

Effects of Biotechnology on Women: Female Foeticide and Law

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Serious violations of the girl child's right to survival and protection can result from practices discriminatory and destructive towards them. This paper examines the rights of the girl child to survival and protection as guaranteed under the international and national laws. Its principal purpose is to explore the ground realities in the light of revolutionary developments in the area of medical technology and its misuse by the society.

The world has made wonderful inventions in the area of human genetic and reproductive technologies with a noble mission to serve mankind. These discoveries, due to the lack of a powerful monitoring system created havoc and led to destruction of life of the girl child foetus resulting in diminishing sex ratio and blatant violation of the girl child's right to survival and protection. This is evidenced by the population statistics, which reveal an alarming decline in the male female sex ratio. In 1900 the female sex ratio was 972 females for every 1,000 males; which fell to 941 per 1,000 in the 1961

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Census, and to 927 in 1991. The situation in some states is more startling. There are only 879 women per 1,000 men in U.P., and just 865 women per 1,000 men in Haryana. In certain communities in Bihar and Rajasthan, the sex ratio has plummeted to 600¹.

Census Year	Sex Ratio (No of females for 1,000 males in India)
1901	972
1911	964
1921	955
1931	950
1941	945
1951	946
1961	941
1971	930
1981	934
1991	927

Source: G.O.I. Census of India, 1991.

Thus in India, as per the 1991 Census count, there were 32 million fewer females in a population of 846 million, there

being 439 million males and 407 million females. The sex ratio is not only adverse to females but has touched an all time low of 927 females per thousand males in 1991. Gender activists express their apprehension that these imbalances if they continue to exist may lead to sexual offences, sharing of women within and outside wedlock and greater insecurity to women.

In general the technique of separation of X-Y sperms is adopted during pre-pregnancy, whereas Ultrasonography and Chorionic Villous Biopsy(CVB) methods are commonly adopted during post pregnancy for determination of the sex of the child. In several countries, prenatal diagnostic techniques are employed exclusively for detection of genetic and other congenital disorders. Nevertheless, in India, ever since their origin they are being misused mainly for sex determination purposes leading to sex selective abortions. Adding to this the technological revolution has also contributed in some clinics advertising to the extent of assuring parents to have a child

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with a 'sex' of their choice.

The discrimination towards girls in India starts from birth or even before. A girl is generally less welcome than a boy in most families. Though almost all the religions consider foeticide a grave sin, the cultural preference for sons in some of the states in India result in violence against female foetuses and girl children. In many cultures, a son is considered an asset to the family as it is he who carries the lineage forward, whereas a daughter is considered a social and economic liability on the family. These pictures compel women to resort to sex-selective abortions to abort female foetuses. As per the statistics of a survey quoted by Vibha Parthasarathi, Chairperson, NCW, it was found that of 8,000 foetuses aborted in Mumbai, 7,944 were girls².

The strong preference for sons often leave women vulnerable to abuse by unscrupulous 'quacks' and 'dais'. In India, in some of the states many of the doctors make money from sex determination tests and abortions, and nearly 50 per cent of the ultrasound tests are carried out by ultrasound operators with no special training. In states like Uttar Pradesh, Haryana and Punjab these tests are conducted even in mobile vans. The ultrasound tests are carried out from the second month of pregnancy at a time when it is impossible to detect the sex of

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foetus pronounced as female and aborted.

Adding fuel to the fire is the fact that the scientific advancements have not only led to sex selective abortions but frequently become a threat to the life of the mother. As per the WHO estimates around the world there are approximately 40 million abortions annually, of which 26 to 31 million are legal and 20 million are illegal and thus unsafe³. The unavailability of safe, confidential and affordable abortion services can have severe consequences for women with unwanted pregnancies. Nearly 20,000 Indian women die every year owing to unsafe abortions⁴.

Women belonging to rich families have access to safe abortions, while poor women generally resort to clandestine abortions in the hands of 'quacks' in extremely unsafe conditions. Cases are not lacking where women who had availed themselves of the latest scientific techniques to come to know about the sex of the child have approached 'quacks' and 'dais' for abortion and died in their hands

due to improper treatment by adopting traditional methods such as use of herbs or roots through the vaginal route, the use of caustic soda, the injection of acid-like fluids into the womb, and the insertion of plant stems, which have harmful reproductive health consequences and fail to result in successful abortions. Often women prefer to approach 'quacks' due to various reasons such as fear of legal action, lack of medical facilities and most importantly the secrecy being maintained by the 'quacks'. Though abortion under certain circumstances has been made legal in India, with the enactment of the Medical Termination of Pregnancy Act, 1971 generally women in India, face difficulties in availing themselves of these services. In India, 1,800 of the 20,000 primary health centres have facilities for Medical Termination of Pregnancy.

Thus it is clear that the Biotechnological inventions made by man for the good and well-being of the society have become destructive and discriminatory towards girl children. We will analyse the existing laws aimed at prevention of misuse of these techniques and to curb illegal abortions.

International Legal Regime

Every human being is subject to a wide variety of laws from the

'cradle to the grave'. Numerous international instruments and national laws have recognised state responsibility for the survival and protection of the girl child. The girl child's right to survival and protection are reflected, inter alia, in Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights and most importantly under the Convention on the Rights of the Child⁵. The Preamble to the Convention on the Rights of the Child reaffirms the goals enshrined under the Declaration on the Rights of the Child, and states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." The Convention also advocates the measures to be taken by the State parties and states that: (1) States Parties recognise that every child has the inherent right to life and (2) States Parties shall ensure to the maximum extent possible the survival and development of the child⁶.

Freedom from gender discrimination is reflected, inter alia, in Article 2 of the Universal Declaration of Human Rights, Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, Article 2(1) of the International Covenant on Civil and Political Rights, Article

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3 of the Convention on the Elimination of All Forms of Discrimination against Women.

Besides, reproductive and sexual health rights under international human rights law derive from a number of separate human rights documents. The Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW Convention")⁷ recognises that the ability of a woman to control her own fertility is fundamental to her full enjoyment of the full range of human rights to which she is entitled. In this vein, Article 12 provides for equality in access to health care, including family planning, appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy lactation.

In addition to these basic norms, international human rights law contains non-discrimination provisions crucial to the realisation of the girl child's rights, such as, the right to modify

customs that discriminate against them⁸. Both the ICDP Programme of Action and the Beijing Declaration and Programme for Action call for the elimination of all forms of discrimination against women and girl children and the root causes of the harmful and unethical practices of female infanticide and prenatal sex selection.

The world conferences have helped to articulate the legal framework and policy goals for the enforcement of child rights in general, and the girl child's rights in particular. The Beijing Declaration and Platform for Action, in turn, urges Governments to "ensure that all health services and workers conform to human rights and to ethical, professional and gender-sensitive standards in the delivery of women's health services aimed at ensuring responsible, voluntary and informed consent; encourage the development, implementation and dissemination of codes of ethics guided by existing international codes of medical ethics as well as ethical principles that govern other health professionals⁹." It also provides for maintaining confidentiality by health workers for guaranteeing privacy of the patient.¹⁰ It further prohibits harmful practices in health care and states that, "any harmful aspects of traditional, customary or modern practices that violates the rights of women

should be prohibited and eliminated.”¹¹

The standards set by the international community had a tremendous impact on India. India is a founder member of the United Nations and had ratified various Conventions including the Convention on the Rights of the Child promising to secure the rights of the child. India has unequivocally endorsed the 27 survival and development goals to be achieved by the year 2000 laid down by the World Summit for Children. The Government is shedding its energies to remove practices, which are discriminatory towards women and girl children, and to empower the girl children in various spheres. To this end the Government has set up a separate Department for Women and Child Development, formulated various policies and programmes and announced a decadal plan of action to achieve the goals in a phased manner within the target period. In accordance with the World Declaration and Plan of Action on the survival, protection and development of children, the Government has come out with the National Plan of Action for Children in 1974 setting priority areas and various goals to be achieved within a stipulated time. Most significantly the National Plan of Action for the Girl Child (1990-2000) which was formulated in tune with the

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SAARC decadal plan of action for the girl child has set new goals and priority areas with a concerted action for the survival, protection and development of girl children. The following is a brief description of the legislative initiatives aimed at protecting the girl child's right to survival and protection.

Laws to Eliminate Female Foeticide and Infanticide in India

The social evil of female foeticide and infanticide is not new in India and it has been practised for decades. The Constitution of India, which came into force on January 26, 1950, has made provisions for protection and empowerment of rights of women and children which includes girl children. Article 21 of the Constitution of India provides for protection of life and personal liberty. Article 14 provides for equality before law and equal protection of laws and

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Article 15(3) provides for making special provisions for women and children. Further Article 51A(e) stipulates a duty on every citizen of India "... to renounce practices derogatory to the dignity of women."

An effort has been made for the first time in 1870 through the Special Act of 1870, to check the practice of female infanticide in India. It suggested inter-alia for the creation of an enlarged police force, surveillance by the community, through the Census. The Indian Penal Code which was enacted in 1860 and amended from time to time treats female infanticide as culpable homicide.¹² It also provides punishment for the acts done before birth with the intention of causing death¹³ and also the acts aiming at abandoning or exposing the child with an aim to cause physical risk to the child.¹⁴

With an aim to regulate the illegal abortions in India, the Union Government has enacted the Medical Termination of Pregnancy Act ("MTP Act") in 1971.¹⁵ The MTP Act carves out exceptions to the provisions contained in the Indian Penal Code that criminalise the performance of an abortion. Thus only those abortions, which fall outside the purview of the MTP Act and of the exceptions contained within the IPC, are regarded as illegal and punishable.

Biomedical Breakthroughs

laboratories, genetic clinics²⁴ and regulation of pre-natal diagnostic techniques²⁵. It requires all facilities to be registered with the prescribed authorities and lays a prohibition on any medical professional from carrying out such diagnostic procedures in a facility other than one registered under the PNMT Act²⁶. It only permits the use of pre-natal diagnostic techniques for the exclusive purpose of specific

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registry cannot legally practise medicine.

The Act also provided for creation of a Central Supervisory Board consisting of concerned Ministers, officials representing

Biotechnology have contributed towards sex selective abortions. But at the same time one has to equally blame and look into the other factors such as social, economic and cultural conditions, which are responsible and becoming motivational factors towards this barbarous practice. The Government has an obligation to address these issues by enacting and effectively implementing and enforcing laws prohibiting and

If we could allow the mind to expand and to explore higher realities, the body would follow. Wouldn't that be enough to save it from disease and old age?

The use of love is to heal. When it flows without effort from the depth of the self, love creates health.

Source : Deepak Chopra, *Journey into Healing*.

genetic abnormalities or disorders,²⁷ and lays a prohibition on the use of these techniques for determining the sex of the foetus.²⁸

The Act specifically prohibits advertisements relating to pre-natal determination of sex and punishment for contravention.²⁹ It provides punishment and penalties for violation of the provisions of the PNMT Act. It also provides for suspension of licence or removal of the name of Registered Medical Practitioner from the State Rolls upon second conviction. A doctor whose name is removed from the

various Ministries/Departments, medical professionals and representatives of women's welfare organisations to exercise the powers and perform the functions conferred on the Board under the Act³⁰.

Conclusion

It was rightly said that, "Technology is not inherently evil: it is neutral how we use it is key. There is lot more positive than negative that will be coming out of biotechnology, but we need to know what we are getting into."³¹ It is a truism that the advancements in the area of

punishing all forms of such violence as well as enacting policies and programmes to avert its commission.

It is high time for the Government to plunge into action with a comprehensive action plan involving various ministries, departments and other non-governmental organisations for overhauling the existing societal structure. To this end, as a first step the Government should remove gender discrimination in the school curriculum and incorporate a gender component in the school and college curriculum; take steps to sensitise

society towards the concept of equality of sexes and the girl child's right to life and survival; take steps to empower women and girls in the area of education, employment and decision making; take strident measures to eliminate sexual abuse and the dowry system. Most importantly, the Government should on a war footing take up the review of

should be incorporated under these laws providing stringent punishment for aiding or associating in the sex selection or identification tests and conducting abortions.

A team comprising the District Magistrate, Superintendent of Police, representatives from State Medical Council and District

those persons who are practising medicine unauthorisedly. For the successful implementation of any law, policy or programme it is necessary to create an effective machinery and monitoring system to achieve the desired goals. Therefore, the Government should immediately set up the proposed National Commission for Children and State

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We are not the body. We are not the mind. We are the ones who have mind and body.

When we touch a new level of consciousness, a new world is created.

Source : Deepak Chopra, *Journey into Healing*.

existing laws concerning women and children, especially the laws concerning Medical Termination of Pregnancy, Pre-Natal Diagnostic Techniques, sexual offences including incest and eve-teasing and dowry related offences. Appropriate provisions

Medical Superintendent must be formed to make surprise visits to the clinics and hospitals of those doctors practising in the district and whose names are not entered in the State register. Strict administrative and legal action should be initiated against all

Commissions for Children in all states with suitable powers, sufficient manpower and better infrastructural facilities for making the elusive dream of "Survival, Protection and Empowerment of Girl Children" into a reality.

References

1. UNICEF, National Workshop on Gender Bias: Female Foeticide and Infanticide (1999), UNICEF, p. 10.
2. *Supra*, 1 p. 15.
3. Nafis Sadik, The State of World Population 1995, United Nations Population Fund, p. 47.
4. The Double Death Syndrome, *India Today*, August 31, 1996.
5. The UN has adopted the Convention on the Rights of the Child on November 20, 1989 and India has ratified the Convention on December 11, 1992.
6. Article 6, Convention on the Rights of the Child.
7. India has ratified CEDAW on June 25, 1993, with a declaration in respect of Article 16(1) and (2) and a reservation in respect of Article 29(1).
8. See. Article 2 (f) and (g) and Article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women. See also, Article 24(3) of the Convention on the Rights of the Child.
9. Para 106 (g), Beijing Declaration Platform of Action.
10. Para 106 (f) *ibid*.

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11. Para 224, *ibid.*
12. Section 229 and 300 of the Indian Penal Code, 1860.
13. Section 315, *ibid.*
14. Section 318, *ibid.*
15. The MTP Act came into force w.e.f. April 1, 1972.
16. Section 2(d) of the MTP Act defines "Registered Medical Practitioner" to mean a medical practitioner who possesses any recognised medical qualifications as defined in clause (b) of Section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register.
17. Section 3(2)(a) MTP Act, 1971.
18. Section 5, *ibid.*
19. Section 3(3), *ibid.*
20. Section 3(3) (a), *ibid.*
21. See Medical Termination of Pregnancy Rules, 1975.
22. D.K. Joshi v. State of U.P. and Ors. JT 2000 (5) SC 211.
23. Section 7(3), *ibid.*
24. Section 3, PNDDT Act, 1994.
25. Section 4, 5 and 6, *ibid.*
26. Chapter 6, Sections 18, 19, 20 and 21, *ibid.*
27. Section 4, *ibid.*
28. Section 6, *ibid.*
29. Section 22, *ibid.*
30. Section 7, *ibid.*
31. John Nisbitt and Patricia Aburdeen, *Mega Trends 2000*, Sid Iwick and Jackson Ltd, London (1990), p. 224.