



## FEMALE INFANTICIDE AND FOETICIDE: LEGAL MEASURES AND SOCIAL CHALLENGES

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### ABSTRACT

*Social norms and ingrained gender biases make female infanticide and foeticide among the most serious human rights abuses. Due to their gender, these practices, which include the selective abortion or murder of girls, reflect a terrible confluence of sociocultural traditions, poverty, and patriarchy. The problems are nonetheless ingrained in Indian society despite the country's lengthy history of addressing them through legislative and policy initiatives. Significant legislative and judicial attempts have been undertaken by India to counteract these abuses since obtaining independence in 1947. Despite legal protections, social issues still exist, and this article examines how India's laws against infanticide and female foeticide have changed throughout time. A thorough examination of female infanticide and foeticide in India is provided in this research, which also looks at the intricate interactions between sociocultural elements and legal frameworks that have influenced these behaviours. As a result of enduring gender biases and a desire for male children in some parts of India, female infanticide and foeticide continue to be deeply ingrained problems despite notable progress in women's rights and gender equality. The historical foundations, cultural values, and financial factors that support these behaviours' ongoing ubiquity are examined in this paper. Additionally, it examines the development of laws intended to prevent female infanticide and foeticide, such as the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act), and its practical effects. The report emphasises a multifaceted strategy that combines legal enforcement with sociocultural transformation to address the underlying causes of female infanticide and foeticide in India in its recommendations for politicians, legal professionals, and civil society organisations.*

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## INTRODUCTION

One of the numerous types of violence against women is female foeticide. <sup>1</sup>15 million girls are born in India each year, yet 40–50 million women and girls are missing from Indian homes, and a quarter of these do not live to be 15 years old because of infanticide and female foeticide. A low male-female sex ratio is also associated with domestic violence against women.<sup>2</sup> For any woman, being a mother is an enormous accomplishment, a time of joy, and a joyous moment. Without women becoming mothers, there would be no human beings on the planet. However, killing a female fetus while she is still in the womb is a major curse on this joy and contentment.

The Indian government has taken extensive legal action in response to these problems, enacting several rules and regulations designed to stop sex-selective behaviour. A significant step in this regard is the Pre-Conception and Pre-Natal Diagnostic Techniques. <sup>3</sup>(Prohibition of Sex Selection) The Act of 1994 forbids sex determination testing and establishes a legal framework for punishing individuals who break these rules. Notwithstanding these steps, sex-selective behaviours are still being reported nationwide, making it difficult to enforce the law <sup>6</sup>. This essay seeks to analyse the sociocultural factors that support female infanticide and foeticide in India, break down the intricate layers of these practices, and assess how well the legislative safeguards against them are working. The study aims to add to the current conversation on gender equality and the rights of women and girls in India by comprehending the underlying causes and analysing the achievements and shortcomings of legal interventions. To establish the foundation for a more just and equitable society, the article attempts to explore possible avenues for ending female infanticide and foeticide using a comprehensive methodology that blends legal analysis with sociocultural insights.

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<sup>1</sup> Prabhat Jha, *Maya's New Husband: A Study of Changing Demographics in Rural India* (Harvard University Press 2011)

<sup>2</sup> Ravinder Kaur, *Too Many Men, Too Few Women: Social Consequences of Gender Imbalance in India and China* (Orient BlackSwan 2013)

<sup>3</sup> Tulsi Patel, *Sex-Selective Abortion in India: Gender, Society and New Reproductive Technologies* (Sage Publications 2007)

## **SOCIAL AND CULTURAL FOUNDATIONS**

India's patriarchal ideals, economic factors, technological developments, and the resulting skewed sex ratios are all intricately linked to the sociocultural foundations of female infanticide in that nation. With significant effects on Indian society, each of these elements contributes significantly to the continuation of the desire for male children.

## **VALUES OF PATRIARCHY AND THE PREFERENCE FOR MALE CHILDREN**

The patriarchal system<sup>4</sup> that rules of Indian society are the main cause of the desire for male offspring. Because they are seen as the heirs who will continue the family name and legacy, men are valued more under this system. On the other hand, women are frequently viewed as members of the family of their future spouse. Cultural norms and traditions that favour sons for their participation in religious rites, particularly those about inheritance and funeral customs, reinforce this view. In addition to devaluing women's position, these patriarchal ideals also support the systematic depreciation of female life, as is demonstrated by behaviours like female infanticide.

## **LEGISLATIVE MEASURES**

India has laws that specifically punish actions that endanger both the mother and the foetus. Section 88, which divided the crime of miscarriage into two categories, is the first of numerous sections in the Bharatiya Nyaya Sanhita (BNS),<sup>5</sup>2023, which addresses offences against pregnant women. One is the foetus's miscarriage, which occurs when it has no time left in the womb. Second, the phrase "the woman be quick with child" refers to a miscarriage of a fetus that is moving in the womb. According to the aforementioned clause, any pregnant woman who causes a miscarriage of a foetus that is immobile in the womb, including the mother, faces a maximum sentence of three years in prison, a fine, or both. Additionally, the clause stipulated that anyone, including the mother, who causes the miscarriage of a foetus that is moving in the womb faces a fine and ten years in prison. According to section 89 of the BNS, a woman who has a miscarriage without her consent faces a fine and either life in prison or a maximum of ten years in prison.

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<sup>4</sup> Priya Nanda and others, 'Gender Dimensions of User Fees: Implications for Women's Utilisation of Health Care' (2005) 2 Reproductive Health Matters 127

<sup>5</sup> Indian Penal Code 1860, ss 312-318 (causing miscarriage)

By limiting sex determination practices and outlawing the use of sex-selective abortion, the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994,<sup>6</sup> It is a comprehensive legislative framework designed to prevent "female foeticide" and advance gender equality. The use of prenatal diagnostic procedures like amniocentesis and ultrasonography is governed by this statute. It forbids any testing to determine the sex of the foetus and permits these procedures only to detect any genetic abnormalities or medical conditions. Medical geneticists, gynaecologists, registered medical professionals, and anyone who owns a genetic counselling centre, genetic laboratory, or genetic clinic or works for one of these establishments and violates any of the aforementioned act's provisions regarding sex-selective abortion, face up to five years in prison and fines of up to \$50,000. Additionally, medical licenses may be suspended or revoked for violations and actions that facilitate sex determination. The Supreme Court ruled in Centre for Enquiry into Health & Allied Themes (CEHAT) v. Union of India that the Central Government should make arrangements for the public to be informed about the prenatal sex determination process.<sup>7</sup> and that the Central Board should take the Act's enforcement seriously. At the same time, it directed the Central Board to work with the states to coordinate the investigation and oversight of the Act's implementation.

### **CIVIL SOCIETY REACTIONS**

Both government programs and non-governmental organisations (NGOs) have made major contributions to the fight against female infanticide and foeticide in India. These organisations have been crucial in promoting awareness, advocating for change, and putting programs in place that try to stop these practices. These initiatives are essential to guaranteeing the protection, education, and empowerment of female children as well as to altering society's perceptions of them.

### **NATIONAL INITIATIVES AND CAMPAIGNS**

The Indian government launched the Beti Bachao, Beti Padhao (BBBP) program in 2015 as part of a larger initiative to address the country's decreasing child sex ratio. To reverse deeply ingrained societal biases and advance gender equality emphasises a multidimensional strategy that integrates survival, protection, and education for the girl child is emphasised. The main goal of BBBP is to combat gender-based discrimination against girls to rectify the imbalanced

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<sup>6</sup> Vibhuti Patel, 'Sex-Selective Abortions and State Response: Prohibition and Criminalization' (2017) 52 Economic and Political Weekly 76

<sup>7</sup> Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994

child-to-sex ratio. It aims to guarantee that girls are born, raised, and educated in a society that values them equally by creating a favourable environment. All Indian states are included in this nationwide program, which focuses especially on the districts with the most concerning sex ratios.

In order to change public attitudes about the value of girl children, BBBP strategically uses a multipronged approach that includes media-driven public awareness campaigns, workshops, and community engagement. Additionally, it promotes inter-sectoral cooperation, coordinating efforts across multiple ministries and sectors, such as Human Resource Development, Women and Child Development,<sup>8</sup> and Health and Family Welfare, to guarantee a thorough approach to addressing the problem. The strategy also provides incentive programs that provide rewards to districts that significantly increase their sex ratios. By showing a shared commitment to creating circumstances where girls may flourish equally, this strategy encourages communities and local governments to actively participate in initiatives to address gender disparities.

### **ECONOMIC ASPECTS: FINANCIAL LIABILITIES AND THE DOWRY SYSTEM**

The preference for boys is largely influenced by economic considerations. Even though it is prohibited, the dowry system is nevertheless widely used in several regions of India. The financial responsibility of giving the groom's family substantial presents, money, and property during the marriage falls on families with daughters. The idea that daughters are financial responsibilities is strengthened by this behaviour. On the other hand, sons are seen as financial resources who would assist their parents in old age and add to the family income, which further encourages the preference for male offspring.<sup>9</sup> It is thought that the preference for boys in Northern India is stronger than in Southern India due to differences in financial levels, educational attainment, economic production methods, the importance and role of religion, and kinship systems.

Although financial implications and gender-specific benefits were mentioned as motivators, there was little evidence to support the idea that these factors acted as mediators between the preference for sons and regional socioeconomic and sociocultural traits.<sup>10</sup> Mothers from the

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<sup>8</sup> Census of India, 'Child Sex Ratio in India: A Statistical Analysis' (Registrar General of India 2011)

<sup>9</sup> Centre for Social Research, 'Female Foeticide in India: Research and Data' (CSR)

<https://www.csrindia.org/female-foeticide> accessed 20 March 2024

<sup>10</sup> Ministry of Statistics and Programme Implementation, 'Women and Men in India 2020' (Government of India 2020)

urban North showed a noticeably greater preference for sons when considering regional variations in socioeconomic and sociocultural characteristics. Nonetheless, a sizable amount of the variation in son choice between the North and South cannot be explained due to the persistence of strong independent regional influences. Even while northern states tend to have higher son preference, there are several notable outliers, such as Andhra Pradesh in the south and several eastern states, where son preference levels are on par with or higher than those in the north.

## **SOCIAL DIFFICULTIES IN ENDING FEMALE INFANTICIDE AND FOETICIDE**

Social issues still exist despite strong legal measures:

**Son are preferred in culture:** Particularly in regions of North India like Haryana, Punjab, and Rajasthan, the son preference is still firmly established. Skewed sex ratios at birth are a clear indication of this.

**Misuse of Technology:** Illegal sex determination persists through unregistered clinics or informal procedures, despite the PCPNDT Act's regulation of diagnostic techniques.

**Insufficient Law Enforcement:**<sup>11</sup> Regular inspections and trained inspectors are lacking. Weak conviction rates, drawn-out judicial proceedings, and underreporting of crimes as a result of social stigma.

**Stigma and Social Silence:** Communities frequently keep quiet because of fear or cultural conditioning, and parents and medical professionals are frequently involved.

**The Dowry System and Economic Pressures:**<sup>12</sup> Even though it is against the law, the ongoing dowry burden makes families view daughters as financial obligations.

## **SOCIAL MEDIA'S IMPACT ON PUBLIC AWARENESS**

On social media, initiatives like #SaveTheGirlChild<sup>13</sup> and Beti Bachao Beti Padhao have acquired popularity. Documentaries and movies like "India's Daughters," "Matrubhoomi," and

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<sup>11</sup> National Commission for Women, 'Gender Statistics' (NCW) <https://ncw.nic.in/statistics> accessed 18 March 2024

<sup>12</sup> UN Women, 'Ending Gender-Based Violence in India' (UN Women India) <https://www.unwomen.org/en/where-we-are/asia-and-the-pacific/india> accessed 25 March 2024

<sup>13</sup> Law Commission of India, 'Compulsory Registration of Marriages (Report No 270)' (2017)

"Laadli" have increased awareness. To expose unlawful activities and encourage behavioural change, NGOs and grassroots initiatives have turned to digital tools.

## **PUBLIC INTEREST LITIGATIONS AND JUDICIAL INTERVENTIONS**

**Union of India v. CEHAT & Ors. (2001):** The Supreme Court issued many historic orders to enforce the PCPNDT Act <sup>14</sup>As a result of this, PIL. The Court mandated: Government awareness programs, District-level clinic monitoring and inspections; Strict regulation and licensing of ultrasonography clinics. This case strengthened court pressure on authorities and brought attention to the Act's inadequate implementation.

## **PENALIZING FEMALE FOETICIDE**

Under section 93 of the BNS, parents who attempt to kill their child under the age of twelve by exposing them to danger or leaving them in a dangerous situation face up to seven years in prison, a fine, or both. If the child dies as a result of these actions, it becomes murder or culpable homicide, which is punishable under sections 103 or 105 of the BNS.

## **RECOMMENDATIONS**

While difficult, India's path to ending female infanticide and foeticide is not insurmountable. Significant progress towards attaining gender equality can be made by bolstering legal frameworks, implementing inter-sectoral strategies, interacting with men and boys, and utilising media and technology. All facets of society, from the government to grassroots organisations, must be committed to these initiatives, and they must be prepared to question and alter deeply ingrained attitudes and behaviours.

A number of ideas have been put out to strengthen the legal framework against gender-biased practices. First and foremost, current rules must be changed to plug the gaps that allow sex-selective behaviour <sup>15</sup>to continue. More rigorous oversight and control of medical devices that can determine a foetus's sex should be part of this endeavour. Furthermore, these laws must be better enforced, which calls for increased training on gender issues and the legal context of

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<sup>14</sup> Ministry of Health and Family Welfare, 'PCPNDT Act Implementation' (Government of India) <https://mohfw.gov.in/acts-rules-and-standards-health-sector/acts/pcpndt-act> accessed 22 March 2024

<sup>15</sup> Law Commission of India, 'Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy (Report No 228)' (2009)

female infanticide and foeticide.<sup>16</sup> For law enforcement officers, judges, and medical professionals. Additionally, it is critical to raise legal awareness in communities regarding the rights of women and girls as well as the consequences of engaging in sex-selective behaviour. Programs for legal literacy can enable communities to successfully fight prejudice and violence against women.

While eliminating female infanticide and foeticide and attaining gender equality are surely difficult tasks, there is still promise for the future. Society may get closer to a day when a person's gender will not define their worth or possibilities in life by working together, raising awareness, and advocating for change. The realisation of a fair, wealthy, and just society depends on this future, which is not only feasible but also essential.

## CONCLUSION

The complicated combination of social, economic, cultural, and legal issues makes female foeticide a complicated problem. Although the legislation is essential in stopping this conduct, it is not a stand-alone remedy. Although vital, laws that forbid sex determination and sex-selective abortions, like India's Pre-Conception and Pre-Natal Diagnostic Techniques Act, frequently encounter difficulties in their execution and enforcement. The efficacy of legislative restrictions is frequently compromised by economic pressures and ingrained societal inclinations for boys. Furthermore, it is challenging to discover and prosecute sex-selective abortions due to their covert nature.

The profoundly ingrained customs of infanticide and foeticide in India have been examined in this essay, which frames them as examples of systemic violence within the larger framework of women's protection in modern Indian society. This discussion contends that these practices should be viewed as markers of broader structural violence, even though the academic debate frequently revolves around ethical issues, access to abortion, and reproductive rights, particularly in the Indian context, where they are entwined with a culturally and technologically reinforced preference for sons.

It asserts that while financial interventions or awareness-raising campaigns aimed at protecting or saving the female child are beneficial measures, they fall short in addressing the underlying causes of sex-selective abortion. Rather, the environment that encourages the adoption of sex-

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<sup>16</sup> Sabu M George, 'Missing Girls in India' (Stop Gender Bias, 2018) <http://www.stopgenderbias.com/missing-girls> accessed 15 March 2024

selective abortion as a reproductive strategy is created indirectly by society norms and the larger cultural context. This viewpoint emphasises that sex-selective abortions go beyond mere acts of prejudice and constitute a type of gendered and institutional violence.