

Sex Selective Abortion- an act Causing Discrimination against Women in India

INTRODUCTON:

Sex selection is matter of global concern. In the last three decades, 12.5 million cases of female foeticide have been reported in India while according to unofficial sources 30 million girls have been killed in the last few decades. Sex selection strikes at the very root of international society, is condemned by the civilized world and is contrary to the spirit of the UNDHRs, 1948. The Sex selection is a systematic extermination/destruction of new born girls or female fetus's i.e. of a population group in whole or in part. It is one of the most heinous forms of persecution of women as a class, it is gender cleansing in the garb of medical practice, has the attributes of crime against humanity committed during peace times and meets the definition of genocide under the UN Convention on Prevention and Punishment of Crime of Genocide, 1948. In India, sex selection is practiced in violation of the domestic criminal laws and trivialized as sociological crime to justify the act and shield the perpetrators. It would be a positive and encouraging development on women-specific legislation if sex selection were recognized as a crime against humanity and genocide. The preamble of the UN Charter, 1945 professes faith in fundamental human rights, in the dignity and worth of human beings and in the equal rights of men and women. One of the purposes of the UN is to achieve international co-operation in promoting respect for human rights fundamental freedoms for all without distinction as to race, sex, language or religion.¹ The UDHR affirms the principle of inadmissibility of discrimination against women. It proclaims that all human beings are born free and equal in dignity and rights,² that every without any distinction is entitled to all the rights and freedoms set forth in the UDHR,³ that everyone has the right to life and childhood is entitled to special care and assistance⁴. The UN General Assembly adopted a Declaration on the Elimination of Discrimination against Women on November 17, 1967 and to implement the principle set forth there in, Convention on the Elimination of all forms of discrimination against Women, 1979, (CEDAW) was adopted on December 18, 1979. For monitoring the implementation of CEDAW there is a committee on the elimination of discrimination against women. To receive individual

¹ Article1,UN Charter

² Article1,UDHR

³ Article 2, UDHR

⁴ Article25(2),UDHR.

complaints by passing the government, the optional protocol to the CEDAW was adopted on 7 October, 1999. The international Covenant on Civil and Political Rights 1966(ICCPR) declares that every child has a right to protection by the family, society and the state.⁵ ICESCR, 1966 contains provisions for the care and protection of children against economic and social exploitation⁶. The Declaration on the rights of the child was adopted on 20 November, 1959 while the UN Convention on the right of the child (CRC) was adopted on 20 November, 1989. For monitoring the implementation of the CRC, a committee on the rights of the child was set up in 1991. CRC recognize that every child has the inherent right to life and state shall ensure the survival and development of the child.⁷The UN declaration “World Fit for Children” directs member States to reaffirm their commitment to promote and protect the rights of the children. The UN has set “Millennium Development Goals” related to gender equality and empowerment of women. Female infanticide and female foeticide violate all the above international conventions and declarations. Pre-independent India had a series of social legislations directed at restoring the dignity of women by changing the social behavior. Bengal Regulation XXI of 1795 declared female infanticide illegal. Regulation VI of 1802 recognized the perpetrators of female infanticide as murderers while Act VIII of 1870 (also known as Female Infanticide Act) mandated compulsory registration of birth, death, betrothals, marriages and remarriages by Registrars appointed for the purpose. Female Infanticide Act was enforced strictly from 1876 to 1906. Law prohibiting female infanticide did not entirely eradicate but deterred such practices.

The write to legal abortion was affirmed by the 1973US Supreme Court’s decision in Roe V.Wade nevertheless abortions continue to be a focal issue for contemporary feminists. An abortion when used as a family planning is bound to become a tool in the hands of the demographers and doctors, politicians and administrators to control the reproductive autonomy of women. It is bound to have a coercive impact on women. The debate about the reproductive freedom and women’s choice has taken a new ominous turn in India with the growing practice of selective abortion of the female fetus after sex determination tests during pregnancy. Sex determination tests are increasingly being used in India for selective examination of the fetus known as the foeticide. Parents have argued that is expense for them to abort the

⁵ Article 24, ICCPR

⁶ Article10,ICESCR

⁷ Article2, CRC

female fetus than to bear the expenses rearing a female child and playing for a dowry. Thus, discrimination against women in India begins even before she is born. The question is what will be the future of the female race?

BACK DROP – STATUS OF THE WOMEN IN INDIA:

The women's movement adopted the cause of abortion reform as a rallying point. Policies related to reproduction have become central to the status and opportunities of women, for reproductive freedom provide an alternative to compulsory motherhood and family life. The issue of free choice in abortion appears to involve questions of fundamental role change for women. Abortion debate which was originally expressed in terms of the right of privacy and medical safety is now primarily debated in terms of women's right to control her body. 'Choice' is not a central component or platform of the Indian women's movement. For, abortion is available on demand for family planning purposes. Abortion is socially mandated consequence of the economic imperatives of the state. In fact, the progressive attitude of the Indian state to abortion is dictated by compulsions rather than a commitment to women's liberation. A selective abortion of women fetus is common in areas where the cultural norms value male children over female children. A son is often preferred as an 'asset' since he can earn and support the family, a daughter is 'liability' since she will be married off to another family, and so cannot contribute financially to her parents. Patriarchal structure of a society is the single important factor skewing the sex ratio in favor of males. Women go for sex selection abortions due to compulsions. These arise out of social norms fostering son preference because their lives are put at stake in case they do not produce a son. All religions treat abortion as immoral, and contrary to divine law, this blanket ban on abortion, resulted in illegal abortions and then risking the life of woman. A major cause for the alarming increase of foeticide and adverse sex ratio is the traditional practice of dowry. However, the fact remains that the right to burn is being denied to the female child.

GENDER AND DEMOGRAPHIC CRISIS:

Pre determining the fetus and aborting the female fetus is widespread in India. The misuse of sex determination and the monstrous proportion of female foeticide are causing the demographic

imbalance in the country. Gender bias can broadly impact the society and it is estimated that by 2020 there could be more than 25 million young “surplus males’ in India. There are thousands of female fetuses being aborted every year. Hence the male to female has altered to a great extent. According to UNICEF about 7000 fewer baby girls are born than the expected number. The impending gender crisis India is facing is the rapid depletion of women’s population. The official census of government of India has revealed a sharp decline in the sex ratio of females from 945 to 927 per 1000 males. The demographic social problems India is going to confront in the coming years is alarming and disturbing. Demographic crisis lead to increasing sexual violence and abuse against women and female children, trafficking and increasing maternal deaths due to abortions. The sex ratio has altered consistently in favor of boys since the beginning of the 20th century and the effect has been most pronounced in the states of Punjab, Haryana and Delhi. It was in these states that private fetal sex determination clinics were first established and the selective abortions have become popular from the late 1970s. More generally, demographers warn that in the next twenty years there will be a shortage of brides in the marriage market mainly because of the adverse sex ratio, combined with an overall decline in fertility. While fertility is declining more rapidly in urban and educated families, nevertheless the preference for male children remains strong. For these families, modern medical technologies are within easy reach. Worryingly, the trend is far stronger in urban rather areas, and among literate rather than illiterate women, exploding the myth that growing affluence and spread of basic education alone will result in the erosion of gender bias.

ADVANCED MEDICAL TECHNOLOGIES ENHANCE SEX SELECTIVE ABORTION:

Social discrimination against women already entrenched in Indian society has been spurred on by technological developments that today allow mobile sex selective clinics to drives into almost any village or neighborhood. The latest advances in modern medical sciences – the tests like amniocentesis and ultrasound scanning (ultra-sonography) which were originally designed for detection of congenital abnormalities of the fetus are being misused for knowing the sex of the fetus with the intension of aborting, if it happens to be a female. The worst situation is when these abortions are carried out well beyond the same period of 12 weeks endangering the women’s life. These horrific numbers of fetal sex determination and sex selective abortions by

unethical medical profession, has today grown into Rs.1, 000 crore industry. This is believed to be the proof of the increased incidences of sex selective abortions or female foeticide following sex determination through the abuse of medical technologies such as ultra sound scanning and amniocentesis. If amniocentesis was the first medical technology to be widely abused for the purpose in recent years, ultrasound scanning has emerged as a simpler and more popular alternative.

JUDICIAL RESPONSE AND CONSTITUTIONAL RIGHT:

In the case of the Kharak Singh V. State of U.P and others, the Supreme Court has held that a person has complete right of control over his body organs and his 'person' under the Article 21 of the Indian constitution. It can also be said to be including the complete right of the woman over her reproductive organs. Freedom from interference in one's privacy and family life is protected by Article 21 of the Universal Declaration of Human Rights. Right to abortion is a species of right to privacy, which is again proclaimed to be a continuance of the right to life under Article 21.

In the landmark case of CEHAT and others V. Union of India in the light of the alarming decline in sex ratios in the country to the disadvantage of women, this petition was filed seeking directions to the Supreme Court for the implementation of the Pre-Natal Diagnostic Techniques Act which regulates the provision of pre-natal Diagnostic technology. In this case, the court took on the unique role of actually monitoring the implementation of the law and issuing several beneficial directives over the course of 3 years during when the case was proceeding in the court. This petition put the issue of sex selection and sex selective abortion in the national agenda and as a consequence there have been heightened activities on this issue by government and non-government agencies alike.

LEGAL PROVISIONS –LACK OF PROPER IMPLEMENTATION:

The word 'abortion' remains abhorrent to Indian culture and mindset, it is considered equivalent to murder. Therefore, word 'abortion' was substituted with the words 'termination of pregnancy'. Prior to 1971, termination of pregnancy was not regulated by any law. However the

Indian Penal Code (IPC) provided for many provisions to punish the persons responsible for miscarriage from Sec 312 to 316 of IPC. In spite of these penal provisions the practice of causing miscarriage continued in India for various social and medical reasons. Thereafter the parliament enacted 'The Medical Termination of Pregnancy Act, 1971 (MTPA) which legalized abortion under specific conditions such as danger to the health of the mother and/or the child. This Act has an overriding effect over IPC. The MTPA laid down liberal grounds through which women obtained the right to safe, scientific and legal abortions. MTPA has been hailed as a land mark social legislation, which confers on women the right of privacy and freedom of choice. The Act has been treated as a milestone in the modernization of Indian society through the instrumentality of law. It has a direct impact on population control and in achieving economic and social development and would play a role in the emancipation of women from the age old fear of abortion being considered as a sinful and criminal act. Nevertheless, the Act is not concerned about women's health and autonomy. The inherent lacuna of this legislation is that it promoted termination of female fetus. The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted in 1994 to combat the practice of female foeticide in the country through misuse of technology. The Act prohibited determination of sex of the fetus and stated punishment for the violation of the provisions. The Act was amended in 2003 to improve regulation of technology capable of sex selection and to arrest the decline in the child sex ratio known as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibitions of Sex Selection) Act, 1994. Both these laws were meant to protect the childbearing function of the woman and legitimize the purpose for which pre-natal tests and abortions could be carried out. Unfortunately, in practice we find that these legislations lack proper and effective implementation and have been misused which is deterrent in promoting the interest of a female child.

CONCLUDING REMARKS:

In India, the available legislation for prevention of sex determination needs strict implementation, alongside the launching of program aimed at altering attitudes, including those prevalent in the medical profession. The objectives of the law get defeated due to lacunae in the law and lack of proper implementation. Even though the law is a powerful instrument of change

yet law alone cannot root out this kind of social problems. The girls are devalued not only because of the economic considerations but also because of socio-cultural factors, such as, the belief that son extends the lineage, enlarge the family tree, provide protection, safety and security to the family and is necessary for salvation as he alone can light the funeral pyre and perform other death related rites and rituals. Evidence also indicates that the problem of female foeticide is more prevalent in orthodox families. It is therefore, essential that these socio-cultural factors be tackled by changing the thought process through awareness, mass appeal and social action. The conditions which perpetuate gender inequality needs to be changed with a sense of urgency. There is an urgent need to prevent the misuse of amniocentesis technique for sex determination. More than legislative intervention, there is a need for mobilizing public opinion and changing the social outlook through public education. The constitution of India, promises complete equality to women and gives her equal rights. A number of social legislations enacted in the post-independence era sought to revolutionize the positions of women in India. But social attitudes and thinking remained deep-rooted in antiquated and irrational customs, traditions and prejudices. As long as the basic perceptions of the society and the law enforcing agencies remained anti-women, gender justice cannot be achieved. It is concluded that, awareness amongst people from all walks of life and enlightening them with education are two foolproof tools of combating this ever pervading menace which has plagued our country and rendered the sex ratio to fall drastically.

Abortion must be available to women who want it, while selective abortion of female fetus must be stopped.