

RIGHT OF GIRL CHILD TO BE BORN IN SOCIETY

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Abstract

“Girl Child a child in this conservative society is always fight for her rights since from the ancient period. Girl who is a source of every relation and plays an important role in the progeny was always consider as a useless individual. Her fight starts from the womb of her mother till the end of life, struggling to achieve her rights”.

Life is a priceless gift of almighty. It is believed that life and death is under the control of God. In every thought of the religions it is believed that no one can interrupt in the system of the God. But with the passage of time science has invented numerous technologies by which the religious / traditional beliefs, with respect to the death and birth of the living being, has totally been changed. With the help of these advance techniques / inventions; known as pre-natal sex determination test, we can easily detect the child in womb; whether it is male or female. However these techniques were invented for detection of the disease / complications with respect to the pregnancy and betterment of the humanity but unfortunately it is being misused. In every thought/society of the world, the girl child is considered as a burden for the parents therefore with the help of these advance techniques the parents want to get rid of female child. The result of termination of female child came in the form of misbalance of sex ratio.

Historical Background

With respect to the problem of female foeticide, and in order to verified the present scenario we have to glimpse in the history as well:-

A. **Vedic Period:** During Vedic period, woman was free in every sphere of the society/ life, she was the master of her own choice. She obtained education as boy could. There was no discrimination on the basis of gender at all. There was

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no culture of observing pardha system. She can choose her life partner without any pressure of parents or society. It is surprised to be stated that about twenty women have participated in writing of Vedas. By considering this fact alone we can easily imagine that during vedic era, women were having their supreme position.

- B. **Post- Vedic Period:** In this period the place of females in the family as well as in the society started degrading.
- C. **Medieval Period:** In the medieval period, women had to face drastic changes in her position. The attacks of the foreign invaders have totally changed the position of the women in Indian society. Due to the fear of the invaders the social evils like child marriage, sati, pardha system and female infanticide were introduced in Indian society.

LEGAL FRAMEWORK UNDER INDIAN LAW:

As per the Hindu mythology the marriage is made in heaven and the main object of the marriage is to reproduction of the children so that the couple of the marriage and their children may fulfill the certain religious / spiritual obligations. Though principally in our religious system the female have been allotted special space in the form of Saraswati, Durga, Shakti and so on but in actual scenario there is great difference. Everyone wants a male child, as the boy will fulfill certain rituals in order to provide *moksha* to his family. This has been observed in the Censex of 2011 that for every 1000 male child there is only 919 female child were born which shows the declining trend of female birth in the society. It shows that if this trend is still increase then in future the ratio of female birth in comparison to male birth create a huge gap and for this purpose the legislatures frame various Laws for the protection in the birth of Girl Child.

While making the laws the legislators were well acquainted with the problem therefore in order to restrain this social evil, they have introduced certain laws, which are discussed herein under:-

1. Miscarriage Under I.P.C 1860:

- *Section 312³*: as per this section “causing miscarriage not in good faith in respect of a woman who must be with child or the expression "with child" or "quick with child" means pregnant It also includes a woman who causes herself to miscarriage.”
- *Section 313⁴*: as per this section “causing miscarriage of woman without her consent is prohibited and punishable under the Act. In this section, the form of miscarriage is aggravated and grave hence subject to higher punishment.
- *Section 314⁵*: “This section states that whoever, with intent to cause the miscarriage of a woman with child, does an act which causes the death of such women. Moreover it is not essential that the offender should know that the act is likely to cause death”.
- *Section 315⁶*: According to this section, “ act done with intent to prevent child being born alive or cause it to die after birth”.
- *Section 316⁷*: This section states that, “causing death of quick unborn child by act amounting to culpable homicide”.

2. Maternity Benefit Act of 1961: This Act define⁸ the word "miscarriage" which means expulsion of the contents of a pregnant woman at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under IPC.

3. Medical Termination of Pregnancy Act 1971: Abortion was crime, for which mother as well as the doctor or practitioner could be punished except in those cases where it has to be conducted in order to save the life of the mother. The breach of law, which went unnoticed, was one of the major factor for the untimely death of pregnant mother's⁹. In order to prevent untimely death of pregnant woman this Act was Passed, wherein it was stated that up to 12 week pregnancies may be terminated only by registered doctor.

³Indian Penal Code 1860.

⁴Indian Penal Code 1860.

⁵Indian Penal Code 1860.

⁶Indian Penal Code 1860.

⁷Indian Penal Code 1860.

⁸Section 2(j) of Maternity Benefit Act 1961.

⁹Tripathi S.C, Law Relating to Women and Children, Central Law Publication, Edn 6th , 2017.

If two or more medical practitioner are of the opinion that the pregnancy is more than 12 weeks but less than 20 weeks, can be terminated on the ground that the continuance of the pregnancy would involve a risk to the life of the pregnant woman of grave injury to her physical or mental health or there is substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. This Act states¹⁰ that it can be terminated either at a hospital established or maintained by the government or at a place which is approved by the government but for doing so, no suit or other legal proceeding can be instituted against him as per the aforesaid Act¹¹.

For protecting the Rights of girl child to be born in the society the below mentioned Act has been framed by the legislature.

4. The Pre-Conception and Pre-Natal Diagnostic Techniques (prohibition of sex selection)

Amended Act of 2002: Pre-natal sex determination is also a cruelty and abortion in the ethical way a murder of the child in womb by her own mother¹². This technique includes all prenatal diagnostics procedure and pre-natal diagnostics tests. The use of this technology in the context of India is wholly discriminatory to the female sex and has an impact on the status and dignity of women¹³.

This Act states¹⁴ that diagnostics test means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or concepts conducted to detect genetic or metabolic disorder of chromosomal abnormalities or congenital anomalies or sex-linked diseases¹⁵. But amendment took place in the year 2002 which added the word "pre conception" under this Act. It means prohibition of sex selection before or after conception in any manner and techniques. This Act¹⁶ permits the use of this technique but only in cases of abnormalities but while performing such tests, all side and after effects of such procedure has been explained to the concerned pregnant woman. But communication of sex of the fetus by words, figures or in any other manner to the concerned pregnant woman or her relations or any other person is prohibited. For this purpose,

¹⁰Section 4 Medical Termination of Pregnancy Act 1971.

¹¹Section 8 Medical Termination of Pregnancy Act 1971.

¹²Srivastav. S.S, Criminology Penology and Victimology, Central Law Agency, 6th Edn.

¹³Malik K, Krishan Pal, women and law, Allahabad Law Agency, Edn 1st.

¹⁴Section 2(k) **The Pre-Conception and Pre-Natal Diagnostic Techniques (prohibition of sex selection) Amended Act of 2002**

¹⁵Bata Manjula, Women and law, Allahabad Law Agency, Edn 2nd.

¹⁶Section 4(2) **The Pre-Conception and Pre-Natal Diagnostic Techniques (prohibition of sex selection) Amended Act of 2002**

Central Supervisory Board and State Supervisory Board have been constituted so that the proper implementation of this Act is possible. This Act declares¹⁷ that every offence under the Act shall be cognizable non-bailable and non-compoundable and will be tried only by metropolitan and judicial magistrate of first class. The intention behind for making this strict Act is only to protect the birth of a girl child who has been murdered by the society before her birth.

5- Provisions of Indian Constitution 1950.

• Fundamental Rights:

Article 14¹⁸ of our constitution guaranteed equality before law and Article 15(1) states that “*State shall not discriminate against any citizen on the ground of religion, race, caste, sex, place of birth or any of these.* The word “discriminate against” mean to make any adverse distinction or to distinguish unfavorably from others.

Article 15(3)¹⁹ states that “*nothing in this Article shall prevent to the state from making any special provisions for women and children.*” Following the instructions of the constitutional provisions the legislature has introduced certain laws with respect to the protection of the children.

Article 21²⁰ states that “*no person shall be deprived of his life or personal liberty except according to procedure established by Law.*”

• Directive principles:

Article 39²¹ states that “*the children are given opportunities or facilities to develop in a healthy manner and the childhood is to be protected against exploitation and against moral and material abandonment.*”

Article 42²² states that “*State shall make provisions for securing just and humane conditions of work and for maternity relief.*”

After enacting various Laws and policies by the government at state and Central Level still the difference ratio of girl child Birth towards Male Child birth is not improve. There is a need to

¹⁷Section 27 The Pre-Conception and Pre-Natal Diagnostic Techniques (prohibition of sex selection) Amended Act of 2002

¹⁸Constitutional Law of India 1950.

¹⁹Constitutional Law of India 1950.

²⁰Constitutional Law of India 1950.

²¹Constitutional Law of India 1950.

²²Constitutional Law of India 1950.

change the mind set of Families as well as Society for the birth of Girl as she also able to be a better child then male.

SUGGESTIONS :

This paper offers the following suggestion in order to solve the problem of illegal abortion specially of girl child with main focus on situation in India:-

1. Uniformity : *The existence of different laws with respect to the current problem is out dated idea. It create a little bit confusions and complication as to in what situation which law is applicable. The executive should consolidate the present laws in order to bring uniformity.*

2. Strict Implication : *The government is making laws in order to stop this evil but until unless the law is implemented seriously the making of law terms as a futile exercise. The government should strictly implicate the provisions and should take strict action against the law breakers.*

3. Social Mind Set: *The most important aspect is that until mind set of a society is not changed, nothing can be changed. Education is one of the best courses to change the mindset of the society. The education may spread awareness regarding females and their importance in society.*