO-LEGAL ANALYSIS

*Vageshwari Deswal**

I. INTRODUCTION

In the tradition bound Indian society, women have been physically, socially, psychologically and sexually exploited from times immemorial, sometimes in the name of religion, sometimes on the pretext of the writings in the scriptures and sometimes by the social sanctions. In spite of our 65 years of independence, majority of Indians are still enslaved to their own mental makeup which refuses to acknowledge women as equivalent to men. A woman in our society is relegated to the status of an enigma. She is worshipped as goddess in temples, she is attributed mysterious powers of annihilation (kali) and construction (maa). But, unfortunately this mythological existence remains only in temples and scriptures.

Observing, studying and depicting women in poetry, writing, painting and sculpture is a very old business. In fact the woman has been a sort of obsession for all the philosophers, authors, thinkers and artists. Woman as an entity has been the focal point of all of them. Irony of the situation is that, despite all the importance attached to women they were never given their due share or status in life and society.¹ In fact the very institutions that proclaim to safeguard their lives and interests, such as family and marriage etc have laid a siege on them. The forms of oppression may vary but the content is same. The Indian society condemns the life of a woman who is unable to bear children more specifically a male child.

It is an admitted fact that in Indian society, discrimination against girl child still prevails, may be because of prevailing uncontrolled dowry system despite the Dowry Prohibition Act, as there is no change in the mind-set or also because of insufficient education and/or tradition of women being confined to household activities. Sex selection/sex determination further adds to this adversity. The misuse of modern science and technology by preventing the birth of girl child by sex determination before birth and thereafter abortion is evident from the 2001 Census figures which reveal

*Assistant Professor, Law Centre-II, Faculty of Law, University of Delhi, Delhi.

¹ Afsar Bano, INDIAN WOMAN: THE CHANGING FACE, Preface (Delhi, 2003).

greater decline in sex ratio in the 0-6 age group in States like Haryana, Punjab, Maharashtra and Gujarat, which are economically better off.²

II. FEMALE FOETICIDE

Female foeticide means and implies expulsion of the female foetus from the mothers womb. Foetus has been defined as, “a human organism during the period of its development beginning on the fifty-seventh day following fertilization or creation and ending at birth”.³

Female foeticide is the most nefarious crime committed against humanity in general and womanhood in particular. The craving for a male offspring coupled with the family planning programme’s insistence on small family norm and the evil of dowry system have all created a situation wherein the birth of a daughter is sought to be avoided at all costs, thereby leading people to commit the most heinous of all crimes wherein a girl child is murdered in her mother’s womb. It raises a lot of issues involving violation of human rights, ethics of use and abuse of scientific techniques and gender discrimination which are always left unanswered by the perpetrators themselves. The impact of large scale female foeticide in the past three decades is already manifesting itself in the form of a skewed sex ratio and lack of brides for boys of marriageable age. More generally, demographers warn that in the next twenty years as the number of marriageable women declines, men would tend to marry younger women, leading to a rise in fertility rates and thus a high rate of population growth. The abduction of girls is an associated phenomenon. A society with a preponderance of unmarried young men is prone to particular dangers. More women are likely to be exploited as sex workers. Increases in molestations and rape are an obvious result. The sharp rise in sex crimes in the last two decades have been attributed to the unequal sex ratio.

The possibility of diagnosing genetic defects initiated research on pre-natal sex determination and ultrasound scans, amniocentesis⁴,

² *CEHAT v. UOI*, (2003) 8 SCC 398.

³ The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002, Section 4 (1) (bc).

⁴ Amniocentesis is a pre-natal test in which a small amount of amniotic fluid is removed from the sac surrounding the foetus by a fine needle inserted into the uterus through the abdomen under ultrasound guidance. This is used to detect certain types of birth defects such as Down’s syndrome, Sickle cell disease, Cystic fibroids and Muscular dystrophy.

sonography, etc. was evolved for detection of genetic or chromosomal disorders, congenital malformations or sex linked disorders. These tests, although were meant to detect foetal abnormalities soon began to be used for purposes of determining the sex of the baby. Ultrasound scanning⁵ being a non-invasive technique quickly gained popularity as a safe method of testing the sex of the foetus. Those involved in testing could also make money by charging high fees and easily evade the law by saying that they had checked only for detection of abnormalities and not for sex determination. The records could also be easily manipulated, moreover radiologists could keep portable machines and thereby continue this nefarious activity without anyone coming to know about it.

Now new technologies have evolved which ensure child of desired sex. X and Y chromosome separation, Ericsson method⁶, Pre-conception gender selection (PGS), Pre-implantational genetic diagnosis (PGD) and in-vitro fertilization ensure the birth of baby of desired sex without undergoing abortions. The method of PGS was evolved to check and reduce the incidence of diseases related to the X chromosome which are more likely to manifest in case of boys than in girls but the technique is being misused to avoid the birth of girls.

As per Medical Termination of Pregnancy Act, 1971, abortion is legal but only in certain prescribed circumstances. So far the only available methods of abortion were surgical. Surgical abortions are effective and safe only in trained hands under sterile and well equipped conditions. If performed improperly it may lead to infection, infertility, rupture of uterus and even death. Some years back two new pills⁷ have been launched which allow a female to have an abortion with her privacy intact and without her body being invaded. It doesn't require any anaesthesia or hospital stay. The pill RU-486 was approved as a prescription drug in India in October 2002, but even pills are not entirely risk free as they

⁵ Ultrasound of foetus is recommended medically for detection of birth defects such as cleft lip, club foot or heart disease and to ascertain the proper growth of the baby.

⁶ The Ericsson Albumin method was pioneered and patented by Dr. Ronald Ericsson in the mid-1970's. In this the father's semen sample is processed for gender selection and then used to inseminate the mother by intra uterine or intra cervical insemination.

⁷ RU-486 or Mifepristone and Misoprostol.

may lead to severe bleeding and if the action remains incomplete then unless it is completed surgically it may have serious repercussions. Although there are remote chances of misuse of this pill for female foeticide as sex of child is usually detected by abdominal ultrasound at 14 weeks or by trans vaginal sonography at 12 or 13 weeks, still chances of its misuse cannot be totally ruled out as there are some tests such as amniocentesis⁸ that could be used to determine the child's sex earlier. Although companies supplying the pills have tried to check its misuse by providing for a consent form to be signed by women seeking abortion, but in reality the pills are freely available over chemist's shops even without the doctors prescription.

The last 30 years have witnessed a sharp decline in the sex ratio and the number of women has been rapidly declining. During this period sex determination clinics have mushroomed in virtually every nook and corner of the country. Surveys have shown that maximum number of abortions involve female foetuses. This declining sex ratio is precipitating a catastrophe in the form of severe imbalance in the male- female ratio.

III. LEGISLATIVE CONTROL OF FEMALE FOETICIDE

The earliest law on this problem is Regulation VI of 1802 followed by the Female Infanticide Act, 1864 passed by the Britishers to curb the then prevalent practice of infanticide⁹ by declaring it equivalent to willful murder. Today female foeticide has appeared in place of female infanticide thereby hastening the pace of the death of a female child from the born to the unborn stage.

In 1860, the Indian Penal Code was enacted which contains provisions for control of abortions. Section 312 of the Act¹⁰ states that, 'whoever voluntarily causes a woman to miscarry, where the miscarriage is not caused in good faith for the purpose of saving the life of the woman shall be punished with imprisonment upto seven years'. This section also covers a woman who causes herself to miscarry. Causing miscarriage without woman's consent¹¹ and causing death with the intention of causing miscarriage¹² are also made punishable under the Act. Under the Act,

⁸ *Supra* n. 4.

⁹ Infanticide is the killing of infants immediately after birth by choking them, feeding them with poisoned milk or burying them alive.

¹⁰ The Indian Penal Code, 1860 hereinafter referred to as the Act.

¹¹ *Id.*, Section 313.

¹² *Id.*, Section 314.

whoever before the birth of any child does any act with the intention of thereby preventing the child from being born alive or causing it to die after it is born and by such act prevents the child from being born alive or cause it to die after its birth shall be punished with imprisonment upto ten years except in cases where such act was committed in good faith to save the life of the mother¹³. Sections 312 to 318 comprehensively cover offences of causing miscarriage, preventing the child from being born, causing death of unborn¹⁴, abandoning the new born,¹⁵ concealing the body or secretly disposing it off¹⁶. Though the words foeticide or infanticide have not been specifically used, nevertheless these sections cover both of them.

The gender neutral terms employed in these sections ensures the application of these provisions to foetuses as well as infants of either sex, however male foeticide or infanticide are unheard of in India. In Indian society where obsession for son is a structural and cultural affliction, a woman faces extreme social and psychological pressure to give birth to a male offspring. These provisions fail to address the more important issues wherein women suffer numerous pregnancies and consequent abortions under the tremendous social pressure on them.

In 1964 the Ministry of Health set up a committee¹⁷ to look into the Human Rights issue of reproductive rights of women wherein they were claiming legalization of abortions. In the year 1971, the Parliament enacted the Medical Termination of Pregnancy Act, 1971, which came into force from 1st April, 1972 and was subsequently revised in 1975 and 2002 by the Medical Termination of Pregnancy Amendment Act (no.64 of 2002), with an objective to avoid the misuse of induced abortions¹⁸.

¹³ *Id.*, Section 315.

¹⁴ *Id.*, Section 316.

¹⁵ *Id.*, Section 317.

¹⁶ *Id.*, Section 318.

¹⁷ The name of the committee set up by Ministry of health in 1964 was "Shantilal Shah Committee"

¹⁸ An abortion is the termination of a pregnancy by the removal or expulsion from the uterus of a foetus or embryo resulting in or caused by its death. An abortion can occur spontaneously due to complications during pregnancy or can be induced. An abortion induced to preserve the health of the pregnant female is termed a therapeutic abortion, while an abortion induced for any other reason is termed an elective abortion. The term abortion most commonly refers to the induced abortion of a pregnancy, while spontaneous abortions are usually termed miscarriages.

The MTP Act¹⁹ is a small legislation with only eight sections. This Act recognizes a woman's right to privacy, her right to limit pregnancies, her right to produce healthy babies and gives her the freedom to take decisions with respect to her own body, but this right is being misused by unscrupulous people to selectively get female foetuses aborted.

The MTP Act, lays down the conditions under which pregnancy can be terminated²⁰, the persons²¹ as well as the place²² to perform it. As per this Act the reasons for which medical termination of pregnancy is permissible are:

- (1) Where a pregnant woman has a serious medical disease and continuation of pregnancy could endanger her life like:
 - (a) Heart disease,
 - (b) Severe rise in blood pressure,
 - (c) Uncontrolled vomiting during pregnancy,
 - (d) Cervical/ Breast cancer,
 - (e) Diabetes mellitus with eye complication (retinopathy),
 - (f) Epilepsy,
 - (g) Psychiatric illness.
- (2) Where the continuation of pregnancy could lead to substantial risk to the new-born leading to serious physical/ mental handicaps such as in case of:
 - (a) Chromosomal abnormalities,
 - (b) Rubella viral infection to mother in first three months,
 - (c) If previous children have congenital abnormalities,
 - (d) Rh incompatibility related risks,
 - (e) Exposure of foetus to radiation beyond prescribed limits.
- (3) Where the pregnancy has resulted due to rape of the woman²³,

¹⁹ The Medical Termination of Pregnancy Act, 1971.

²⁰ *Id.*, Section 3.

²¹ *Id.*, Registered medical practitioner has been defined in section 2(d).

²² *Id.*, Section 4.

²³ *Id.*, Explanation 1 to Section 3.

- (4) Where the socio-economic status of the mother would hamper the progress of a healthy pregnancy and the birth of a healthy child, and
- (5) Failure of the contraceptive device irrespective of the method employed.²⁴

The opinion of a qualified gynecologist is a prerequisite for any abortion to be done and in case the pregnancy exceeds 12 weeks but is below 20 weeks then opinion of two doctors is necessary²⁵. For getting the foetus aborted a lady has to give her consent in writing in the prescribed format. The consent should be free and based on the above considerations only. Consent of husband is not required. For girls below 18 years of age, and those who are mentally unstable, the consent of guardian is required²⁶. The consent assures the medical practitioner performing the abortion that she has chosen to undergo the abortion of her free will after having been counseled about the procedure, risks involved and precautions to be taken after that.

This Act also prescribes the qualifications required for a medical practitioner to be able to perform abortions and in only those institutions which have been licensed by the Government to perform abortions. Such institutions have to display the certificate issued by the Government at some conspicuous place in the institution where it is easily visible to persons visiting that place.

The provisions of this Act are aimed at reducing the incidence of illegal abortions which involve great risk to the life and health of girls who often fall into untrained hands of quacks and to liberalise abortions to give women greater control over her body and overall well being, but the Act is outdated as it fails to address the issue of conflicts which arise in view of the legal rights conferred upon the unborn child by the criminal as well as property laws. Today a child born with defects can sue for injuries suffered while in womb for negligence under the law of torts.

In 1980's large scale female foeticide was detected in Maharashtra so the State Government banned Amniocentesis by the Maharashtra

²⁴ *Id.*, Explanation 2 to Section 3.

²⁵ *Id.*, Section 2 (a) and (b).

²⁶ *Id.*, Section 3(4)(a) and (b).

Regulation of Use of Pre-Natal Diagnostic Techniques Act in 1987. The total population of the country increased by 24.7% between 1981 and 1991. On the other hand the percentage of females which was 48.3% in 1981 declined to 48.1% in 1991 due to a fall in the sex-ratio from 934 to 927 per 1000 males during the same period.²⁷ This dwindling sex-ratio bears eloquent testimony of violence against women even in the safety of mother's womb. The alarming fall in sex ratio according to the 1991 census figures brought a ghastly picture to the fore which was the presence of only 927 women per 1000 men as compared to the figure of 972 per 1000 in 1961. Madhya Pradesh, Haryana, Rajasthan and Uttar Pradesh, showed a drastic fall in sex ratio to 850 women for every 1000 men. In certain communities of Bihar and Rajasthan the situation was even more alarming where the ratio was mere 600 females per 1000 males.²⁸ This was the position in 1990 which was designated by the United Nations as the International Year of the Girl Child.

The Vienna declaration on the Elimination of All Forms of Discrimination Against Women, (CEDAW), was ratified by the UNO on December 18, 1979. The Government of India which was an active participant to CEDAW ratified it on June 19, 1993. The preamble of CEDAW reiterates that discrimination against women violates the principles of equality of right and respect for human dignity. By operation of the relevant articles of CEDAW, the State should take all appropriate measures including legislation to modify or abolish gender based discrimination in the existing laws, regulations, customs and practices.

Article 21 of the Constitution of India reinforces "Right to Life". Article 51A(e) also provide for renouncing of practices derogatory to the status of women. In the light of all these the Parliament of India enacted the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 for preventing misuse of technology to determine pre natal sex leading to female foeticide, but the enforcement machinery was not put into place. Non maintenance of adequate records by clinics made it difficult to identify the purpose for which ultrasound tests were conducted. Even the police authorities failed to register any case under

²⁷ CENSUS OF INDIA, 1991, New Delhi, Office of the Registrar General of India.

²⁸ *Ibid.* Also see, REPORT ON CRIMES IN INDIA, Ministry of Home Affairs, Govt. of India, 1994.

this Act owing to lack of social sanction. Non compliance by the medical practitioners who mutely exploited the situation to their monetary advantage and emerging techniques of sex selection at pre-conception stage such as X and Y chromosome separation, PGS etc rendered this Act ineffective in combating the situation.

In response to a Public Interest Litigation²⁹ filed by Centre for Enquiry into Health and Allied Themes [CEHAT] which is a research center of Anusandhan Trust based in Pune and Mumbai, Mahila Sarvangeen Utkarsh Mandal [MASUM] based in Pune and Maharashtra and Dr. Sabu M. George who is having experience and technical knowledge in the field, urging effective implementation of the Act³⁰, the Supreme Court passed an order on 4th may, 2001 directing the authorities to ensure implementation of the Act³¹ and plug its loopholes. The same petitioners again filed a writ petition (civil) no. 301 of 2000. 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 by appointing appropriate authorities at State and District levels and the Advisory Committees; the Central Government be directed to ensure that Central Supervisory Board meets every 6 months as provided under the PNDT Act; and 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.

On September 10, 2003, Justices MB Shah and Ashok Bhan of the Supreme Court while delivering their judgment on the above issue observed:

It is unfortunate that for one reason or the other, the practice of female infanticide 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

²⁹ AIR 2001 SC 2007.

³⁰ Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

³¹ It is noteworthy here that till 2001, not a single conviction was recorded under this Act.

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.³²

The Court also directed the Central Supervisory Boards to examine the necessity of amending this act in order to remove difficulties in its implementation and make it more equipped to deal with present and future technological advancements. Directions stated that appropriate authorities should be appointed at District and Sub-District levels and the list of members appointed should be published in the print and the electronic media. These authorities were required to send quarterly reports to the Central Supervisory Boards and in general directions were given to spread awareness against the practice of Pre-natal sex determination and the hazards associated with it. The Supreme Court directed the State governments to take further steps to enforce the law and the Department of family welfare was directed to file an affidavit indicating the status of actions taken. Supreme Court directed 9 companies to supply the information of the machines sold to various clinics in the last 5 years. Details of about 11,200 machines from all these companies were collected and fed into a common data base. Addresses received from the manufacturers were also sent to concerned States to launch prosecution against those bodies who were using ultrasound machines without getting themselves registered under the Act. The court directed that the ultrasound machines/scanners be sealed and seized if they were being used without registration. The Indian Medical Association [IMA], Indian Radiologist Association [IRA], and the Federation of Obstetricians and Gynecologists Societies of India [FOGSI] were asked to furnish details of members using these machines. State governments have communicated to the Central government in writing that according to the official reports received, they are satisfied that sex

³² *CEHAT v. UOI*, (2003) 8 SCC 398.

determination services are no longer being provided in their respective States.³³

The ministry of health and family welfare had proposed a series of amendments to the 1994 Act. These were finally given parliamentary approval and the PNDT Act was finally amended in December 2002 with a view to overcome lacunae in existing law and to check the illegal practice of female foeticide. The Act was subsequently titled as The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994. Thereafter the Ministry of Health and Family Welfare notified the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Rules, 2003 thereby substituting the 1996 Rules with the new rules on 14th February, 2003.

The Parliament passed this Act with the following objectives:

- (i) To ban the pre-conception sex selection techniques;
- (ii) To prohibit the misuse of pre-natal diagnostic techniques for sex-selective abortions;
- (iii) To regulate the pre-natal diagnostic techniques for the appropriate scientific use for which they are intended; and
- (iv) To ensure the effective implementation of the Act at all levels.³⁴

This Act has made registration of all diagnostic laboratories compulsory with a direction to the manufacturers of ultrasound equipment to sell their products only to registered laboratories. Accordingly, no person including manufacturer, importer, dealer or supplier of Ultrasound machines, Imaging machines, Scanner or any other equipment, capable of detecting sex of foetus as also no organization including a commercial organization should sell, distribute, supply, rent, allow or authorize the use of such machines or equipment, whether on payment or otherwise to any Genetic counseling centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person not registered under the Act.³⁵ The registration certificate in Form-B has to be displayed publically.³⁶

The provider of such machine/ equipment to any person or body registered under the Act has to send to appropriate authority of the concerned

³³ Pamela Philipose, *Women versus Girls*, INDIAN EXPRESS, April 5, 2006.

³⁴ PC & PNDT Act, 1994.

³⁵ *Id.*, Section 3B read with Rule 3A of the Rules.

³⁶ PNDT Rules, Rule 4(i)(ii), Rule 6(2), 6(5)&8(2).

State, Union Territory and to the Central Government, once in three months, a list of those to whom the machine/ equipment has been provided, and take an affidavit from such body or person purchasing or getting authorization for using such machine/ equipment that it shall not be used for detection of sex of the foetus.

The use of Pre-natal diagnostic techniques is permitted only when:

1. age of the pregnant woman is above thirty-five years;
2. the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
3. the pregnant woman has been exposed to potentially teratogenic agents such as, drugs, radiation, infection or chemicals;
4. the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease; or
5. any other condition as may be specified by the board.³⁷

All Genetic counseling centres, Genetic labs, Genetic clinics and Ultrasound clinics conducting any scan, test or procedure on any pregnant woman shall now have to keep complete records of such tests indicating name, husband's name as well as name and address of the referring medical practitioner and the reasons requiring such test, scan or procedure as specified in Form F.³⁸

Whenever any pregnant woman undergoes prenatal diagnostic technique for any other than the permitted purposes it shall be presumed that she was compelled by her husband or any other relative to undergo the procedure and they shall be held liable for the same unless the contrary is proved.³⁹

The following acts can be complained against under the various provisions of this Act:

- (a) Publication of an advertisement to provide the services of any kind of sex selection or pre-determination⁴⁰;

³⁷ PC&PNDT Act, Section 4.

³⁸ PNDT Rules, Rule 9(4).

³⁹ PC&PNDT Act, Section 24.

⁴⁰ *Id.*, Section 22.

- (b) Non-registration of the Clinic indulging in pre-conception or pre-natal diagnostic techniques or not displaying of such registration certificate at a conspicuous area within the clinic or establishment⁴¹;
- (c) Getting sex determined of the unborn child;
- (d) Compelling a pregnant woman to undergo sex determination;
- (e) Assisting or facilitating the process of sex-selection⁴²;
- (f) Communication by the medical professional in any manner of the sex of the unborn child to the pregnant lady or any other person;⁴³
- (g) Non-maintenance of the mandatory records by a clinic registered under the PC&PNDT Act.⁴⁴

IV. IMPLEMENTATION OF THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES ACT 1994

To monitor and review the implementation of the provisions of this Act, it is proposed to set up State level supervisory bodies. These bodies shall create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus. It will review activities of appropriate authorities functioning in the state and take action against them if they fail to perform their duties. These bodies will also keep track of various activities carried out under the provisions of this Act and its Rules and will prepare and send consolidated reports to the Central Supervisory Board and the Central Government.⁴⁵

A complainant desirous of lodging complaint can approach the designated appropriate authority who at the State level is a high ranking health department official above the rank of Joint Director of Health and Family Welfare. At the district level the appropriate authority is the Civil Surgeon or the Chief Medical Officer and in a city the Chief Health Officer or the Ward Health Officer or the Medical Superintendent of a Government Hospital. A complaint has to be made in writing to the appropriate authority who has to acknowledge the receipt of the same. If the appropriate authority

⁴¹ *Supra* n. 35 & 36.

⁴² PC&PNDT Act, Section 4(4) and Section 23.

⁴³ *Id.*, Section 5(2).

⁴⁴ *Id.*, Section (4).

⁴⁵ *Id.*, Section 16A(1).

fails to take action within 15 days, the complainant can go to the Court of competent jurisdiction with the acknowledgement receipt.

Any violation of this Act including running unlicensed laboratories will lead to seizure of equipments. The appropriate authority may seal as well as seize the equipment.⁴⁶ The fine, for those who indulge in sex-selection procedure has been doubled from Rs.50,000 to Rs. 1 lakh, with additional provisions for the suspension and cancellation of the Registration of those medical practitioners who are found guilty of the above offences.⁴⁷

According to statistics submitted by Action Aid, a Non Governmental Organization, who conducted a nation wide survey on the dwindling sex ratio in our country, the number of cases of foeticide registered during 2003, 2004, and 2005 were 57, 86 and 86 respectively. In the year 2005 out of total 86 cases registered, 21 were in Chhattisgarh, 12 in Madhya Pradesh, 12 in Punjab, 10 in Rajasthan, 8 in Haryana, 4 in Gujarat and Maharashtra.⁴⁸

In 2005, the Punjab Government launched a unique 'Integrated Monitoring system' as a pilot project in Ludhiana to check the misuse of technology for female foeticide.⁴⁹ Through this software suspected cases of female foeticide would be detected. The Government will maintain computerized database of the centres, machines, inspections and court cases. Any woman in the age group of 15 to 45 going in for an Ultrasound would have to fill up a form (Form F) for personal details and another form (Form G) for her consent in accordance with the PNDT Rules. The Ultrasound centres would undergo surprise and regular checks. According to the latest available reports there are 1347 registered ultra-sound centres in Punjab out of which the registration of 311 centres had been subjected to cancellation or suspension from time to time. FIR's against 103 centres had been lodged and 14 centres had been convicted by courts for PNDT Act violations⁵⁰

⁴⁶ PNDT Rules, Rule 11(2).

⁴⁷ PC&PNDT Act, Section 23(3).

⁴⁸ Punjabnewslines.com, Posted on Friday, July 25, 2008.

⁴⁹ THE HINDU, February 2, 2006.

⁵⁰ www.theindiapost.com june3, 2009

The Times of India, New Delhi edition had carried a report on 23rd June 2009, on how PNDT cases were falling flat because of the failure on part of State Governments to usher in the law. Taking cognizance of the same the Punjab and Haryana High Court had demanded information on the status of notification for PNDT Act in the State of Haryana. Following the court orders, the Director Health, Haryana, recently submitted before the bench that the Government had only recently found out that the notification had not been published in gazette because of a technical glitch. To make amends, he added, it would either issue a fresh notification or an ordinance to give the Act a retrospective effect in the state from October 24, 1997. He also told the court that so far the State has convicted 13 people under the Act and that it was the first one in the country to do so.

After recording the submissions, the bench coming down heavily on the Haryana Government and said that the Government appeared apathetic to the implementation of such an important legislation. It also directed the State Government to implement the Act at the earliest to ensure that no person involved in such inhumane acts walks free. In response to another Public Interest Litigation filed by a local lawyer Gaurav Goyal, who apprised the court of a raid in June 2007 on a hospital run by a quack, seven months after a complaint about foeticide cases in which around 250 fetuses were recovered from that hospital tank in Pataudi village of Gurgaon District of Haryana. The High Court had earlier in response to a complaint, ordered an inquiry by the Commissioner and it was found that four doctors had neglected to take action against that racket operating in their jurisdiction despite complaints. The Bench also ordered strict action against those four doctors.⁵¹

In Gujarat also the State Health department has filed cases against 79 doctors for violation of the provisions of the PNDT Act. Recently a doctor has been held guilty for failing to submit details of the sonography tests done by him to the concerned official of the Health department within the first five days of every month. Accordingly, the accused in the above case, Dr. Paresh Seth from the Shah-e -Alam area of Ahmedabad has been sentenced to imprisonment and also ordered to pay a fine of Rs. 1000.⁵²

⁵¹ <http://timesofindia.indiatimes.com>, TNN 8 July 2009.

⁵² Indianexpress.com Feb 4, 2009.

V. CONCLUSION AND SUGGESTIONS

The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex-Selection) Act as amended in 2002 is a well drafted and timely taken bold step which is proving effective in checking female foeticide to some extent. This Act has also brought the recently developed techniques of sex-selection at time of conception like Ericsson method (X and Y Chromosome separation), and Pre-implantational Genetic Diagnosis (PGD) under the ambit of law. The Act is backed by a stringent enforcement mechanism in the States so as to ensure its effective implementation. But, as has been proven time and again, its difficult to eradicate social evils with the help of legislation alone. Prejudices against the womankind in general and the girl child in particular are deep rooted in our society. There are practices abound which, despite all legislative measures are still thriving owing to the general misconception of male supremacy. There is an urgent need to sensitise the general public in order to curb the practices discriminatory against and derogatory to the dignity of women.

The dwindling sex ratio needs to be balanced and this can be done only when the State, media, journalists, non-governmental organisations, medical practitioners, women groups and the public themselves take concerted steps to ensure that provisions of anti female foeticide law are implemented fully and effectively. It is only by a combination of monitoring, education campaigns, and effective legal implementation that the deep-seated attitudes and practices against women and girls can be eroded. In this religious leaders should play a pro-active role. They should clear the misinterpretations associated with our scriptures and encourage people to have a scientific, rational, and humanitarian approach. Traditionally the task of performing last rituals which vests only with the son should be extended to daughters as well.

Many States have launched schemes for the girl child such as cash incentive for parents on birth of girl child, free education upto graduation, some policies which offer staggered payments and finally mature at the time of marriage and so on. The local panchayats should also take steps to control female foeticide at grassroot level. The local leaders should engage educated people from their villages to create awareness, educate the masses so as to empower people and involve women as forerunners

in the campaign against female foeticide. Prizes should be declared for informers and incentives for decoys. There should be wide publicization in the media of the scale and seriousness of this malpractice. NGOs should take a key role in educating the public on this matter. The National Commission for Women, NGO's, Ministry of Health and Family welfare should come up with better schemes for proper implementation of the existing laws and undertake campaigns for spreading awareness on a massive scale with the help of newspapers, radio, television, internet and also sms'es via mobiles.

The medical fraternity including the medical profession and its associations like Indian Medical Association, Radiologist Association and Forum for Obstetricians and Gynaecologists should give up their petty interests in the larger interests of humanity. There is need to inculcate a strong ethical code of conduct among medical professionals. The Indian Medical Council Act, 1956 and The Medical Council's Code of Ethics, should be amended to harmonise with present day laws and most importantly the womenfolk who are the bearers of children should free themselves from the imposed responsibility of producing sons at any cost. A child whether it's a boy or a girl has a right to be born healthy and it's the duty of parents to provide them a safe, caring and protected environment conducive to their development. The removal of this practice in Indian society is a serious challenge. It must involve the empowerment of women and a strengthening of women's rights through campaigning against practices such as dowry, and ensuring strict implementation of existing legislation. We have to create a feminine movement so that women feel a sisterhood towards each other and stand up for other woman in distress. All women whether mothers or mothers in law should vehemently oppose any illtreatment towards their own kind. We need to bring up our daughters as sons and make them equally successful and discard the old notions that a girl's education is in order to better her marriage prospects. Education is a tool to empower them in order to face this world. An educated female class which is more aware of their rights will do wonders for the feminist movement.