



## FEMALE FOETICIDE AND INFANTICIDE: A LEGAL ANALYSIS

Priyadarshni<sup>a,\*</sup>,  Dr. Sunayana Trisal<sup>b,\*\*</sup> 

<sup>a</sup> Research Scholar (SRF), Faculty of Law, MMH College, Ghaziabad, Chaudhary Charan Singh University, U.P., (India)

<sup>b</sup> Associate Professor, Faculty of Law, MMH College, Ghaziabad, Chaudhary Charan Singh University, U.P. (India)

### KEYWORDS

Female Foeticide, Infanticide,  
Violence, Abortion, Sex Ratio

### ABSTRACT

Women play a pivotal role in the development of the society. They are an integral part of the mainstream development. Nonetheless, the domination of a female continues in many forms from womb to tomb in the society.<sup>[1]</sup> Declining sex ratio and gender discrimination of the girl-child has become a deep-rooted problem in the society. The main reason being the crime of female foeticide and female infanticide. 'Female Foeticide' is the destruction of the female foetus in the mother's womb and 'Female Infanticide' is the killing of the girl-child after her birth. If a girl-foetus escapes foeticide then infanticide is waiting for her after birth. Both, foeticide and infanticide, are socially tolerated problems. The desire of having a male child in family has become an issue of gravest concern, leading to gender discrimination. This paper is an attempt to identify the issues, the Law and its application to come to a relevant conclusion.

### 1. Introduction

Female foeticide is one of the many forms of violence directed at women. Every year, 15 million girls are born in India, but one-quarter of these do not reach the age of 15 due to female foeticide and infanticide,<sup>[2]</sup> and the shameful fact is that 40-50 million girls and women are missing from Indian families.<sup>[3]</sup> Domestic violence against women is also linked to a low male-female sex ratio. Becoming a mother is a great accomplishment, bliss, and happy moment for any woman. There would be no human beings in the world if women did not become mothers. But destroying a female foetus in the womb is a big curse for this bliss and happiness. The evidence on the evil of sex discrimination, victimisation of females, has been witnessed since ancient times and is still practised today. In today's technological age, it is very easy to test the sex of the foetus, so there has been a change in the sex ratio of male and female over the last few decades, and the main cause of the imbalance is female foeticide and infanticide. Difference between female foeticide and female infanticide is that the Female Foeticide is determining the sex of the foetus and undergoing the process of abortion, if the sex of the foetus is a girl. While Female Infanticide is the killing of the girl child once she has taken birth.

For the first time in 1991, Indian Nobel Prize winning economist Amartya Sen wrote about 37 million "missing women" in India<sup>[4]</sup> because at that time the ratio of women to men was 927:1000.<sup>[5]</sup> According to 2001 census the sex ratio was 933 females per thousand males.<sup>[6]</sup> Whereas according to 2011 Census, the number of women in the population of India is 58,74,47,730 and the sex ratio is 943 females per thousand males.<sup>[7]</sup> Although the fifth National Family and Health Survey was conducted by the government between 2019-2021 in December 2021, which found that for the first time in the history of India, there are more women than men.<sup>[8]</sup> According to this survey, there are

1020 women per 1000 men, this overall sex ratio improvement is a subject to pleasure. Although the Census of 2021 has not yet been done, only after that will the data be correctly ascertained and the correct picture of sex ratio will emerge and can be analysed fruitfully. The 2021 Census (the 16th Census) will be undertaken in 2022. However, determining gender equality solely on the basis of sex ratio is not appropriate because many factors, such as poor health care, education, poverty, are responsible for gender inequality, which also affects the rising cases of female foeticide and infanticide.

### Sex Ratio 1951 Onwards<sup>[9]</sup>

Year	Males	Females
1951	1000	946
1961	1000	941
1971	1000	930
1981	1000	933
1991	1000	927
2001	1000	933
2011	1000	943
2019-2021	1000	1020

### Reasons For the Female Foeticide and Infanticide

It would not be an exaggeration to call a heinous crime like female foeticide as a blot on the whole world. It is such a heinous act done by the people of the society against the women while living in the society, in which the right of a girl to live is taken away before her birth. Such dreadful crime can happen in any city, town, district and society because patriarchal society and small mentality give rise to such crimes. This type of crime is a form of domestic violence against women, which starts before the birth. The reason of female foeticide, which is the intentional killing of a female foetus, lies in the following mentioned factors. These may be distinguished as social,

### \* Corresponding author

E-mail: priyadarshni1000@gmail.com (Priyadarshni).

E-mail: sunayanatrisal@gmail.com (Dr. Sunayana Trisal).


DOI: <https://doi.org/10.53724/lrd/v6n3.02>


Received 10<sup>th</sup> March 2022; Accepted 15<sup>th</sup> March 2022

Available online 27<sup>th</sup> March 2022

2456-3870 / © 2022 The Authors. Published by Research Inspiration (Publisher: Welfare Universe). This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/)



 <https://orcid.org/0000-0001-5259-3520>

 <https://orcid.org/0000-0002-8962-1393>

economic and emotional reasons, though not mutually exclusive, they are:

#### Social Reasons

- Illiteracy is a major reason that encourages female foeticide and infanticide because some people do not understand the difference between good and bad and are unable to take informed decisions.
- Due to the increasing dimensions of science and technology, there has been an increase in the cases of female foeticide because people have easy access to gender selection techniques and they do not face any problem to get the abortion done.
- Due to many cultural beliefs and social rules, cases like female foeticide and infanticide also increase.
- India is a vast country, geographically and population wise too. The diversity of the Indian society can be gleaned in the areas of caste, creed, religion, tradition and region and therein lie the root cause of prioritising the behaviour towards the boys and girls in the society.
- Unfortunately, the mind-set of the society is male dominated or patriarchal. It means that the male gender gets a lot of preference everywhere and this hard fact of favouritism can also be evidently witnessed at the micro level in the Indian families, where taking birth as a male child automatically gains a lot of advantages in the society.
- Due to the family and social pressure on pregnant women are ready to go for abortions.

#### Economic Reasons

- The practice of dowry system can be said to be the main reason for female foeticide because the parents feel that if a girl is born then parents will have to give dowry, and if a boy is born then he will bring a daughter-in-law with ample dowry.
- Those people in the society whose financial condition is good, they find out the sex of the foetus even by paying the desired amount for ultrasound and this also increases the cases of female foeticide.
- One another reason for this evil is that most of the people think that female foeticide helps to keep the family size small and thus financially burden gets reduced.<sup>[10]</sup>

#### Emotional reasons

- It is believed that only the son can provide peace by giving fire after the death of the parents, and only the son can do other social, religious and commercial tasks like earning income, family growth, farm-barn, land-property etc. can do it successfully.
- It is believed in the society that the son will continue the lineage while the daughter will go to the in-law's house after marriage.<sup>3</sup>
- The desire and fashion of a small family can also be the reason for female foeticide and infanticide because if the first-born baby of the house is a girl, then the baby growing in the womb is also examined for the desire to have a second baby boy child and in the case of a girl foetus, she is aborted.
- In Hindu Society the practice of female foeticide and infanticide have been considered to be a 'sin'<sup>[11]</sup>, in the Muslim community, it is regretted as 'haram' and the Christians community also condemns abortion. In spite of this female foeticide and infanticide is continuing in every community.<sup>[12]</sup> Female Foeticide' is somewhat connected with gender discrimination or gender disparity. Female foeticide not only

just excludes daughters but also related to violence against women because it is very vital to know that this discrimination on the basis of sex starts in the womb of the mother. This evil of violence is very much similar to female foeticide because like the female foeticide it is also the violation of right to life. The Indian families are clear-cut living examples of the 'Gender favouritism' wherein, the birth of a boy child is keenly looked forward to and the birth of a girl child is looked down, disdainfully. This very preference for the male child over the birth of a female child gives undue rise to the practice of 'Female foeticide' and the growth of 'Female infanticide', which in turn creates a 'Skewed Sex Ratio' in the country.

#### Laws Relating To Female Foeticide

To stop this barbaric and heinous crime, many laws have been made over the years, by the legislature, so that such crimes can be prevented in the society. These laws depict the changing dimensions of the foeticide and the dynamism of the law to keep pace with it.

#### Indian Constitution

The 'Right to live' has been provided in Article 21 of the Indian Constitution, thus no person has the right to kill any girl child in the womb. In case of **Radiological and Imaging association vs. Union of India**<sup>[13]</sup>, the High Court stated that Sex test of pregnant women by sonography is a violation of Article 21 of the Constitution.

Similarly, Article 51A (e) of fundamental duties of Constitution impose on every citizen for the renunciation of practices degrading to women.

#### Laws for the Protection against Female Foeticide & Infanticide

Indian penal code	1860
Medical termination of pregnancy act	1971
Pre-natal diagnostic techniques act	1994
Pre-conception and pre-natal diagnostic techniques act	2004

#### Indian Penal Code, 1860

Indian Penal Code deals with the offences related to female foeticide and infanticide. This also provides the protection for causing miscarriage, injuries to unborn children and infants under sections 312 to 318. Indian penal code has defined punishable causing miscarriage a serious offence whether it is causing 'with consent' or 'without consent' of the woman. The relevant sections are shown in the table below:<sup>[14]</sup>

Sec.	Offence	Max. Quantum of Punishment
312	Causing Miscarriage	Imprisonment up to 7 years and/or fine
313	Causing Miscarriage without Woman's consent	Imprisonment for life and fine
314	Death caused by act done with intent to cause miscarriage.	Imprisonment for life and fine
315	Act done with intent to prevent child being born alive or to cause it to die after birth.	Imprisonment up to 10 years and/or fine
316	Causing death of quick unborn child by act amounting to culpable homicide.	Imprisonment up to 10 years and fine
317	Exposure and abandonment of child under twelve years, by parent or person having care of it.	Imprisonment up to 7 years and/or fine
318	Concealment of birth by secret disposal of dead body.	Imprisonment up to 2 years and/or fine

#### Medical Termination of Pregnancy Act, 1971

Under this act, abortion of a pregnant woman was allowed if the woman

wanted to cause an abortion voluntarily due to rape or any other medical risk. This type of pregnancy could be terminated only by Registered Medical Practitioner but due to technology being easily available, the cases of female foeticide started increasing rapidly and the government had to pass Pre-natal Diagnostics Techniques Act (PNDT) Act, 1994 to get rid of this problem.

#### **Pre- Natal Diagnostic Techniques Act (Pndt), 1994**

PNDT Act, 1994<sup>15</sup> was passed by Parliament to prevent female foeticide, under this Act, prenatal sex determination was declared invalid and illegal and all the techniques which were related to sex selection before conception were also done under this act so that the difference between sex ratio of male to female could be stopped. Many provisions have also been made for the establishment of a Central and State Supervisory Board for proper monitoring of this Act. Under this act, a provision of 3 years imprisonment and a fine of ₹ 50,000 were made in the first instance for violating the rules, and in case of repetition of the offense, a provision of 5 years of imprisonment and a fine of one lakh were made.

But this act also could not prove to be effective and it was amended by the government and became the Pre-Conception and Pre-natal Diagnostic Techniques Act (Regulation and Prevention of Misuse) (PCPNDT) Act, 2004.

#### **Pre-Conception and Pre Natal-Diagnostic Techniques Act, 2004**

The main objective of passing this act was to root out female foeticide, under which the punishment of prenatal sex screening is made more stringent.

#### **Judicial Response Towards Female Foeticide and Infanticide**

Judiciary plays an important role in interpreting the legal provisions and mete out justice to the aggrieved parties. The Courts in India have responded to matters of gender related offences in a very remarkable manner. The fabric of a society is strong as long as Gender justice does not suffer. Judiciary has given several landmark judgments from time to time and opined in very strong words on crimes like female foeticide and infanticide. The below mentioned landmark judgements give a glimpse of the important role the judiciary plays in helping resurrect and mould the strong biases of the society against females.

#### **Centre for Enquiry into Health and Allied Themes (CEHAT) & Ors v. Union of India and Ors.<sup>[15]</sup> 10 September, 2003**

This is a landmark case related to female foeticide, in this case the Supreme Court had ordered the Central Government and the State Government to stop illegal sex determination and spread social awareness against female foeticide and in this case, it has also been clearly stated that mere enactment of any law is not enough but it also needs proper implementation and execution. The court also directed all States to confiscate equipment for the using purpose of ultrasound from unlicensed clinics for sex determination.

#### **Vinod Soni & Anr. v. Union of India 2005<sup>[16]</sup>**

In this case, the PCPNDT Act, 1994 was challenged by petitioner and said that it violates Article 14 and Article 21 of the Constitution, but the Bombay High Court dismissed the petition describing the PCPNDT Act constitutional and stated there is no violation of articles 14 and 21 of Indian Constitution.

#### **Mr. Vijay Sharma and Mrs. Kirti Sharma v. Union of India 2007<sup>[17]</sup>**

Vijay and Kirti Sharma husband wife challenges the validity of the PCPNDT Act 2001 for banning sex determination test and pleaded with the court that they should be allowed give birth to a male child with the help of sex

determination test because there is a social stigma attached to the birth of a girl child in the country. The Court held that if sex determination test is not banned, it will lead to imbalance in sex ratio and girls will always be unwanted and also held that accepting the petition of the petitioner would be an insult to womanhood.

#### **Dr. Anil Kumar Mishra v. State of U.P 2011<sup>[18]</sup>**

In this case, the Allahabad high court showed concern for sex ratio difference and stated that where the girl child is seen as a burden due to social condition of society, had led to the crime of female foeticide and infanticide. The court also stated that doctors who carrying out sex determination and sex selection tests for abort female foetus need to be seriously condemned.

#### **Voluntary Health Association of Punjab v. Union of India<sup>[19]</sup> 8 November, 2016**

In this case, Supreme Court issued various directions to curb female foeticide by effective implementation of the 'The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Justice Deepak Mishra and Justice Shiva Kirti Singh said that female child is also untitled for equal rights like male child. In this case two appeals were heard together and the 2006 writ petition Civil No. 349 was disposed of and the writ petition of 2014, Civil No. 575 rejected.

#### **Federation of Obstetrics v. Union of India<sup>[20]</sup> on 3 May, 2019**

This writ petition was filed by the Federation of Obstetrics and Gynaecological Societies of India (FOGSI), highlighting the issues and problems affecting the practice of obstetricians and gynaecologists under PCPNDT Act, 1994. In this case it was said that improper selling of sonography machine not only affects the welfare of women but it amounts to undue harassment and mental torture of the members of the petitioner society. Sealing of machines directly deprives a woman of vital medical assistance. Provided that this petition was dismissed on the ground that by diluting the provisions of the rules in this Act, only the object of the Act to prevent female foeticide would be defeated and the right to life of the girl child under Article 21 of the Constitution will be limited to formalities only. It was also stated that non-maintenance of records would not be merely a clerical error but would become a springboard for the offense of foeticide.

#### **Smt. Rekha Sengar v. The State of Madhya Pradesh<sup>[21]</sup> on 21 January, 2021**

In this case, the Madhya Pradesh High Court, while relating to the Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, related to female foeticide, said that this Act should be strictly implemented. Court refused to grant bail to a woman accused of female foeticide and said that granting bail may reinforce the Notion that Pre-Natal Diagnostic Regulation Act is only A "Paper Tiger".

#### **Conclusion**

The judiciary has taken a strict stance against female foeticide. From time to time, the Central and State Governments have also been directed by judiciary to make and implement strict rules. The legislature has made many laws to prevent female foeticide, but all these laws are not enough to stop and eliminate this heinous and brutal crime, even today a heinous crime like female foeticide is continuing. The implementation has to be strict. The most pragmatic way to prevent and stop this crime is to change the conservative thinking and attitude towards women, for which it is necessary to take

combined, co-ordinated, protective and organizational measures by all the organs of the State and voluntary organisations and NGOs, all together. The fourth estate, i.e., the TV, Newspapers, and other types of electronic media, the social-networking media like Facebook, WhatsApp can also help in disseminating information regarding evils of gender bias and the resultant repercussions on the society as a whole. It can also popularise the various schemes being run by the government for upliftment of the girls, and thus help in curbing crimes like female foeticide and infanticide in conjugation with the active participation of the society.

## References

1. Indira Noopur, Women's Studies in school Education: A New Perspective (1989) p.8.
2. Behera, Avimanyu, Domestic Violence against Women Vis-A-Vis Judicial Response in India (2007) p.22.
3. Ibid.
4. IFES Asia-Pacific Officer Sarah Bibler, Regional Director for Asia- Pacific Vasu Mohan, and Dr. Meeta Singh, former advisor to the Dignity of the Girl Child program: INDIA'S 37 MILLION "MISSING WOMEN" Visited on 19 march 2022, [https://www.ifes.org/news/indias-37-million-missing-women#:~:text=In%20a%20seminal%20article%20in,men\)%20was%20a%20low%20927.](https://www.ifes.org/news/indias-37-million-missing-women#:~:text=In%20a%20seminal%20article%20in,men)%20was%20a%20low%20927.)
5. Ibid.
6. Web edition: PROVISIONAL POPULATION TOTALS Chapter-6 Census of India 2001, Series 1, India, Paper 1 of 2001, ch-6 SEX COMPOSITION OF THE POPULATION [https://censusindia.gov.in/Data\\_Products/Library/Provisional\\_Population\\_Total\\_link/PDF\\_Links/chapter6.pdf](https://censusindia.gov.in/Data_Products/Library/Provisional_Population_Total_link/PDF_Links/chapter6.pdf), Visited 20 march 2022
7. Population census 2011, [www.Census2011.co.in](http://www.Census2011.co.in) visited on 18 march 2022
8. Hannah Ellis-Petersen in Delhi Thu. 25 nov 2021, <https://www.theguardian.com/world/2021/nov/25/india-has-more-women-than-men-for-first-time-survey-finds> visited on 27 Feb. 2022.
9. [http://lsi.gov.in:8081/jspui/bitstream/123456789/310/1/49962\\_1981\\_POR.pdf](http://lsi.gov.in:8081/jspui/bitstream/123456789/310/1/49962_1981_POR.pdf)
10. Mishra Preeti, Etiology of Domestic Violence against women in India: An Analysis, (200)3 p.139
11. Singh, Dr. Nishant, Tripathi, Prof. Madhusudan, Janamkotarastibetian (sribhrunhatya), Khushi Publications, (2011) p.41
12. Our World in Data, Gender Ratio by Hannah Ritchie and Max Roser, published in June 2019 <https://ourworldindata.org/gender-ratio> visited on 23 feb2022.
13. AIR 2011, Bombay 171.
14. Section 350. Criminal force: India Code, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_5\\_23\\_00037\\_186045\\_1523266765688&orderno=35](https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=35) Ovisited on 18 Feb. 2022.
15. Writ Petition (civil) 301 of 2000, Date of judgement-10/09/2003.
16. CriLJ 3408, 2005 (3) MhLj 1131.
17. Writ Petition 2777 of 2005, decided on 7 September 2007.
18. Civil Misc. Writ Petition No. 57791 of 2008. Judgment delivered on 01.04.2011.
19. Writ Petition (civil) no. 349 of 2006 with Writ Petition (civil) no. 575 of 2014
20. Writ Petition (civil) no. 129 of 2017.
21. S.L.P.(CrL.) No. 380 of 2021.
22. Madhya Pradesh High Court denies bail to Woman accused of female foeticide by Sneha Somani, April 3, 2021 <http://lawtimesjournal.in/madhya-pradesh-high-court-denies-bail-to-woman-accused-of-female-foeticide/Visited> on 18 march 2022
23. Pleadings intelligent Legal Solutions, laws against female foeticide, written by Saanvi Singla, Student of University Institute of Legal Studies, Panjab University and Tamanna Jindal, Student of University Institute of Legal Studies, <https://blog.ipleaders.in/laws-female-foeticide-india/> visited on 10 march 2022

\*\*\*\*\*