

LAW AND FEMALE FOETICIDE: A CRITICAL LEGAL ANALYSIS

***KUMAR NAYAK**

I. Introduction

Female foeticide refers to the deliberate termination of pregnancy based on the sex of the foetus when it is identified as female. It is a manifestation of entrenched gender bias and reflects a societal preference for male children. The practice has led to a disturbing decline in the child sex ratio, posing serious demographic and social consequences.

From a legal standpoint, female foeticide is not merely a social evil but a direct violation of fundamental rights and human dignity. The law treats such acts as criminal offences, recognising the unborn female child as deserving of legal protection.

II. Social Causes of Female Foeticide

The persistence of female foeticide is rooted in multiple social factors, including:

- A. Patriarchal social structures
- B. Preference for male heirs
- C. Dowry-related economic considerations
- D. Belief that sons ensure lineage continuity
- E. Misuse of prenatal diagnostic technologies

These factors collectively contribute to the perception of daughters as economic and social burdens, leading to sex-selective abortions.

III. Constitutional Perspective

The practice of female foeticide strikes at the heart of constitutional values. It violates:

- A. The guarantee of equality before law
- B. The prohibition of discrimination on grounds of sex
- C. The right to life and personal dignity

The Constitution imposes a duty upon the State to protect women and children and to promote social justice. Female foeticide undermines these constitutional objectives by denying the very right to be born.

IV. Statutory Framework in India

A. Medical Termination of Pregnancy Act

The Medical Termination of Pregnancy Act, 1971 regulates the conditions under which abortions may be legally performed. While it permits termination under specific circumstances, it does not allow abortion for sex-selection purposes. Any termination based solely on the sex of the foetus is illegal.

B. PCPNDT Act

The principal legislation addressing female foeticide is the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994. The Act:

- I. Prohibits sex selection before and after conception
- II. Regulates the use of prenatal diagnostic techniques
- III. Bans communication of the sex of the foetus
- IV. Prescribes penalties for medical practitioners and others involved

The Act seeks to curb the misuse of technology that facilitates sex-selective abortions.

C. Indian Penal Code

Provisions of the Indian Penal Code criminalise acts causing miscarriage without lawful justification. When female foeticide results from illegal abortion practices, criminal liability arises for both the service provider and other participants.

V. Judicial Approach

Indian courts have consistently recognised female foeticide as a serious offence against society. The judiciary has emphasised strict enforcement of the PCPNDT Act and held that leniency in such cases defeats the purpose of the law.

Judicial pronouncements have highlighted that female foeticide leads to long-term social imbalance and must be addressed through deterrent punishment and vigilant regulatory mechanisms.

VI. Enforcement Challenges

Despite a comprehensive legal framework, enforcement remains weak due to:

- I. Poor monitoring of diagnostic centres
- II. Low conviction rates
- III. Collusion between medical professionals and families
- IV. Lack of awareness among the public

These shortcomings reduce the deterrent effect of the law and allow the practice to persist.

VII. Role of the State and Society

The eradication of female foeticide requires a multi-dimensional approach. Legal measures must be complemented by:

- I. Public awareness campaigns
- II. Education and empowerment of women
- III. Economic and social incentives supporting the girl child
- IV. Ethical regulation of medical practice

Law alone cannot eliminate female foeticide unless accompanied by social transformation.

VIII. Comparative and International Perspective

International human rights instruments recognise gender equality and protection of children as fundamental principles. Female foeticide violates these norms by denying female children equal protection and dignity. India's commitment to international conventions strengthens the obligation to prevent sex-based discrimination before birth.

IX. Critical Evaluation

While the PCPNDT Act is comprehensive, its success depends on effective implementation. Over-criminalisation of medical practitioners without adequate procedural safeguards may also discourage legitimate medical practice. A balanced approach focusing on accountability, transparency, and education is essential.

X. Conclusion

Female foeticide represents a profound failure of societal values and legal enforcement. Although Indian law provides a robust framework to combat this practice, persistent gender bias and weak implementation continue to undermine its effectiveness. Eliminating female foeticide requires not only strict legal enforcement but also a sustained commitment to gender equality, ethical medical practice, and social reform. Protecting the unborn female child is fundamental to achieving a just and balanced society.

Footnotes

1. Census of India, *Child Sex Ratio Data* (various years).
2. Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.
3. Medical Termination of Pregnancy Act, 1971.
4. Supreme Court of India observations on declining sex ratio and PCPNDT enforcement.
5. Flavia Agnes, *Law and Gender Inequality in India*.
6. Law Commission of India Reports on gender justice and women's rights.
7. United Nations Population Fund, *Gender-Biased Sex Selection*.