

**FEMALE FOETICIDE AND INFANTICIDE IN INDIA: A
SOCIO–LEGAL STUDY OF STATE OF
MAHARASHTRA**

Thesis Submitted for the Award of the degree of

DOCTOR OF PHILOSOPHY

in

Law

By

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DECLARATION

I do hereby declare that the thesis entitled “**Female Foeticide and Infanticide in India: A Socio–Legal Study of State of Maharashtra**” submitted in partial fulfillment of the requirement for the award of the degree of Doctor of Philosophy (Ph.D.) is entirely my original work and all ideas and references have been duly acknowledged. It does not contain any work that has been submitted for the award of any other degree or diploma of any university.

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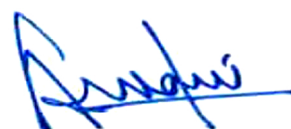
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CERTIFICATE

This is to certify that the work contained in the thesis entitled “**Female Foeticide and Infanticide in India: A Socio–Legal Study of State of Maharashtra**”, submitted by **Jesmin Banu Khan**, Registered Number *11919622* for the award of the degree of **Ph.D.** to the **Lovely Professional University Phagawara, Punjab** is a record of *bonafide* research works carried out by her under my direct supervision and guidance. I considered that the thesis has reached the standards and fulfilled the requirements of the rules and regulations relating to the nature of the degree. The contents embodied in the thesis have not been submitted for the award of any other degree or diploma in this or any other University.

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Place: Phagwara



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ABSTRACT

In our country, gender discrimination is the most serious problem. There are some countries with a larger male-to-Female ratio that are also patriarchal in nature. In the year 1988, Maharashtra became the first state to pass legislation prohibiting the practice of sex selective abortion. In 1994, the Government of India passed “Pre-natal Diagnostic Techniques Act (PNDT)” in response to the growing availability of sex selection technology. “In 2004 The PCPNDT Act (Regulation and Prevention of Misuse of Pre-Conception and Pre-natal Diagnostic Techniques)” was revised to deter and punish pre-natal sex determination and Female foeticide. Although, the government’s monitoring system for the PCPNDT Act is broken. Nobody should have the right to take life away from the Almighty. There is no justification for the heinous murder of a Female foetus. People from all walks of life, both urban and rural, are becoming increasingly involved in this illegal activity.

The problem of falling sex proportion is a perilous circumstance for our modern human growth. Female foeticide has been used in India since the 1990s, when scientific improvements in medicine such as prenatal sex determination became available. Female children used to be slaughtered after birth in several parts of India prior to this. Female offspring are seen as a socio-economic burden in the society, thus parents understand that it is preferable to eliminate them before they are born. With each passing decade, the amount of Females per 1000 males in India decreases. “From 962 and 945 Females for every 1000 boys in 1981 and 1991, the sex ratio had plummeted to 927 girls for 1000 boys in 2001 and 940 girls for 1000 boys in 2011.”

In India, Female foeticide and Female infanticide are serious problems. Female infanticide has been an issue in India for millennia, due in part to the patriarchal attitude of the culture. Female infanticide is the intentional death of Female infants. Gender – selected killing, or “gendercide,” is another term for it. Female infanticide is a long-standing cultural phenomenon that has likely resulted in millions of gender-specific fatalities throughout history. In India, Female foeticide and Female infanticide are common societal issues that contribute to a significant gender

disparity. Female foeticide is becoming more common as a consequence of sex-selection practices, while Female infanticide is becoming more common as a result of socio-economic concerns. Though, law is a powerful tool to bring social changes, it cannot solve this societal problem on its own. Women's violence is a national embarrassment. Female foeticide is among the most horrific forms of brutality against women, in which a woman is denied her another very fundamental right, "the right to life." In many parts of India, sex-determination and illegal abortions and a spike in the amount of Female infanticide instances having a serious societal issue. It cuts across all castes, classes, and communities, as well as the North-South divide. Girl children are targets for attackers even before they are born. Many academics have noted that, as a result of progress in Medical methods such as genetic testing and ultrasonography, which have been actually designed to detect developmental problems in the foetus, are now used to determine the gender of the unborn child with the purpose of terminating it if it is a female. In the worst-case scenario, treatments are conducted after the 12 week safe limit has passed, the woman's life in jeopardy.

The problem of Female foeticide and infanticide has been hidden for a long time, but it is becoming more obvious with the passage of time. However, data on Female foeticide and Female infanticide from several Indian states is limited, with Maharashtra being one of them.

The goal is to make this information available to a wide range of people so that they can better comprehend the difficulties surrounding Female foeticide and Female infanticide. Despite its flaws, it is intended that this study will serve as a reference point for monitoring long-term developments in the future, as well as a useful tool for decision makers in framing reactions and methods for intervention in the State.

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3	<i>Air India v. Nargesh Meerza</i>	[(1981) 4 SCC 335]..
4	<i>Akhil Bharatiya Soshit Kamachari Sangh v. Union of India</i>	IR 1981 SC 298 : (1981)1 SCC 246.
5	<i>Alka Sharma v. State</i>	(2006) 3 Crimes 369 (Del.).
6	<i>Appasaheb and anr. v. State of Maharashtra</i>	Appeal (Crl.) 1613 of 2005, AIR 2007 SC 763
7	<i>Associate Banks Officers' Association v. State Bank of India</i>	(1998, 1 SCC 428)
8	<i>Atma Prakash v. State of Haryana</i>	AIR 1986 SC 859: (1986) 2 SCC 349
9	<i>Bachni Devi v. State of Haryana</i>	(2011) 4 SCC 427: (2011) 2 SCC (Cri) 580
10	<i>Balaji v. State of Mysore</i>	AIR 1963 SC 649.
11	<i>Bandhwa Mukti Morcha</i>	(1984)3SCC161
12	<i>Bhagwant v. Commissioner of Police</i>	1985 Cr LJ 1521: AIR 1985 SC 1285
13	<i>Board of Trustees v. Nadkarni</i>	AIR 1983 SC 109
14	<i>Bodhisattwa Gautam v. Subhra Chakrabarty</i>	1996 SCC (Cr) 133
15	<i>Bonbrest v. Kotz</i>	138 Mass 14 (1884).
16	<i>Brij Lal v. Prem Chand</i>	1989 Supp (2) SCC 680:1991 SCC (Cri) 394
17	<i>CEHAT v. UOI</i>	(2003) 8 SCC 398
18	<i>Centre for Enquiry into Health and Allied Themes v. Union of India</i>	(2003) 8 SCC 406, (2003) 8 SCC 410, WP (C) No. 301 of 2000, (2003) 8 SCC 410
19	<i>Chandra Raja Kumari v. Police Commissioner,Hydrabad</i>	1996 Cri LJ 2725 (Del).
20	<i>Chandrakant kalyandas Kokodar v. State of Maharashtra and ors</i>	AIR (1970) 1396, (1970) SCR (2)80
21	<i>Chitra Agarwal v. State of Uttaranchal</i>	AIR 2006 Utt 78
22	<i>D. Chelliah Nadar v. Lalitha Bai</i>	AIR 1978 Mad 66.
23	<i>D. S. Shishodia v. K. C. Samdariya</i>	2001 Cr.L.J. NOC 156 Raj
24	<i>Danial Latifi and another v. Union of India</i>	AIR 2001 SC 3262
25	<i>Deepak v. State of M.P.</i>	1994 Cr.L.J. 767 (M. P.).
26	<i>Deputy Inspector General of Police v. S. Samuthiram</i>	(2013)1 SCC 598.
27	<i>Dietrich v. Inhabitants of Northhampton, D. A. Gordon, "The Unborn Plaintiff"</i>	63(4) Michigan Law Review 579-627 (1965)
28	<i>Director of Public Prosecutions v. Morgan</i>	1976 AC 182 (HL)

29	<i>District Appropriate Authority, Faridabad v. Dr. Anil Sabani</i>	Writ Petition (Civil) 301 of 2000, decided on 10-9-2000.
30	<i>Dr. Meeru Bhatia Prasad v. State</i>	2002 CriLJ 1674, 94 (2001) DLT 597, 2001 (60) DRJ 594
31	<i>Dr. Nisha Malaviya and another v. State of Madhya Pradesh</i>	2000 Cri LJ 671
32	<i>Dubar v. Union of India</i>	AIR 1952 Cal. 496.
33	<i>Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others,</i>	AIR 1981 SC 746
34	<i>Francis Ghosal v. Gabri Ghosal</i>	(1907) 31 Bom. 25
35	<i>Gaurav Jain v. Union of India,</i>	Dt. 30-9-1921 as amended by the UN General Assembly on 20-10-1949.
36	<i>Ghanashyam Mishra v. State</i>	AIR 1957 Ori 78: 1957 Cri LJ 469.
37	<i>Grit, Kalyan Kendra Workers' Union v. Union of India</i>	(1991)1 SCC 619: AIR 1991 SC 1173. 19.
38	<i>Gudalure M. J. Cherian v. Union of India</i>	1995 SCC (Cr) 925
39	<i>Hari Kisan v. Sukhbir Shigh</i>	AIR 1988 SCC 2127
40	<i>Hem Chand v. State of Haryana</i>	(1994) 6 SCC 727: 1995 SCC (Cri) 36.
41	<i>Hiralal v. State (Government of NTC) Delhi</i>	Appeal (Crl.) 825 of 2002
42	<i>In re Sant Ram, AIR 1960 SC 932. See also State of Maharashtra v. Chandrabhan</i>	AIR 1983 SC 803
43	<i>In Re: Ratnamala And Anr. v. Unknown</i>	AIR 1961 Mad 31
44	<i>Inder Sain v. State</i>	1981 Cri LJ III6 (Del).
45	<i>J. K. Cottons printing and Weaving Co. Ltd. v. Labour Appellate Tribunal of India,</i>	AIR 1964 SC 737
46	<i>John Vallamathom v. Union of India</i>	AIR 2003 SC 2902,
47	<i>Jorden Diengdeh v. S. S. Chopra</i>	AIR 1985 SC 935: (1985)3 SCC 62
48	<i>K. R. Soorachari v. State of Karnataka</i>	(2005) II SCC 214: (2006) I SCC (Cri) 101.
49	<i>Kailas v. State of Maharashtra</i>	(2011) 1 SCC 793
50	<i>Kans Raj v. State of Punjab</i>	(2000) 5 SCC 207: 2000 SCC (Cri) 935
51	<i>Kanwar Pal Singh Gill v. State</i>	(2005) 6 SCC 161: 2005 SCC (Cri) 1420.
52	<i>Kashi Prasad v. State of Bihar</i>	172. 1980 BBCJ 612 (Pat).
53	<i>Kunhu Moideen v. Sayed Mohammedan</i>	S.A. No. 234 of 1980 Decided On, 30 May 1985 (High Court of Kerala).
54	<i>Kunju Moideen v. Sayed Mohammed</i>	AIR 1986 Ker 48.

55	<i>L. V. Jadbav v. Shankarrao</i>	173. (1983) 4 SCC 231: 1983 SCC (Cri) 813.
56	<i>Labourers Working on social Hydro Project v. State of Jammu & Kashmir</i>	AIR 1984 SC 177: 1983 Lab. I.C. 502: 1983 SCC (L&S) 289
57	<i>Laiq Singh v. State of U. P.</i>	(1970) 2 SCC 561: 1970 SCC (Cri) 502.
58	<i>Laxman Harlal Rathod v. State of Maharashtra</i>	AIR 1983 P & H 252
59	<i>Laxmi v. Union of India,</i>	(2014)4 SCC 427.
60	<i>Lichhamadevi v. State of Rajasthan</i>	AIR 1988 SC 1785
61	<i>Lily Thomas v. Union of India</i>	AIR 2000 SC 1650 (2000)6 SCC 224
62	<i>Madan Lal v. State of J & K</i>	(1997)7SCC 677:1997 SCC (Cri) 1151
63	<i>Madhu Kishwar v. State of Bihar</i>	AIR 1996 SC 1864 : (1996)5 SCC 125.
64	<i>Maharashtra v.Chandraprakash Kewalchand Jain</i>	AIR 1990 SC 658
65	<i>Malpani Infertility Clinic (P) Ltd. v. Appropriate Authority</i>	AIR 2005 Bom 26
66	<i>Maneka Gandhi v. Union of India</i>	AIR 1978 SC 579.
67	<i>Mary Roy v. State of Kerala</i>	AIR 1986 SC 1011
68	<i>Maynard v. Midland</i>	(1984) 1 WLR 634
69	<i>Mohd Ahmed Khan v. Shah Bano Begum</i>	(1985)2 SCC 556 AIR 1985 SC 945.
70	<i>Montreal Tramways v. Liveilli</i>	[1933] SCR 456
71	<i>Nand Kishore Vishwanath Newara v. State of Maharashtra</i>	(1993) II D.M.C. 195.
72	<i>Narayanamurthy v. State of Karnataka</i>	(2008) 16 SCC 512: (2010) 4 SCC (Cri) 322
73	<i>Nathu Ram v. State of Haryana</i>	(1994) 1 SCC 491: 1994 SCC (Cri) 88
74	<i>Nilima Priyadarshini v. State of Bihar</i>	1989 Supp (1) SCC 336.
75	<i>Noor Mohammad v. Mohammed Jaiddin</i>	AIR 1992 MP 244
76	<i>Pappu v. State of Chattisgarh</i>	Dated 10-9-2014 (Chh).
77	<i>Pathuma v. State of Kerala</i>	AIR 1978 SC 771
78	<i>People's Union for Democratic Rights v. Police Commr.</i>	(1989) 4 SCC 730: 1990 SCC (Cri) 75.
79	<i>Pratap Misra v. State of Orissa</i>	(1977) 3 SCC 41: 1977 SCC (Cri) 447.
80	<i>Pratibha Rani v. Suraj Kumar</i>	(1985) 2 SCC 370: 1985 SCC (Cri) 180
81	<i>Prem Chand v. State of Haryana</i>	1989 Supp (1) SCC 286: 1989 SCC (Cri) 418.
82	<i>Prem Kumar v. State of Rajasthan</i>	Criminal Application No. 391 of 2011 in Criminal Anticipatory Bail Application No. 599 of 2011 29-03- 2012.

83	<i>Premiya v. State of Rajasthan</i>	(2008) 10 SCC 81.
84	<i>Premwati v. State of M. P.</i>	1991 Cri LJ 268 (MP).
85	<i>Prithi Chand v. State of H.P.</i>	(1989) 1 SCC 432: 1989 SCC (Cri) 206.
86	<i>Punjab v. Gurmeet Singh</i>	AIR 1996 SC 1393: 1996 Cr LJ 1728.
87	<i>Punjab v. Iqbal Singh</i>	(1991)3 SCC 1: 1991 SCC (Cri) 513
88	<i>R. v. Morgentaler</i>	(1988 SCC).
89	<i>Rafiq v. State of U.P.</i>	(1980) 4 SCC 262: 1980 SCC (Cri) 947: 1980 Cri LJ 1344.
90	<i>Raj Bahadur v. Legal Remembrancer</i>	AIR 1953 Cal. 522 (DB).
91	<i>Rajeshwari v. State of Tamil Nadu</i>	1996 Cri LJ 3795
92	<i>Randhir Singh v. Union of India</i>	AIR 1982 SC 879 : (1982) ISCC 618 (Para 8)
93	<i>Ranjit Hazarika v. State of Assam</i>	(1998)8 SCC 635
94	<i>Reema Aggarwal v. Anupam</i>	2004 Cr.L.J.892 SC
95	<i>Rupan Deol Bajaj v. K. P. S. Gill</i>	(1995)6 SCC 194.
96	<i>S. Gopal Reddy v. State of A.P.</i>	155. (1996) 4 SCC 596: 1996:SCC (Cr.)792. AIR 1996 SC 2184.
97	<i>Sarla Mudgal v. Union of India</i>	(1995, 3 SCC 635: AIR 1995 SC 1531).
98	<i>Satvir Singh v. State of Punjab</i>	(2001) 8 SCC 633, (2001) 8 SCC 633: 2002 SCC (Cri) 48.
99	<i>Satya v. Siri Ram</i>	AIR 1983 P & H 252
100	<i>Shanti (Smt.) v. State of Haryana</i>	AIR 1991 SC 1226.
101	<i>Sharma Bai v. State of Uttar Pradesh</i>	AIR 1959 All. 57.
102	<i>Sheela Barse v. State of Maharashtra</i>	AIR 1983 SC 378
103	<i>Shefali Banerjee v. State</i>	AIR 1969 Cal 544
104	<i>Shobha Rani v. Madhukar Reddi</i>	(1988)1 SCC 105: 1988 SCC (Cri) 60.
105	<i>Shri Bhagwan Katariya and others v. State of Madhya Pradesh</i>	2002 Cri LJ 1674.
106	<i>Sidaway v. Board of Governors of the Bethlehem Royal Hospital and the Mandsley Hospital</i>	(1984) 2 WLR 78.
107	<i>Smith v. Brennan</i>	31 NJ 353 (1960)
108	<i>Solomon v. Muttiah</i>	(1974) 1 MLJ 53
109	<i>State of H. P. v. Nikku Ram</i>	(1995) 6 SCC 219: 1995:SCC (Cr.)1090.
110	<i>State of Karnataka v. Krishnappa</i>	AIR 2000 SCC 1470
111	<i>State of Kerala v. Kundumkara Govindan</i>	1969 Cri LJ 818 (Ker).
112	<i>State of Maharashtra v. Manohar</i>	1994 Cri LJ 2536 (Born).
113	<i>State of Punjab v. Gurmit Singh,</i>	(1996) 2 SCC 384: 1996

		SCC (Cri) 316.
114	<i>State of U. P. v. Ashok Kr. Srivastave</i>	(1992) 28 ASIL 212.
115	<i>State of U.P. v. Santosh Kumar</i>	(2009) 9 SCC 626: (2010) I SCC (Cri) 88.
116	<i>State v. Dr. Joaquin, Antonio D'silva</i>	(1999) 4 Crimes 244 (Goa).
117	<i>Suchita Srivastava & Another v. Chandigarh Administration</i>	2009 (9) S. C. 1
118	<i>Sunil Batra v. Delhi Administration</i>	AIR 1978 SC 1675.
119	<i>Surendra Chauhan v. State of Madhya Pradesh</i>	AIR 2000 SC 1436.
120	<i>Surrender Chauhan v. State of Punjab</i>	AIR 2000 SC 1436
121	<i>Sushil Kumar Sharma v. UOI & others</i>	JT 2005(6) SC 266
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124	<i>Trimukh Maroti Kirkan v. State of Maharashtra</i>	2007 Cr.L.J. 20 SC.
125	<i>Tukaram v. State of Maharashtra</i>	(1979) 2 SCC 143: 1979 SCC (Cri) 381.
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127	<i>V. N. Pawar v. State of Maharashtra</i>	1980 AIR 1270.
128	<i>Verkennes v. Corniea</i>	65F Supp 138 229 Minn 365 (1949).
129	<i>Vijay Sharma v. Union of India</i>	AIR 2008 Bom 29., AIR 2008 BOM 31
130	<i>Vijayalakshmi and Another v. State Rep. by Inspector of Police and Another</i>	2021 SCC OnLine Mad 317.
131	<i>Vinod Kumar Sethi v. State of Punjab</i>	1982 SCC Online P &H 96: AIR 1982 P&H 372
132	<i>Vinod Soni v. Union of India</i>	2005 Cr LJ 3408
133	<i>Vinod Soni v. Union of India</i>	Criminal Writ Petition No. 946 of 2005 and Criminal Application NO 3647 of 2005 (Decided on 13-6-2005).
134	<i>Vishaka v. State of Rajasthan</i>	(1997) 6 SCC 241 : 1997 SCC (Cri) 932.
135	<i>Vishal Jeet v. Union of India</i>	(1990)3 SCC 318: 1990 SCC (Cri) 482.
136	<i>Voluntary Health Assn. of Punjab v. Union of India</i>	(2013) 4 SCC I: (2013) 2 SCC (Cri) 287.
137	<i>Walker v. Great Northern Railway Co. of Ireland</i>	(1891) 28 L.R. (Ir.) 69.
138	<i>Walker v. Northumberland County Council</i>	1995 ICR 702: 1995 IRLR 35.
139	<i>Watt v. Rama</i>	(1972) VR 353 (Victoria).
140	<i>Wazir Chand v. State of Haryana</i>	(1989) 1 SCC 244: 1989 SCC (Cri) 105.

LIST OF ABBREVIATIONS

AIR	All India Reporter
All. MR	All Maharashtra Reporter
BBBP	<i>Beti Bachao, Beti Padhao</i>
BBC	British Broadcasting Corporation
CCTV	Closed-Circuit Television
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEHAT	Centre for the Equity of Health and Allied Themes
CID	Crime Investigation Department
CIDCO	City and Industrial Development Corporation of Maharashtra
CJI	Chief Justice of India
COVID	Coronavirus Disease
CPC	Civil Procedure Code
CRC	Convention on the Rights of the Child
CRPC	Criminal Procedural Code
CRPD	Convention on the Rights of persons with Disabilities
CSR	Child Sex Ratio
FIR	First Information Report
GSR	General Statutory Rules
HC	The High Court
ICESCR	International Covenant on Economic, Social and Cultural rights
IPC	Indian Penal Code
IVF	In Vitro Fertilization
MASUM	<i>Mahila Sarvangeen Utkarsh Mandal</i>
MD	Doctor of Medicine
MIDC	Maharashtra Industrial Development Corporation
MS	Master of Surgery
MTP	The Medical Termination of Pregnancy Act, 1971
MWCD	Ministry of Women and Child Development
NCRB	National Crimes Bureau Report
NFHS	National Family Health Survey
NGO	Non Government Organizations
NHM	National Health Mission
PCPNDT	The Pre-Conception and Pre-Natal Diagnostic

	Techniques (Prohibition of Sex Selection) Act, 1994
PIL	Public Interest Litigation
PNDT	Pre-natal Diagnostic Techniques Act
POCSO	The Protection of Children from Sexual Offences Act, 2012
RTI	Right to Information
SAARC	South Asian Association for Regional Cooperation
SC	The Supreme Court of India
SITA	Suppression of Immoral Traffic in Women and Girls Act, 1956
SRB	Sex Ratio at Birth
SRS	Sample Registration System
U/S	Under Section
UCC	Uniform Civil Court
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UOI	The Union of India
v.	<i>Versus</i>

APPENDICES

SR. NO.	APPENDIX NAME
I	Questionnaire
II	Research Publication Details
III	The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
IV	The Dowry Prohibition Act, 1961.
V	The Medical Termination of Pregnancy Act, 1971.
VI	The Medical Council Act, 1956.
VII	The Indecent Representation of Women (Prohibition) Act, 1986
VIII	Conference Certificates
IX	Publication Certificate
X	Turnitin originality report

Female Foeticide and Infanticide in India: A Socio–Legal Study of State of Maharashtra

ABSTRACT

In our country, gender discrimination is the most serious problem. There are some countries with a larger male-to-Female ratio that are also patriarchal in nature. In the year 1988, Maharashtra became the first state to pass legislation prohibiting the practice of sex selective abortion. In 1994, the Government of India passed “Pre-natal Diagnostic Techniques Act (PNDT)” in response to the growing availability of sex selection technology. “In 2004 The PCPNDT Act (Regulation and Prevention of Misuse of Pre-Conception and Pre-natal Diagnostic Techniques)” was revised to deter and punish pre-natal sex determination and Female foeticide. Although, the government’s monitoring system for the PCPNDT Act is broken. Nobody should have the right to take life away from the Almighty. There is no justification for the heinous murder of a Female foetus. People from all walks of life, both urban and rural, are becoming increasingly involved in this illegal activity.

The problem of falling sex proportion is a perilous circumstance for our modern human growth. Female foeticide has been used in India since the 1990s, when scientific improvements in medicine such as prenatal sex determination became available. Female children used to be slaughtered after birth in several parts of India prior to this. Female offspring are seen as a socio-economic burden in the society; thus, parents understand that it is preferable to eliminate them before they are born. With each passing decade, the number of Females per 1000 males in India decreases. “From 962 and 945 Females for every 1000 boys in 1981 and 1991, the sex ratio had plummeted to 927 girls for 1000 boys in 2001 and 940 girls for 1000 boys in 2011.”

In India, Female foeticide and Female infanticide are serious problems. Female

infanticide has been an issue in India for millennia, due in part to the patriarchal attitude of the culture. Female infanticide is the intentional death of Female infants. Gender – selected killing, or “gendercide,” is another term for it. Female infanticide is a long-standing cultural phenomenon that has likely resulted in millions of gender-specific fatalities throughout history. In India, Female foeticide and Female infanticide are common societal issues that contribute to a significant gender disparity. Female foeticide is becoming more common as a consequence of sex-selection practices, while Female infanticide is becoming more common as a result of socio-economic concerns. Though, law is a powerful tool to bring social changes, it cannot solve this societal problem on its own. Women’s violence is a national embarrassment. Female foeticide is among the most horrific forms of brutality against women, in which a woman is denied her another very fundamental right, “the right to life.” In many parts of India, sex-determination and illegal abortions and a spike in the amount of Female infanticide instances having a serious societal issue. It cuts across all castes, classes, and communities, as well as the North-South divide. Girl children are targets for attackers even before they are born. Many academics have noted that, as a result of progress in medical methods such as genetic testing and ultrasonography, which have been actually designed to detect developmental problems in the foetus, are now used to determine the gender of the unborn child with the purpose of terminating it if it is a female. In the worst-case scenario, treatments are conducted after the 12-week safe limit has passed, the woman’s life in jeopardy.

The problem of Female foeticide and infanticide has been hidden for a long time, but it is becoming more obvious with the passage of time. However, data on Female foeticide and Female infanticide from several Indian states is limited, with Maharashtra being one of them.

The goal is to make this information available to a wide range of people so that they can better comprehend the difficulties surrounding Female foeticide and Female infanticide. Despite its flaws, it is intended that this study will serve as a reference point for monitoring long-term developments in the future, as well as a useful tool for decision makers in framing reactions and methods for intervention in the State.

i. Introduction

India has crossed more than seven decades of post-independence era. It is sad to accept but truth is, in Indian patriarchal society there is no separate existence of the feminine gender, women are born with a 'positive' concept that they will never say no to anyone or to anything. The so-called patriarchal society considered girls are liability always. Women can never be mentally independent. When a girl learns to understand her senses, she gets trained on the limits and boundaries of her parent's house and in-law's house, there are certain boundaries that she can never violate. Only girls are trained, just because boys have their own home. Since a woman spend her whole life in someone else's house, all the rules and regulations are assigned to her only.

Men and women are the both sides of a coin, to strengthen a nation union is best and separation makes weakness. The term 'woman' indicates – half of a man. Undoubtedly, it is an era of women's rights, there has been a shift. "The Constitution of India gave women equal rights with men from its beginning." Liberty of a woman is always been violated. The bitter truth is that there is a yawning gap between the theoretical and practical status of woman in Indian context.

In the medieval period women were deprived of all rights of equality, afterwards, in British Empire in India, considerable changes were felt. Several legislations passed by the Britishers through which a woman got liberty or ameliorations. With the transformation of education, women began to realize their role in the national movement of transforming a new India. After the independence, all the three organs of state fully contributed a lot of rights, immunities and privileges in strengthening the position of women.

To bring the socio-cultural changes the mindset of the people towards girl child should be changed. It is possible to attain the goal with the support of many religious groups, social organizations, and educational reform to not only teach but also practice equality between the sexes. Public awareness must be created to treat girls equally on par with boys. People should understand the disastrous result of Female foeticide. State should provide special incentives for the welfare of girls. Free education should be provided at school levels to girls. Efforts have to be made to make them feel as they are assets not liability.

Socially, girl child is at most disadvantageous state. Women are denied access to their human rights at every stage of their lives, from conception to deathbed. In India, where every study points are the low utilization of health services, low coverage of ante-natal and post-natal care and low levels of institutional deliveries, the utilization of the sophisticated modern technology for sex detection of the foetus on a large scale is a big surprise and a matter of concern. "As per the 2011 Census, the child sex ratio (0-6 years) has shown a decline from 927 Females per thousand males in 2001 to 919 Females per thousand males in 2011."¹

After undergoing sex selection testing, more or less 15,914 abortions carried in 1984 to 1985 in a popular Abortion Centre in Mumbai were for girl foetuses.² Likewise, a survey conducted by the Mumbai's Women's Centre revealed, 7,999 of the 8,000 foetuses aborted in 6 metropolitan hospital were Females foetuses.³

According to a field survey conducted in Mumbai, 84 percent of gynaecologists confessed to doing prenatal diagnostic tests for determination of sex. Only a few examples of genetic abnormalities were discovered among the 74% of gynaecologists who had started doing the test from 1982. The vast maximum of 'patients,' the bulk of whom were primarily concerned in finding the fetus's gender.⁴

Infanticide is the intentional, deliberate murder of a baby girl within 1 year of birth, at all anyway straightforwardly by using highly toxic physical and chemical or indirectly by families and community members deliberately failing to feed the infant, thereby eradicating the girl child from society. Regrettably, the parents see their daughter as a burden rather than a responsibility. This point of view is based on a complicated collection of socio - cultural and economic influences. Fear of dowry, women's economic independence, and social practices and traditions that have regarded a daughter as a second-class citizen. Although the level of neglect and unequal treatment against girls varies from time to time, it is a constant.

It was in a report, "the Female infanticide existing in India since 1789 in several

¹ Ministry of Health and Family Welfare, Government of India. Press Information Bureau, available at: <http://pib.nic.in/pressrel/PrintRelease.aspx?relid=103437> (Last visited on January 26, 2016).

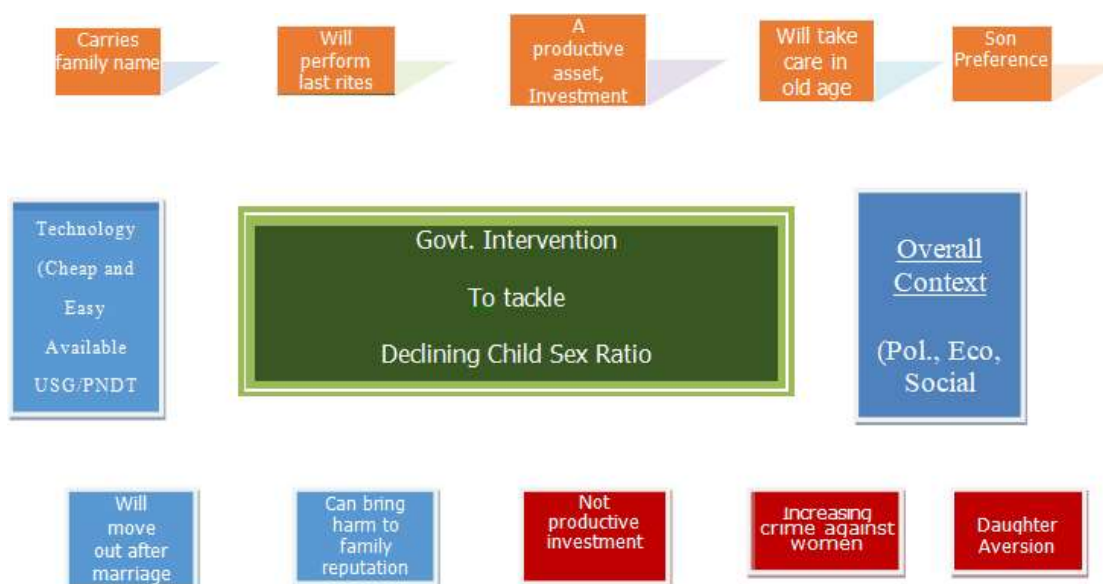
² Diaz, A. A. "Amniocentesis and Female Foeticide" *Bulletin of the Indian Federation of Medical Guide* 3(5), 87 (1988).

³ K. D. Gangrade., "Sex Determination – A Critique" 18(3) *Journal of Social Change* 63-70 (1988).

⁴ S. Kulkarni, "Pre-natal Sex Determination Tests and Female Foeticide in Bombay City" The Foundation for Research in Community Health, Bombay (1986).

districts of Rajasthan; along the western shores in Gujarat – Surat and Kutch; and among a clan of Rajputs in eastern part of Uttar Pradesh. Female infanticide was so widespread in Jadeja (Rajput) families of Kutch and Saurashtra that only five of such families were found who had not killed their ‘new-born’ daughters. There are alarming reports of the baby girls being murdered even in areas where this practice did not exist earlier.⁵ Poverty, ignorance of family planning, cost of dowry, *etc.* have been reported as the possible causes for this crime.”⁶

The Big picture:



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ii. Statutory Provisions to Eliminate the Social Evil:

Although, the Female foeticide and infanticide were prohibited through statutory provisions in pre-independence India. “The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, The Code of Criminal Procedure, 1973, The Indian Penal Code, 1860, The Medical Termination of Pregnancy Act, 1971, Medical Council Act, 1956, The Constitution of India”, *etc.* all

⁵ N. Desai, “Born to Die”, in The Indian Post (Bombay), 5 (1988)

⁶ Tandon, S. L., & Sharma, R. “Female foeticide and infanticide in India: an analysis of crimes against girl children” 1(1) *Indian Journal of Criminal Justice Sciences* 1-10 (2006).

⁷ Suresh Puri, “Not Girls, only Boys for us”- *The (in)effectiveness of Pre-Conception & Pre-Natal Diagnostic Technique (PC & PNDT) Act 1994 of Government in addressing the Decline in Child Sex Ratio in India* (2015) (Research Paper, ISS Hague, Netherlands).

Acts contain penalties for causing miscarriages and other related offences, but these prohibitions were seldom implemented due to a lack of government oversight.

Due to misusing the technology to battle with the country's misdemeanor of illegal abortions, the "Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted on September 20, 1994 by the Government of India." The Act's main goal is to control and supervise the use of prenatal diagnostic procedures in order to prevent Female foeticides by preventing their exploitation for sex selection. The Act was revised on 14th Feb, 2003 to make it more inclusive, and recommenced the name of the Act as the "Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994."

This Act prohibits certain activities that lead to Female foeticide, such as gender determination, pre or post conception, and regulates "pre-natal diagnostic methods for the sole aim of discovering genetic problems, metabolic disorders, chromosomal abnormalities, certain congenital malformations, or sex-linked disorders, as well as the prevention of sex -selection misuse."

Challenging constitutionality of the "Pre-conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 on ground of violation of Article 21 of the Constitution was rejected by the Supreme Court in *Vinod Soni v. Union of India*.''⁸

Definitions under the "Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994"

A *Gene Consultancy Centre* is a facility, hospital, doctor's office, nursing home, or other establishment, by whichever name it is known, that provides patients with genetic information, counselling, and other services.⁹

A *genetic laboratory* or diagnostic centre is a facility that provides services for analyzing and testing samples acquired from a Genetic Clinic for prenatal diagnostic testing.¹⁰

⁸ 2005 SCC Online Bom 651:2005 Cri LJ 3408.

⁹ The Pre Conception, Pre Natal Diagnostic Techniques Act, 1994, s. 2(c) "*Genetic Counseling Centre means an institute, hospital, nursing home or any place, by whatever name called, which provides for genetic counseling to patients.*"

¹⁰ The Pre Conception, Pre Natal Diagnostic Techniques Act, 1994, s. 2(e) "*Genetic Laboratory means a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic tests.*"

Pre-natal diagnostic procedures include gynaecological, obstetrical, and clinical methods such as ultrasound, foetoscopy, and trying to take or attempting to remove samples of seminal fluid, chorionic villi, embryo, blood, or any other tissue or fluid of the father or mother prior to or after gestation for sending to a Biological Laboratory or Genetic Health center for evaluation, as well as pre-natal diagnostic procedures for sex selection pre or post gestation.¹¹

Ultrasonography, or indeed any test or study of seminal fluid, chorionic villi, bloodstream, or any cell or liquid of an expectant lady, is one example of a *pre-natal diagnostic test*, to find out any disorder, chromosomal abnormalities, congenital malformations, hemoglobinopathy, or sex-related diseases.¹²

Chapter II of the PCPNDT Unless they are registered under the Act, a Genetic Counselling Centre, Laboratory, or Clinic may not conduct or engage any person who does not have the requisite qualification to assist in conducting activities connected to pre-natal diagnostic techniques. Any medical geneticist, gynaecologist, paediatrician, registered medical practitioner, or other person shall conduct, cause to be conducted, or facilitate in the conduct of any other forbidden activities other than the place registered under this Act by him/her or via any other means. [S. 3]¹³

“Regulation of Pre-Natal Diagnostic Techniques”

Only a few diseases chromosomal abnormalities, genetic metabolic disorders, haemoglobinopathies, sex-linked genetic diseases, congenital deformities, or if any other anomaly that also be specified are allowed to be detected using pre-natal diagnostic tools under the PCPNDT Act. Following the fulfilment of any of the aforementioned prerequisites, the qualified person may only utilize the prenatal

¹¹The Pre Conception, Pre Natal Diagnostic Techniques Act, 1994, s. 2(i) “*Pre-natal diagnostic procedures means all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo, blood or any other tissue or fluid of a man, or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception.*”

¹²The Pre Conception, Pre Natal Diagnostic Techniques Act, 1994, s. 2(k) “*Prenatal diagnostic tests means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or hemoglobinopathy or sex linked diseases.*”

¹³The Pre Conception, Pre Natal Diagnostic Techniques Act, 1994, s. 3 “*no medical geneticist, gynaecologist, paediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.*”

diagnostic technique.

These techniques can only be utilized if one or more of the following conditions are met:

1. The expectant woman is over the age of 35 and is carrying a high-risk pregnancy.
2. The expectant mother has had two or more abortions or miscarriages and is unable to conceive naturally.
3. In her medical history, the pregnant woman has been habituated to or exposed to potentially harmful substances such as medicines, radiation, infection, or chemicals.
4. The pregnant woman's family has a history of mental illness, physical abnormalities, or other hereditary illnesses, among other things. [S.4]¹⁴

Procedures of Prenatal diagnostic can be use lawfully to identify whether the infant is Rh +ve or not if the pregnant lady is Rh +ve. This procedure is allowed if there is a chromosomal deformity and may be useful in detecting prenatal abnormalities. Because the conditions have been stated, no family member or husband can request or

¹⁴The Pre Conception, Pre Natal Diagnostic Techniques Act, 1994, s.4 "*Regulation of pre-natal diagnostic techniques.- On and from the commencement of this Act,—*

1. no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

2. no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:— (i) chromosomal abnormalities; (ii) genetic metabolic diseases; (iii) haemoglobinopathies; (iv) sex-linked genetic diseases; (v) congenital anomalies; (vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board;

3. no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:— (i) age of the pregnant woman is above thirty-five years; (ii) the pregnant woman has undergone of two or more spontaneous abortions or foetal loss; (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals; (iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease; (v) any other condition as may be specified by the Central Supervisory Board; Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

4. no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2).

5. no person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both."

urge the use of prenatal diagnostic methods.¹⁵

Few guidelines on using pre-natal diagnostic procedures:

- (a) The person administering the prenatal diagnostic technique shall advise the pregnant lady of all relevant negative effects;
- (b) the person must acquire written agreement as from pregnant lady in her native language; and
- (c) the person must provide a copy of her written consent to the pregnant woman.

By words, signs, or any other means, no message about the gender of the foetus should be made to any related person associated with pregnant lady or any relatives of the pregnant woman.[S. 5]¹⁶

This section expressly bans any “Genetic Centre, laboratory, or clinic” from selection of sex of a foetus or communicating that information. It specifies rules for the use, control, and surveillance of ultrasound machines in order to prevent them from being used to determine the gender of a foetus. The Act outlaws the finding and publication of the sex of a foetus, and any promotion or marketing of sex selection facilities, and establishes penalties for infractions, including up to 5 years in imprisonment and a fine of up to 1,000,000₹.¹⁷ The registered doctor must obtain consent in written first

¹⁵ M. Rao, *Law Relating to Women and Children* 204 (EBC Publishing, Lucknow, 4th edn. 2018).

¹⁶The Pre Conception, Pre Natal Diagnostic Techniques Act, 1994, s. 5 “Written consent of pregnant woman and prohibition of communicating the sex of foetus.

1. No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless—

(a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;

(b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and

(c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

2. No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner.”

¹⁷The Pre Conception, Pre Natal Diagnostic Techniques Act, 1994, s. 22 “Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention.-

1. No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such centre, laboratory, clinic or at any other place.

2. No person or organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or preconception selection of sex by any means whatsoever, scientific or otherwise.

from expectant woman in a native dialect or any language that she knows before performing any pre-natal diagnostic treatment. The Act also requires genetic counselling centres, clinics, hospitals, nursing homes, and other businesses to be registered. [S.6]¹⁸

The Code of Criminal Procedure, 1973

Only one judicial tribunal has the power to postpone the execution of a death sentence, and that is the High Court. As an example, Section 362 specifies that after signing a judgment, the High Court may change or reconsider it.¹⁹ By postponing the execution of a pregnant woman, it is deferred until delivery, but the High Court It's also possible that the sentence will be reduced to life in prison. This is commutation of a sentence already confirmed and is distinct from the powers in s. 368. Pregnancy should be confirmed by the certificate of a qualified physician.²⁰

It is clear that the Code of Criminal Procedure obliquely recognizes the right to life of the unborn child providing safeguards, by mandating that the Court shall order the implementation of a death sentence against an expecting woman to be postponed or reduced to life imprisonment.²¹

"Indian Penal Code, 1860"

Miscarriage and death of a foetus which has not born yet, is dealing with in "Sections 312-316 of the Indian Penal Code (IPC)," with punishments ranging from seven years to life imprisonment and fines based on the seriousness and intent with which the

3. Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees. Explanation.—For the purposes of this section, "advertisement" includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal, light, sound, smoke or gas."

¹⁸The Pre Conception, Pre Natal Diagnostic Techniques Act, 1994, s. 6 "Determination of sex prohibited On and from the commencement of this Act,—

(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;

(b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus;

(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception."

¹⁹ R. Ranchhoddas and D. K. Thakore, *The Code of Criminal procedure* 650 (Wadhwa, Nagpur, 15th edn., 2000).

²⁰ S. C. Sarkar, *The Law of Criminal Procedure* 1241 (India Law House, New Delhi, 7thedn., 2001).

²¹The Criminal Procedure Code, s. 416 "Postponement of capital sentence on pregnant woman.—If a woman sentenced to death is found to be pregnant, the High Court shall, commute the sentence to imprisonment for life."

crime is committed.

“Section 312 of the Indian Penal Code” is dealing with inducing miscarriage or illegal abortion with the woman’s permission, while Section 313 deals with inducing miscarriage without her authorization. “*The Medical Termination of Pregnancy Act, 1971* (34 of 1971)” allows only qualified medical practitioners to terminate pregnancies, but only if the procedure is ongoing and “poses a risk to the mother’s life or serious harm to her bodily or mental health. When there is a significant chance that the kid will be born with physical or mental defects, or will be physically handicapped.” If the lady conceived as a consequence of rape or contraceptive failure by a married couple, it is considered that the pregnant lady’s mental health has been seriously harmed. The IPC, 1860, makes it illegal for a non- registered medical doctor to terminate a pregnancy. In terms of the Act, it contained the numerous grounds on which a pregnancy can be terminated by a doctor but not a quack. It is high time that this provision was also modified with grave concern.

If the woman’s situation is covered U/S 3 of the Act, neither the husband nor his relatives have the authority to prevent her from having an abortion.²² Under section

²²The Medical Termination of Pregnancy Act, 1971, (34 of 1971), s. 3 “*When Pregnancies may be terminated by registered medical practitioners.-*

(1) *Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.*

(2) *Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner, - (a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are.*

Of opinion, formed in good faith, that,-

(i) *the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or*

(ii) *there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.*

Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) *In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.*

(4) (a) *No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.*

312²³ of the IPC, 1860 it is illegal to cause a miscarriage. Since then, relevant civil legislation has been enshrined in the Act, which makes it legal to terminate a pregnancy in certain circumstances. Because the law allows for such terminations to be carried out in a variety of ways, the Act makes no provision for the husband's agreement in any case.²⁴

“‘With child’ means pregnant, and it is not necessary to show that ‘quickening,’ that is, the mother’s sense of the foetus’ movements, has occurred or that the embryo has assumed a foetal form; the stage of pregnancy and the form that the ovum or embryo may have assumed are irrelevant.” She had just been pregnant for a month and there was no sign of a foetus or child, a woman’s acquittal on a charge of forcing herself to miscarry was ruled unlawful in law.²⁵

The term “woman quick with a child” refers to a specific stage of pregnancy when quickened occurs. This is a woman’s sense of foetal movement. Even a pregnant lady who causes her own miscarriage may be subject to Section 312. Good faith isn’t enough on its own. It must be done in good faith to save the mother’s or child’s life, and not for any other reason. This observation of the Court of Delhi occurs in a case²⁶ in this case, the doctor was extremely careless in injecting needles twice during abdominocentesis. As a result of the severe infection, the patient was compelled to have an abortion. There was only consent for one insertion, which had no bearing on the second insertion.

Specifically, “a ‘miscarriage’ is the early expulsion of a kid or foetus from the mother’s womb before the gestation period is completed at any point throughout the pregnancy.”

As a result of unlawful interactions, a woman became pregnant at the 24-week, and a doctor gave her an injection to abort the pregnancy. The woman, however, died the

(b) Save as otherwise provided in Clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.”

²³The Indian Penal Code, 1860 (Act 45 of 1860), s. 312 “Causing miscarriage.—Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.”

²⁴*Dr. Mangla Dogra v. A K Malhotra*, AIR 2012 CC 1401 : 2012 (3) Ker LT (SN) 124 (P&H).

²⁵*Ademma*, (1886) 9 Mad 369.

²⁶*Meeru Bhatia Prasad v. State*, 2002 Cr LJ 1674 (Del).

next day without having a miscarriage. Because the doctor was deemed to be aware of the medicine's probable ill effects, his actions According to the legislation, this constituted as "voluntarily causing miscarriage."²⁷

Be quick with the child – Quickening is a term used to describe a woman's experience during her 4th or 5th month of pregnancy.²⁸

Under section 313²⁹ of the IPC, if the work was done in the absence of the woman's permission, the person who procured the abortion will be punished alone; under section 312, both the person who procured the termination and the woman who causes herself to miscarry will be penalized. Her conviction under section 313 was upheld when the accusation was a woman kicked a pregnant woman in the belly, with a consequence of miscarriage.³⁰

Section 313 would be attracted only if it is established that the pregnancy is aborted in the absence of the authorization of the prosecutrix.³¹

The lady dies because of miscarriage³² the son-in-law of a pregnant woman left her at the accused doctor's house. Her dead body was recovered from the place where it was buried in the accused's house. It was in a decomposed state. The accused made extra-judicial confessions to three different persons to the effect that the death took place during abortion. Circumstantial evidence also proved this fact beyond reasonable doubt. His conviction under the section was confirmed as also the five-year sentence, but fine was set aside.³³ A pregnant woman was operated on by a homoeopath doctor to induce abortion, however the woman died after only a few hours because her uterus

²⁷*Akhil Kumar v. State of MP*, 1992 Cr LJ 2029 (MP).

²⁸*Supra* note 23 at 12.

²⁹The Indian Penal Code, 1860 (Act 45 of 1860), s. 313 "*Causing miscarriage without woman's consent.—Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with 4 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*"

³⁰*Tulsi Devi v. State of UP*, 1996 Cr LJ 940 (All).

³¹*Shantaram Krishna Karkhandis v. State of Maharashtra*, 2007 Cr LJ 149 (Bom). & *Pranab Kanti Sen v. State of WB*, 2010 Cr LJ 162 (Cal).

³²The Indian Penal Code, 1860 (Act 45 of 1860), s.314 "*Death caused by act done with intent to cause miscarriage.—Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; if act done without woman's consent.—and if the act is done without the consent of the woman, shall be punished either with, or with the punishment above mentioned.*"

³³*Moideen Sab v. State of Karnataka*, 1993 Cr LJ 1430 (Kant).

leaked. Section 314 of the Penal Code was used to punish him.³⁴

Ingredients for both these offences are contra-indicative and cannot go together. When conviction is recorded under Section 304A,³⁵ it was assumed to be a negligent act, which would rule out all except intentional acts; nevertheless, convictions for offences under sections 313 and 314 can be based on the accused's purposeful act rather than carelessness. The presence of *mens rea* would be required in such a circumstance. As a result, the appellants' convictions for crime is punishable U/S 304-A, 313, and 314 of the IPC appear to have been registered incorrectly by the trial court.³⁶

In anyone intentionally doing any act to prevent child being born alive. Whatever he is doing its not in good faith.”³⁷

If anyone caused death which is amount to culpable homicide, the offence is “cognizable, non-bailable, non-compoundable and is triable by a Court of Sessions.” The punishment may be maximum ten years, also with fine.³⁸

“The Indian Penal Code 1860 grated the ‘legal abortions’ without criminal intention and in good faith for the express purpose of saving the life of the mother. Until 1970 the provisions contained in the Indian Penal Code (IPC) governed the law on abortion.” Despite these penalties, quacks, unregistered, and unqualified medical practitioners continued to cause miscarriages in India for a variety of social and medical reasons when they learned that the foetus was Female. Preventing the birth of a Female child by terminating a pregnancy by quacks and unlicensed and unqualified medical practitioners caused serious bodily and mental harm to the mother, and in

³⁴*Jacob George v. State of Kerala*, 1994 Cr LJ 3851 : (1994) 3 SCC 430 [LNIND 1994 SC 417] .

³⁵The Indian Penal Code, 1860 (Act 45 of 1860), s. 304A “*Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*”

³⁶*Mahesh Govindbhai Barot v. State of Gujarat*, 2009 Cr LJ 3535 (Guj).

³⁷The Indian Penal Code, 1860 (Act 45 of 1860), s. 315 “*Act done with intent to prevent child being born alive or to cause it to die after birth.—Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.*”

³⁸The Indian Penal Code, 1860 (Act 45 of 1860), s.316 “*Causing death of quick unborn child by act amounting to culpable homicide.—Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*”

many cases resulted in her death. It is essential to stop the illegal abortions and the termination of pregnancy by quacks, unregistered and unqualified medical practitioners the “Medical Termination of Pregnancy Act was passed in 1971.”

Right to life of foetus

Article 14³⁹ uses two phrases “equality before the law” and “the equal protection of the law.” These two phrases have, however, been used in the “Universal Declaration of Human Rights.”⁴⁰

Article 21 asserts, “Right to Life with Dignity under”,⁴¹ Sex – selection tests violates both these rights. The right to life is guaranteed by Article 21 of the Indian Constitution, and it has been recognized in a number of situations. However, this is rarely an option for the unwanted girl child. Hence, the right of the girl child may be construed in broader terms and should be read as:

1. “She is a girl; she has **Right** to be born alive and not to be killed in the womb.
2. She is a girl; she has **Right** to remain alive after birth and not to be killed at any moment after birth.
3. She is a girl; she has **Right** to her mind her body, **Right** to childhood and **Right** to a healthy family environment.”

The “**Universal Declaration of Human Rights**” states, “All human beings are born free and equal in dignity and rights”.⁴² As basic human rights recognized by various international instruments *i.e.* Right to equality and Right to life. Sex selection tests, Female foeticide and Female infanticides violate both these rights. Article 21 of the Indian Constitution guarantees the right to life, which has been recognized in a number of instances. However, for the unwanted girl child, this is rarely a possibility.

³⁹The Constitution of India, art. 14 “*Equality before law—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*”

⁴⁰Dr. J. N. Pandey, *The Constitutional Law of India* 77 (Central Law Agency, Allahabad, 48th Edition 2011).

⁴¹The Constitution of India, art. 21 “*Protection of life and personal liberty—No person shall be deprived of his life or personal liberty except according to procedure established by law.*”

⁴²The Universal Declaration of Human Rights, art. 1 “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*”

iii. Review of Literature

A preliminary literature review shows that past studies are primarily focused on the rates and ratio and reason behind the foeticide and infanticide.

1. Amartya Sen, (1990) Gender and Co-operative Conflicts. In: Irene Tinker (ed.)

The Eminent Economist supposed that about 100 million girl children have been aborted before birth, killed or neglected to death. There are so many evidence, that are expressing women are going through sex selective abortions under compulsions.⁴³

2. P. Ishwara Bhat, (2009) Law & Social Transformation

The Author has emotionally pointed out “It is unfortunate that for one reason or the other, the practice of Female infanticide still prevails despite the fact that gentle touch of a daughter and her voice has soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of Female infanticide whereby Female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advance medical techniques. Unfortunately, developed medical science is misused to get rid of a girl child before birth.”⁴⁴

3. T. M. Kolloor (1990), Female Infanticide: A psychological analysis

Infanticide defines as, “Killing of an entirely dependent child under ‘one year of age’ who is killed by mother, parents or others in whose care the child is entrusted”.⁴⁵

4. Talha A. Rahman & Ayesha T. Siddiqui, (2007) Discrepancies in the laws on identifying foetal sex and terminating a pregnancy in India

The authors argued in this essay that allowing only married lady to have abortions that under MTP Act was immoral and discriminatory. They also

⁴³ Amartya Sen. (ed.) *Gender and Co-operative Conflicts. In: Irene Tinker Women and World Development*, 123-149 (Oxford University Press, New York, 1990).

⁴⁴P. I. Bhat, *Law & Social Transformation* 566(EBC, Lucknow, 1st Edn. 2009).

⁴⁵T. M. Kolloor. “Female Infanticide: A psychological analysis”, *Grass Roots Action*, special issue on Girl Child (1990).

argued that one provision of the MTP Act is negated by the PCPNDT Act. The ethical issues related to abortion as well as disability-related abortion, which continue to be debated, will take a backseat for the purposes of this article.⁴⁶

5. Aysan Sev'er, (2008) Discarded Daughters: "The Patriarchal Grip, Dowry Deaths, Sex Ratio Imbalances & Foeticide in India"

The author criticizes the government for failing to address the unnatural deaths of Female foetuses, newborns, and toddlers. The evidence of police bias, in difference, and corruption, especially in crimes committed against women, was meticulously documented in Indian feminist and activist literature.⁴⁷

6. Kanchan Mathur, (2008) Body as Space as Site: Bodily Integrity and Women's Empowerment in India

This weekly includes women's inner rights to have control and autonomy over their bodies without pressurizing any external powers. This is a life free from fear of violence, the ability to make decisions regarding where they can go, and to make informed choices regarding sexual and reproductive health choices. Women's bodies have been the sites of intense debate worldwide and especially in the Indian society. The dichotomy between their mental and physical selves and non-recognition of women's emotional, mental, psychological, spiritual and physical expressions persists irrespective of regional locations and has led to restriction of spaces and constants violation of their '*bodily integrity*'. The indemnities of respect for bodily integrity will permit women to encounter their body and manipulation of it in terms which are seen by them as essential for both their physical and emotional well-being.⁴⁸

7. Samsunnessa Khatun and Aznarul Islam, (2011) 'Death Before Birth'- A Study On Female Foeticide In India

The author critiques this, stating that foeticide can cost one or two months' wages, whereas dowry can cost several years' wages. With the passage of time, people have become more civilized, and killing Female babies has become

⁴⁶Talha A. Rahman & Ayesha T. Siddiqui, "Discrepancies in the laws on identifying foetal sex and terminating a pregnancy in India", IV(3) *Indian Journal of Medical Ethics* 119-120 (2007).

⁴⁷ A. Sev'er., "Discarded Daughters: The Patriarchal Grip, Dowry Deaths, Sex Ratio Imbalances & Foeticide in India" 7(1) *Women's Health and Urban Life* 56-75 (2008).

⁴⁸Kanchan Mathur, "Body as Space as Site: Bodily Integrity and Women's Empowerment in India" 43(17) *Economic and Political Weekly*, 54- 63 (2008).

more civilized as well. In Indian culture, everyone who is alive has the right to live. Because the foetus is a living thing, it has a right to life as well. If someone takes another person's life, it should be viewed as a homicide. As a result, a killer of a Female foetus should be penalized similarly to a murderer. Female foeticide, according to Mrs. Pratibha Patil, India's first Female President, is a "disgrace" to society.⁴⁹

8. Dr. Bir Pal Singh, (2012) Sociology of Female Foeticide and Infanticide. Where does the Law Stand?

The author has acclaimed that Society is full of choices. Until the mindset and attitudes of people is not changing, mere legal enactments and provisions under the Constitution of India will not serve its purpose of safeguarding the rights of women and children. It critically examines the growing problem of Female foeticide and infanticide in India from the point of socio-legal dimensions. The census data of 2011 revealed that the sex ratio has improved from 933 Females per 1000 male in 2001 to 940 in 2011, the highest recorded sex ratio since the 1971.

Children are considered to be the future of any society, as their development decides the progressive direction of any country and society. But prejudices in the form of so-called customs, traditions and attitudes towards Female children can lead to an imbalance in the social structure of that society.⁵⁰

9. Mona Arora, (2013) A Cry Still Unheard: A Menace of Female Foeticide Societal Attitude towards Female Foeticide

In this Article the author has stated that, dowry is the main reason behind the heinous crime foeticide and infanticide of girl child in India, a dowry death occurs in India every 93 minutes. Investment on boy child is more fruitful for future rather than a girl. Girls used to be treated as a consumer despite of a producer. Society makes a mother guilty mind who have a girl child on her lap.⁵¹

⁴⁹S. Khatun. & A. Islam. "Death Before Birth'- A Study On Female Foeticide In India", 1(3) *MS ACADEMIC*, 94-99 (2011).

⁵⁰Dr. Bir Pal Singh, "Sociology of Female Foeticide and Infanticide. Where does the Law Stand?" 38 *Internet Journal for Gender Studies* 57-66 (2011).

⁵¹Mona Arora, "A Cry Still Unheard: A Menace of Female Foeticide Societal Attitude towards Female

10. Avanish Bhai Patel, (2013) Crises in Female Existence: Female Foeticide and Infanticide in India

The paper implies that Female foeticide and infanticide are the insidious problem in Indian society which violate right to birth and protection of life of foetus and infant. The paper also examines the last three census of child sex ratio (0-6 years) which is decreasing on an alarming rate, status of remedial process and legal provisions to control Female foeticide and infanticide. "If the cases of foeticide and infanticide continues, no longer a day will come when Mother India will have no mothers, potentially, no life." The decline in sex ratio cannot be simply viewed as a medical or legal issue. It is embedded within the social construction of patriarchy and is reinforced by tradition, culture and religion.⁵²

11. Reylaura M. Cantave (2014) Female Foeticide, Infanticide and Gender Inequality Concerns in India: Role of Policy

The author has exclaimed that, the paper analyzes the major root causes of Foeticide and Infanticide and centralizes in the loopholes that continue to be an instrument against women inside the State. In Tamil Nadu, South of India, there is proverb that states "Raising a girl child is like watering a neighbor's plant." In 2011, Indian Prime Minister, Manmohan Singh acknowledged 'gendercide' as a national shame and called for action against the practice of Foeticide and Infanticide. However, there has been a lack of implementation of the law due to culture and traditional norms.⁵³

12. Nisha Jitendra Singh Kushwaha & Kiran Arun Sharma, (2014) "Factors Responsible for Female Foeticide"

The article explains the factors for the practice of Female foeticide; those are religious, social, economical, legal and psychological. These factors are adversely affecting the self-esteem and moral of the women and consequent of the adverse effect, the women, they do not wish to have daughters. As a

Foeticide" 2(1), *Journal of Social Sciences* 1-4 (2013).

⁵²Avnish Bhai Patel "Crises in Female Existence: Female Foeticide and Infanticide in India" 6(4) *International Journal of Criminology and Sociological Theory* 235-241(2013).

⁵³Reylaura M. Cantave (2014) "*Female Foeticide, Infanticide and Gender Inequality Concerns in India: Role of Policy*" (Research Paper, St. John's University, Annual NYSPSA Conference) (2014).

parent they do not wish their daughters to face the same trauma and degradation, the parents believe that killing of the daughter before she is born is better so that she does not become the prey to the countless crimes, which will ultimately destroy her life and result in humiliation for her parents. It is challenging to detect cases of Female foeticide and sex selection, because it used to perform very secretly behind closed doors, which ultimately leads to less registration of cases in the Courts.⁵⁴

13. Pritam Potdar, Alka Barua, *et.al.*, (2015) “If a woman has even one daughter, I refuse to perform the abortion: Sex determination and safe abortion in India”

The authors of this article describe how many civil society organizations mobilized advocacy efforts in the 1980s, resulting in the passage of the “Pre-Natal Diagnostic Technique Act in 1994,” which was later amended in 2003 and renamed the Pre-Conception & Pre-Natal Diagnostic Technique (Prevention and Misuse) Act. Radiology (including the use of ultrasound), in-vitro fertilization facilities, and genetic laboratories are all covered under the PCPNDT Act. The content of the MTP and PCPNDT Acts is significantly different, addressing two completely separate types of facilities with no cross-references. Despite this, most authorities tend to combine the two and speak of “preventing sex selective abortions” at the implementation level. These two laws are part of a long list of laws directed towards the potential welfare of women and the girl child – such as prevention of child marriage, against dowry and equal inheritance rights. However, the lack of rigorous implementation and no strategy to address the deep-seated cultural and social values have resulted in little change in the *status quo*.

There are also numerous instances where private medical practitioners have denied abortions to unmarried girls, single women and for pregnancies caused by rape for fear of any enquiry jeopardizing their practice, even though quite clearly these women are not likely to have carried out sex determination or

⁵⁴Nisha Jitendra Singh Kushwaha & Kiran Arun Sharma., “Factors Responsible for Female Foeticide” 1(7), *Research Journal of Language, Literature and Humanities* 1-4 (2014).

wanted an abortion for this reason.⁵⁵

14. Asha Basumatary, (2015) Study of Institution of Female Infanticide in Colonial India

The heinous crimes Female infanticide got paramount importance during colonial period. Irrespective of cast, creed and class Female infanticide increased uncontrollably, which will affect the country generation by generation. This is a process to run away from economic pressure. Parents are frightened for the tradition of dowry, because they have to save money for dowry, and pay gift to the bride groom's family.⁵⁶

15. Suresh Puri (2015) "Not Girls, only Boys for us" – The (in)effectiveness of Pre-Conception & Pre-Natal Diagnostic Technique (PC & PNDT) Act 1994 of Government in addressing the Decline in Child Sex Ratio in India

This research paper critically examines the extent to which this flagship policy intervention by State and Central Government has succeeded to address the burning issue of decline in child sex ratio also has assessed implementation & monitoring mechanism and the capacity issues of PCPNDT 1994 Act. The role of centuries old socio-cultural norms in whatever results the Act has produced is also analyzed, it is a case of 'double whammy' where the ineffective implementation, near absent monitoring and visible capacity gaps in all dimensions further exacerbated by overall socio-cultural (& gender) norms have rendered in partial success of the intervention.⁵⁷

16. "Foeticide is still rampant in state" Times of India, June 9, (2016)

"Infanticides are less because foeticide is rampant," said activist Sabu George, who has been campaigning for greater implementation of the Prenatal Diagnostic Techniques Act (PCPNDT) to prevent sex-selective abortions.

Child sex ratio signifies the preference for male child and also reflects neglect towards a child after she is born. Such things like breast-feeding within an hour

⁵⁵ P. Pritam., B. Alka., *et.al.*, "If a woman has even one daughter, I refuse to perform the abortion": Sex determination and safe abortion in India, 23(45)*International Journal on Sexual and Reproductive Health and Rights* 114-125 (2015).

⁵⁶ A. Basumatary "Study of Institution of Female Infanticide in Colonial India" 3(7) *Journal of International Academic Research for Multidisciplinary* 404-411 (2015).

⁵⁷ Suresh Puri, "'Not Girls, only Boys for us"- The (in)effectiveness of Pre-Conception & Pre-Natal Diagnostic Technique (PC & PNDT) Act 1994 of Government in addressing the Decline in Child Sex Ratio in India" (2015) (Research Paper, ISS Hague, Netherlands)

of birth or immunizing below the age of five years play a significant role in the health and well-being of children. In households where a girl child is unwanted, neglect is common in these areas.

NGO Lek Ladki Abhiyan's Varsha Deshpande, who played a significant part in exposing the sex selective abortion racket in Beed in 2011, though, said that Female infanticide in Maharashtra is more common than what the state would like to believe. Sixteen districts of Maharashtra, including Beed, Parbhani, Nashik and Aurangabad, have critically low child sex ratios. Lives are snuffed out of babies by feeding them tobacco, ganja or simply leaving them under a pile of straw. Infanticide cannot be eliminated till social issues such as dowry or violence against women are resolved.⁵⁸

17. S. Vijayalakshmi, (2018) The Menace Of Female Foeticide And Infanticide In India

The author has pointed out the reasons behind this menace are socio-economic, cultural, legal, moral and technological factors. "The United Nations says an estimated 2,000 unborn girls are illegally aborted every day in India." The United Nations has expressed serious concern about the situation. According to UN norms, Female-male ratio in the world is usually 1050 Females per 1000 males. But in India, this ratio is dropping down to nearly 850 Female per 1000 male, particularly in Haryana, Punjab, Chandigarh and Delhi.⁵⁹

18. Richa Kumari, (2018) Female Foeticide, Infanticide, and Trafficking –A Evil to Society

Foeticide and infanticide, according to the author, are cultural legacies of strong son preference, dowry, and the notion of girls as *paraaya-dhan*, problems related to the safety and marriage of a girl child, *moksha*, the patrilineal necessity of *waaris* (heir) *etc.* Girl Child is being widely selected for trafficking over male child for various grave reasons: As sex workers, as domestic servants, as construction workers, for labour purposes, for begging, and for sexual exploitation *etc.*⁶⁰

⁵⁸Editorial, "Foeticide is still rampant in state" *Times of India*, June 9, 2016.

⁵⁹S. Vijayalakshmi., "The Menace of Female Foeticide and Infanticide in India" 7 *International Journal of Multidisciplinary Educational Research* 159-167 (2018).

⁶⁰Kumari. Richa., "Female Foeticide, Infanticide, and Trafficking –A Evil to Society" 5(2)

19. “Kishore Yadav J., Praveena Ganapa, *et.al.*, (2018) Awareness and perception regarding Female foeticide among adolescents in rural community of Nalgonda district, Telangana”

Awareness needed, Female foeticide is perhaps one of the worst forms of violence against women where a woman is denied her most basic and right *i.e.*, “the right to life”. This will not only change the perception and behavior of future generation, but motivated adolescents can also influence the families and community.⁶¹

20. Sharqua Noori Ansari (2018) “THE RIGHT TO LIFE”: FEMALE INFANTICIDE AND FETICIDE: AN ANALYSIS OF INDIA

The author is directly criticizing the woman, the more educated woman is, the more likely she is to actively choose a boy, assuming that she decides to have one child. The women who likely to keep daughters are the very independent minded. Educated men, especially in the business class, also want to have sons to carry on their business, legacy. When a woman lives in the society for full of honor & dignity and this is also called the true empowerment of women.⁶²

21. “Jyoti Sarkar & Debaditya Das (2018) Female foeticide is a menace in our modern Indian society: Critical analysis

In this article, the laws which have been made by the government from time to time to stop Female foeticide, those are only in writing. The expanding irregularity amongst males and Females is prompting numerous violations, for example, illicit trafficking of girls, rapes, polygamy and dehumanization of society. These crimes have been on an increase making this world dangerous for women. Female foeticide is a standout amongst the most violent crimes on this planet.”⁶³

22. Arun Kumar Srivastava, Rajesh Kumar Baranwal, *et.al.*, (2020) “To Assess Awareness and Perspectives of Female Foeticide among School

International Journal of Basic and Applied Biology 41-44 (2018).

⁶¹Kishore Yadav J. *et al.*, “Awareness and perception regarding female foeticide among adolescents in rural community of Nalgonda district, Telangana” 5(7) *International Journal of Community Medicine and Public Health* 3106-3110 (2018).

⁶²Sharqua Noori Ansari ““THE RIGHT TO LIFE”: FEMALE INFANTICIDE AND FETICIDE: AN ANALYSIS OF INDIA” 8(4) *Indian Journal of Applied Research* 25-26(2018).

⁶³Jyoti Sarkar & Debaditya Das, “Female foeticide is a menace in our modern Indian society: Critical analysis” 4(3) *International Journal of Law* 37-43 (2018)

Children”

The paper was about a research that was done to measure school children's knowledge and awareness of Female foeticide. Killing of Female foetus is one of society's most heinous kinds of discrimination against women. It's one thing to continue to discriminate against women who wish to enter what is widely considered a man's world; it's another to refuse to let her be born into that world. The patriarchal social structure, which is founded on the idea that a man's familial history passes through him, treats men as a valuable 'commodity' that must be maintained and accorded special importance in the family and community.⁶⁴

23. *Vatchhalabai Maruti Kshirsagar v. State of Maharashtra*

A nurse attempted to cause miscarriage of a pregnant girl but was unsuccessful. On the third day another person, the accused, an attendant, made an attempt and succeeded but the condition of the girl became serious after five days. She was hospitalized and died of septicaemia which had developed from ruptures and tears in the internal parts of vagina. There was no evidence to show that ruptures and tears had occurred at the hands of the accused. It was held that his conviction under section 314 was not proper.⁶⁵

24. *“CEHAT v. Union of India”*

The Supreme Court intervened in to stop illegal sex determination and directed all State to confiscate ultrasound equipment from clinical that is being run without licenses. The Health Secretaries of Punjab, Haryana Delhi, Bihar, West Bengal *etc.* were present to explain the steps taken to implement the Pre-Natal Diagnostic Techniques Act 1994.⁶⁶

25. *“CEHAT, MASUM and Dr. Sabu George v. Union of India and others”*

In this landmark case the Supreme Court took on the unique role of monitoring the implementation of the law and issued several beneficial directives and put the issue of sex selection and sex selective abortion on the national agenda. The Court also directed all the State Governments to create public awareness

⁶⁴Arun Kumar Srivastava, Rajesh Kumar Baranwal, *et.al.* “To Assess Awareness and Perspectives of Female Foeticide among School Children” 20(2) *Medico-legal Update* 230-233 (2020).

⁶⁵*Vatchhalabai Maruti Kshirsagar v. State of Maharashtra*, 1993 Cr LJ 702 (Bom).

⁶⁶(2001) 5 SCC 577

against the practice of pre-natal determination of sex and Female foeticide through advertisements in the print and electronic media by hoardings and other appropriate means.⁶⁷

26. *State of Maharashtra v. Flora Santuno Kutino*

Deceased, an unmarried girl was pregnant from accused; she died while causing miscarriage due to perforation of uterus following abortion. It is a clear case that accused was instrumental in causing the woman to miscarry and obviously it was not done in good faith for purpose of saving life of deceased. Miscarriage was with a view to wipe out evidence of deceased being pregnant. Accused liable to be convicted under sections 312, 315, 316 and 201 of IPC, 1860.⁶⁸

iv. Research Gap

Following the literature assessment, one important socio-legal issue emerged: ensuring compliance with the equality clause is critical.

- 1) Women and Reproductive Technology Developments Abortion has been permitted in India since 1971 in order to strengthen humanitarian principles. If the pregnancy is the consequence of sexual assault, contraceptive failure, or if the baby would be seriously handicapped, or if the mother is unable of bearing a healthy child, or if it is dangerous to the mother's life, the pregnancy can be terminated. Amniocentesis was first used to diagnose foetal anomalies in 1975, but it was quickly used to determine the baby's gender.
- 2) There are numerous reasons for this, including the neglect of Female children, which is affecting the Child Sex Ratio, and the belief that only the son can perform the last rites of his family members, lineage and inheritance continue through the male line, and sons will look after parents in old age.
- 3) Another factor for Female foeticide / infanticide is the excessive demand for dowry. A small-family norm, combined with the ease of access to sex determination tests, may be a catalyst for the reduction in child sex ratio, which is aided by the ease of access to pre-conception sex selection services.

⁶⁷AIR 2002 SC 3689.

⁶⁸2007 Cr LJ 2233 (Bom).

v. Significance

- 1) Female infanticide and foeticide are one of the social menaces in Indian Society. This practice continues in several parts of our country. The existing available literature suggests that factors relating to female infanticide and foeticide are multi-fold which need to be re-examined in a holistic manner to understand the factors which are directly or indirectly responsible for such crimes. Although the legislations and other measures having taken by Government to combat the practice of Female infanticide and foeticide.
- 2) It is important to examine the existing factors which led the people to commit such heinous crimes. It is required to find a way to tackle and to prevent such hidden crimes in our society. The assessment of the enforcement of the specific laws are female foeticide and infanticide are necessary to understand its impact. Such heinous crimes need a thorough impartial study on the implementation of specific laws against the female infanticide and foeticide and other socio-economic factors.

vi. Objectives

These are the Following objectives of this Research:

1. “To study the historical background of Female foeticide and infanticide.”
2. “To analyze the factors and to investigate the effects of decline in sex ratio in the light of socio-cultural, economic scenario.”
3. “To study the Regulations and the use of techniques particularly for the specific purpose.
4. “To study various laws specially the Succession Laws related to women.”
5. “To find out the judicial approach towards Female foeticide and infanticide.”
6. “To study the steps taken by the government, particularly on protecting the girl child.”

vii. HYPOTHESIS

There were attempts to abolish female foeticide and infanticide in India but this heinous crime is still prevailing covertly and overtly in our society. Although, there is a comprehensive law to prevent female foeticide and infanticide. The researcher has extensively reviewed the existing literature and framed a null hypothesis to find a reasons and causes of female foeticide and infanticide in India.

Negative Hypothesis

The existing legislation is sufficient to curb female infanticide and foeticide.

viii. RESEARCH METHODOLOGY

Proposed methodology:

The researcher has used both doctrinal and empirical methods of data collection and analysis.

1. Data Types

- a) A secondary mode of data collection from various research papers, journals, books, reports, online data, and other sources to draw inferences on the subject.
- b) The researcher selected three districts as per the existing data available which suggested these areas are vulnerable.
- c) The respondents were mainly divided into two categories.

The first respondents data has been collected through *questionnaire* (literate respondents) directly from the three rural districts by visiting the respective areas selected for data collection.

The second respondents data has been collected through *schedule* (illiterate respondents) directly from the three rural districts by visiting the respective areas selected for data collection.

1. Thane Commr.,
2. Nasik Commr. and
3. Yavatmal in Maharashtra

- a) The category respondents were-
- married women,
 - married men
 - unmarried students (only girls).

The researcher adopted a purposive sampling for the collection of data.

The data was also collected from the top most experts through interview who have worked on this subject.

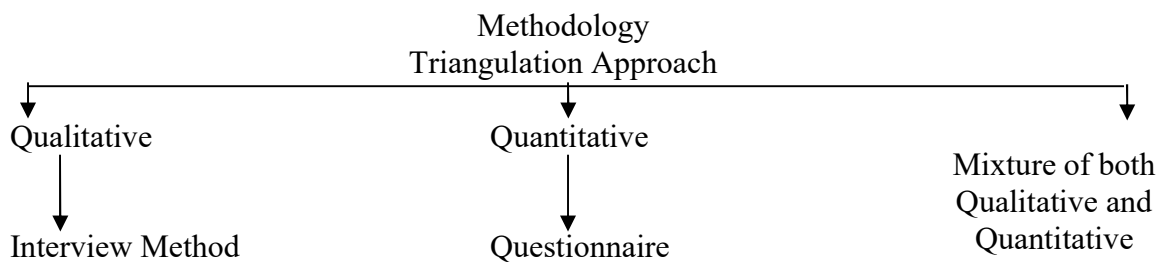


Table: 1 Questionnaire

Category of Respondents	<i>Modus operandi</i>
Married women (both literate and illiterate)	Questionnaire / Schedule
Married men (both literate and illiterate)	Questionnaire / Schedule
Unmarried (girl students)	Questionnaire

Questionnaire	Schedule
Category (Literate married respondents) =158 Unmarried (girl students) = 54	Category (Illiterate married respondents) =205
Grand Total Respondents = 417	

Table: 2 Interview Method

Interview Method	
Names	Designation
1. Advocate Varsha Deshpande	A lawyer, practicing in the State of Maharashtra, a Social Activist, Salam India Award winner, leads crusades against female foeticide, she has done more than fifty sting operations across the state hunting for

	clinics that offer illegal gender-selection abortions. She is a member of the Pre-Conception and Pre-natal Diagnostics Technique Act's National Inspection Monitoring Committee. She is leading <i>Lek Ladki Abhiyan</i> in Maharashtra, she is also a part of <i>Dalit Mahila</i> Vikas Mandal.
2. Mr. Rizwan Parwez	Last twenty years of his association with non-profit organizations, he has worked in different capacities on the issue of gender-biased sex selection, declining child sex ratio, women's access to safe and legal abortions, and livelihoods for women and girls. He has led field-based interventions on pre and post birth discrimination against girls, which gave him the opportunity to work closely with the state officials, legal and medical fraternity, civil society organizations, media, local community and panchayats. Training of stakeholders on MTP and PCPNDT Acts has been a special area of interest. He had served as the member of the National Inspection and Monitoring Committee constituted under the PNDT Division of the Ministry of Health and Family Welfare, Govt. of India, and currently serving as the member of the State Supervisory Board, constituted under the PC-PNDT Act by the Govt. of NCT of Delhi.
3. Dr. Sabu George	Dr. Sabu George spent 35 years working on the issue of female foeticide. He studied at IIT Bombay, completed Master's from John Hopkins and PhD at Cornell University. He has travelled extensively and engaged with people at the ground. That comes from his dedication towards this cause. In 1990s he had already predicted that the 2001 census will be bad. He has a

	very good sense of the situation in states like Kerala and Rajasthan and a fair sense of many other states in India. All this comes from his experience and knowledge gained from working at the ground level.
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ix. SCHEME OF THE STUDY

Chapter – I is discussing the Concept and definitions of Foeticide and Infanticide with Objectives of the study.

Chapter – II is on “History of Female foeticide and Infanticide in India,” the role of International Human Rights Instruments which recognizes women’s “Economic, Social and Cultural rights.” Protection against Sexual Exploitation and Trafficking of Children in India, Indian Laws Dealing with “Commercial Sexual Exploitation of Children and Trafficking, then Philosophy of Feminism with some philosophers’ thought towards feminism including Feminism in India.”

And important aspect of this Chapter is Status of Women in Different Ages *i.e.* In Vedic period, Women in British period and in contemporary India.

Chapter – III is focusing on the Growing reasons and Consequences of “Female foeticide and Infanticide” in India. *Firstly*, causes of “Female foeticide and infanticide” in India are including some reasons; Obsession for Son in Indian Society, “Evolution of Dowry in India,” Dowry system still prevalent in India, Dowry system in India with suitable Case

Laws. The Dowry Prohibition (Amendment) Bill 2010, Girls are always considered as financial Burden, the misuse of Advancement of the Technology (PCPNDT).

Secondly, Consequences of Female foeticide and Infanticide, is indulging Discrimination against Girl Child and increasing Crimes against women. *Thirdly*, it also included another perspective of Consequences of “Female foeticide and Infanticide:”

“The data of Percentage of population in the age group 0-4 years to total population by sex and residence, in Maharashtra, 2010;”

“Neo-natal mortality rates and percentage share of Neo-natal deaths to Infant deaths by residence, India and bigger States, 2010;”

“Early neo-natal mortality rates and percentage share of Early neo-natal deaths to Infant deaths by residence, India and bigger States, 2010;”

“Estimated death rates for children aged 0-4 years by sex and residence India and bigger States, 2010;”

Under-five Mortality Rates (U5MR) by sex and residence, India and bigger States, 2010; Sex Ratio at Birth.

Chapter – IV is comprised of *firstly*, Gender Discrimination and Inequality Issues in India, it has included Women’s Status in India. Women’s position in the Indian Constitution, its adequateness to provide Social Justice, “Equal Pay for Equal Work” and its effectiveness, Directives Principles – Women, “Women and the Uniform Civil Code.”

Secondly, Women as Victim of Crime, Women, Supreme Court in Victim Justice, Women as Victim Compensation.

Thirdly, Women and Personal Laws, the property is very much important aspect, because the fight is endless for the property, whether is a husband-wife or brother-sister. Maximum women are unaware of their own Right to succession and Inheritance in any Law. “Women’s Right to succession and Inheritance in Hindu Law, Women’s Right to succession and Inheritance under Muslim, Christian Parsi and Jews Law.”

Gender Discrimination became a grave concern in India. A collected data has been interpreted, performing the MTP Act rampantly.

Chapter – V is discussing about the protectionist approach of the legislature towards the children, the Legislative framework regarding “Female foeticide and infanticide in India,” the role of Indian Constitution. As well as other statutes *e.g.* “The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, The Dowry Prohibition Act, 1961, The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973, The Medical Termination of Pregnancy Act, 1971 and The Medical Council Act, 1956” *etc.*

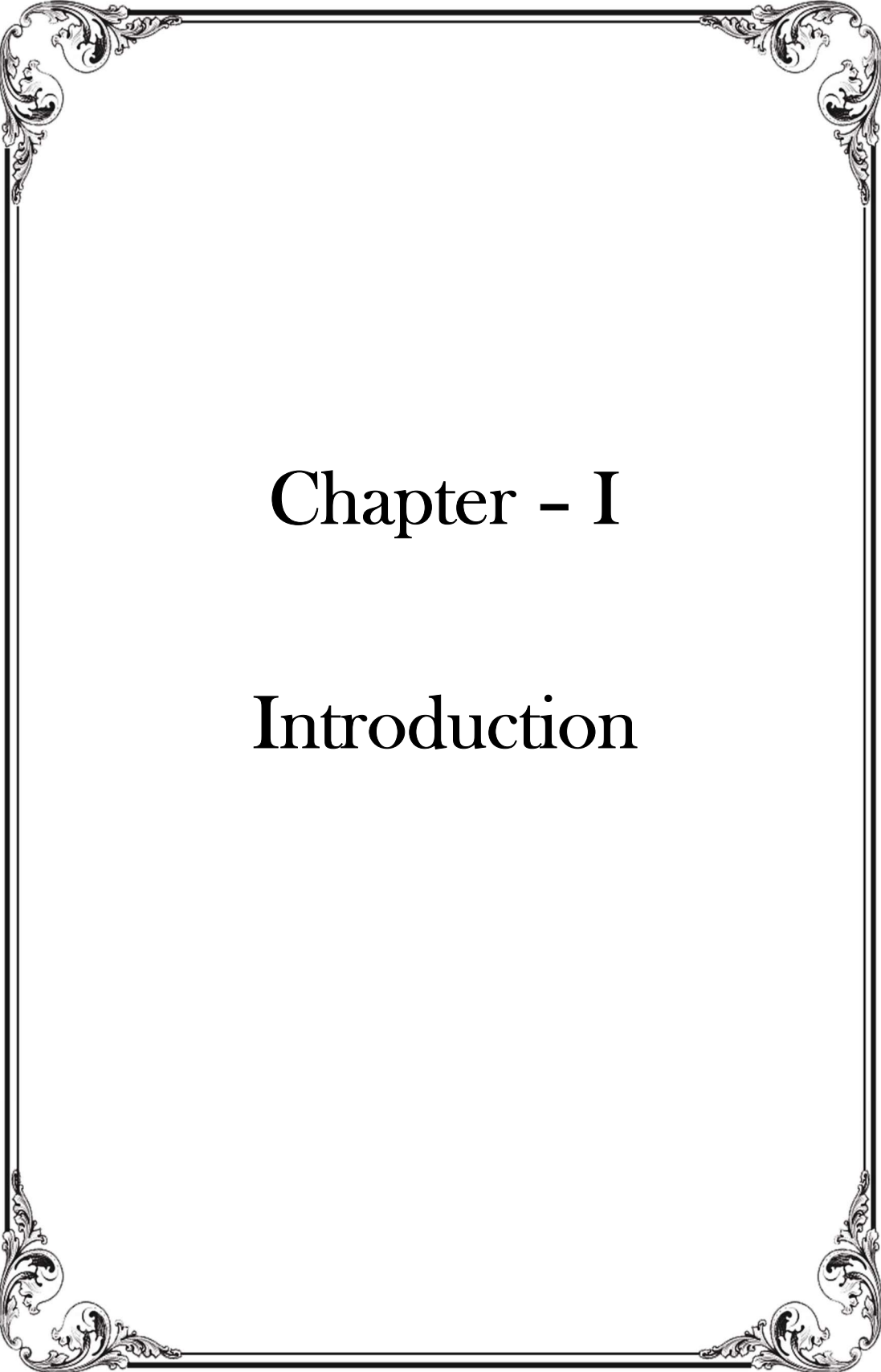
Chapter – VI is completely based on the Role of Judiciary in curbing Female foeticide and infanticide in India, with Judicial responses, with various case laws, and few recent true incidents.

It is also discussing the Government initiatives “*Beti Bachao Beti Pado*” and

“*Sukanya Samridhi Account*” to protect the girl child.

Chapter – VII is consisting on An Empirical Study in the State of Maharashtra, with interview of some eminent persons who have achieved a respected place in child rights, with their hard work.

Finally, the CONCLUSION AND SUGGESTIONS has been made accordingly. The suggestions given by the researcher is based upon the problems identified during the study of policies and schemes run by the government related to present scenario of India.



Chapter - I

Introduction

Chapter – I

1.1 – Introduction

1.1.1 – Concept

India has crossed more than seven decades of the post-independence era. It is sad to accept but truth is, in Indian patriarchal society there is no separate existence of the feminine gender, women are born with a ‘positive’ concept that they will never say *no* to anyone or anything. The so-called patriarchal society considered girls are liability always. Women are never mentally independent.

When a girl learns to understand her senses, she gets trained on the limits and boundaries of her parent’s house and in-law's house, there are certain boundaries that she can never violate. Only girls are trained, just because boys have their own home. Since a woman spends her whole life in someone else's house, all the rules and regulations are assigned to her only. This gender discrimination is very common in Indian society.

Men and women are both sides of a coin, to strengthen a nation union is best and separation makes weakness. The term ‘woman’ indicates – half of a man. Undoubtedly, it is an era of a drastic shift in the history of women. “The Constitution of India gave women equal rights with men from its beginning.” But society does not accept that women may have the liberty of thought even rest rights are not needed to mention. The harsh reality is that there is a huge disparity between women’s theoretical and practical status in Indian culture.

In the medieval period, women were deprived of all rights of equality; afterwards, in British Empire in India, considerable changes were felt. Several legislations passed by the Britishers through which a woman got liberty or amelioration. With the transformation of education, women began to realize their role in the national movement of transforming a new India. After the independence era, all the three organs of state fully contributed a lot of rights, immunities, and privileges in strengthening the position of women.

It is really tough to change people’s opinions about the girl child. However, it should be altered in order to bring about socio-cultural changes. Various communal groups, social organizations, and the educational system should work together not just to teach but also to practise gender equality. Public awareness must be created to treat girls

equally on par with boys. People should be aware of the result of Female foeticide. The state should provide special incentives for the welfare of girls. Free education should be provided at school levels to girls. Efforts have to be made to make them feel as they are assets, not a liability.

The girl child is the most vulnerable member of society. Women are particularly vulnerable to human rights violations from conception to adulthood, during every step of their life. In India, where every study points are the low utilization of health services, low coverage of ante-natal and post-natal care and low levels of institutional deliveries, the utilization of the sophisticated modern technology for sex detection of the foetus on a large scale is a big surprise and matter of concern. According to the “2011 Census, the child sex ratio (0-6 years) has shown a decline from 927 Females per thousand males in 2001 to 919 Females per thousand males in 2011.”⁶⁹

1.1.2 – Foeticide:

“Foeticide is defined as aborting a Female foetus after sex determination test.”

Ultrasonography, amniocentesis and foetoscopy helps to determine abnormalities in the foetus. However, it has been used inappropriately to determine the gender of the foetus for the past three decades.

“In a well-known Abortion Centre in Mumbai, after undertaking the sex determination tests, out of the 15,914 abortions performed during 1984-85 almost 100 per cent were those of girl foetuses.”⁷⁰ Similarly, a survey report of women’s centre in Mumbai found that out of 8,000 foetuses aborted in six city hospitals 7,999 foetuses were of girls.”⁷¹

“A field study conducted in Mumbai shows the fact that, 84 per cent of the gynaecologists admitted to having performed the amniocentesis tests for sex determination. Of these 74 per cent gynaecologists had started performing the test since 1982 and only a few cases of genetic defects were detected. The overwhelming majority of ‘patients’, most of whom were from middle or upper middle class, were

⁶⁹Ministry of Health and Family Welfare, Government of India. Press Information Bureau. Available at: <http://pib.nic.in/inewsitelPrintRelease.aspx?relid=103437> (last visited on January 26, 2016).

⁷⁰Diaz, A. A. “Amniocentesis and Female Foeticide” 3(5) *Bulletin of the Indian Federation of Medical Guide* 87 (1988).

⁷¹K. D. Gangrade, “Sex Determination – A Critique” 18(3) *Journal of Social Change*, 63-70 (1988).

only interested in knowing the sex of the foetus.”⁷²

1.1.3 – Infanticide:

Infanticide is the intentional killing of a dependent infant under the age of one year by the mother, parents, or anyone entrusted with the child’s care.

The purposeful, intentional killing of a girl child within one year after birth is known as infanticide. It is carried out either through the use of toxic, organic, and inorganic poisons, or through the intentional failure of parents or other family members to feed the infant. The parents who consider daughter a liability and not responsibility cannot be a part of society. This perspective remains unchanged in socio-cultural-economic factors. The fear of dowry, women economic independence, social customs and traditions have considered daughter a secondary status in the society. Although the degree of neglect and discrimination towards girls varies from period to time, it remains a constant.

It is recorded, “the Female infanticide existing in India since 1789 in several districts of Rajasthan; along the western shores in Gujarat – Surat and Kutch; and among a clan of Rajputs in eastern part of Uttar Pradesh. Female infanticide was so widespread in Jadeja (Rajput) families of Kutch and Saurashtra that only five of such families were found who had not killed their ‘new-born’ daughters. There are alarming reports of the baby girls being murdered even in areas where this practice did not exist earlier.⁷³ Poverty, ignorance of family planning, cost of dowry, *etc.* have been reported as the possible causes for this crime.”⁷⁴

⁷²S. Kulkarni, “*Pre-natal Sex Determination Tests and Female Foeticide in Bombay City*” The Foundation for Research in Community Health, Bombay (1986).

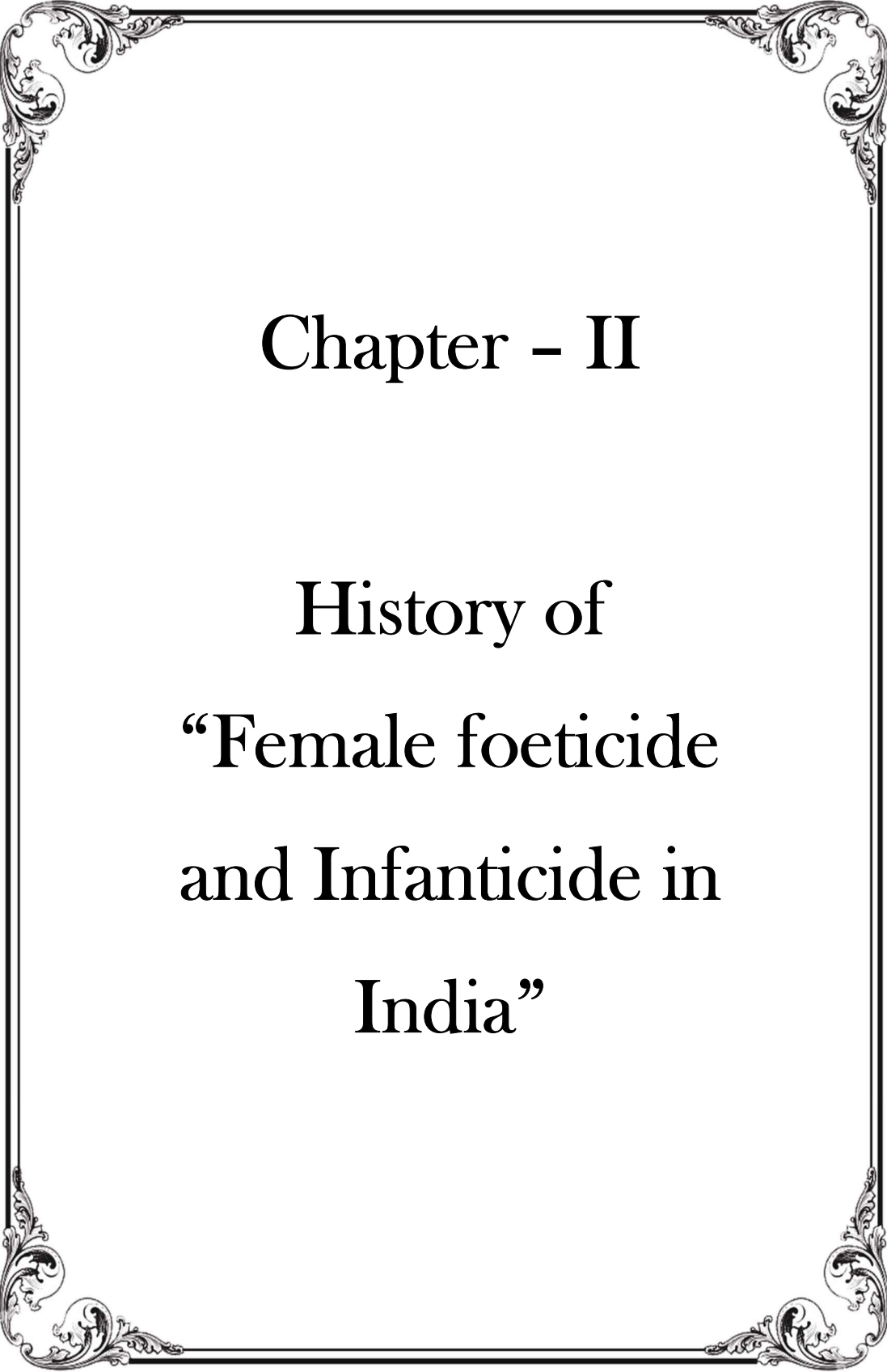
⁷³Anupam Patel & Dr. Kanchan Shrivastava, “Scenario of Child Sex Ration in the World” 16(5) *Journal of Advances and Scholarly Researches in Allied Education*, 1126-1133 (2019).

⁷⁴Sneh LataTandon, &Renu Sharma, “Female foeticide and infanticide in India: an analysis of crimes against girl children” 1(1) *International Journal of Criminal Justice Sciences* 1-10 (2006).

1.1.4 – Objectives of the Study

These are the Following objectives of this Research:

1. “To study the historical background of Female foeticide and infanticide.”
2. “To analyze the factors and to investigate the effects of decline in sex ratio in the light of socio-cultural, economic scenario.”
3. “To study the Regulations and the use of techniques particularly for the specific purpose.
4. “To study various laws specially the Succession Laws related to women.”
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Chapter – II

History of “Female foeticide and Infanticide in India”

Chapter – II

2.1 – History of “Female foeticide and Infanticide in India”

Economic, Social and Cultural rights are myth for women. It's not about those recognized rights which are written on the book or in scripture, it's about all kinds of rights and immunities which a woman deserves by birth.

2.2 – International Human Rights Instruments which recognizes women's “Economic, Social and Cultural rights”:

- “Universal Declaration of Human Rights (UDHR).”
- “International Covenant on Economic, Social and Cultural Rights (ICESCR).”
- “Convention on the Elimination of all forms of Discrimination against Women (CEDAW).”
- “Convention on the Rights of the Child (CRC).”
- “Convention on the Rights of persons with Disabilities (CRPD).”
- “Conventions on the Protection of the Rights of All Migrant Workers and Members of Their Families.”

However, blaming the one side is not justifiable, in Indian society women has a notion that they've born to appease the male members of their family. Various books, Acts are totally ineffective if the women herself is not capable enough to understand her rights. Rights and duties are correlated; from born to death women always tries fulfil their duties only. The main aim to provide Economic-Social-Cultural rights to women to wipe out the inequality and discrimination form the mind of people.

Right to work

Women are low-paid than the men. There should be fair competition in every work place, dignified and without discrimination.

Right to food

In India it's a customary practice in every family ladies are not allowed to have food until and unless all men have completed their meals fully fed whether they are sick, going through menstruation cramps, either pregnant or breast-feeding mother and commonly they are allowed to have less nutritious food.

Right to social security

The “equal pay for equal work” is a myth for women in India, as they face sickness in health, physical disability, maternity cramps, employment loss or harm, infirmity.

Every woman deserves a dignified life without discrimination. Women who are working at informal sector they need adequate parental leave and equal benefits.

Right to housing

Right to housing is an important part of life. Each and every person needs to feel secure in their own house, they need security from outside and inside too, a healthy environment, security, accessibility with a freedom to choose a place for residence.

Right to water and hygiene

“Every day, more than 152 million hours of women and girls’ time is spent ensuring basic needs, including collecting water for domestic use.”⁷⁵ Women should have the right to access of water and sanitation as fundamental rights. Water and sanitation should be inexpensive, adequate, safe, harmless and physically accessible. Accessing the facilities of water and hygiene should not be underestimated.

Right to education

“According to UNICEF, 53% of all children out of school are girls denied of the right to education. Furthermore, poverty, exploitation and armed conflict exacerbate the risk girls face even if they go to school, forcing many to stay home or drop out in fear for their safety.”⁷⁶ There should be same admission criteria for boys and girls in educational field without any discrimination. School drop-outs, child marriages are preventing girls from their basic education. When a boy is educated, he educates his family only, but when girls are educated, they educate two families. Girl’s education should be main priority of each and every State.

Right to health

Gender gaps are always prevailed in our society. There is less priority of Women’s health care, so they are more vulnerable and morbidity rate is higher. Women in their reproductive years (15-44 years) are very much busy with household chores. Everyday approximately eight hundred women used to die for issues related to pregnancy and on the time of delivering the child.⁷⁷

“Cultural Rights/ Marriage and Family”

⁷⁵ MEETING THE DRINKING WATER AND SANITATION THE URBAN AND RURAL CHALLENGE OF THE DECADE, available at: https://www.who.int/water_sanitation_health/monitoring/jmpfinal.pdf (last visited on June 1, 2021)

⁷⁶ UNICEF, ‘UNICEF says education for women and girls a lifeline to development,’ New York, May 4, 2011.

⁷⁷ World Health Organization, Maternal Mortality, Fact Sheet No. 348, (Geneva, 2012).

The Female gender, they have the right to choose their own political leaders; they have equal rights of casting their votes. The Constitution of India has provided “equal rights to all its citizens whether it is men or women.” Women are free to choose their life partners for marriage. Women have the right to apply for dissolution of marriage and claim for maintenance also. They can have guardianship of children and inheritance of property too.

After marriage, all wives change their surname and put their husband’s surname after their name, nobody even questions about it. Although it has been noticed in the post-feminist era their many women, who have added their husband’s surname to their name instead of removing their maiden surname. Legal documents show that even today many of them are still trying to change their names after getting married. Historically, there are three reasons behind governing this custom - Protection of family and wealth, designation of a new life direction, and endorsement of the marriage. Before marriage, she is known by her name, but post that she finds the title of Mrs. Added to her name. People take it for granted that after marriage a woman’s identity is associated with her husband. People who follow this practice believe it helps to bring uniformity in a marriage. As there is a belief that women are half of the men, if the husband and the wife have the same name then it becomes easier to recognize a family. It is the continuance of family name, in the patriarchal society or the superiority of the husband over the wife, there are many reasons behind this practice. But no one has ever asked the woman about her opinion. Sparing few matriarchal societies in small clusters and tribes of the world, women have had to change their identity. Although nowadays many women are capable enough of deciding not to change their name, it’s limited to official purpose only. Whereas, people in the society address a married woman by her husband’s surname only. It doesn’t occur to us to ask her concern if she has changed her name or not, it is taken for granted. This is the 21st century – when our lifestyle has changed drastically from the early centuries. In ancient times women used to live in different circumstances and had to depend on men. Today women can have an opinion, self-respect, own identity, and many claim that they respect it. Marriage gives a woman a new birth. She is leaving her house where she has born and brought up, but unfortunately, after snatching her shelter our Indian society wants her surname also. Marriage is just like

re-birth because when a woman got married, she enters into a new world, new life meets new people, she has to learn rituals/ customs of another family with those hurdles she has to bear the pain of sacrificing her surname also. Parent says, 'it's not your home, you have to go to your in-law's house'; in-laws say 'it's not your home you are not allowed to do whatever you want. Sometimes, it's not only a fight for identity; it becomes a fight for her self-respect, fights for her shelter, and fight for her existence. Few people think that feminism is only for explaining the feminist jurisprudence, but feminism is there to protect the person who is vulnerable, whether it is a woman or a man.

2.3 – Sexual Exploitation and Trafficking of Children

Child abuse turns into a nightmare when the reason behind the exploitation is commercial gain. Child prostitution is an inaccurate concept because it implies consent. There is no validity of a child's consent in the eye of law. When a youngster is sexually exploited, permission has no value at this age. For monetary gain, the youngster is subjected to sexual slavery. There is an increasing situation of kid vulnerability that transcends class, caste, and gender.

The source of child sexual exploitation lies only in the circumstances in which a young victim is subjected to selling his or her body to satisfy the sexual urges of another person as a customer. People participating in sexual exploitation included not just 'clients,' but also 'suppliers,' such as pimps and brothel owners, and 'caretakers,' such as public servants, politicians, and cops, among others. Poverty is the primary cause of this global problem; most families rely on their children to contribute to the household income through illegal child labour.

Simply put, they are attempting to alienate and isolate the child. In 1994, the "United Nations General Assembly" defined 'trafficking' as the illegal and covert export-importation of people across domestic and international borders, particularly from underdeveloped nations, only with aim of exploiting women and girls for the profit of recruitment agencies, traders, and criminal gangs, as well as many other illicit behaviour such as compelled household work, falsified marital relations, secret work opportunities, and compelled adolescence.⁷⁸ Migration is very usual, whether it is

⁷⁸A. Bajpai, *Child Right in India*, 438 (Oxford University Press, New Delhi, 3rd edn., 2018).

with or without consent. Poverty and illiteracy have stimulated the situation more and more. Year after years passes by but there is lack of reporting not only trafficking but of all crimes in National Crimes Bureau Report (NCRB). This heinous crime is not only in the border areas, but also import- export of sufferer from under developed areas to urban markets where their demand is increasing day by day. There are now many routes by which children are being moved all over the world by some clandestine criminal networks. The concept of child trafficking comes from the clients, pimps, procurers, brothel owners, police, guardians, *etc.* There is a strong gang and powerful alliance, who are always dominates, originates, perpetuates, and proliferates this illicit demand. The definition of trafficking by the UN General Assembly clearly indicates that trafficking has an ingredient of recruitment and 3rd party profit. Sometimes, it is possible that some of the family members or child's nearest person, they are aware of the trafficking. In fact, without the help of the trusted person, it is not so easy to control the child. The person who are in authority taking undue advantage of the weak one. The traffickers are not one or limited person, they are more than one and connected with each other and changes their hand to hide themselves during transit. Time to time different kinds of traffickers have been identified in different times, like crime gangs, government officials, police, pimps, dealers and even politicians.

2.4 – The Indian Scenario

In Indian context there are various forms of trafficking, even though trafficking is mostly linked to prostitution. There are many reasons why women and children are trafficked, but prostitution is the most obvious aspect of this violent and demeaning trade. At the same time, human trafficking serves a variety of goals, including construction work, carpet industry jobs, domestic work, forcing minors into bonded bondage, begging, marriage, providing jockeys for camel races in Gulf countries, and pornography. The quantity of victims of human trafficking and the purpose for which they are used are determined by worldwide commerce patterns as well as market and economic trends.⁷⁹ It is quite difficult to investigate and intervene into specific cases where there are major crime groups in the sphere of trafficking. It has witnessed some

⁷⁹ 'Child Trafficking in India', available at: <http://www.hqcr.org/sites/default/files/Child%20Trafficking%20in%20India-A%20Situational%20Analysis.pdf> (Last visited on May 25, 2015).

forms of trafficking with religious or community sanction – the “*Bassanis, Joginis, BhogamVandhis, and Venkatesinis*” in Andhra Pradesh; the “*Muralis, Aradhinis, and Tamasha*” girls in Maharashtra; the “*vadiyars*” in Tamil Nadu; the “*Bedia, Bachhda, and Sansi*” communities in Madhya Pradesh; and the “*Nat*” community in Uttar Pradesh. All the communities justifies and legitimizes the practice and the ultimate result of this practice is prostitution.

In India, old custom of children in prostitution varied as the *devdasi* or the *Jogini*. In the last few years, increasing number of commercial-sexual-exploitation of children in tourist destinations like sea beach areas, Goa *etc.* The major reasons behind the “commercial sexual exploitation” of women and children are poverty, unemployment and illiteracy. About 70% of them are illiterates; 43% of them desired to be rescued. Who wants to leave the place, most of them have desire to save their children from being exploited in the same profession, to protect the future of their children, and apprehensiveness of Sexual Transmitted Diseases. Rest of the others they continue to be exploited unavailability of alternative sources of income, non-acceptability of society, fear of family customs, poverty, ill-health, and their frustration.⁸⁰

2.5 – The Laws of India Dealing with “Commercial Sexual Exploitation of Children and Trafficking”

The Constitution of India, Article 23⁸¹ says, Trafficking is prohibited in the vulnerable part of the population (*i.e.*, women and children) “Articles 39(e) and (f)⁸² of the

⁸⁰ Regional Office Save the Children Alliance, Report: Trafficking of Women and Children in South Asia: *Taking Stock and Moving Ahead: A Broad Assessment of Anti-Trafficking Initiatives in Nepal, Bangladesh and India* (UNICEF, 1999)

⁸¹The Constitution of India, art. 23 “*Prohibition of traffic in human beings and forced labour.—*
(1) *Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.*
(2) *Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.*”

⁸²The Constitution of India, art. 39 “*Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—*

(a) *that the citizens, men and women equally, have the right to an adequate means of livelihood;*
(b) *that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;*
(c) *that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;*
(d) *that there is equal pay for equal work for both men and women;*
(e) *that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;* (f) *that children are given opportunities and facilities to develop in a healthy manner and*

DPSP” directs that, the state’s responsibility to safeguard children as they are vulnerable. The children should not be forced or exploited in the name of monetary requirement to enter in any work or profession which is not suitable according to their tender age and capacity. The State should make sure that the venerable minds are in a position to develop in a fit family setting and mental growth should continue with dignity and freedom.

At first the issue was dealt by the “Suppression of Immoral Traffic in Women and Girls Act (SITA), 1956, which was passed on 31 December, 1956. The legislation was enacted in pursuance of the UN Convention of 1950.⁸³ This Act had so many lacunas. Some of the disadvantages were:”⁸⁴

- The Act did not adhere to the applicable international agreement in its entirety. There was a gap in the definition of prostitution.
- There is no provision for dealing with the policing and punishment of criminals engaging in inter-state and worldwide networks to obtain the children.
- There are no explicit provisions in place to address forced prostitution.
- There is no explicit mechanism for dealing with sexual abuse of male children.
- Protective homes established under the legislation were mostly custodial houses and not properly staffed.

2.6 – Philosophy of Feminism

Women’s positions in diverse societies around the world are not identical. Whether in an established, growing, or impoverished society, women have occupied a distinct role, sometimes oppressed, and other times ruling. However, it is prejudiced and harmful in practically all past and present cultures. The majority of societies are patriarchal. Men are the rule maker and the women are the followers of those rules in the society, women can do only a thing appease their male members of family and some societies they sale women like chattels and engage them with a duty to appease

in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

⁸³Government of India, UN Convention for the Suppression of Traffic in Persons and of Exploitation of the Prostitution of Others. This was approved by the General Assembly resolution 317(iv) of 2 December 1949. In 1950, the ratified this convention.

⁸⁴ Sheela Barse, *A Critique of the Suppression of Immoral Traffic in Women and Girls Act 1956* (1975) (Mumbai, India: Neer Gaurav Research and Development Foundation).

the males and elder Females with having no rights. In books and stories, they possess an honorable position but in practical life they are tolerating inhumanity, brutality, ill-treatment, and all kind of mischief by males. The majority of women are reliant on male family members, so they have nothing to do for their dignity. According to the ancient law, "Having divided body into two parts, Lord means (*Brahma*) became male by of the one half, and Female by means of the other." "Lord *Shiva* consists of a body of two halves, one is of male and other is Female, *i.e.* called '*Ardhanareshwara*'. Woman as considered more powerful than man and treated as goddess of '*Shakti*.'"

Manu glorified the widowhood as ascetic. Women were knowledgeable, free, and highly civilized during the Aryan Golden Age, when males were free, bold, robust, and fearless. Women are the most perfect illustration of conjugal love, giving their entire lives as wives to their partners during their brief existence. This was to be the long-term effect of Vedic women who performed sacrifices to the Gods alongside their husbands as equal partners.

All positive concepts are myth only; the equality between man and woman in Indian society is not in practical. Under the Mohammedan context of theology and *Shariat*, the position of woman is half of a man. Marriages are contracted in consideration of dower (*Mahr*), although the dower is an exclusive right to the wife and but women has cover themselves by *purdah* is almost ignoring of personal liberty and gender parity. But in modern times position of women is changing in every society with the concept of women empowerment and particularly in India all possible work has been done to give a status to women equal with men. The Constitution of India has discarded all sex discriminations. Gender equality and liberty has been made a fundamental right and the States are directed to remove all sex inequalities and obstacles to their personal liberty. Whereas the orthodox Hindu society believes that the women does not deserve personal liberty.

Swami Dayanand, the creator of *Arya Samaj* gutsily raised his voice against ill-treatments, disparities with women, which are deep-rooted in the *lex loci*. "The Constitution of India" declared "equality of status and of opportunity irrespective of religion, race, caste, creed, sex, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment of office under the

State.”⁸⁵ Article 15,⁸⁶ prior to the passage of the equality act, the most famous

⁸⁵The Constitution of India, art. 16 “Equality of opportunity in matters of public employment.—

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office 3 [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. 4 [(4A) Nothing in this article shall prevent the State from making any provision for reservation 5 [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]”

⁸⁶The Constitution of India, art. 15 “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

[(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other

fundamental freedom was in Article 14 that “the State not shall deny to any person equality before the law or the equal protection of the laws within the territory of India.”⁸⁷

There are a number of innovative laws that grant women the same status as men. To eliminate all discrepancies, differences, and unequal treatment against women, e.g. “The Equal Remuneration Act, 1976”, “The National Commission for Women Act, 1990” the job of addressing to the Government the difficulties relating to women, how they are deprived of their entitlements, and reporting on their growth and progress, if any, has been assigned. This Commission has constitutional obligation as well as certain judicial authority.

Various protectional laws brought into force, such as the “Commission of Sati Prevention Act, 1987, Indecent Representation of Women (Prohibition) Act, 1986, Dowry Prohibition Act, 1961, Muslim Women’s (Protection of Rights on Divorce) Act, 1986, Suppression of Immoral Traffic in Women and Girls Act, 1956, the Family Courts Act, 1984, Protection of Human Rights Act, 1993,” etc. The reservation of women in Parliament and State Legislations is in progress it will be used as a weapon to protecting the women’s rights. “The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994” The legislation was introduced and passed by Parliament to prohibit the heinous crime of ‘Female foeticide and infanticide.’

“The Domestic Violence Act, 2005” was enacted to provide “more effective protection of rights of women guaranteed under the Constitution of India who are victims of violence of any kind occurring within the family and for matters connected therewith.”

In the post-independence era, there were so many changes brought for freedom of India’s women irrespective of all religions and classes of this country. But still

than the classes mentioned in clauses (4) and (5); and
(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.— For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]”

⁸⁷The Constitution of India, art. 14 “Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

women are under the clutches of male domination. Demand of dowry, dowry deaths, cruelties and so many other events took place by some uneducated, back dated families and including ladies. Marriage is an institution and not a criminal one established by abductions. Nowadays the parent finds such persons who are rich but greedy, and the parent sends their daughters to such unscrupulous family where they are tortured and treated as they like.

“This humanity is male and man defines woman not in herself, but as relative to him; she is not regarded as an autonomous being. She is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed to the essential. He is the subject, he is the Absolute-she is the other.”

Simone de Beauvoir⁸⁸

For the previous two centuries, gender has affected the both legal and cultural climates in practically every country. In terms of power and influence, women are indeed a minority sector of society; nonetheless, the sex ratio in the population is roughly equal. It's true, inequality in gender and differences persist in every social institution. Some of the differences might at first appear very lightly, but in fact they became matter of grave concern in the status of majority of the women. While progress in gender equalization has been made, there are few important gaps that have not been closed; often they are not even fully recognised. Gender equalization refers to both, equality in sex ration and dignity, power, status and roles of women in every society. *Eleanor Holmes Norton* contends that only continuing and diligent effort will ensure the pursuit of policies for affirmative action and comparable worth, both of which are necessary if women are to obtain equal justice.

In “*Durkheimian* tradition, it is contended that normative enforcement of gender specific roles is a function of the strength of the definitions of deviance attached to them.”⁸⁹ Internal and external sanctions against deviant behaviour reinforce normative behaviour.⁹⁰ To understand the maintenance of women's status, one needs to analyze

⁸⁸ H. M. Parshley, ‘*The Second Sex*’ 86 (Vintage, e Books, New York, 1983).

⁸⁹ E. D. Norton, and Excellence “*Ivory Tower in Higher Faces Challenge Inequality Battle*”, Speech delivered at the Education Conference (Michigan University, 1985).

⁹⁰ Josefina Figueira-McDonough and Rosemary Sarri, *The Trapped Woman: Catch-22 in Deviance and Control* (Sage Publications, New Delhi, 1987).

the specific content of socially constructed relationships between the sexes. The conceptions that are stereotypically attributed to women are mediated and maintained in a variety of ways. *Goffman* refers the essential source for maintaining gender differences as gender ideals. In his words, he argues, “provide a source of accounts that can be drawn in a million of ways to exercise, justify, explain or disapprove the behaviour of an individual or the arrangement under which he lives.”⁹¹ The philosophers did not directly aimed women’s right or position, but the kind of system they automatically explain that.⁹² The philosophers were more concerned about State and its unity. They thought that the unity of the State would further be developed by the equality of sexes. The subject of women’s position formed a pretext for many plays and comedies, which showed that there were people who were trying to arouse public opinion regarding women’s rights. *Plato’s* rebellious ideas about the Constitution of a State are contained in his works: *Republic*, *Laws* and *Dialogues*. In his work, *Republic*, he advocated a rare kind of system which had a unique method of choosing the king or the queen, as the case may be. So, to hold that *Plato* believed, equal rights between men and women won’t be wrong, but He followed mere logic. It should not be outcome of emotional reaction or humanitarian ground. His viewpoint, on the other hand, might not always ensure consistency. The law allowed for the establishment of private spouses. *Plato* also appears to have articulated a different character of women, one that qualifies them for home responsibilities. One of the viewpoints on women’s varied roles in society is that their nature must not be same of that of men. Women, because of their prescribed role within a limited sphere, that would be resulted in a woman is less likely than a man to practice civic virtue.⁹³

This contrast in women’s positions in *Republic* and *Laws* was owing to the attributable to the fact that private property and the relatives were eliminated in the former and reestablished in the latter, not because of *Plato’s* influence. Few critics feel that this restoration turned women into men’s personal property. Her purpose and limitations were defined by her family’s demands. Her ‘nature’ must be established

⁹¹ E. Goffman, “The Arrangement Between the Sexes” 4 (3) *Theory and Society* 301-331 (Autumn 1977).

⁹² R. Mehta, *Socio-Legal Status of Women in India* 11-23. (Mittal Publications, New Delhi, 1st edn., 1985).

⁹³ Susan Moller Okin, *Women in Western Political Thought* 60-70 (Princeton University Press, New Jersey, 1979).

and retained in conformity with her role, as determined by her socialization and required regulation.

Aristotle believed that people derive all things from their functions. Thus, their approach towards women is also functional. It is a law of nature everything has a purpose and exists for the better, he describes a hierarchy that ends with the human race, which is the best of all. Inside the human race too, there exists a similar hierarchy. Based on this theory, he declared the Greek State (Polis) as the best State. “Greek family, similarly, with the subordination of wife, children and slaves is the natural and, therefore, the best form of family structure.” Thus, assigning a “natural” status to the Greek State, *Aristotle* begins his argument with a sketch of the development of the Polis from the household and the village.

The Polis is considered an organism, and its nature can be discovered by examining its development and growth. The household is the initial level, which is built on fundamental human differences. The ruler and the ruled, on the other hand, have a similar divide between male and Female. The State is being ruled by the man: “he controls it as father, husband and master like patriarchal society.” Women are born with a natural inferiority complex to men. Women are made for procreation; men offer the form, while women provide the substance.⁹⁴

If there is the relationship of the ruler and the ruled, why does not the ruled have the chance to become the ruler? Why this inequality for women permanently? *Aristotle* tried to reconcile the permanent inequality with the equality implied by political rule by pointing out that whenever there is a relationship of the ruler and the ruled, even among equals, the ruler will always be in dominating position, by the very fact of ruling, will be in a distinct position and superior.

Rousseau’s view about women, women are the representative of the whole Western world. In his writing “*Discourse on Inequality*, he holds private property responsible for inequality.” Nature made women and men equal otherwise. The emphasis on “nature” in *Rousseau’s* writings is significant, because it is on this ground that he determines a distinct and special place for women. He argues that women deserve sharply distinct position is due to those characteristics that are natural to her sex. “Her

⁹⁴ R.G. Mulgan, *Aristotle's Political Theory: An Introduction for Students of Political Theory* 44-47 (Clarendon Press, Oxford 1977).

procreative ability makes her unlike men, who have been categorized in terms of a generally limitless potential and rational; though creative, woman has been viewed as functionally determined by reproductive role, her potential which is stunted.”⁹⁵ The subtext of his writing is that he views women as a source of nefariousness. Women should keep their modesty, according to him, and husbands have complete power over their wives for the rest of their lives.

Considering these natural characteristics individually, it is possible that *Rousseau's* mention of the charm a woman holds over a man is correlated with his perception of the woman as a source of evil. He propounded dependence on man in such strong terms and did not feel guilty about it, to overcome this fear. The contrary he feared, seemed more likely to happen. It may have been to counter this fear, that he propounded woman's dependence on man. He seems to resent the desire of some women to usurp positions which nature intended for men, and was convinced that an average woman can manage very well by preserving her natural coqueties at various levels of behaviour.⁹⁶ So out of resentment, he chose to call her the source of evil. The next characteristic is related to the first and again that same fear might have led him to hold that meekness was the only virtue which was “natural” to her. According to him, he has a long list of “feminine” qualities for women; “shame, stupidity, weakness and ignorance were extolled highly.”⁹⁷

Intellectual pursuits were not for women, according to *Rousseau*. His ideas regarding intellectual development of a woman are curse to present-day thinkers and specially those who stand for liberty of women. He was of the opinion that women were designed solely for household purposes by nature. However, the protagonists of *Rousseau's* thought maintain that he did not in fact bar women from intellectual pursuits and, on the contrary, he considered catastrophic a situation where a man and his wife could not communicate. What he meant, they say, is that women must have a capacity for practical reasoning on the lines of his concept of a “sensitive reason” and leave the “logic chopping” to man.⁹⁸

Rousseau tried to purify marriage as “a training ground for a good son, husband or

⁹⁵*Supra* note 94 at 49.

⁹⁶ J.H. Broome, *Rousseau, A Study of His Thought* 98-101 (Edward Arnold, London 1963).

⁹⁷*Supra* note 94 at 49.

⁹⁸*Ibid.*

father. The family, he thought, must have a sentimental foundation which demands chastity, which can be ensured by the husband's rule only."

The advanced ideas of thinkers, like *John Stuart Mill*, were influenced by the fact that in the 17th century to which they belonged, political status was denied to women. The "family" in English society was changing, acquiring an identity and significance of its own. Contractual reciprocity rather than the assumption of status, was beginning to colour the attitudes towards servitude, just as growth of rationalism, its faith in man and powers of education were working away at the root of a status-oriented society. Amongst philosophers who denied any political status to women were *Maxwell*, *Roger Coke* who thought that women were unfit for any civil business.⁹⁹ The advanced ideas, however, are reflected by *Hobbes*, *Locke*, *Jeremy Bentham* and *John Stuart Mill*.

Locke assumed that, "familial authority should belong to the mother as much as to the father. In fact, the paternal power of society ought to be called the parental power, to be more correct. Parents should have a joint dominion over their children." The mother specially has a great share in nourishing the child. Deviating sharply from the Patriarchalism of the 17th century, "*Hobbes*" insisted that paternal power, in the state of nature, was not derived from fatherhood as such. Its patriarchal sovereignty was a product of procreation then the mother, who is a full partner in the act of generation, should have an equal claim on the child." However, sharing power is not possible because Supreme Power cannot be divided. Subordination was due to conventions and human consent. *Hobbes*' attitude towards women was a mixed one.

Jeremy Bentham "with a radical approach was a covert feminist, eager to put untapped brains and energy of women to use. According to him, sensibility of women is more than men; they are physically weak but more sympathetic by nature. On the whole, she is fit for a family life and man for outside life."¹⁰⁰ Women, on the other hand, are not kept out of public spaces. He campaigned for women's rights and pushed for universal suffrage and secret ballot voting in real life.¹⁰¹

John Stuart Mill was the real champion of women's right was more or less twenty

⁹⁹ G. J. Schochet, *Patriarchalism in Political Thought* 71 (Basil Blackwell, Oxford, 1st edn., 1975).

¹⁰⁰ Jeremy Bentham, *Theory of Legislation* 24 (N.M. Tripathi, Bombay 1979).

¹⁰¹ M. P. Mack, *Jeremy Bentham: An Odyssey of Ideas*, 323 (Columbia University Press, London 1963).

years before, *Spencer* never supported the enslavement of women.¹⁰² However, *John Stuart Mill*, “an ardent liberal, propounded that the liberty of women, to a level of equality with men, was not solely for the happiness of women themselves, but was a pre-requisite for the improvement of human being. Liberty and self-determination were the themes of Mill's argument against the gross inequality in marriage laws and severe discrimination suffered by women in the areas of educational and occupational opportunity.” The women’s liberation, according to him, will have two effects:

- I) They will be satisfied with their own choices; and
- II) If they so desire, they must contribute to society’s overall satisfaction, and knowledge is the best approach to promote independence from family bonds.

In *John Stuart Mill*’s achievement, “The Subjection of Women, liberty, individuality, democracy and justice run like a golden thread cherishing equal rights to women, except when some recognized social expediency required otherwise. He considered family as a school of sympathy in equality, of living together in love, without power on one side and obedience on the other”

Stuart Mill’s only critique was that he did not examine the structure of the family and women’s responsibilities. He did not see the injustice in norms and processes that permitted males to have a profession and financial freedom while forcing women to choose among family relations and financial freedom, while being a forward-thinking feminism.¹⁰³

The hypothesis of feminism is a mixture of theoretical and philosophical ground. It covers the broad area on feminist theory. The feminist theory targets on the inequality between genders and power related to sexuality. Much feminist theories have enlightened the gender – discrimination and empowerment of women. Feminist theory focuses curbing the gender – discrimination and to promote women’s rights, interests, and issues in society. The present feminism has its deep roots, and tries to settle down the equality between sexes, and to promote equal rights and interest despite of gender biasness.

¹⁰² B. Ernest, *Greek Political Theory: Plato and His Predecessors* 85 (Methuen, London 1960).

¹⁰³ *Supra* note 94 at 49.

2.7 – “STATUS OF WOMEN IN DIFFERENT AGES”

Feminism in India

The branches of the government namely, legislature, executive and judiciary at the Central, State and local levels-have the obligation for women’s empowerment with the help of “fundamental rights and Directive Principles of State Policy,” This provides a foundation for the goal of promoting “Constitutional Feminism.” The citizen has a basic responsibility to eliminate actions that are harmful to women's respect. Some of the cases, amongst others, which project the concept of this type of feminism, are *Vishakha v. State of Rajasthan*,¹⁰⁴ *Nilima Priyadarshini v. State of Bihar*,¹⁰⁵ *Bodhisattwa Gautam v. Subhra Chakraborty*,¹⁰⁶ *State of Punjab v. Gurmit Singh*,¹⁰⁷ etc.

A research was carried out by six Women’s Studies Centres – sponsored by the “Department of Women and Child Development, Ministry of Human Resource Development, Government of India in 2005” – for preparing a report on developing Indian perspectives on feminist theory and methodology. The report submitted by it, *interalia*, highlights the following:

1. Feminist theory serves as a tool for modern intellectual inquiry. Its Indian views have not yet been created, which is why many researchers have expressed their discontent with the analytical methods available that are derived from other cultures. The most significant shortage is in academic reading material on Indian women’s studies and feminism interpretations.
2. A new knowledge base must be built by establishing theoretical standards and encouraging feminist discourse practitioners in India to re-interpret obtained learning data. In order to dismantle old educational systems, commencement must be made with a conceptual framework that simultaneously inducts multidisciplinary techniques. Transitions between theory and practise must be seamless, because any discussion of feminism must address practical consequences and specific examples.
3. The range of topics covered is extensive and impressive: power, agency, voice,

¹⁰⁴ (1997) 6 SCC 241 : 1997 SCC (Cri) 932.

¹⁰⁵ 1989 Supp (1) SCC 336.

¹⁰⁶ (1996) 1 SCC 490 : 1996 SCC (Cri) 133.

¹⁰⁷ (1996) 2 SCC 384 : 1996 SCC (Cri) 316.

choice, and economic liberty; oral and written literature; cinema and sexuality; and political standing in relation to the national frame. Panchayat studies have a strong regional focus.

4. Ethnicity and identity issues arose on a variety of levels. Indian modernity has clashed with religion and customary behaviour. Gender intersects with *Dalit*, Hindu, and Muslim identities.” Are you a woman first or last?” the old question resurfaces with new implications, despite the fact that the answer lies in the politics of reading.

The importance of assessing Indian women’s standing throughout history is less debatable, yet the attempting something new is loaded with danger. insurmountable problems. As historian *Romila Thapar* remarks: “Within the Indian subcontinent there have been infinite variations on the status of women diverging, according to cultural environment, family structure, class, caste, property rights and morals.”¹⁰⁸

According to *Susan Wadley*, there is logic in this concept. She says:

The Female is first of all *Shakti*, [energy or power], the energizing principle of the Universe. The Female is also *Prakriti* [nature], the integral part of the universe. She further observes: “Uniting these two facts of Female, women are energy, power and nature, and nature is uncultured... uncultured is somehow dangerous.”¹⁰⁹

Veena Das says that in *shakti* form, the Goddess is frequently seen standing alone, not encircled by a greater male principle. “The principle of power finds expression in the goddesses who represent ‘shakti’ who come to the aid of human in periods of cosmic darkness, by killing the demon who threatens the cosmic order.”¹¹⁰

The Preamble of the Indian Constitution resolved to “provide social, economic, and political justice to all of its citizens, as well as freedom of thought, expression, belief, faith, and worship, equality of status and opportunity, and to promote fraternity among them all, ensuring the dignity of the individual and the nation’s unity and integrity.”

“The review of the disabilities and constraints on women, which stem from the socio-

¹⁰⁸ D. Jain, *Indian Women* 6 (Publication Division, Ministry of Information and Broadcasting, Government of India, 1975).

¹⁰⁹ S. S. Wadley and D. Jacobson, *Women in India: Two Perspectives* 114 (Manohar, New Delhi, 1977).

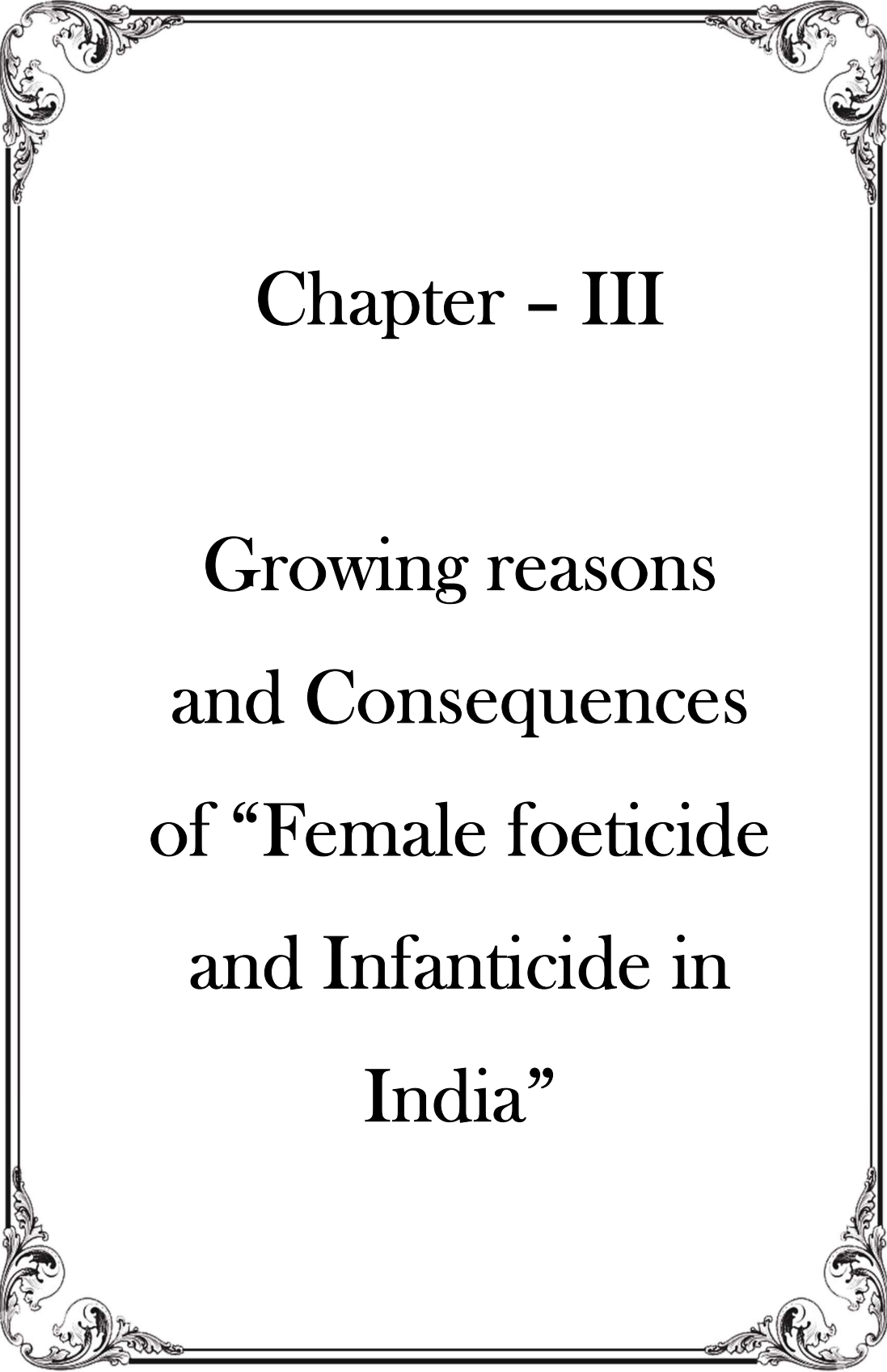
¹¹⁰ Veena Das, “*The Mythological Film & its Framework of Meaning*” 8(1) *India International Centre* 43-56 (1981).

cultural situations, indicates that the majority of women are still very far from enjoying the rights and opportunities guaranteed to them by the Constitution... The social laws, that sought to mitigate the problems of women in their family life, have remained unknown to a large mass of women in this country, who are as ignorant of their legal rights today as they were before Independence."¹¹¹

2.8 – Concluding Remarks

Instead of progress, discrimination, the war on discrepancies, violence and un-empowerment continues. The road map towards the achievement is a long way and women have to struggle for each and every right, they have to continue their fight from cradle to grave. There no such history where a woman gets reward without struggling.

¹¹¹ Government of India, Report: Committee on the Status of Women in India (Ministry of Education & Social Welfare, 1974).



Chapter – III

Growing reasons and Consequences of “Female foeticide and Infanticide in India”

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Growing reasons and Consequences of “Female foeticide and Infanticide in India”

3.1 – “Causes of Female foeticide and infanticide in India:”

3.1.1 – Obsession for Son in Indian Society:

In the 21st century, some are worried about their future and some are worried about their life and career. Maternal age has been advanced substantially in all sectors of society because of carrier orientation, the pursuit of higher studies, initial unwillingness to procreate, less family compulsion, easy availability of contraceptives, awareness, and preservation of egg, in vitro fertilization (IVF), surrogacy and above all economic reasons. Among those who are worried about the future of their child, some unscrupulous people are prioritizing the sex of their child. Unremittingly the society criticizes the mother who gave birth to a girl child. Being manipulated by society, families try to live with the society by doing whatever was said or done like getting their child married at an early age, paying dowry, not letting them out of home often. Today's world, on the other hand, is developing feminine jurisprudence, Female empowerment, and equal rights for men and women. Every day people are fighting in legislature and parliament for women's rights. In this cruel society, women are judged at every step they take, they are treated as a marriage tool and not as a personality to live up to their dreams. Even in this era, where a girl starts off her career just like any other man in the society, most of them are questioned or suggested to marry as soon as they complete their traditional education or join a job. If after marriage she is unable to give birth to a child, society calls them barren. Due to the long tedious race to cope-up with the advancing world, suitable age for marriage might get passed. In the worst case, they are losing their fertility and the joy of becoming parents. People, who are helpless and crave for their child but cannot conceive, are becoming a parent through surrogacy, test-tube baby, IVF (In vitro fertilization), *etc.* Some people even decide to adopt a baby irrespective of sex. But people who are blessed to have their child, instead of thanking God they run after not to have a girl child. Despite praise for the efforts, they are putting in to build a healthy society, sex determination commotion has been persistent.

These technological advancements made lifestyle easy and comfortable but could not

wipe out people's complicated thoughts. They still think of women as a medium to carry the lineage of the family; they must look after the in-law's family. People that are only interested in having a male child, they have no idea, what is waiting for them in the future. The mindset of the people and the fearlessness towards the law and order of the country will create a girl-less society. The parent who is obsessed with a male child, they don't understand how nature works, by only giving birth or having a male child can't carry on their legacy. They must understand for the peace of society, peace of one's house, and to carry on the lineage of the in-law's family, the girl child is always needed.

Obsession for son still prevails in society. The curse of society is named "dowry" is a fear in the mind of people. People's mindset towards girl child is burden only. It is beyond imagination, how the world will be if there is no daughter. There will be crisis, it will enhance the crimes against women more and more, social foulness will increase, there will be an unmanageable anarchy. To maintain social peace and tranquility the country needs to maintain the Child Sex Ratio (CSR). Dowry is the price paid to the bridegroom's own parents for his upbringing. The society should be ashamed of it. Care and nurture of a parent is priceless, it cannot be paid in terms of money. In one hand, the bridegroom's parents are liable and found guilty for continuing the dowry as an old tradition, on the other hand, the parents of daughter are also liable because, the parents themselves think daughter are burden on them, till they are not getting married, so bride's parents are also participating in the crime as well as bridegroom's parents. According to the "National Crime Record Bureau (NCRB), there is one dowry-death in India in every one hour thirteen minutes."¹¹²

অন্যায় যে করে আর অন্যায় যে সহে

তব ঘৃণা যেন তারে তৃণসম দহে।

রবীন্দ্রনাথ ঠাকুর¹¹³

¹¹² How Unsafe India is for Women, available at: <https://www.news18.com/news/india/rape-every-16-minutes-dowry-death-each-hour-ncrb-data-shows-howunsafe-india-is-for-women-2925445.html>, (Last visited on October 1, 2020).

¹¹³ He who commits wrong or condones the same, May your contempt singe like a reed in flame. By Rabindranath Thakur.

3.2 – Evolution of Dowry in India¹¹⁴

Marriage is an important component of Indian culture, and if the parents are not able to marry their daughter, they would suffer from inferiority complex. ‘*Sulka*’ was known as, the girl was taken away once a price was paid. It was compensation paid to the parents. The term ‘*Stridhan*’, where the women receive gifts from her parents, families, relatives and it was recognized as her property it can be considered that dowry system existed back from the Vedic period. In Hindus ‘*Kanyadan*’ is a part of Indian marriage, which is bifurcated as *Kanya* which means daughter and *Dana* means gift. The bridegroom receives jewellery along with money as dowry. In that time, the motive of dowry was to help the bride so that she uses the things and money for her own use in her in-law’s house as a new member, to make her comfortable, which became a social evil now. Today’s concept, dowry is treated as a consideration by the bride’s family to keep their daughter happy after marriage. According to the income, qualification, eligibility amount of the dower should be determined by the Groom’s family. The value of the groom is being fixed in terms of monetary value. Payment of dowry is the scale of measurement of the groom’s quality. More educated or wealthy grooms demand more dowry, and it has become custom in present scenario. The problem arises, after the dowry price is paid to the groom and his family, the greed grows, which often leads to physical, mental, or sexual harassment *etc.* to the bride.

In the Mohammedan law, “*the Dower (Mahr) is an amount of money or property that is given to the girl at her time of marriage.*”

Dowry payments in the village have been stable in the last decade. Between 1960 and 2008, researchers looked upon 40,000 marriages in rural India and found dowry was paid in 95% of marriages even though it was declared illegal in India. It was found that dowry payments were doubled between 1930 and 1975, but post 1975, there was a decline in dowry size.¹¹⁵

There have been many changes in India between 2008 and the present, although the trends or patterns of dowry payment have not changed yet. And dowry is prevalent in almost all communities, including Sikhs, Christians, Hindus, and Muslims.

¹¹⁴ Priya R. Banerjee, “Dowry in 21st Century India” 15(1) *Trauma Violence & Abuse* 34-40 (2004).

¹¹⁵ Dowry, available at: <https://www.bbc.com/news/world-asia-india-57677253> (Last visited on August 1, 2021).

3.2.1 – Dowry system still prevalent in India

Dowry in India is a price paid the groom's family demands of take from the bride's parental house and it is considered as a symbol of honor. Dowry is still practiced in almost every part of India, although it is banned under IPC, 1860. There are families who start assembling and saving money for their daughter's wedding as soon as a girl child is born in their family. But there are also some families who nowadays focus on educating their daughters instead of adding money for their daughter's marriage. But even such families in their mind somewhere has a thought that they will not have to give dowry if their girl is educated enough. A question still arises here that 'What is the need for dowry?' The system of dowry is prevalent and will always exist in India if the people do not stop considering their daughters as a burden. This is the reason that the patriarchy is always given more weightage. This is the reason that people are taking advantage of this mindset that daughters are burden over their parents and to release their burden, the family gets ready to pay the price to get rid of the burden. A family becomes happy if a boy is born in their family and the same family soon the girl is born starts having the feeling of burden. In the whole world, the number of women is less than the boys, because many families kill their girls as an infant only, as soon as they know, only due to the fear of getting the girl child married someday and giving dowry and in many other cases, the girls are killed after the marriage if she fails to bring enough dowry for her husband's family. This is happening only because the parents feel that their daughter is a burden over them and to give a shelter to their daughters for the rest of her life, the groom's family demand a price and the parents are happily paying it because they do not want to keep their daughters at their home. Many questions remain unanswered in a girl's life and for which she after a point of time stops looking answers for. It might have occurred to the girls that why is she considered as a burden over her parents and why is she not capable enough to do what a boy could have done or why she can't look after her parents for the rest of her life like a son would do. But she never gets the answers. Dowry is a practice which would never change if the mindset of the society doesn't change and it begins from an individual's home.

Dowry exists in India, because now it has become another source of income for the groom and his family. There are men who are married unemployed only to get the

dowry and start his own business or something on his own or for his family's benefits. Marriage in India used to be sacred and holy but now it has become a market of grooms and brides where everyone looks for their perfect partners and families focuses over the dowry. There are families in India, who would reject a girl even if she is more educated and capable if she is unable to bring the said dowry. In a family, the woman who brought more dowry is given more respect than the woman who couldn't. If a woman fails to bring demanded dowry, she will be harassed by her in laws physically, mentally and sexually. The groom and his family torture the girl which results in many dowry deaths either direct killing or instigating the girl to commit suicide. Many people say that with the evolution of time, dowry system has declined. With the evolution of time, there are families who have boycotted this dowry system,¹¹⁶ but such families are only few. Most of the families give importance to dowry at a much bigger level than the girl. In rural areas, it is practiced at the biggest level, because the society is sick and are illiterate but that shouldn't happen in the urban areas. No, even in the urban areas, the same situation exists and very fewer families do not want to be a part of the dowry system. The bride's families are ready to pay a price for taking away their daughters and the groom's families are always ready to accept it. One of the major reasons to accept or give dowry is the society and their show offs. No one from the society will come for help if anything happens to the bride and groom or their families, but still, they must show off to the people who would never even bother and will always talk behind their back. People say that time is changing, and boys and girls are equal now. But is it so? If this would have been true, then the girls never had to suffer, and no dowry death cases would have occurred. The society really needs to change their mindset, so that no innocent suffers, or is killed for a baseless thing as dowry.

3.2.2 – Dowry system in India

Though it is 21st century but it is surprising that India is still tangled in many social evils like superstition, dowry system, caste system, Female foeticide *etc.* With the passing time there are so many orthodox traditions, customs have been abolished, changed its procedure, however, the dowry custom continues persists. With the

¹¹⁶ Social issues since childhood and political history, available at: <https://timesofindia.indiatimes.com/readersblog/social-issues-since-childhoodand-political-history/dowry-system-in-india-33961/> (Last visited July 31, 2021).

increase in dowry demand since the 20th century, offences related to women, like wife beating, domestic violence, harassment of women, bride burning have also increased. The menace of dowry is not new in Indian society, it is as old as civilization itself and it has flourished over the years. With time the concept of dowry has undergone many changes.¹¹⁷

Traditionally the term 'Dowry' means "gifts given by parents to their daughter at the time of her marriage." Dowry system has been an integral part of Hindu marriages for long and from there it has seeped into other communities too. Dowry is derived from the ancient Hindu custom of "*kanyadan*", where the bride's parents shower his daughter with jewellery and clothing at the time of her wedding, and "*vardakshina*", where the bride's parents give the groom money or gifts in kind. Both of these were done voluntarily and out of affection and love. Traditionally *kanyadaan* was not considered complete unless *varadakshina* was given. Earlier girls did not enjoy proprietary rights in their parental family, so dowry was considered a substitute for the same. These days, these customs have assumed menacing proportions and have become coercive and brutally dangerous. The custom of dowry, was a significance of love and affection, now it took a shape of curse. Dowry as a pre-condition of marriage is a social menace but continues to be a common practice and showing off as a scale of status in almost every part of India. Higher education means more demand, the financial steadiness of bridegroom, rather than helping to decrease the problem, seem to have elevated it. In fact, well settled boys have started to consider it their right to be given hefty amounts of dowry as a measure of appreciation for their hard work. Hence, this offence has assumed as an integral, inherent right of the groom's family. Often the demand for dowry is not articulated in clear terms. The hints, suggestions and description of dowry given and taken by others are all vague in nature and open to various interpretations and which have the potential of turning deadly at a later date.

At some places the situation is so bad that prices are fixed for high ranked government officials, doctor, engineer *etc.* spending a huge amount on the marriage and dowry has become a status symbol nowadays. But this practice of dowry is a curse for poor and middle-class parents. Sometimes, demand is not made at or before the marriage time

¹¹⁷ B. Vinayak., G. Sarthak., *et.al.* "Dowry System in India" II(II) *Indian Journal of Law and Legal Research* 777-785(2021).

but the girl is harassed after the marriage always and forced to bring cash or gifts from her parents. Often it happens that a woman commits suicide when it becomes unbearable for her.

From a woman's perspective, the bride price framework in Indian society is one of the lengthiest shadows that go along with that. Invisible and evident means, no matter how large the unscrupulous transactions in the twenty-first century. The basis of a large public outcry against women, the custom of presenting a gift is a vague communication of the appearance of men in the general public. It is always compulsory for young women to provide a lot of money, gold as gems, electronic gears, portable or enthusiastic buildings, preparation and preparation his family, during the wedding. Except for the first point of the procedure sleeping with monitors trying to make sure the budget works well for their young girls, in the current vision has changed the guards who pay for the guarantee of prosperity of their girls. Ornaments and money the lady of the hour carries with her. The people's home is frequently alluded to as "*Streedhan*," and that is under the ownership of the lady, although it is frequently considered as appropriate because of the boys' family. Total on paid as the assignment does not have a set standard, the measuring stick depends surprisingly on the boys' cost / social status and is often seen as a prep family as income they do teach their child. The living frame is spread out continuously to disrupt extents that take the number of many young girls. Dowry is a social evil that we still face in our so-called literate and educated society.¹¹⁸ Dowry, which used to be a gift or kind given to a bride for her financial independence, has become more of a custom these days. Every family that has a daughter suffers sooner or later. The daughter also gets her share in the parental property like a son as well, has a share in the parent's property. But it is given as a dowry during her marriage to buy a good husband to make her life happy. This has become uglier as money plays an essential role as a dowry, and a standard has been set for grooms according to the price offered. This has become more of a marketplace where the bride's family can buy a groom for their daughter according to the amount of dowry paid.

¹¹⁸ Dowry system a social stigma, India, available at: <https://timesofindia.indiatimes.com/readersblog/akash-kumar/dowry-system-asocial-stigma-20030/> (Last visited on July 31, 2021).

When a girl comes with less dowry, they are mentally, physically, and sexually ill-treated by the husband and her in-laws, leading to suicide. As every parent wish is to get a good husband for her daughter who can keep her happy, the parents have to be corrupt and earn more money to give more dowry and get a good groom for their daughter. They have to take bribes or practice unfair means in business. Although there are laws against the practice of dowry, the practice of dowry hasn't come to an end. Many ministers have allegedly paid the dowry in their daughter's wedding and ignored the law; then, how can we expect this from the common people.

3.2.3 – Case Laws

*“Prem Kumar v. State of Rajasthan,”*¹¹⁹ a commitment for dowry is not always required because Section 3 of the “Dowry Prohibition Act prohibits the acceptance, demand, or payment of a dowry as consideration for marriage.” Any transaction of dowry is punishable by up to 6 months in prison, a fine of up to 15,000₹ or the amount of Dowry, whichever is greater, or a maximum punishment of 5 years in prison. Both the receiver and the provider are intended to be penalized U/S 3¹²⁰ of the “Dowry Prohibition Act.” Demanding of Dowry is likewise illegal U/S 4 of this Act. *“Kunhu Moideen v. Sayed Mohammedan,”*¹²¹ U/S 2¹²² of the Act, the money provided

¹¹⁹Criminal Application No. 391 of 2011 in Criminal Anticipatory Bail Application No. 599 of 2011 | 29-03- 2012.

¹²⁰The Dowry Prohibition Act, 1961, s. 3 “Penalty for giving or taking dowry.— [(1)] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable [with imprisonment for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]: Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than [five years].]

[(2) Nothing in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given].”

¹²¹ S. A. No. 234 of 1980 Decided On, 30 May 1985 (High Court of Kerala).

¹²² Dowry Prohibition Act, 1961, s. 2 “Definition of “dowry”.—In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

to the bridegroom is not considered as Dowry is not paid in a Muslim marriage for the acquisition of a joint asset in the names of both the daughter and the son-in-law. As a result, giving or receiving valuable security or property must be linked to both parties' marriages, and a link between the giving and taking of valuable security or property and the parties' marriage is needed.

*"S. Gopal Reddy v. State of Andhra Pradesh,"*¹²³ the demand, even if filed before to the marriage, was found to be valid by the court, is a violation of U/S 4¹²⁴ of the "Dowry Prohibition Act of 1961." In this case, the court also noted that any demand for money or property made by the bride, his parents, or anybody else would be covered by Section 4 of the "Dowry Prohibition Act 1961."

*"Appasaheb and anr. v. State of Maharashtra,"*¹²⁵ a dowry of 20,000₹ was presented at the time of the wedding. After 6 months of marriage, the appellant and his family requested more money from the girl to cover their housing expenses, and they utilized physical and emotional harassment to achieve this. Her parents found out one day that she had ingested poison and had committed suicide. The Supreme Court sentenced all of the defendants to seven years in prison under Indian Penal Code Sections 304B¹²⁶ and 34.¹²⁷

at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.—The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."

¹²³ AIR 1996 SC 2184.

¹²⁴ The Dowry Prohibition Act, 1961, s.4 "Penalty for demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

¹²⁵ Appeal (Crl.) 1613 of 2005.

¹²⁶ The Indian Penal Code, 1860 (Act 45 of 1860), s. 304B "Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

¹²⁷ The Indian Penal Code, 1860 (Act 45 of 1860), s. 34 "Acts done by several persons in furtherance

*“Hiralal v. State (Government of NTC) Delhi,”*¹²⁸ the deceased committed suicide by ingesting poison. It was later discovered that her in-laws were to blame, as they placed her under so much pressure to bring more and more money that she couldn't take it any longer and committed suicide. The court ruled that a dowry demand should be made as soon as possible after the death. If there is sufficient time between the act of cruelty and the victim's death, it can be concluded that cruelty was not the cause of her death, and so Section 304B of the IPC cannot be enforced.

Laws against Dowry in India

In the year 1961 when the custom of dowry was prohibited and made a punishable offence by passing DP Act, 1961 by the Parliament of India. It was the first and the only Act which exclusively deals with the dowry system and prohibits it in any form. Later on amendments were also introduced in “Indian Penal Code” create an easy way for a woman to get remedy against the harassment which she has to suffer because of nonpayment of the demand of dowry by her parents. Some references are also made in CrPC and “The Protection of Women against Domestic Violence Act, 2005.”

“Valuable security has been defined under Section 30¹²⁹ of IPC.” Because the legislature uses the phrases any asset or funds given by wife's family to the husband's family in Section 2, the term dowry does not cover anything donated by the husband's family. Any present or other thing, however, shall not be considered dowry unless it is given in consideration of marriage. Only the gifts made by parents, grandparents and brothers are considered as marriage expenses. Gifts made by other than them do not come within the purview of marriage expenses.

The punishment for transactions of dowry or abetting to the fine was imprisonment up to 6 months and the up to 5,000₹. Now the punishment of giving or taking dowry is minimum imprisonment of maximum 10 years, and the fine is up to 10,000₹ or the amount of dowry, whichever is more.

If the court is its opinion to reduce any punishment then the court is bound to record

of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]”

¹²⁸ Appeal (Crl.) 825 of 2002.

¹²⁹ The Indian Penal Code, 1860(Act 45 of 1860), s. 30 ““Valuable security”.—The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.”

the reason in writing. However, Section 4 clearly mentions that there must be a demand of dowry. The Section or any prohibition of this Act doesn't apply if dowry isn't demanded. While taking the evil of dowry more seriously Parliament inserted Section 4A¹³⁰ imposing a banning advertisement. Accordingly, through an advertisement offers any property share or business or of any monetary interest as consideration for his son's marriage and print, publish and circulate any such advertisement, "he shall be punished for a term of imprisonment which shall not be less than six months but which extend to five years. He may also be liable to fine up to 50,000₹." The court has power to impose a punishment of less than six months if it has proper reasons for it. The court will mention reasons in the decision for awarding a punishment less than six months. "Advertisement may be in any newspaper, periodical, journal or through any other media."

Therefore, any kind of advertisement offering any consideration for marriage by parents or relatives of a girl or boy is strictly forbidden and punishable under the Act.

Section 5¹³¹ is also one of the steps to prevent the dowry. Any commitment for dowry transactions is void, according to the law. Therefore, such an agreement cannot be enforced under Indian Contract Act, 1872.

Section 6¹³² provides for, if any person receives the property of dowry then he/she

¹³⁰The Dowry Prohibition Act, 1961, s. 4A "Ban on advertisement.—If any person—
(a) offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative,
(b) prints or publishes or circulates any advertisement referred to in clause (a), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:
Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.]"

¹³¹The Dowry Prohibition Act, 1961, s. 5 "Agreement for giving or taking dowry to be void.—Any agreement for the giving or taking of dowry shall be void."

¹³²The Dowry Prohibition Act, 1961, s. 6 "Dowry to be for the benefit of the wife or her heirs.—(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

(a) if the dowry was received before marriage, within 3 [three months] after the date of marriage; or
(b) if the dowry was received at the time of or after the marriage, within [three months] after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within 3 [three months] after she has attained the age of eighteen years; and pending such transfer, shall hold it in trust for the benefit of the woman.

[(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor [or as required by sub-section (3),] he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine [which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with

should return the same to the bride within a prescribed time period.

If the bride passes away prior receiving the property, the property will be claimed by her heirs from the person who gave it to her. But if the bride dies in “seven years of her marriage” and the death is occurred due to some unnatural causes then the property will be inherited by her children or her parents.

If a person is guilty for failure to transfer property, the Court in addition to punishment for non-transfer may also direct to property transfer to that woman and if the woman has died and the death is not occurred due to natural cause to her children or parents.

According to Section 7,¹³³ every Court cannot execute cases under this Act. Court is empowered to take cognizance and can take *suo moto* action on receiving reports from either an executive or victim’s parent or the aggrieved party or any other relatives or

both.]

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

[Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,—

(a) if she has no children, be transferred to her parents, or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.]

[(3A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) [or sub-section (3)] has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, [her heirs, parents or children] the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, [her heirs, parents or children] within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, [her heirs, parents or children].]

(4) Nothing contained in this section shall affect the provisions of section 3 or section 4.”

¹³³ The Dowry Prohibition Act, 1961, s. 7 “Cognizance of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) no court shall take cognizance of an offence under this Act except upon—

(i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognised welfare institution or organisation;

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of an offence under this Act.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government. (2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.]

[(3) Notwithstanding anything contained in any law for the time being in force a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.]”

by any recognized welfare institution.

Section 8¹³⁴ states that offence shall be considered cognizable for some purposes so as mentioned in CrPC. Depending upon the investigation conducted for the offence, it may or may not be considered cognizable.

Furthermore, Section 42¹³⁵ of the Act *i.e.*, if any person refuses to disclose personal details, the person may be arrested without warrant or Magistrate's order.

Section 8A¹³⁶ provides that if any person has been prosecuted under this Act for whole transaction of dowry, the burden of proving his uncommitted offence will lie upon prosecuted person.

Appointment and functions of "Dowry Prohibition Officers" is provided under section 8B¹³⁷ of the Act. The State Government is also empowered to specify their

¹³⁴ The Dowry Prohibition Act, 1961, s. 8 "*Offences to be cognizable for certain purposes and to be bailable and non-compoundable.—(1) The Code of Criminal Procedure, 1973 (2 of 1974) shall apply to offences under this Act as if they were cognizable offences—*

(a) for the purposes of investigation of such offences; and

(b) for the purposes of matters other than—

(i) matters referred to in section 42 of that Code; and

(ii) the arrest of a person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be [non-bailable] and non-compoundable.]"

¹³⁵ The Code of Criminal Procedure, 1973, s. 42 "*Arrest on refusal to give name and residence.—(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.*

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction."

¹³⁶The Dowry Prohibition Act, 1961, s. 8A "*Burden of proof in certain cases.—Where any person is prosecuted for taking or abetting the taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under those sections shall be on him."*

¹³⁷ The Dowry Prohibition Act, 1961, s. 8B "*Dowry Prohibition Officers.—(1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.*

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:—

(a) to see that the provisions of this Act are complied with;

(b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;

(c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and

(d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(3) The State Government may, by notification in the Official Gazette, confer such powers of a police

jurisdiction and functions. Following are the functions and powers of “Dowry Prohibition Officer”; The State Government has the power to empower dowry prohibition officers same as a police officer. The State Government may appoint an advisory board consisting of not more than five social workers in which two must be women who will be responsible for assisting and advising the “Dowry Prohibition Officer” with effectiveness of which they accomplish their job.

The Central Government may enact a set of guidelines to carry out the mission “Dowry Prohibition Act” under Section 9.¹³⁸ Section 10¹³⁹ delegated guideline making authority to the State Government in order to carry out the Legislation’s goal.

“The Dowry Prohibition (Maintenance of Lists of Presents to the Bride and the Bridegroom) Rules, 1985”

The powers given under Section 9 of the “Dowry Prohibition Act”, the Government of India has enacted. These rules came into effect from October 2nd, 1985.

officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(4) The State Government may, for the purpose of advising and assisting Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an advisory board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under sub-section (1).]

¹³⁸The Dowry Prohibition Act, 1961, s. 9 “Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

[(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the form and manner in which, and the persons by whom, any list of presents referred to in sub-section (2) of section 3 shall be maintained and all other matters connected therewith; and

(b) the better co-ordination of policy and action with respect to the administration of this Act.]

[(3)] Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

¹³⁹ The Dowry Prohibition Act, 1961, s. 10 “Power of the State Government to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the additional functions to be performed by the Dowry Prohibition Officers under sub-section (2) of section 8B;

(b) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (3) of section 8B.

(3) Every rule made by the State Government under this section shall be laid as soon as may be after it is made before the State Legislature.]”

It states that the bride and groom must keep track of all presents presented at the time of the wedding. Depending on the circumstances, the bride or bridegroom must keep such a list at the time of marriage or shortly afterward.

Such list must be signed by both parties. If either of the party is unable to sign the document, the list shall be read over to her and the person reading the list shall put his signature on the list and thereafter the bride or bridegroom shall put her thumb impression on it. All agreements in regard to transaction of dowry are null and void. When a person other than the woman to be married, receives any dowry, such person is required to transfer it within 3 months of its receipt. If bride is under eighteen, it must be returned within three months of her attaining adulthood. In cases where the bride dies before such transfer then her heirs would be entitled to the same. Failure to do so is construed as a dowry offence punishable under this Act.

The jurisdiction in dowry offences lies with the metropolitan magistrates or first-class magistrates. Usually, the bride or her parents are hesitant to complain, so the recognition of complaints lodged by welfare organizations has broadened the scope of this act.

3.2.4 – Dowry Prohibition (Amendment) Bill 2010

The Dowry Prohibition Act has been amended to correct flaws in the original statute. In order to reinforce dowry prohibition regulations, the “Ministry of Women and Child Development (MWCD)” is pursuing further revisions to the existing provisions of “the Dowry Prohibition Act, 1961.” The National Commission on Women proposed modifications to the act in 2009. The Dowry Prohibition (Amendment) Bill 2010 was written in conjunction with the “Ministry of Law and Justice after these recommendations were addressed at an Inter-Ministerial meeting.” The highlights of the proposed amendments are;

1. Authorize the Protection Officers appointed under the “Domestic Violence Act, 2005” to carry out the duties of Dowry Protection officers too.
2. Allow women to file dowry complaints at the place where they temporarily or permanently reside.
3. Prescribe lesser punishment for giving dowry and higher penalty for taking the same as usually the girl’s parents are compelled to give dowry against their wishes and prescribing same punishment for them discourages them from

complaining.

4. There should be a clear distinction between “gifts” given voluntarily and those given under compulsion or duress
5. Make it mandatory for the couples to maintain in the form of a sworn affidavit the list of all gifts exchanged in connection with the marriage and get that list duly notarized by a Dowry Prohibition Officer. Noncompliance with the above requirement would attract penalty for the groom, the bride as well as their parents.

Problem of Dowry Deaths in India:

Dowry death means death in relation to dowry. A bride's cause of death was homicide or suicide “*within seven years of her marriage*” on account of dowry related harassment torture is termed as dowry death. This is known as constructive homicide whereby instead of killing of a person by another person, such circumstances are created, whereby the victim is forced to take his/her own life.

Provisions to check dowry deaths under the IPC:

Dowry death has been defined in section 304B¹⁴⁰ of IPC as follows:

“When the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.”

Essential Ingredients of Section 304B¹⁴¹ IPC

The prosecution must rule out the idea of a normal or unexpected death in order to prove the death occurred under non-natural conditions. Death due to burning, bodily

¹⁴⁰ The Indian Penal Code, 1860 (Act 45 of 1860), s. 304B “Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]”

¹⁴¹ *Supra* note 126 at 64.

injury, strangulation, poisoning, hanging *etc.* is all non-natural causes of death.

Death to occur within “seven years of her marriage”:

For prosecution under 304B, statutory time period of seven years must not have elapsed. The “period of seven years” has to be counted thenceforth from date of marriage and not from the *Viday* ceremony.

In *D. S. Shishodiav. K. C. Samdariya*¹⁴² “the Rajasthan High Court held that the date of marriage should be reckoned from the date of solemnization and not from the date of ‘Muklava’ ceremony.”

“She must have been subjected to cruelty or harassment by her husband or any relative of her husband:”

The term cruelty used here includes physical cruelty and mental cruelty as well and also noted in the description U/S 498A of Indian Penal Code.

*“Shanti (Smt.) v. State of Haryana”*¹⁴³ According to the Supreme Court, ‘there is no explanation in Section 304B well about definition of ‘cruelty,’ but ‘given the general context of such wrongdoings, it must assume that the definition of ‘cruelty or harassment’ will be the same as that given in the explanation of Section 498A, it declares cruelty to be a criminal offence prosecutable.

“Such cruelty or harassment should be for, or in connection with demand for dowry:”

The term ‘dowry,’ as defined in U/S 2 of the “Dowry Prohibition Act, 1961,” must be understood in connection with the marriage of the said agreement to deliver any property or money at any time should be in connection with the marriage of the parties are the key terms in the definition. There could be numerous such instances of money being paid or property being given to one of the spouses. In diverse civilizations, for example, some customary traditions related to any other celebrations, such as the birth of a baby are common. Such contributions do not fall under the definition of ‘dowry.’ “(*Satvir Singh v. State of Punjab*).”¹⁴⁴

“Similarly demand for money on account of financial stringency or for meeting urgent domestic expenses are not demand for dowry (*Appasaheb v. State of Maharashtra*).”¹⁴⁵

¹⁴²2001 Cr.L.J. NOC 156 Raj.

¹⁴³AIR 1991 SC 1226.

¹⁴⁴(2001) 8 SCC 633

¹⁴⁵ AIR 2007 SC 763.

“Presumption as to dowry Death:”

As per “Section 113B¹⁴⁶ of Indian Evidence Act, 1872” in a case related to dowry death, the prosecution has to prove the cause of woman’s death as non-natural within seven years of her marriage. If she was tortured or harassed before her death for dowry and furthermore it was proved, the law presumes it as a case of dowry death. In accordance with the prosecution the accused person would be responsible for proving himself. The court emphasized the importance of such a provision by saying, killing a bride for dowry is carried out in complete seclusion within the home, making it difficult for the prosecution to provide evidence to show the accused’s guilt if the courts rely on rigorous circumstantial evidence requirements. When a crime like murder takes place in the privacy of one’s own home, the first burden of proof cannot be as severe as it is in other circumstantial evidence situations. The weight of the burden would be lighter. In light of the Evidence Act,¹⁴⁷ the inhabitants of residence will have a commensurate burden of proof regard to the manner in which the offence was perpetrated. The house’s residents are unable to flee with just remaining silent and delivering no explanation based on the false premise that the prosecution bears sole responsibility for proving its case and that the accused has no obligation to provide any explanation. (*Trimukh Maroti Kirkan v. State of Maharashtra*).¹⁴⁸

“Legitimacy of marriage for affixing liability for dowry death:”

*Reema Aggarwal v. Anupam*¹⁴⁹ the Supreme Court discussed whether anti-dowry laws applied in cases where the validity of the marriage was in question. According to Justice Arijit Pasayat, the term ‘husband’ should be interpreted to include anyone who enters into a marriage and, under the guise of such proclaimed or pretended husband hood, subject the woman to abuse or coercion in any form or for any of the purposes listed in the relevant laws, namely sections 304B and 498A. Regardless of whether or

¹⁴⁶ The Indian Evidence Act, 1872, s. 113B “Presumption as to dowry death. —When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death. Explanation. — For the purposes of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).]”

¹⁴⁷ The Indian Evidence Act, 1872, s. 106 “Burden of proving fact especially within knowledge. — When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

¹⁴⁸ 2007 Cr.L.J. 20 SC.

¹⁴⁹ 2004 Cr.L.J.892 SC.

not marriage is legal, statutes must be construed purposefully in cases like these to give effect to legislative intent and achieve the goal for which they were designed. When viewed in the context of the legislative intent behind these provisions, the absence of a term ‘husband’ that includes full those who allegedly contract marriages and cohabit with such women in the purported exercise of his position and status as husband is no basis to exclude them from the reach of Sections 304B and 498A.

Punishment for Dowry Death:

The legislation stipulates a minimum term of 7 years for those convicted of dowry death, but judges have the ability to impose a longer sentence. Generally, the legislature prescribes the highest sanctioned punishment in case of a particular crime and the judges have a discretion to award lesser sentence, if they deem it appropriate to do so, but in case of Dowry death, the minimum punishment to be awarded has been laid down as 7 years and the judges have liberty to award higher sentences. Although the 18th Law Commission, recommended increasing the minimum sentence in dowry death cases to ten years from the present term of seven years but the recommendation to maximize the punishment from life imprisonment to death sentence was turned down.

Misuse of Sections 304B and 498A of the IPC:

At the same time when real victims are not getting proper justice timely, few unscrupulous people are trying to misuse the Sections 304B and 498A of the IPC.

“*Sushil Kumar Sharma v. U O I & others*,¹⁵⁰ the purpose of these laws, according to the Supreme Court, is to prevent and regulate the threat of Dowry. However, there have been a number of occasions when the complaints were not genuine and were submitted for a different reason. In such circumstances, the accused's acquittal does not always erase the humiliation he or she endured during and before the trial. Negative media coverage can sometimes add to the anguish. The question then becomes what steps can be done to ensure that the well-intentioned provisions are not abused. The fact that these regulations are Constitutional and *intra-vires* does not allow unscrupulous people the right to wreck personal vendettas or harass others. As a result, the legislature may need to figure out how to deal with people who file bogus complaints or claims. Until then, the courts must deal with the matter within the

¹⁵⁰JT 2005(6) SC 266.

current framework. It's critical to remember that the investigating agencies and the courts' role is that of a watchdog. Their purpose to ensure that no blameless person suffers as a result of false, unsubstantiated, and malicious accusations.

3.3.1 – Girls are considered as financial Burden:

In Indian culture people adore sons and abhor daughters. The Girl child is, oftener than not, the lesser child. An all-pervading asymmetry prevails and to be sure, it is a legacy of the by-gone days. In *Atharva Veda* we can find "The birth of a girl grant it elsewhere; here grant a son".¹⁵¹ Unfortunately, the girl's rejection, as unwanted as she is, begins even before she is born, *i.e.* in the mother's womb. Pre-natal gender – determination tests or amniocentesis are used to eliminate thousands or even millions of Female foetuses. Those who are fortunate enough to avoid the exams are born into apathy and raised in neglect, which severely limits their potential.

Rights of Child

In 1989, it was due to the resolution of the SAARC meet those interests are being taken today in favour of the girl child. We get from history how British administrators had been very keen on banishing and eradicating 'Female infanticide' in undivided India. Due to the efforts of Montgomery and Walker that open Female infanticide was brought to a stop. A century later, by the principle of "first call for children," the U. N. General Assembly has again surfaced to adopt, internationally, standards and the protection and in society, the wellbeing of children, particularly Female child, is a priority. In the recommendation, "The Convention on the Rights of the Child," 54 Articles describe and focused on the children:

1. The right to survival includes the right to life, the best possible health, enough nutrition, and reasonable living standards. Similarly, the right of having a name and nationality is disguised.
2. The right of being safe it encompasses freedom from exploitation, abuse, inhumane and degrading treatment, and neglect in all kinds. In emergency and armed conflict situations, it also involves the right to extraordinary protection.
3. Number three is the right to development. Schooling, early childhood development and care, social protection, as well as relaxation, amusement, and

¹⁵¹Indira Dey and Ramendra Narayan Chaudhuri, "Gender Preference and its Implications on Reproductive Behavior of Mothers in a Rural Area of West Bengal" 34(1) *Indian Journal of Community Medicine* 65 (2009).

cultural activities, were all addressed.

These are elaborations and reiterations of what the “Constitution of India” contains and the “National Policy for Children” confirms. The only striking difference between the Convention and the Constitution of India is the convention’s, emphasis on non- discrimination among children *i.e.*, non-discrimination based on a child’s gender.

In Indian culture, a boy is esteemed more than a girl; this is culturally dictated. India has witnessed the situation that prevailed during the calamitous Bengal famine of 1943. During the famine, the Female child casualties were more than those of the male ones. Even in times of natural calamity and/or tragedy, the psychology of protecting the boy so that the boy will protect the family members in their infirm times is highly widespread.¹⁵²

Survival of a Girl Child

Although the “infant mortality rate in India” now is not as high as it was in the 1960s, the girl child's survival remains extremely precarious. The social taboo of neglecting food, nutrition and education to a girl child makes her incapable and her resources become limited. This is all guided by cultural compulsions.

A Girl Child’s Status in the Family

A girl is a burden to her family, especially in rural settings, where she is required to work from dawn to dusk. She does all of the household chores that the other family members used to handle. A girl child from a poor rural family or a lower-middle-class urban family has a terrible work regimen. Even a brief enumeration of their accomplishments will astound anyone who isn’t familiar with the issue.

Very commonly minding their younger siblings, collecting fish from not-so-deep water reservoirs, using various kinds of nets and sell them to procure food stuff, collecting snails, crabs, shells *etc.* for food, Cooking, carrying food for male members of the family working in fields, queuing in ration shops for rice, wheat, kerosene oil *etc.*, collecting drinking water from far away tube wells, tanks and wells, cleaning utensils, sweeping, mopping *etc.*, work at brick kilns *etc. etc.*

The list could be elaborated to any length. This shows that comfort a girl child has

¹⁵² Dr. N. K. Chakrabarti & Dr. Shachi Chakrabarty, *Gender Justice* 4 (R. Cambray & Co. Private LTD. Kolkata, 2nd edn., 2018).

none. Her days and nights are spent in incessant toils and tribulations. The girl child becomes also the victim of deliberate decimation by the parents, the reason behind the behavior sometimes the child is result of unwed motherhood or rape and molestation.

3.3.2 – Advancement of the Technology (PCPNDT)

There used to be a common essay in the curriculum of teenage children; ‘Science is blessing or a curse’. Day by day the perspectives toward science are changing; it’s an integral part of our life. This advancement of technology made our life more blessed. In medical terms, a life begins when sperm enters the egg, resulting in fertilization, or when sperm enters a plate in the lab, resulting in fertilization. The potential mother, on the other hand, is unaware of this movement. The egg lives for two days only and if it is not fertilized within that period, after that it dies. Complex hormonal secretions enliven development and function of sexual organs of men and women. The existence of this new life becomes apparent to the prospective mother shortly. It depends on the organic health of the prospective mother whether she can hold it or not. If she holds, in majority cases she does, this new life develops and the foetus becomes an entity. Despite the fact that it cannot communicate, express opinions, or be seen with the naked eye, it achieves societal, medicinal, and legislative acceptance. Unfortunately, it is not yet sure whether it will be allowed to be born as a child or aborted midway. Because abortion has been accepted as a strait to terminate unwanted pregnancy. There are hospitals and private clinics where abortions are carried out for various reasons. The moment a kid is born into this world, he or she acquires a personality and is protected by the law. The subject of whether an unborn kid as a child born, he or she has the equal rights. has been raised numerous times. It refers to whether or not an innocent fetus can inherit property or sue someone, or, more crucially, whether or not it can claim the protection of life guaranteed by the Indian Constitution. India is saddled with the biggest problem of population rise and concerned people are delighted to try every method to control the population. The subject of rights of the unborn child has been taken to the western Courts where verdicts have also been pronounced.

When damages are sought for injuries caused on an unborn child in gestation, the born- alive rule (and its inference that the unborn kid lacks legal identity) causes conceptual challenges.

*“Walker v. Great Northern Railway Co. of Ireland*¹⁵³ a damages claim was filed against a transportation firm for injuries sustained by the plaintiff, who was in her mother’s womb at the time of the accident. In declining to award damages, according to O’Brien J., the plaintiff had no actual existence [and] was not a human being at the time of the accident... the plaintiff was then with his or her mother’s tender touch, and we have not been referred to any authority or principle to show that a legal duty has ever arisen towards something that is not in esse in fact and only has a fictitious existence in law, such that a negligent act is an infringement of that duty.”

*“Montreal Tramways v. Liveilli,*¹⁵⁴ nearly 40 years after Walker, the judges felt it was appropriate to depart from Walker’s premise and award damages to the plaintiff. Between the time of conception and birth, Cannon J. believed it was unnecessary to address the rights of the child while in its mother’s womb. The cause of action, in his perspective, began once the injury happened, not while the wrongdoing happened. The plaintiff’s right to compensation began when she was born with the bodily impairment from which she suffered; it was only after she was born that she was injured, and it was only then that her rights were infringed upon and she began to have rights.”

UNBORN CHILD RIGHTS

Law recognizes the foetus as a union of cells which creates a potential independent life. This is the way how law protects the rights of an unborn child. Its rights to inherit and to sue are well recognized. It has also the right as not to be harmed by drugs and the right to bring a tort action. Here comes the important question whether abortion should be treated a killing when done beyond the permissible reasons as laid down by rules. Such abortion should be classified as murder and the abortionist (doctor or someone else) should be prosecuted.

One of the earlier cases wherein right of an unborn child was raised was *“Dietrich v. Inhabitants of Northhampton.*¹⁵⁵ Justice Holmes held that one cannot have a conditional prospective liability in tort to one not yet born. The Court held that an infant does not have a legal personality until it can live separately from its mother.”

¹⁵³(1891) 28 L.R. (Ir.) 69.

¹⁵⁴[1933] SCR 456.

¹⁵⁵D. A. Gordon, “The Unborn Plaintiff” 63(4) *Michigan Law Review* 579-627 (1965).

But in a subsequent case of *Bonbrest v. Kotz*¹⁵⁶ in 1946, the earlier judgment was altered. The Court held that “injuries to a viable unborn child are compensable in a tort action brought by the child after its birth.”

The New Jersey Court in *Verkennes v. Corniea*,¹⁵⁷ held that, there’s no reason why a foetus in the mother’s womb shouldn’t have its own legal personality. It is against the law to harm an unborn child. Property can be inherited by an unborn child. Similarly, an unborn child should be recognised as a separate personality in tort cases for its own benefit.

The *Bonbrest* case was decided on the pretext of a viable foetus. A viable foetus is something that has progressed to the point where it can live just outside of the mother’s womb, either even without the assistance of an artificial womb. This biological approach is a shift from the traditional approach which recognizes viability at the point of birth and the consequent legal protection. Because of its distinct characteristics, the foetus is different from its mother. Its sex can be known, its defects can be diagnosed and even its heartbeat can be heard with bare ears. So there is every reason to recognize the foetus as a separate being; subsequent cases have rejected the viability concept as it has been treated as an irrational dividing line. Damages are being awarded now for causing injuries to the foetus at any time during gestation and even acts preceding conception. The famous case is *Smith v. Brennan*.¹⁵⁸

The judiciary has accepted the advances and tried to adjust with its marked changes. The ultimate result is a direct benefit to the society and valued acceptance of an unborn child as a distinct personality, “a human being, from the moment of conception to the point of death comes under legal protection.” This achievement has redefined life.

The right of an unborn child has a bearing on the means of abortion as a process of birth control or otherwise. This has created dimensions which needed due consideration. The sanctity of an unborn child in the light of ethical and religious norms should dominate over other essential priority. In some situation, where mother’s life is threatened, the guardians and the doctor will always advise abortion when sanctity of the foetus is sacrificed. There are some delicate situations where

¹⁵⁶ 138 Mass 14 (1884).

¹⁵⁷ 65F Supp 138 229 Minn 365 (1949).

¹⁵⁸ 31 NJ 353 (1960).

emotions of the mother are hurt. Thus, in a poverty ridden family where a family planning method fails and the mother conceives but is unable to bear economic burden of an additional child, the foetus has no sanctity. Difficult situation also arises when an unmarried woman conceives but the father of the child refuses to marry her and the guardians of the unmarried woman compel her to abort, again the foetus has no sanctity.

PRE-NATAL DIAGNOSIS AND AMNIOCENTESIS

The incidence of birth difficulties is increasing with mother's age. Many of these difficulties are related to chromosomal abnormalities and can be diagnosed at pre-natal stage. Pre-natal diagnosis of chromosomal, single-gene and multifactorial disorders can be carried out. Doctors apply high-tech methods of aminocentesis, chorionic villis biopsy, foetoscopy, radiography and ultrasonography to find out the defects. Depending upon the results of the examinations, the doctor may advise *utero* treatment.

In case where the foetus has major defects, termination of pregnancy may be advised. Prospective parents who agree for termination of pregnancy need to be counseled about the possible issues or problems. Accordingly, psychometric testing and psychiatric interviews are conducted on families of which women underwent amniocentesis for the diagnosis and pre-natal detection of genetic defect of the foetus. These women received positive results after tests and decided to go for abortions. After abortion, depression was noticed and was as high in women men as well. Emotional wounds might have hurt by the facilities but they preferred abortion instead of birth of a defective child.

For genetic disorder, abortion is accepted where a crippled child is likely to be born. In some other cases, the child may be treated to remove the defects, if so, advised by the doctor. After the diagnostic results are known to the doctor in respect of a genetic disorder, he is to provide factual information regarding the nature of the disorder and its mode of inheritance. While the information is communicated, the doctor considers the psychological impact. A thirteen-week gestational period is required for successful aminocentesis. By this time an emotional attachment has already developed. Therefore, detailed information should be made available to the couple and well in advance. Accurate results from the laboratory are of prime importance and quality

control alone can assure such accurate results. In case of prenatal diagnosis, any inaccurate results may have devastating effects on the couple and may lead to moral and legal consequences. The decision of the couple should be based on qualified information regarding prenatal diagnostic procedure and further counseling after it. The counseling should be noncoercive and respectful of the views of the parents about abortion. Medical ethics demand that privacy of the patient should be strictly maintained. But the laboratory findings should never be withheld from the parents.

Pre-natal diagnosis is a birth facilitating service. Aminocentesis is a route to find out the abnormality in the foetus or to allow pregnancy to complete full term. Without this many of the pregnancies would have been aborted for the fear of defective child. Specially, for older women such services make conception more acceptable. Previously such women dared not to take such risk of defective child. The technical issues of pre-natal diagnosis are eventually significant but morality and ethics dictate that pre-natal diagnosis should be followed by genetic counseling.

The following table has been prepared in respect of risk and maternal age at 35, 40 and 45 years:¹⁵⁹—

Risk of any aneuploid foetus Amniocentesis				Risk of Down's syndrome at amniocentesis			Risk of Down syndrome at birth		
Maternal age (years)	35	40	45	35	40	45	35	40	45
Risk %	2	6	12	1.5	2.5	8	0.5	1.0	4.5

There are various therapeutic methods by which genetic diseases can be treated. Most of the diseases are amenable to treatment. Thus, deficient gene product viz. haemophilia can be replaced. Drug treatment by penicillamine in Wilson's disease is well responded. There are needs for further research in genetic diseases so that preventive medicines can developed and new therapeutic methods are discovered to cure the genetic patients.

The doctor carries out diagnosis and treats the patient. He is also duty bound to

¹⁵⁹A. E. H. Emery and R. F. Mullier, *Elements of Medical Genetics* 309 (Churchill Livingstone, London, 8th edn., 1992).

provide information and advice to the patient. The essence of relationship between doctor and patient. Informed consent comes from the patient on the basis of disclosed risk. In the event of undisclosed risk, the patient is likely to suffer for which he may sue the doctor on the pretext of negligence. But Courts held that the conduct of a doctor should be judged by professional standards, *i.e.*, whether he acted like any other reasonable doctor exercising ordinary skill.

“In *Maynard v. Midland*¹⁶⁰ the same verdict was given by the Court of Appeal in *Sidaway v. Board of Governors of the Bethlehem Royal Hospital and the Mandsley Hospital*.”¹⁶¹ The Court held that while professional norms control diagnosis and treatment, doctors are also required to disclose risks and provide appropriate advice. So far genetic counseling is concerned; the approach to reasonable standards should be viewed differently. This is an area where only specialists can work. Advances in this area are very fast. The doctor should possess adequate knowledge so that he can inform the prospective parents about the nature of genetic risks and advise them how to overcome the problems and make procreative plans. Thus, the couple not only receives information but also advice to form their informed decision. The highly technical and medical terms should not vitiate the counseling. It should be passed on to the couple in a way which is understandable to them. Counseling that fails to be informative is legally inadequate. The technical accuracy matters little to the counselee but the information should be properly and comprehensively conveyed to her. The counselor should inform everything so that the counselee can find enough understandings for her decision.

This is an issue that the doctor owes a duty to the foetus. If this duty is breached, it will give rise to injuries which are cognizable under Tort Law. The injury to the foetus, the plaintiff, is not the affliction but the defect with which it is born. In a normal tort case, damages are sought because breach of duty by the defendant causes injuries to the plaintiff.

The foetus starts independently living which usually occurs after twenty-eight weeks of conception. Abortion is the expulsion of foetus in less than three months of pregnancy. “Miscarriage” means extraction of the foetus within four months to seven

¹⁶⁰(1984) 1 WLR 634.

¹⁶¹(1984) 2 WLR 78.

months. Pre- mature delivery is a body delivered after seven months of pregnancy but before the due date, 280 days. Abortion may be due to physiological reason or it may be induced. The induced abortion or miscarriage may be therapeutic or criminal. A miscarriage may occur under the following circumstances: —

- a) A pregnant woman may meet with an accident, say falling dangerously, car accident *etc.* In case she falls down accidentally none can be made liable except her misfortune. If the car accident is due to negligent driving and proved so, the driver may be held liable as in case of *Watt v. Rama*.¹⁶²
- b) A panel of doctors may decide after three months of pregnancy that to continue the pregnancy further is likely to be endangered to the mother physically or psychologically it and recommends the “termination of pregnancy” with consent of prospective parents. This is therapeutic termination and the attending doctors are registered.
- c) A pregnant woman beyond three months pregnancy may be assaulted with or without intention and a miscarriage takes place. This induced miscarriage is criminal and to be dealt with under criminal law.
- d) Miscarriage can also happen if the uterus of the pregnant woman has some disease and is unable to hold the foetus to mature. Preventive measures and treatment are likely to help the mother.

Pre-natal Genetic Testing for Sex and Disability

Although sex-selection should be deemed unethical, there are a few exceptions that can be justified with significant limits on genetically challenged people. Most types of pre- natal genetic testing are permitted for a variety of reasons, including parental consent or a woman’s reproductive choice. There may be some debate about the legality of sex- selection prohibitions. It’s impossible to tell the difference between sex-selection testing and termination for diseases like Down’s Syndrome (DS). Furthermore, it is unavoidable to keep a restriction on the former while allowing the latter.¹⁶³

Everywhere including Canada, the pre-natal testing pertinent to sex-selection is prohibited. Whatever the reason or situation may be, in any place in the world sex-

¹⁶² (1972) VR 353 (Victoria).

¹⁶³ Bartha M. Knoppers, and Rosario M.Isasi “Regulatory approaches to reproductive genetic testing” 19 (12) *Human Reproduction* 2695–2701 (2004).

discrimination is considered ethically unacceptable not to mention pre-natal testing and abortion.

Restriction on “Sex-Selection”

Some legal analysts and a number of social activists have claimed that sex-determination is unjustified because it is defined as a systematic bias against women and choices that favour only male foetus. However, their assertion that they avoid disabled children cannot be justified as a similar circumstance, nor can they impose any pressure or discrimination on disabled persons.¹⁶⁴ All people are concerned about the boundaries of their welfare and opportunities. Disabilities limit opportunities and welfare of their parent irrespective of its state of seriousness.

Mostly in India, girl children are considered as burden which leads to sex-determination, *e.g.*, Afghan women are living with under rule by the Taliban. In this situation, it is matter of grave concern that welfare of children still exists there or not, specially the Female child. Sex-selection can't be the reason of bringing social change. “Buchanan *et.al.*, have argued that prohibition of sex-selection is justified because it undermines the public good the natural balance represented by the biologically determined sex ratio. While it may be true that a change in the male to Female ratio in a population might reduce the choice for reproductive partners, any type of reduction in the general population may reduce the absolute choice for partners; and in the Western world it is unclear that something close to a 1:1 ratio is necessary given patterns of reproductive and social choices.” Too much social resources have used already to give a men and women equal position in society. There may be some reasons people aid sex-determination but they do not necessarily assist male chauvinism. But this sex-selection is opposed to the social context. Few experts are concerned about the sex-selection, the punishment and vigilance on pre-natal testing and terminations is very much narrow.

“PRE-NATAL DIAGNOSTIC ACT”

“The Pre-conception and Pre-natal Diagnostic Act (prevention of Sex Selection) Act, 1994” was commenced and subsequently amended to stop the “sex selective abortions” of the Female foetus or even selection was possible before conception. The

¹⁶⁴ K. L. Buchanan *et.al.*, “Stress and the evolution of condition-dependent signals” 15(4)*Trends Ecol Evol* 156-160 (2000).

rapid growth of medical science has encouraged the unscrupulous to make money in a society where 'son of preference' is a social obsession.

The Supreme Court India, "took a serious view of the plight of sex-selective discriminatory practices by the medical fraternity, and the connection it may have with the use of pre-natal sex determination, directed by the Central Government to implement the PC & PNDT Act in all its aspects. The order came following a Public Interest Litigation filed by the 'Centre for the Equity of Health and Allied Themes (CEHAT)', the '*Mahila Sarvangeen Utkarsh Mandal* (MASUM)' and Dr. Sabu George, who had done extensive research in this area."

In *District Appropriate Authority, Faridabad v. Dr. Anil Sabani*, Palwal has found the accused guilty of violating numerous Act provisions in a case handled by SDIM. This is most likely a one-of-a-kind occurrence of lower-level adjudication under the Statute. "The Centre for Enquiry into Health and Allied Themes (CEHAT)"¹⁶⁵ writ petitions, on the other hand, are relevant.

The view of legislation was questioned before the Bombay HC in "*Vinod Soni v. Union of India*",¹⁶⁶ on the grounds that it is in violation of Indian Constitution Articles 14 and 21. The Court, in dismissing the petition, found that the right to life promised by Article 21 of the Indian Constitution does not encompass the child's freedom to choose his or her sex.

The right to life, or personal liberty, cannot be construed to encompass the freedom to choose the gender of any child who may be born. The act of conception is a physical event. It is not necessary for every capable male and Female to copulate. Even if both partners are capable and healthy enough to have a kid, conception is not required. That being a medical fact, asserting the right to select the sex of a kid that has come into being as a right to do or not do something that cannot be considered a right is absurd. The right to personal liberty cannot be expanded by any stretch of the imagination to include the right to prevent the birth of a Female or male foetus, which is a matter for Nature to decide. To assert a right to determine the existence of such a foetus, or the prospect of such a foetus arising, is to assert a right that may never exist. In our opinion, the right to create a future life with the option of determining the sex

¹⁶⁵ Writ Petition (Civil) 301 of 2000, decided on 10-9-2000.

¹⁶⁶ Criminal Writ Petition No. 946 of 2005 and Criminal Application NO 3647 of 2005 (Decided on 13-6-2005).

of that life cannot be right in and of itself; so, the petition does not make even a prima facie case for violation of Article 21 of the Indian Constitution, and it is dismissed. In light of the fact that the petition was rejected.”

The downfall in sex ratio is the mirror of the Indian society. These are the reason found by National Human Rights Commission:

- i. A societal attitude toward women that considers them as an economic burden when she leaves the family after being married, for example, and money must be expended on her wedding.
- ii. Leading to a shortage of employment options among women, it is a common misunderstanding because only a man kid will be capable to help and support his elderly parents. Gender roles that are rigid put strain on both men and women.
- iii. Unawareness of numerous government rules and acts aimed at protecting women and girls, which increases safety concerns about women’s mobility, is a key source of concern for parents.
- iv. Because a girl’s education is not tied to economic prosperity, school dropout rates are substantially higher in girls than in boys.¹⁶⁷

3.4.1 - “Consequences of Female foeticide and Infanticide”:

3.4.2 – Discrimination against Girl Child

Inequality against the girl child has taken most cruel, most unabashed face. Here we can discuss about few instances on mindset of people towards their daughters. Sons are royal treasure; Daughters are but bones in the throat. Why girl child has born; and not died during birth itself. The father is the richest who has son; who owns no daughter. Silver dishes, to be sure, are for boys; Girls’ fare is only indifference. Education is for boys alone; Girls are destined for the kitchen. Daughters are for in-laws’ house *parayadhan*; no need to groom them properly. A son’s son will surely perform rites for the next world; a daughter’s son is nothing but an oppressor. A daughter’s birth reduces one’s longevity; as *Yama* comes closer.

Being unable to withstand parental and social torture (in cases of molested girl

¹⁶⁷Minutes of the meeting of the Core Group on Women held on 25th October 2019 at 11:00 am on ‘Decline in sex ratio in India’ and ‘Work-life balance of working women’ in Room No. 508, Manav Adhikar Bhawan, C-Block, GPO Complex, INA, New Delhi.

children), girl children commit suicide and the percentage of suicide is not too insignificant. When married, the percentage of desertion of girl wives increases more. This is mostly a rural scenario. The urban scene, particularly in the lower socio-economic structure, shows no significant variation either. In-depth surveys on the condition of girl child in urban areas still remain a desideratum. In this connection, a handful of proverbs are sure to amply illustrate how a girl child is held in the family's respect. In all the proverbs biasness against the female child is at large. "According to the data, as many as 24,568 children, including 13,325 girls, aged 14-18 years died by suicide between 2017-19."¹⁶⁸

Girl Child and Census of India

A continuous preference, choice for baby boy or son in Indian society, the "Child Sex Ratio in India has dropped to 914 Females against 1,000 males the lowest since independence, in the provisional 2011 Census report". Although, it is 914 out of 1000, it shows only 86 less Female per 1000 male, it seems very less in number. But, if we countdown the disparity out of lakh and crores, the difference will be alarming. It requires serious attention.

"It is an increasing trend in the Child Sex Ratio (0-6 years) has been seen in Punjab, Haryana, Himachal Pradesh, Gujarat, Tamil Nadu, Mizoram and Andaman and Nicobar Islands, in all remaining 27 states and Union Territories, the Child Sex Ratio shows decline over Census 2001."

"The highest child sex ratio has been reported in Mizoram (971 Females against 1000 males) and Meghalaya (970)."

"Notably, Punjab and Haryana, which have traditionally seen low sex ratio, have recorded an increasing trend but still remained at the bottom of the list. Haryana has 830 Female children and Punjab 846 against per 1000 male child. Haryana's Jhajjar (774 Females) and Mahendragarh (778 Females) districts have the lowest sex ratio. Krishna Tirath, Minister of State for Women and Child Development, said the fall in girl child population is a matter of concern. Uttar Pradesh (29.7 million), Bihar (18.6 million), Maharashtra (12.8 million), Madhya Pradesh (10.5 million) and Rajasthan (10.5 million) constitute 52 per cent children in the age group of 0-6 years. Population

¹⁶⁸ Over 24,000 children died by suicide from 2017 to 2019: NCRB, India, available at: http://timesofindia.indiatimes.com/articleshow/84929224.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Last visited on November 11, 2021).

(0-6 years) 2001-2011 registered minus 3.08 per cent growth with minus 2.42 for males and minus 3.80 for Females. Kerala with 1084 has the highest sex ratio followed by Puducherry with 1038. Daman and Diu has the lowest sex ratio of 618.”¹⁶⁹

The baby girl is neglected right at the beginning of her life is reflected in the decline in sex-ratios in the successive censuses in India from 1872. In 1872 the ratio of Females per 1000 males had been 972 while in the 1991 census it dwindled to 931. How to account for this steady, incipient erosion of the Females in Indian society while keeping in mind Prof. Amartya Sen’s said that, at birth a Female child is much stronger than a male child and has greater sustainability. But, in reality, it has proved to be otherwise. The census of 1991 that while there were 150 million children between 0-6 years of age, there was an estimated 7.8 million girls are missing. “The total provisional population of 1210.2 million, the number of males was pegged at 623.7 million and the population of Females stood at 586.5 million. The percentage growth in 2001-2011 was 17.64 males 17.19 and Females 18.12. India’s population accounts for world’s 17.5 percent population.”

“This is the highest sex ratio at the national level since Census 1971 and a shade lower than 1961. Three major States – Jammu and Kashmir, Bihar and Gujarat – have shown a decline in Sex Ratio as compared to Census 2001.” Dr. Chandramouli said, “India’s skewed sex ratio due to Female foeticide and the practice of selective sex determination has been a cause for concern. Sex ratio is the number of Females per 1000 males.”

“The Decline in Child Sex Ratio is a matter of grave concern, Dr. Chandramouli said, remains the lowest ever child sex ratio of 914. The provisional data showed that the child sex ratio [0 to 6 years] came down to 914 Females per 1000 males as against 927 in the Census 2001. It showed a continuing preference for male children over Females in the last decade. Increasing trend in the Child Sex Ratio was seen in Punjab, Haryana, Himachal Pradesh, Gujarat, Tamil Nadu, Mizoram and Andaman

¹⁶⁹ Census of India 2011: Child sex ratio drops to lowest since Independence, India, *available at:* https://economictimes.indiatimes.com/news/economy/indicators/census-of-india-2011-child-sex-ratio-drops-to-lowest-since-independence/articleshow/7836942.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Last visited on November 11,2021).

and Nicobar Island but in all the remaining 27 States / Union Territories, the child sex ratio showed decline over Census 2001. Whereas overall sex ratio has shown improvement since 1991, decline in child sex ratio has been unabated since 1961 Census. The total number of children in 0 to 6 year age group is now 158.8 million, less by five million since 2001.”¹⁷⁰

The enormity and gravity of the situation was realized in the SAARC meet in Islamabad in 1989 and the SAARC promptly responded with a proposal to declare “1990 as the year of the girl child.” The problem of the Female child proves so persistent and nagging that a year-old programme is not enough to cope with the situation. Naturally, the whole decade (1990-2000) has been dedicated to the cause of the girl child.

3.4.3 – Crimes against women

“Of late, crime against women in general and rape in particular is on the increase.... Rape is not merely a physical assault—it is often destructive of the whole personality of his victim. A murderer destroys the physical body of the victim, a rapist degrades the very soul of the helpless Female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape.”

*State of Punjab v. Gurmit Singh*¹⁷¹

Rape

Sexual crimes against women have a high legal status in the majority of countries. Rape is the most vile of the crimes that shock the consciousness and shatter its foundations. It's the only crime in which the victim is socially judged rather than sympathized with. She is also morally degraded; her dignity and character being tarnished for the rest of her life. The mental anguish is excruciating, and the physical suffering is traumatizing. Even with her struggles, she seeks justice by appealing to the courts, keeping her faith in the penal laws, hoping she will achieve justice relentlessly. The statistical records are grim and shocking. According to the National

¹⁷⁰ Census 2011: population pegged at 1,210.2 million, India available at: <https://www.thehindu.com/news/national/Census-2011-population-pegged-at-1210.2-million/article14665518.ece> (Last visited on November 11,2021).

¹⁷¹(1996) 2 SCC 384: 1996 SCC (Cri) 316.

Crime Records, about 75 percent of rape accused are married men.¹⁷²

Being a woman in India is difficult; a Female is raped every 20 minutes. Even in the twenty-first century, India is unsafe place for women. The world's most unsafest country for women, is India. In 2012, *Nirbhaya* was not the only rape victim. According to the NCRB study, it was one of 24,923 incidents reported in the same year, with more than 68 Females raped every day.¹⁷³

“According to World Health Organization, every 54 minutes a woman is raped in India;¹⁷⁴ whereas, as per the Centre for Development of Women's Studies, 42, women are raped in India every 35 minutes.”¹⁷⁵

These are the statistics but the scenes of unreported cases are terrible. The lists of crimes against women are huge; but it is pathetic to see all reported case; as “68 rapes went unreported.”¹⁷⁶ “The National Crime Reports Bureau (NCRB), the number of rape cases in India increased from 15,468 in 1999 to 16,496 in 2000, recording a jumped to 6.6 percent.”

Rape is rarely committed for sexual enjoyment, contrary to popular opinion. It's a form of violence that takes the form of a sexual act. According to studies, rape is done to release violent energy against a person who causes the rapist fear, and vengeance violence is aimed towards women – who serve as a replacement for invasion.¹⁷⁷

Gary Scanlan and Christopher, Ryan defined rape as: “*Rape means insofar as the law is concerned the slightest degree of penetration by the male sexual organ of the Female sexual organ [which] will be sufficient to constitute intercourse without anything more occurring.*”¹⁷⁸

In English Law, Section 1, Sexual Offences (Amendment) Act, 1976 gave statutory force to the definition formulated by the House of Lords in “*Director of Public*

¹⁷² India Today Magazine, India, available at: <https://www.indiatoday.in/magazine/09-09-2002> (Last visited on November 11, 2021).

¹⁷³ Why India ranked as the dangerous place for women, India, available at: <https://timesofindia.indiatimes.com/readersblog/why-india-is-not-safe-for-women/why-india-ranked-as-the-dangerous-place-for-women-22638/> (Last visited on November 11, 2021).

¹⁷⁴ According to a study done by World Health Organisation.

¹⁷⁵ India Today Magazine, India, available at: <https://www.indiatoday.in/magazine/09-09-2002> (Last visited on November 11, 2021).

¹⁷⁶ India Today Magazine, India, available at: <https://www.indiatoday.in/magazine/09-09-2002> (Last visited on November 11, 2021).

¹⁷⁷ Dr. Ashok Bhimani, (ed.), *Sexual Abuse of the Girl Child* 163 (Ashish Publishing House, Delhi, 1994).

¹⁷⁸ G. Scanlan and C. Ryan, “An Introduction to Criminal Law” 35(3) *The International and Comparative Law Quarterly* 754-755 (1986).

Prosecutions v. Morgan.¹⁷⁹ This section provides that a man commits the *actus reus* of rape if he has unlawful sexual intercourse with a woman, without the consent of the woman.” The penetration must be *per vaginam*. The consent of woman is an essential feature of rape. “Section 44, Sexual Offences Act, 1956 provides that on the trial of any offence under this Act, it is necessary to prove sexual intercourse (whether natural or unnatural); it shall not be necessary to prove completion of the intercourse by the emission of seed, but the intercourse shall be deemed complete upon proof of penetration only.” The *lex loci* on rape evolved mostly based on common law.

Definition

‘Rape’ occurs in XVI Chapter of the Penal Code, 1860 (IPC). There is a special heading for sexual offences in that Chapter, which encompasses Sections 375, 376, 376A, and 376D of the IPC. Criminal Law (Amendment) Act, 2013 made substantial changes to Sexual Offences. Prior to “Criminal Law (Amendment) Act, 2013,” “Sections 375 and 376” were amended by the “Criminal Law (Amendment) Act, 1983”, this also updated so many new provisions, namely, Sections 376A to 376D. The newly revised portions were added to prevent sexual abuse of women that was not declared rape but was nevertheless considered extremely abhorrent.

The newly revised Section now runs as:

Thus, a man is said to commit rape if there is,

1. “Penis penetration into a person’s vagina, urethra, mouth, or anus without authorization, or causing another person to do so with him or another person.
2. Injecting any tool or body part, other than a penis, into a person’s vagina, urethra, anus, or any other body part, or forcing the person to do so with him or another person.
3. Using one’s lips to touch another’s penis, vagina, anus, or urethra, or inducing another to do so with him or another person;
4. Touching a person’s vagina, penis, anus, or breast, or inducing a person to touch a person’s vagina, penis, anus, or breast, or inducing a person to touch a person’s vagina, penis, anus, or breast, or inducing a person to touch a person’s vagina, penis, anus, or breast, or inducing a person to touch a person’s vagina.”

If someone who hasn’t reached the age of eighty is considered to have given their

¹⁷⁹1976 AC 182 (HL).

agreement; formerly, the age limit was sixteen years. Furthermore, if the victim doesn't physically fight the time of penetration in the meantime, the victim is not considered to have consented to the sexual activity. As a result of these changes, a person can be liable under this offence not only when he himself actively participates in the offence but also when he passively participates in the offence by causing a woman to do any of the abovementioned acts with another person.¹⁸⁰

Few relevant cases

*“State of Kerala v. Kundumkara Govindan,”*¹⁸¹ according to the court the essence for the offence charged under Section 376¹⁸² IPC is rape, and it entails a sexual

¹⁸⁰ The Indian Penal Code, 1860, s. 375 “*Rape.—A man is said to commit "rape" if he—
penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so him or any other person; or
inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person or
applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,
under the circumstances falling under any of the following seven descriptions—
First.—Against her will.
Secondly. —Without her consent.
Thirdly. —With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly. —With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly.—With or without her consent, when she is under eighteen years of age.
Seventhly.—When she is unable to communicate consent.
Explanation I.—For the purposes of this section, "vagina" shall also include labia majora.
Explanation II.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:
Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.
Exception I. — A medical procedure or intervention shall not constitute rape.
Exception II.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.]”*

¹⁸¹ 1969 Cri LJ 818 (Ker).

¹⁸² The Indian Penal Code, 1860, s. 376 “*Punishment for rape.—(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.*

(2) Whoever,—

being a police officer, commits rape —

(i) within the limits of the police station to which such police officer is appointed; or

intercourse. The phrase refers to ‘intercourse’ refers to a sexual act. It is defined as a mutual action by the members of the self-contained group. The term ‘intercourse,’ like the word ‘trade’ is used metaphorically to describe the relationship between the sexes. Sexual activity is defined as the temporary visit of a member of one organization member by another for specified and limited purposes. According to this Kerala judgement, the term ‘penetration’ denotes access or through.

“*Ghanashyam Mishra v. State*¹⁸³ and *Nathu Ram v. State of Haryana*¹⁸⁴ that the depth of penetration is immaterial.”

“*Prithi Chand v. State of H. P.*”¹⁸⁵ The Court the defense’s argument was dismissed because it ignores the reality that without penetrating, here’d be no hymen with

(ii) in the premises of any station house; or
 (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
 being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
 being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
 being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force. or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
 being on the management or on the staff of a hospital, commits rape on 3 woman in that hospital; or
 being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
 commits rape during communal or sectarian violence; or
 commits rape on a woman knowing her to be pregnant; or
 commits rape on a woman when she is under sixteen years of age; or
 commits rape, on a woman incapable of giving consent; or
 being in a position of control or dominance over a woman, commits rape on such woman; or
 commits rape on a woman suffering from mental or physical disability; or
 while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
 commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation. —For the purposes of this sub-section,—

(a) “armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861;

(d) “women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow’s home or an institution called by any other name, which is established and maintained for the reception and care of women or children.]”

¹⁸³ AIR 1957 Ori 78: 1957 Cri LJ 469.

¹⁸⁴ (1994) 1 SCC 491: 1994 SCC (Cri) 88.

¹⁸⁵ (1989) 1 SCC 432: 1989 SCC (Cri) 206.

ripped edges and severe bleeding from the vagina-stained garments. Because the doctor determined that the vagina only allowed one finger with effort, it cannot be assumed that there was no insertion of penis.

“*Madan Lal v. State of J & K*”¹⁸⁶ Going a level further, the court had to decide if an offender who removed a female and then violently rubbed his organ on her private part but failed to insert it into her intimate parts was simply abusing her U/S 376¹⁸⁷ IPC and not committing rape. The offence was convincingly demonstrated in the facts of this case of this case, and the Court correctly sentenced him U/S 376 and 511 IPC.¹⁸⁸

“*Pratap Misra v. State of Orissa*¹⁸⁹ (Pratap Misra) and *Laiq Singh v. State of U.P.*,”¹⁹⁰ The SC handed down a decision that remained unreported and had no repercussions among the numerous NGOs. Women were raped in both cases, and the guilty were released by the SC after being sentenced in two lower courts, based on the theory that the prosecutrix’s lack of harm implies her consent.

“In 1978, the Supreme Court again pronounced another like judgment against a conviction of the Bombay High Court under Section 375¹⁹¹ IPC and acquitted the accused in *Tukaram v. State of Maharashtra*¹⁹² (popularly known as Mathura Trial), the Sessions Judge found the evidence insufficient to convict the accused. The Bombay High Court reversed the finding and sentenced the accused to rigorous imprisonment.”

“The Supreme Court reversed the decision of the Bombay High Court and held the accused not guilty on three grounds:

1. There were no injuries shown by the medical report, and thus ‘stiff resistance

¹⁸⁶ (1997)7SCC 677:1997 SCC (Cri) 1151.

¹⁸⁷ *Supra* note 182 at 92.

¹⁸⁸ The Indian Penal Code, 1860, s. 511 “*Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.*”

¹⁸⁹ (1977) 3 SCC 41: 1977 SCC (Cri) 447.

¹⁹⁰ (1970) 2 SCC 561: 1970 SCC (Cri) 502.

¹⁹¹ *Supra* note 180 at 92.

¹⁹² (1979) 2 SCC 143: 1979 SCC (Cri) 381.

having been put by the girl' was false. The alleged intercourse was a peaceful affair.

2. The court disbelieved the testimony that she had raised alarm.
3. The court held that under Section 375¹⁹³ IPC, only the fear of death or hurt can vitiate consent for sexual intercourse. There was no such finding recorded and, therefore, since the girl was 'habituated to sexual inter-course', there was consent."

The verdict wasn't really taken lightly. There were loud protests, and it was pointed out that there are insufficient laws to protect women who have been raped, as well as legal actions to safeguard women who have been summons to a police station.

"In *Tukaram v. State of Maharashtra*," one of the reasons for the judgment was that Because Mathura was a person of simple virtue, the events took place with her permission. In an open letter to the then Chief Justice, it was said:¹⁹⁴

The offender was accused of rape based on the third component of the rape description in formal legal words. In that case, the Court had to decide whether the conduct was performed with her consent or out of fear of death or harm. The issue of 'permission,' however, remained relevant; in fact, it was vital. Only submission, not consent, is established by the facts of the situation. Couldn't Their Lordships' consideration of 'consent' have been expanded in a way that was truly protective of Mathura's dignity and rights? Mathura's relationship with her lover may have given the Court the impression that she was a person of easy virtue. The social taboo against pre-marital sex is so severe that Indian cops have been known to rape young girls. Alternatively, they could be forced to surrender to their wants in police stations.¹⁹⁵

"Thus, the fight began for the protection of women alleged to be of unchaste character. It was thought that consent should not be implied if the woman was unchaste. *Prem Chand v. State of Haryana*,¹⁹⁶ because of the assaulted girl's behaviour, the Supreme Court decreased the minimum punishment for rape from ten to five years. The woman who had been raped was a woman of easy virtue. This

¹⁹³ *Supra* note 180 at 92.

¹⁹⁴ By Upendra Baxi, Vasudha Dhagamwar Raghunath Kelkar and Lotika Sarkar against the judgment.

¹⁹⁵ V. Dhagamwar, *Law, Power and Justice: The Protection of Personal Rights in the Indian Penal Code* (Sage Publications, 1992).

¹⁹⁶ 1989 Supp (1) SCC 286: 1989 SCC (Cri) 418.

judgement sparked consternation and agitation, and a women's movement resulted in harsh condemnation of the Supreme Court and the submission of a review petition. Despite the fact that the petition for review was denied, the Supreme Court attempted to clarify its stance.”

Acid attack

The rise in the incidence of acid attacks on women necessitated the creation of a new crime of acid attacks on women, Sections 326A¹⁹⁷ and 326B,¹⁹⁸ on recommendation of Justice J. S. Verma Committee. The Court of Session has jurisdiction over Section 326A, which is cognizable, non-bailable, non-compoundable, and triable. For the object of this Section, any substance that has an acidic, corrosive, or burning tendency and is capable of causing bodily injury resulting in scars, disfigurement, or temporary or permanent incapacity falls within the definition of acid.

While Section 326A of Indian Penal Code emphasizes on ‘grievous hurt’ resulting from acid attack, in the legislative aim of Section 326B is to prohibit throwing or attempting to hurl acid with the goal of causing severe bodily harm of the sort described therein. The Court of Session has jurisdiction over Section 326B, which is cognizable, non-bailable, non-compoundable, and triable.

In *Laxmi v. Union of India*,¹⁹⁹ the Supreme Court directed few guidelines to curb the menace of acid attack. These are:

¹⁹⁷ The Indian Penal Code, 1860, s. 326A “*Voluntarily causing grievous hurt by use of acid, etc.—Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:*

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

¹⁹⁸ The Indian Penal Code, 1860, s. 326B “*Voluntarily throwing or attempting to throw acid.—Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.*

Explanation 1.—For the purposes of section 326A and this section, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.—For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.]”

¹⁹⁹ (2014)4 SCC 427.

1. The over-the-counter sale of acid is prohibited unless the seller keeps a log/register of the sale of acid, which includes the name(s) of the person(s) to whom acid is sold, as well as the amount of acid sold. In the log/register, the address of the person to whom it is sold must be entered.
2. All sellers are required to sell acid only once the buyer has presented
 - (a) a government-issued photo ID that includes the person's address and
 - (b) states the reason/purpose for obtaining acid.
3. Within 15 days, the vendor must notify all acid stocks to the Sub-Divisional Magistrate concerned.
4. No acid shall be sold to anyone under the age of eighteen.
5. In the event of an undeclared stock of acid, the SDM in charge has the authority to seize the stock and levy a fine of up to 50,000₹ on the seller.
6. Any anyone who violates any of the above directives will face a fine of up to 50,000₹, according to the SDM in charge.

Amendment of Section 354

In IPC, the words must be penalized by imprisonment of any type for a term of not less than one year and not more than five years, as well as a fine, according to Section 354²⁰⁰IPC shall be substituted for must be punished with a sentence of imprisonment of minimum one year and maximum five years, as well as a fine.

The sections related to Sexual harassment already existed in diluted form before to the establishment of the *Visakha* Guidelines, but there was no such specific clause that laid out punishment for Sexual Harassment. Section 354A has now been included as a specific offence.

The new provision has its origin “in the judgment of the Supreme Court in *Vishaka v. State of Rajasthan*²⁰¹ and the *Nirbhaya* case after which Justice J. S. Verma deemed it proper to include the offence of sexual harassment in Section 354A IPC.”

“*Pappu v. State of Chattisgarh*,²⁰² The use of either assault or criminal force is a

²⁰⁰ The Indian Penal Code, 1860, s. 354 “Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, 1 [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].”

²⁰¹ (1997)6 SCC 241: 1997 SCC (Cri) 932.

²⁰² Dated 10-9-2014 (Chh).

necessary element for attracting the provisions of Section 354²⁰³ for the offence prescribed in the section; however, the use of either assault or criminal force is not a necessary element for attracting the provisions of Section 354A for the offence prescribed in the section.”

“Assault or use of criminal force to woman with intent to disrobe”

Section 354B²⁰⁴ addresses a very particular offence and complements and expands on the paragraph dealing with a woman’s modesty being offended. This is a good provision, given the numerous cases of women having publicly humiliated as a form of punishment, mainly in impoverished places.

“Voyeurism”

The act of observing someone participate in private actions is known as voyeurism. When a male observes a woman engaging in private acts when she is unaware that she is being observed, he has done the crime of voyeurism.²⁰⁵

Justice J. S. Verma Committee in its report expressed its surprise on the fact that stalking, voyeurism, eve-teasing may be realized as minor offences, It may result in the deprivation of not only a girl child's right to school, but also of children’s freedom of expression and movement. In common-law countries, voyeurism is not a crime until it is deemed so by legislation. Criminal voyeurism statutes in the United States are linked to privacy and violation of privacy laws. In the UK, under Section 67, non-consensual voyeurism became criminal in 2004, Sexual Offences Act, 2003. In

²⁰³ *Supra* note 200 at 97.

²⁰⁴ The Indian Penal Code, 1860, s. 354B *“Assault or use of criminal force to woman with intent to disrobe—Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.”*

²⁰⁵ The Indian Penal Code, 1860, s. 354C *“Voyeurism.—Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.*

Explanation 1.—For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.]”

Canada, voyeurism was added as a sexual offence vide Section 162 in the Canadian Criminal Code.

In India, where a woman has a reasonable expectation of her privacy not being breached by any intruder, who happens to be either known or unknown to her, if that intruder either watches or captures the image of that woman while she is engaged in a personal act, that intruder is guilty of the act of voyeurism. It is a cognizable, bailable, non-compoundable offence triable by a Magistrate.

Stalking

Following a woman, attempting to foster personal engagement despite the victim's apparent lack of interest, spying, or monitoring the use of any sort of electronic intimation are all examples of stalking. The act of stalking trespasses with the mental peace of a person or causes stress, frightened of violence or alarm. "Stalking may be committed both physically and through electronic media. Section 354D²⁰⁶ was inspired from the definition of 'Stalking' in Section 2A, Protection from Harassment Act, 1997 passed by British Parliament on 25th November 2012. It can be through telephone calls, computer communication, letters, *etc.*"

"*Rupan Deol Bajaj v. K. P. S. Gill*²⁰⁷ the notion of 'modesty' in relation to women had been clarified by this Court. The safety of Female students, women, and others attending educational institutions, workplaces, and other sites is critical in a civilized and cultured society. The experiences of women and girls on overcrowded buses, metros, trains, and other forms of public transit are terrifying and horrible."

²⁰⁶ The Indian Penal Code, 1860, s. 354D "*Stalking*. —

Any man who—

follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that —

it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

in the particular circumstances such conduct was reasonable and justified.

Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

²⁰⁷ (1995)6 SCC 194.

“The Supreme Court in *Deputy Inspector General of Police v. S. Samuthiram*”²⁰⁸ was of the opinion that, before enacting appropriate regulations to combat eve-teasing, it was essential to take at least some immediate steps to limit it. As a result, the SC adopted the following instructions to ban eve-teasing in the public interest:

- (1) All State Governments and union territories are directed to station civil dressed Female police officers to monitor and supervise eve-teasing incidents in the areas surrounding bus stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, and places of worship, among other places.
- (2) A further directive will be issued to state governments and union territories to install CCTV in important locations, which will serve as a deterrent and, if identified, will allow the criminal to be apprehended.
- (3) Persons in charge of educational institutions, places of worship, cinemas, railway stations, and bus stops must take whatever actions they feel necessary to prevent eve-teasing within their boundaries, and must report any complaints to the nearest police station or the Women’s Help Centre.
- (4) When eve-teasing occurs in a public service vehicle, either by passengers or by those in charge of the vehicle, the crew of the vehicle shall, upon the aggrieved person’s complaint, take the vehicle to the nearest police station and report the matter to the police. Failure to do so will result in the permission being revoked immediately.
- (5) Within three months, State Governments and Union Territories must create a Women Helpline in various cities and towns to combat eve-teasing.
- (6) Appropriate boards warning against eve-teasing should be displayed in all public locations, including educational institutions' precincts, bus stops, railway stations, movie theatres, parks, beaches, public service vehicles, and places of worship, among others.
- (7) Passers-by bear responsibility as well, and if they witness such an incidence, they should report it to the local police station or the Women Helpline to protect the victims.
- (8) The State Governments and Union Territories of India would take

²⁰⁸ (2013)1 SCC 598.

appropriate and effective measures by issuing appropriate instructions to the authorities concerned, including District Collectors and District Superintendents of Police, to take effective and proper measures to prevent eve-teasing incidents. When a convict is found guilty of inflicting an injury of such a kind that causes the victim's death or puts them in a state of neglect at the time of the crime, he is accountable under Section 376A.²⁰⁹

A husband's sexual assault on his wife is living apart, whether under a judicial decree or without her will, constitutes an offence of rape, according to Section 376B²¹⁰'s explanation.

If a person has previously been convicted of U/S 376²¹¹ related offence, he or she will be sentenced to life imprisonment or death punishment.

If a person has previously been convicted under Section 376-376D²¹² and is convicted of any of the above provisions, he or she will be sentenced to life imprisonment or death punishment.²¹³

“In our country, prostitution has existed from times immemorial. From the *Rigveda*, it is found that there were women who were common to several men, i.e., who were

²⁰⁹ The Indian Penal Code, 1860, s. 376A “Punishment for causing death or resulting in persistent vegetative state of victim.—Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of Section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.”

²¹⁰ The Indian Penal Code, 1860, s. 376B “Sexual intercourse by husband upon his wife during separation.—Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of Section 375.”

²¹¹ The Indian Penal Code, 1860, s. 376D “Gang rape.—Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

²¹² *Ibid.*

²¹³ The Indian Penal Code, 1860, s. 376E “Punishment for repeat offenders.—Whoever has been previously convicted of an offence punishable under Section 376 or Section 376A or Section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.”

courtesans or prostitutes. In *Mahabharata*, courtesans were an established institution. The *Adiparva* narrates how a *vaishya* (prostitute) waited upon *Dhritarashtra* when his wife Gandhari became pregnant. Yaj: II divides concubines into two categories: 1) *avaruddha*- one who is kept in the house itself and forbidden to have intercourse with any other male; and 2) *bhujisyas*- the concubine who is kept elsewhere and is in the special keeping of the person, and another person cannot have intercourse with her.”²¹⁴

The term ‘prostitute’ refers to a woman who sells her body for unrestricted sexual relations, particularly for money.²¹⁵ As to this definition, “Beaumont C. J. says: I do not say that this is a universal definition and I do not suggest that a prostitute is bound to be entirely indiscriminate and to accept the first customer who offers her price like a cabman on the rank. But I certainly think that prostitution involves more than intercourse with one man.”

He went on to say that a married lady who restricts her favours to one man, even if that man is not her husband, is not a prostitute in his eyes. A married woman, like a kept, can obviously be a prostitute. He did, however, believe that prostitution included the unrestrained use of a woman’s body for monetary gain.²¹⁶

In the Indian social system, prostitution is open business, and Females are pushed into the sex trade by their parents and relatives. Parents and family pressures not only compel the m to pursue a career, but also help them retain consumers and increase their revenue.

The commodification of young girls has begun, with their own people selling them to brothels for a profit. As a result, the image of prostitution has grown like a rainbow, with pictures cultivated by the public society projecting the position of its women, objectifying the women as sexual commodities to satisfy their sexual cravings.

It has lasted throughout history in practically all countries; however, it has been attempted to be restricted by law in some circumstances. Even the legal debate over whether prostitution is immoral, a mischief, or the victimization of a prostitute

²¹⁴ V. K. Deewan, *Law Relating to Offences against Women: With Detailed Case Laws of Supreme Court and Different High Courts* (Asia Law House, Hyderabad, 5th edn., 2020).

²¹⁵ *Oxford Dictionary*

²¹⁶ J. P. Bhatnagar, *Law Relating Women and their Rights* (Asoka Law House, New Delhi 2nd edn., 1998).

continues. Although laws prohibiting the crime, it is freely committed, encouraged, supported *etc.* It continues to thrive despite police raids and expensive rehabilitation and reformation programmes.

Prostitution and human trafficking for prostitution have grown to such inhumane proportions that the international community has reacted by adopting many treaties, such as the “International Agreement for the Suppression of White Slave Traffic.”²¹⁷ International Convention for the Suppression of Traffic in Women and Children,²¹⁸ and the International, Convention for the Suppression of Traffic in Persons and of the Exploitation of Prostitution.”

Street walkers, religious prostitutes, brothel prostitutes, singing and dancing girls, and other categories of prostitutes were not identified by the Committee.

The constitutional mandate under Article 23²¹⁹ is against human trafficking and exploitation in any form. The goal was to abolish all forms of human trafficking, including prostitution and beggary. India enacted a Central Law in 1950 to carry out the Convention's requirements as a signatory to the “International Convention for the Suppression of Human Trafficking and Exploitation.”

“Immoral Traffic (Prevention) Act, 1956”

The fundamental goal of the law was to end the commercial brutality of trafficking of people for the purposes of commercial sexual exploitation as a means of living.

“In *Ratnamala, re*,²²⁰ it was observed:

It is undeniably true that the Act's goal is not to outlaw prostitutes and prostitution in general, or to punish a woman for prostituting herself; rather, the purpose of the legislation was to prevent or eliminate commercialized vice, namely, trafficking in women and girls for the purpose of prostitution as a means of living.”

“*Shefali Banerjee v. State*,²²¹ according to the” International Convention signed in May 1950” in New York, the Act was judged to be a measure to eliminate a social ill. The legislature wanted to not only prohibit prostitution but also provide rehabilitation to the prostitutes, so this is a social law with a dual punitive and remedial objective.”

²¹⁷ Dt. 18-5-1904 as amended by the UN General Assembly on 3-12-1948.

²¹⁸ Dt. 30-9-1921 as amended by the UN General Assembly on 20-10-1949.

²¹⁹ *Supra* note 81 at 42.

²²⁰ AIR 1961 Mad 31.

²²¹ AIR 1969 Cal 544.

In “*Vishal Jeet v. Union of India*,²²² the court determined that the Act addresses both a social and a socio-economic issue. As a result, the legislation's provisions are more preventative than punitive.”

Female foeticide

The death of a foetus in the womb of a potential mother is known as Female foeticide. India has had a heinous habit of murdering Female children since its inception. The technique for killing a Female child included injecting opium into the infant's milk or drowning the infant under the mother after birth, treating them as unwanted members of the family, and mistreating, neglecting, and disregarding medical care for daughters. Now is a period when scientific technology is being misused to create so-called educated people. The reality is depressing, but it is the truth: amniocentesis, the technology used to evaluate the condition and sex of the baby, is now predominantly utilized to selection the sex of a Female embryo and then to eliminate it. Surprisingly, ostensibly educated and relatively well-off families are more likely to use the technique than the poor, who cannot afford doctor's costs and have never heard of such immorality. The indiscriminate slaughter of Female foetuses has resulted in a dangerous position in which the population's gender ratio has been harmed.

“Female infanticide”

Deliberate killing of new born girl child and abortion of Female foetus in the womb are the tragic drama of Female life in this country, which is not a new phenomenon in the present scenario. Because this crime is usually done at the moment of birth or within a few days of birth, or on the same day of the child's birth, occurrences of Female infanticide are rarely reported to the authorities. For this reason, it is very difficult to take the case till court and convict anybody. However, Female infanticide has been prevented among rich people (Rajputs) groups in Northern and North-Western India.

An effort has been made for the first time in 1870 through the Special Act 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. Under sections 299²²³ and 300²²⁴ IPC treats Female infanticide as a

²²² (1990)3 SCC 318: 1990 SCC (Cri) 482.

²²³ The Indian Penal Code, 1860, s. 299 “*Culpable homicide.—Whoever causes death by doing an act*

culpable homicide. It also provides punishment for the acts done before birth with the intention of killing the baby and also the acts arising of abandoning or exposing the child with an aim to cause physical risk to the child.

Although there are several explanations for this heinous crime in India, hypergamy is one of the most prominent. According to a 19th-century source, big groupings of villages in Rajasthan and Gujarat, a few hundred upper-caste families, and no girl child allowed to thrive for many years had been allowed to grow.²²⁵

For some land-owning upper caste communities, Female infanticide became a component of their family strategies in order to secure additional land and property holdings in order to improve and so ladyfy their household socio – economic position.²²⁶

In rural South India, particularly in Tamil Nadu, Female infanticide has been reported in several castes. Female infanticide is on emersion in that region due to an enhancement in housing troubles and poorness, as well as a dread of the dowry custom. Inequality in salaries has resulted in women receiving less schooling and having fewer economic possibilities.

According to a report of a NGO,²²⁷ in rural Bihar, Female infanticide, Female foeticide, and excessive girl child death owing to selective neglect were all too common. Killing of foetus was carried out in particular by *dhais* (delivery attendants) who were threatened by the mother's male relatives, overriding the women's protests. Fear of retaliation, poverty, and a lack of other options drove

with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

²²⁴ The Indian Penal Code, 1860, s. 300 “Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

²²⁵ A. M. Shah.et.al., (ed.) 'Women in Indian Society', (1996).

²²⁶ C. Alice, “Limitations on Female Life Chances in Rural Central Gujarat” 20 *The Indian Economic And Social History Review* 1-25 (1983).

²²⁷Adithi (A NGO): *Female Infanticide in Bihar; 1995*.

the 'dhais' to agree to this dreadful task. This NGO also revealed that, the medical practitioners also killing the infant, when they approached by members of the family the "newly born girl child". The process of infanticide is indeed a smooth process, because, there were no Government registered documents of the death and birth both. The death and birth both events are following each other quickly.²²⁸

"Sexual harassment at workplace"

"Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The international conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose."

*"Vishakha v. State of Rajasthan"*²²⁹

Economic independence is cited as one of the major causes for commission of crimes against women. As women try to close the wage gap with males, a new sort of crime has emerged: workplace sexual harassment. This breach of human rights, gender inequity, and injustice is the most egregious. Each incident of workplace sexual harassment results in a nonconformity of the Constitution's basic rights, particularly the rights to gender equality and life and liberty. Working-place sexual harassment is obviously incompatible with a woman's pride and respect. Men's behaviour toward women has only recently been recognized as extending beyond the most horrible kinds of rape to other perspective of men's behaviour toward female gender. It is also only presently that such behaviour has been widely recognized as creating legally redressable harms and has been hauled out of the closet.

The legal claim of sexual harassment is a demand that the government support women who refuse sexual access in situations where it was formerly a patriarchal right.²³⁰

According to the "South East Region Women's Group and WASH (Women Against Sexual Harassment)" campaign leaflet, sexual harassment can take a variety of forms, including comments about a person's looks, physic, or attire; starting to lean in and

²²⁸ Nidhi Mishra (ed.) *Law and Child*, 257 (2004).

²²⁹ (1997)6 SCC 241: 1997 SCC (Cri) 932.

²³⁰ C. A. MacKinnon, *Feminism Unmodified Discourses on Life and Law* 104 (Harvard University Press, 9th edn., 1994).

looking at someone's body; abusive, degrading, patronizing, or denigrating comments or behaviour; misogynistic comments or funny stories; sexually inappropriate proposals or force; commit or threats regarding employment conditions in exchange Nervousness, frustration, or hostility; illness, depression, sleeplessness, headaches, digestive issues; inability to focus; lack of self-esteem and enthusiasm to focus, deterioration in work capacity; absences; and relationship problems are all examples of injuries.

"The first successful claim against sexual harassment at the workplace is *Walker v. Northumberland County Council*,"²³¹ the English Court awarded mental damages as a result of job stress. As a result, it's apparent that stress can cause harm. In such a circumstance, a lawsuit for negligence against the employer may be pursued. The decision in this case is significant because it opens up a new realm of mental harassment, as opposed to the physical contact hypothesis. It is self-evident that actions of sexual harassment that violate the Female body do not have to result in bodily injury to the Female body. A verbal insult could cause injury, and it could happen on a mental level. As a result, the problem of workplace sexual harassment occurs, causing harm to women and it is critical that a legal remedy be established and aggressively pursued. It's understandable that the possibility of reporting harassment scares women away.

Once rebuilt to symbolize a Female functional understanding of the causes of sexual harassment, to correlate to female's understanding of the agony it causes, and to predict a bold new set of feminist thought, the traditional grandeur of a law may be evoked to achieve a historic transformation.

"Domestic violence"

"Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one's family, for it is there that accident, murder and violence are likely to occur."

*Sidney Brandon*²³²

The global women's movement has made Women are subjected to violence both inside and outside the house, a major topic. This is due to their uneven status in a

²³¹ 1995 ICR 702; 1995 IRLR 35.

²³² Sydney Brandon in M. Borland (Ed.), *Violence in Family* (1976) 1.

patriarchal society that affects people from all walks of life. The first sorts of violence addressed were, for dowry, young brides are raped and murdered. Other more heinous manifestations of the prevalent occurrence of domestic abuse were discovered, including wife beating, cruelty, torture, and humiliation. As a result of this revelation, women's organizations have demanded that wife abuse be classified as a crime as well.

"Violence"

Violence is an act of hatred that infringes on another autonomy and identity. It's a threatening weapon for 'asserting one's will over another, proving or experiencing a sense of authority,' according to the dictionary. Acts of familial or interpersonal battering that occur Domestic violence is defined as violence within a family unit that operates in safe and isolated manner, adequately shielded from the public.²³³ Domestic violence has been hidden behind an iron curtain as an unspoken occurrence that occurs behind the family's 'closed doors,' a private matter between 'inmates' that is neither observed nor intervened in by the public.²³⁴

Domestic violence

Domestic violence takes the shape of verbal, physical, or mental abuse, and it often takes more subtle forms than other kinds of violence in society. The sufferer is alienated from remedies due to familiarity with the perpetrator and filial values, as a result, a comfortable status quo emerges in which the victim reconciles and society can collaborate. In the face of restrictive socio-economic circumstances, reconciling with subordination breaches the case of human rights – liberty and dignity. The women are harmed more by the hopelessness of their condition than by the abuse itself, as a result, their personality and trust in their own people are eroding. Human rights are violated when the victim is ignored and no attempt is made to provide solace or reparation.²³⁵ Legal remedies are rendered ineffectual due to the victims' incapacity to access the law, Furthermore, the four corners of the so-called 'home' keep the law from accessing the sufferers, which is much terrible. When victims of domestic abuse attempt to escape violent relationships, they can face greater violence or even death.

²³³ M. A. Fineman, "Preface" in M. A. Fineman and R. Mykitiuk (eds.), *The Public Nature of Private Violence: The Discovery of Domestic Abuse* XI-XVIII (1994).

²³⁴ Amee Yajnik, "Domestic Violence and Protection of Human Rights", AIR 1999 J-145.

²³⁵ A. S. Anand, "Victims of Crime – The Unseen Side" (1998) 1 SCC 3.

As a result, the majority of incidences of domestic abuse go unnoticed as women are unwilling to report about family member.

Because of the women's weak and vulnerable status within their homes, all of these criteria distinguish domestic violence from other forms of abuse. It also debunks the idea that women are harassed and assaulted on the streets and at work, while their homes are the safest 'shelter.' Domestic violence statistics in India are scarce, and the few research that are available suggest that physical abuse of Indian women in their homes is widespread.

Indecent representation

Harassing women is through online platform using fake false and derogatory identities mostly through social websites like Facebook and also through adult websites, it is a common form now a days

While Craigslist is used in the West to publish personal information such as a perpetrator's geographical address in order to label her as a sex seeker, in India, victimization is primarily limited to Facebook and adult websites such as porn sites.

The building of a profile of the victim, which may include picture(s) and personal information such as residential locations, schooling and graduation information, and professional designations, is a common feature of victimization.

The rise in indecency in the Indian film industry, which poses a threat to Indian civilization and culture. If caution is not exercised immediately, the law will eternally disrupt Indian society by dealing a fatal blow to the country's timeless culture and spirit by unleashing a flood of debauchery.

Parliament passed the "Indecent Representation of Women (Prohibition) Act, 1986" to regulate women depict indecently diversified in nature. The Act's goal was to make it illegal to depict women indecently in ads, publications, writings, paintings, figures, or any other way.

In Section 2(c)²³⁶ any depiction of a woman's figure, form, or body, or any part thereof, in such a way as to have the effect of being indecent or derogatory to, or insulting to, women, or is likely to ostracize, corrupted, or impair public decency or

²³⁶ The Indecent Representation of Women (Prohibition) Act, 1986, s. 2(c) “*“indecent representation of women” means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals*”

morals, is classified as indecent representation of women.

Section 3²³⁷ outlaws printing, causing to be published, arranging for the publication or display of any advertisement that contains indecent representations of women, or participating in the publication or exhibition of any advertisement that contains indecent representations of women.

Section 4²³⁸ any book, pamphlet, paper, slide, video, writing, drawing, painting, or photographic representation that involves obscene representation is prohibited from being produced, sold, distributed, circulated, or conveyed by post.

Under Section 6²³⁹ of the Act, anyone who breaches Sections 3 or 4 is subject to a first-time he will be sentenced of up to two years in imprisonment and a fine of up to 2,000₹, and a second-time sentence of not less than six months but up to five years in prison and a fine of not less than 10,000₹ but up to 1,000,000₹.

“*Chandrakant Kalyandas Kokodar v. State of Maharastra and ors*,²⁴⁰ the court’s decision did not establish any guidelines for determining obscenity. The definition of obscenity varies from country to country, based on the moral standards of the time.”

²³⁷ The Indecent Representation of Women (Prohibition) Act, 1986, s.3 “*Prohibition of advertisements containing indecent representation of women.—No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.*”

²³⁸ The Indecent Representation of Women (Prohibition) Act, 1986, s.4 “*Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women.—No person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form:*

Provided that nothing in this section shall apply to—

(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is in the interest of science, literature, art, or learning or other objects of general concern; or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in— (i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958); or (ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose; (c) any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.”

²³⁹ The Indecent Representation of Women (Prohibition) Act, 1986, s. 6 “*Penalty.—Any person who contravenes the provisions of section 3 or section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.*”

²⁴⁰ AIR (1970) 1396, (1970) SCR (2)80.

“In *Chandra Raja Kumari v. Police Commissioner, Hyderabad*,²⁴¹ it was decided that the right to life includes the right to live with dignity or decency, and that organizing a beauty contest is offensive to women’s dignity and decency violates the constitution’s Article 21.”

Outraging modesty

Modesty is a quality that comes easily to women. It’s tough to prove if a woman’s modesty has been insulted or not using any test. Any conduct in the existence of a woman, however, that is plainly related to sex in common language, must be covered by this Section.

Indecent assault on a woman is punishable, which is less serious than rape. Indecent assault occurs when a person deliberately assaults the victim with the intent of committing not only an offence but an indecent assault, that is, an assault that right-minded people would deem indecent.²⁴²

“In *State of Maharashtra v. Manohar*,²⁴³ early in the morning, a woman came out to gather water from the local well. The accused grabbed her hand and yanked her to him, dragging her to a nearby location. She fought back and raised an alarm. Her bangles were shattered, and she was hurt. The accused was found guilty of outraging modesty under Section 354 of the Indian Penal Code and sentenced.”

“*People’s Union for Democratic Rights v. Police Commr.*”²⁴⁴ for some work, some labourers, including a lady, were transported to a police station. They were beaten up when they requested wages. The woman was stripped down to her underwear and thrashed. The Supreme Court heard the case in a writ petition filed under Art. 32²⁴⁵ of the Indian Constitution. The Apex Court ruled that the offence U/S 354 of the IPC

²⁴¹ 1996 Cri LJ 2725 (Del).

²⁴² *Supra* note 200 at 97.

²⁴³ 1994 Cri LJ 2536 (Born).

²⁴⁴ (1989) 4 SCC 730; 1990 SCC (Cri) 75.

²⁴⁵ The Constitution of India, art. 32 “*Remedies for enforcement of rights conferred by this Part.—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.”

was established with reference to the woman, and awarded compensation to be recovered from the guilty officers' salaries.

*"Kanwar Pal Singh Gill v. State,"*²⁴⁶ on front of visitors, the then-Director General of Punjab Police slapped the prosecutrix, an IAS officer, in the behind at a dinner party. The prosecutrix filed a complaint with the host, informing him of the accused's annoying behaviour. She also requested strict punishment against the accused before other top officers, but when she was unsuccessful, she filed a complaint with the Chief Judicial Magistrate four months later. The accused then requested a criminal revision under Section 482²⁴⁷ CrPC."

The complaint was dismissed by the High Court. The prosecutrix and her husband jointly appealed the verdict, and the High Court's decision was overturned, and the Chief Judicial Magistrate was ordered to take cognizance of the offence U/S 354 and 509²⁴⁸ IPC. U/S 354 of IPC, the Chief Judicial Magistrate imposed a three-month imprisonment with a fine of 500₹. The Sessions Judge upheld the conviction but modified the punishment, ordering the accused to be released on probation rather than serving a prison sentence. The penalty was increased to 50,000₹. The conviction was maintained by the HC, but the fine was increased to 2,00,000₹. The wrongdoer as well as the complainant both appealed the HC's decision.

The Supreme Court acknowledged that there was some delay in submitting the lawsuit in its conclusion, but that was not enough to dismiss the prosecutrix's complaint. There was also no evidence that the prosecutrix worked in collusion with others to spread false information about the accused.

The court observed:

When the entire incident is examined in context, it is evident that the accused's behaviour on the day of the incident did not meet the standard of a top ranking official.

²⁴⁶ (2005) 6 SCC 161; 2005 SCC (Cri) 1420.

²⁴⁷ The Code of Criminal Procedure, 1973, s. 482 *"Saving of inherent powers of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

²⁴⁸ The Indian Penal Code, 1860, s. 509 *"Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, [shall be punished with simple imprisonment for a term which may extend to three years, and also with fine]."*

The accused used unlawful powers in order to insult the complainant's modesty, knowing full well that slapped the prosecutrix on the back in front of other visitors would humiliate her. Because the guilty was a high-ranking police official, he should have exercised extreme caution, and by failing to do so and touching the prosecutrix's body with guilty intent, he committed the offence punishable under Sections 354 and 509 of the Indian Penal Code. As a result, the appeal was denied.

*"Premiya v. State of Rajasthan"*²⁴⁹ a molestation and indignation victim is in the same situation as an injured person, and her testimony should be given equal weight. The accused was found guilty under Section 354 of the Indian Penal Code for outraging modesty."

"Kailas v. State of Maharashtra",²⁵⁰ the victim was from Maharashtra's Bhil tribe (ST) and was thrashed with fists, kicks, and stripped naked by the accused. She was stripped naked and paraded down a country road while being assaulted and tortured by the accused. The High Court's verdict convicting the appellants under Sections 452,²⁵¹ 354,²⁵² 323²⁵³ and 506 Part II IPC read with Section 34²⁵⁴ IPC was maintained by the Supreme Court. It was noted that it was terrible, startling, and appalling, and that the victim's dishonour demanded a greater sentence.

*Dowry death*²⁵⁵

Dowry is an old Indian custom that refers to the bride's family giving property or significant security to the bridegroom's family as a compensation for marriage. Dowry is a dangerous practise that puts women's lives in jeopardy. The issue is that in Indian society, women are still subjected to maltreatment based on dowry. It can

²⁴⁹ (2008) 10 SCC 81.

²⁵⁰ (2011) 1 SCC 793.

²⁵¹ The Indian Penal Code, 1860, s. 452 "*House-trespass alter preparation for hurt, assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting and person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*"

²⁵² *Supra* note 200 at 97.

²⁵³ The Indian Penal Code, 1860, s. 323 "*Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*"

²⁵⁴ *Supra* note 127 at 64.

²⁵⁵ Dowry deaths Supreme Court widens scope of Section 304B, India, available at: <https://www.thehindu.com/news/national/dowry-deaths-supreme-court-widens-scope-ofsection-304-b/article34670458.ece> (Last visited on July 31, 2021).

happen in any household, regardless of whether the family is wealthy, middle-class, impoverished, educated, or illiterate.

The Dowry Prohibition Act of 1961 was the first national Statute to address the issue of dowry. It was instituted by the government on July 1, 1961, with the primary goal of preventing dowry demand. Despite the harsh rules of the “Dowry Prohibition Act,” the dowry system still prevails in India.²⁵⁶

“Abetment to commit suicide”

There are numerous cases of women being compelled to take one’s own life as a result of violence in the house. In such circumstances, the death is the fault of the abettor. In Section 107 of the IPC, the term ‘abetment’ is defined. Abetment can take one of three forms, U/S 107 of the IPC:

- (i) provocation;
- (ii) conspiracy; and
- (iii) will ful assistance.

However, S. 306²⁵⁷ of the IPC deals with the aiding and abetting suicide. It provides that, if a person takes one’s own life, everyone who aids and abets the suicide will be sentenced to a minimum of ten years in jail and a fine.

As the word ‘abetment’ in respect of suicide defined under the Indian Penal Code,²⁵⁸ to put it another way, in order to convict a person for an offence under Provision 306 of the Indian Penal Code, the prosecutor must establish that there was provocation for the conduct of the said offence as defined in the afore mentioned section.

Scolding, bickering or kicking by the husband whether amounts to abetment. This question was considered in “*Nand Kishore Vishwanath Newara v. State of Maharashtra*”²⁵⁹ even if the words in the dying – declaration that there was scolding,

²⁵⁶ Established in 1961(Act no. 28) by the Parliament.

²⁵⁷ The Indian Penal Code, 1860, s. 306 “*Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*”

²⁵⁸ The Indian Penal Code, 1860, s. 108 “*Abettor.—A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.*”

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.”

²⁵⁹ (1993)II D.M.C. 195.

bickering, and kicking by the husband were accepted, these incidents in their entirety would not lead to an abetment sufficient to hold the appellant secured guilty in the offence punishable under Section 306 of the IPC.”

Another question whether outraging of the modesty considered to abetment to commit suicide. The M. P. High Court in “*Deepak v. State of M.P.*”²⁶⁰ the declaration of the deceased, disclosed from her three dying declarations, the two accused persons at late hour of the night entered her room and tried to take advantage of the situation to commit sexual offence against her. This act on the part of the accused might or might not have driven the woman to commit suicide. In the facts as have been brought on record, the two accused persons could not have foreseen that such an act on their part was as serious offence, which would necessarily drive the woman to commit suicide. It is admitted by the deceased in her own dying declaration that no soon after the incident of outraging her modesty, but after about an hour she put herself afire. Therefore, this is not a case where it can be said that the two persons were abettors to the act of commission of suicide by the deceased. Hence, outraging of modesty does not amount to abetment of suicide.

Suicide is a self-murder – Undoubtedly, suicide as old as the human history itself and has still been one of the most intriguing and complicated problem that has been perplexing the human mind for ages. It has attracted the attention and discussed by the social reformers, psychologists, jurists, psychiatrists, doctors, Legislatures and even Courts all over the world. But if suicide is completed and successful by itself it is not an offence under the criminal law because the law cannot reach him to convict. While an attempting suicide is punishable²⁶¹ similarly, a person who aids, abets or counsels the suicide, is punishable.²⁶²

In a bride’s death, it may be required to discover whether the victim’s in-laws had mistreated her, which may have been ongoing since the date of the marriage.²⁶³

Reasons for Suicide

There are number of reasons on account of which the people commit suicide. The

²⁶⁰ 1994 Cr.L.J. 767 (M. P.).

²⁶¹ The Indian Penal Code, 1860, s. 309 “*Attempt to commit suicide.—Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year 3 [or with fine, or with both.]*”

²⁶² *State of Maharashtra v. Madhusudan and others*, (1993)II D. M. C. 10 (Bom.) (DB).

²⁶³ *Suresh Raghunath Kochaane v. State of Maharashtra*, 1993(2) Crimes 545.

causes to take such recourse are mental, physical and social. Some circumstances are illustrated as follows but they cannot be said to be exhaustive:

If a person suffering from a mental illness, depressive illness or a mental disorder; because of poverty; failure in love, exams, and business; serious medical disease, either incurable or unbearable, with a sensation that the illness will never be cured; extreme physical or mental torment or abuse by her relatives or in laws house, husband as well.²⁶⁴

Modes of suicide

The modes and methods to commit suicide differ from one location to the next, and from one person to the next many times govern by the means available. However, some modes and the methods could be illustrated particularly with reference to the women as follows:

- (i) By burning,
- (ii) By drowning,
- (iii) By poisoning,
- (iv) By hanging,
- (v) By jumping,
- (vi) By shooting.

*“Satvir Singh v. State of Punjab*²⁶⁵ reflected the scope of the IPC’s Sections The court concluded that Section 306 IPC, coupled with Section 113A²⁶⁶ of the Evidence Act, 1872, only allowed the court to penalize a husband or his relatives who subjected a woman to cruelty, as defined in Section 498A IPC, and who committed suicide within seven years of their marriage. It makes no difference whether the abuse or harassment occurred ‘soon before her death’ or ‘earlier.’ If it happened ‘soon before her death,’ the exceptional clause in Section 304B IPC would apply; otherwise, Section 306 IPC would apply.”

²⁶⁴ *Supra* note 263 at 115.

²⁶⁵ (2001) 8 SCC 633: 2002 SCC (Cri) 48.

²⁶⁶ The Evidence Act, 1872, s. 113A “*Presumption as to abetment of suicide by a married woman — When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*”

“*Premwati v. State of M. P.*,²⁶⁷ it was determined that Section 304B would apply not just when death is caused by someone, but also when death occurs ‘abnormally.’ If death is preceded by cruelty or harassment by in-laws for or in connection with a dowry demand, and the link between the two is proved, the mere incidence of death is sufficient, even if death was not caused by the in-laws.”

“*Hem Chand v. State of Haryana*,²⁶⁸ the court decided that proof of the accused’s direct involvement in her death was not required. The absence of a direct link between the accused and the death must be considered while calculating the punishment to be given to the accused.”

“*Wazir Chand v. State of Haryana*”²⁶⁹ an instance in which a newlywed woman was burned to death. The facts did not support either murder or assisted suicide, and the infractions eluded Sections 300²⁷⁰ and 306 of the IPC. However, they became entangled in the web of these newly passed laws aimed at preventing dowry harassment. In this case, the fact that the deceased’s father returned a large number of goods from her marriage home after her death indicated that the in-laws were exerting pressure for money and articles, which continued until her death.

“A new dimension was added when the Supreme Court observed in *Shobha Rani v. Madhukar Reddi*²⁷¹ that a dowry demand entitles the wife to dissolution of marriage decree. As a result, for the purposes of matrimonial remedies, Section 304B IPC has added a new dimension to the concept of cruelty.”

“In *State of Punjab v. Iqbal Singh*,²⁷² while convicting the husband, the court stated that the legislative intent behind the incorporation of Section 113A of the Indian Evidence Act and Section 304B of the Indian Penal Code was to strengthen the prosecution’s hands in a crime that was generally committed in the privacy of private residences.”

“In *Kans Raj v. State of Punjab*,²⁷³ a three-judge Bench of the court with the presumption available in terms of Section 113B, Evidence Act, 1872 and its effect on

²⁶⁷ 1991 Cri LJ 268 (MP).

²⁶⁸ (1994) 6 SCC 727: 1995 SCC (Cri) 36.

²⁶⁹ (1989) 1 SCC 244: 1989 SCC (Cri) 105.

²⁷⁰ *Supra* note 223 at 104.

²⁷¹ (1988) 1 SCC 105: 1988 SCC (Cri) 60.

²⁷² (1991) 3 SCC 1: 1991 SCC (Cri) 513.

²⁷³ (2000) 5 SCC 207: 2000 SCC (Cri) 935.

finding persons guilty in terms of Section 304B IPC.” It was laid:

According to existing legislation, if a woman’s death is caused by fire, physical harm, or occurs outside of usual conditions during her marriage years, and it can be proven that she was physically abused or in conjunction with harassment by her spouse or any relative with her death, she is entitled to compensation. Section 304B punishes anyone who dies as a result of a dowry demand.

In fact, the problem of dowry as a social problem was felt in India in the fifties. To solve this problem our Parliament passed The Dowry Prohibition Act, 1961.

An amendment to the Indian Evidence Act, 1872 was made to make it simpler to prove dowry death by transferring the burden of proof from the prosecution to the accused in the case of a wife’s death within ‘seven years of marriage.’ As a result, section 113B of the Indian Evidence Act, which was recently enacted, sets an obligatory presumption against the guilty.

In spite of legal provisions being made incidents of dowry death and cruelty to brides for dowry has increased in India. The reason is that there is mother social institution which has been rapidly commercialized as marriage. Marriages being increasingly used to buy wealth and status in India.

“A total of 24, 771 dowry deaths have been reported in the country in past three years with maximum of them occurring in Uttar Pradesh with 7,048 deaths. As per National Crime Records Bureau data, the country has recorded 3.48 lakh cases of cruelty by husband or his relative and West Bengal tops the chart with 61,259 such cases in past three years, followed by Rajasthan (44,311) and Andhra Pradesh (34,835).”²⁷⁴ Some incidences of dowry deaths and cruelty of husband or relatives of husband which comes before the courts in India are below:

- a) In a case of rapacious husband who set his newly wedded wife Balwindar on fire for the sake of money. The accused, came back from abroad, wished to go again, and demanded from his wife money for this purpose. On her pleading helpless, he attempted to choke her. When her brother came to see her, she told him about her husband threatening to kill her if she didn’t comply with the demand. The accused insulted this brother of his wife and told him that the sister would not be

²⁷⁴Dowry deaths reported in last 3 years, India, available at: <http://indianexpress.com/article/india/india-others/24771-dowry-deaths-reported-in-last-3-years-govt/#sthash.j28Ncyhz.dpuf> (Last visited on November 25, 2021).

allowed to go with him to her natal home, on March 20, 1985, Balwinder Kaur was discovered in the kitchen engulfed in flames. The neighbors heard that, she was shouting, they extinguished fire. The neighbors took her hospital where she died due to burn injuries on 23rd March, 1985 at 8:30pm.²⁷⁵

- b) In *State of U. P. v. Ashok Kr. Srivastava*²⁷⁶ allegation was that the father and the sister of Ashok were dissatisfied with the amount of gifts at the time of marriage and were demanding a sum of 4,000₹ Or more. On 18th July, 1974, the husband, the father-in-law and sister-in-law quarreled with the bride, beat her during the day and at about 2 a.m. sprinkled kerosene on her and set fire to her. Then they came out, stood in the verandah and started hauling fire, firer without making any attempt to rescue her or to put off the fire. She died on the way to hospital.

The case of “*V. N. Pawar v. State of Maharashtra*”²⁷⁷ it has been noted that woman catastrophes are becoming far too common for the India to remain quiet. If these heinous acts are to be avoided, police sensitization mechanisms that will prevent their commission must be established. Special provisions aiding easier proof of such a unique kind of killings on the basis of demonstrating certain fundamental characteristics must also be included in suitable law.

²⁷⁵*The State of Punjab v. Amarjit Singh*, AIR 1998 SC 2013.

²⁷⁶(1992) 28 ASIL 212.

²⁷⁷1980 AIR 1270.

3.4.4 – Another perspective of Consequences of Female foeticide and Infanticide:

Table:1

Maharashtra (NFHS -5)				
Indicators			(NFHS – 5) (2019-20)	(NFHS – 4) (2015-16)
Infant and Child Mortality Rates (per 1000 live births)	Urban	Rural	Total	Total
Neonatal mortality ²⁷⁸	15.1	17.6	16.5	16.2
Infant mortality ²⁷⁹	22.6	23.7	23.2	23.7
Under-five mortality ²⁸⁰	28.2	27.9	28.0	28.7

Table:2

India and bigger States	Total			Rural			Urban		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
India	10.0	10.2	9.8	10.6	10.8	10.4	8.4	8.5	8.2
Maharashtra	9.1	9.4	8.8	9.7	10.1	9.3	8.4	8.5	8.2

²⁷⁸ Neo-natal mortality = $\frac{\text{Number of infant deaths of } < \text{ than 29 days during the year}}{\text{Number of live births during the year}} \times 1000 \text{ rate (NMR)}$

²⁷⁹ Infant mortality rate = $\frac{\text{Number of infant deaths during the year}}{\text{Number of live births during the year}} \times 1000 \text{ (IMR)}$

²⁸⁰ Under-five Mortality Rate = The under-five mortality is the probability that a child born in a specific year or time period will die before reaching the age of five, subject to current age specific mortality rates. It is expressed as a rate per 1,000 live births.

“Percentage of population in the age group 0-4 years to total population by sex and residence, in Maharashtra, 2010”

Statements show the percentage share of population in various age groups for larger States, broken out by domicile and sex. Table: 1. shows the percentage of the population under the age of five. At the national level, 8.4 percent of the population in urban regions is under the age of five, compared to 10.6 percent in rural areas. In both rural and urban areas, gender inequalities in kid population share are insignificant. In Maharashtra’s rural areas, the proportion of male children is around 1% higher. In urban regions, this ranges from 8.2 in Maharashtra to 8.5 in Gujarat.”²⁸¹

“Infant mortality rates by sex and residence, India and bigger States, 2010”

Table 3 shows the Infant Mortality Rate (IMR) by sex and residence for India and its larger states in 2010. The infant mortality rate is calculated as the number of newborn deaths (under one year) per thousand live births. IMR is reported to be 47 at the national level, ranging from 51 in rural areas to 31 in urban areas. It ranges from 28 in Maharashtra to 32 in the larger states. In every state, female infants had a greater mortality rate than male neonates.²⁸²

Table: 3

India and bigger States	Total			Rural			Urban		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
India	47	46	49	51	50	53	31	30	33
Maharashtra	28	27	29	34	33	35	20	19	21

“Neo-natal mortality rates and percentage share of Neo-natal deaths to Infant deaths by residence, India and bigger States, 2010”

Table 4 shows the neo-natal (less than 29 days) mortality rate and the percentage of neo- natal fatalities to newborn deaths at the national and state levels for the year 2010. The neo-natal death rate in the United States is 33 percent, ranging from 19 percent in urban regions to 36 percent in rural areas. Neonatal mortality varies by state, with Maharashtra having the highest rate at 22 percent. At the national level, the

²⁸¹Census, 2011.

²⁸²CHAPTER – 4, POPULATION COMPOSITION (Page – 75).

proportion of neo-natal fatalities to total newborn mortality is 69.3%, ranging from 61.9 percent in urban regions to 70.6 percent in rural areas. Maharashtra (78.0) had the highest percentage of neo-natal fatalities to newborn deaths among the larger states, while Kerala had the lowest (53.2).²⁸³

Table: 4

India and Bigger States	Neo-natal mortality rate			Percentage of Neo-natal death to Infant deaths		
	Total	Rural	Urban	Total	Rural	Urban
India	33	36	19	69.3	70.6	61.9
Maharashtra	22	27	15	78.0	80.0	73.1

“Early neo-natal mortality rates and percentage share of Early neo-natal deaths to Infant deaths by residence, India and bigger States, 2010”

The early neo-natal mortality rate, defined as the number of newborn fatalities within the first seven days of life per thousand live births, is a significant component of both infant and neo-natal mortality rates. The early neo-natal mortality rate, as well as the percentage of early neo-natal fatalities to total newborn deaths, are presented in Table 5. The early neo-natal death rate in 2010 was projected to be 25 at the national level, with rates ranging from 28 in rural areas to 15 in urban areas. At the national level in 2010, the percentage of early neo-natal fatalities to total newborn deaths was 53.9 among the larger States, ranging from 54.6 in rural areas to 49.6 in urban areas. Among the bigger States the percentage for total, varies from 61.7 in Maharashtra.²⁸⁴

Table: 5

India and Bigger State	Neo-natal mortality rate			Percentage of Neo-natal death to Infant deaths		
	Total	Rural	Urban	Total	Rural	Urban
India	25	28	15	53.9	54.6	49.6
Maharashtra	17	21	12	61.7	62.6	59.4

²⁸³CHAPTER – 4, POPULATION COMPOSITION. (Page – 79).

²⁸⁴Census 2011.

“Estimated death rates for children aged 0-4 years by sex and residence India and bigger States, 2010”

Table 6 shows the death rates for children under the age of five by domicile, separately for boys and females. Child mortality is predicted to be 13.3% at the national level, ranging from 14.9 in rural areas to 7.8 in urban areas. This ranges from 2.9 in Kerala to 14.9 in Madhya Pradesh among the larger states. In all states except Odisha and West Bengal, female children have a higher death rate than male children.²⁸⁵

Table: 6

India and bigger States	Total			Rural			Urban		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Indian	13.3	12.6	14.0	14.9	14.0	15.8	7.8	7.5	8.1
Maharashtra	6.4	6.2	6.6	7.5	7.4	7.6	4.6	4.2	5.0

“Under-five Mortality Rates (U5MR) by sex and residence, India and bigger States, 2010”

Table 7 shows the rates of under-five mortality by residence, separately for males and girls. The under-five mortality rate is projected to be 59 at the national level, ranging from 66 in rural areas to 38 in urban areas. It ranges from 33 in Maharashtra to 66 in the larger states. Female under-five mortality rates are greater than male under-five mortality rates in all of the larger states.²⁸⁶

Table:7

India and bigger States	Total			Rural			Urban		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
India	59	55	64	66	61	71	38	36	40
Maharashtra	33	31	35	39	37	42	23	22	25

²⁸⁵Census 2011.

²⁸⁶Census 2011.

Table : 8
Sample Registration System, Office of Registrar General, India

India & Bigger States/UTs	Sex Ratio at Birth Total				
	2012-14	2013-15	2014-16	2015-17	2016-18
India	906	900	898	896	899
Andhra Pradesh	919	918	913	916	920
Assam	918	900	896	915	925
Bihar	907	916	908	900	895
Chhattisgarh	973	961	963	961	958
Delhi	876	869	857	850	844
Gujarat	907	854	848	855	866
Haryana	866	831	832	833	843
Himachal Pradesh	938	924	917	918	930
Jammu & Kashmir	899	899	906	917	927
Jharkhand	910	902	918	916	923
Karnataka	950	939	935	929	924
Kerala	974	967	959	948	957
Madhya Pradesh	927	919	922	916	925
Maharashtra	896	878	876	881	880
Odisha	953	950	948	938	933
Punjab	870	889	893	886	890
Rajasthan	893	861	857	856	871
Tamil Nadu	921	911	915	907	908
Telangana	Included in A.P.		901	897	901
Uttar Pradesh	869	879	882	878	880
Uttarakhand	871	844	850	841	840
West Bengal	952	951	937	939	941

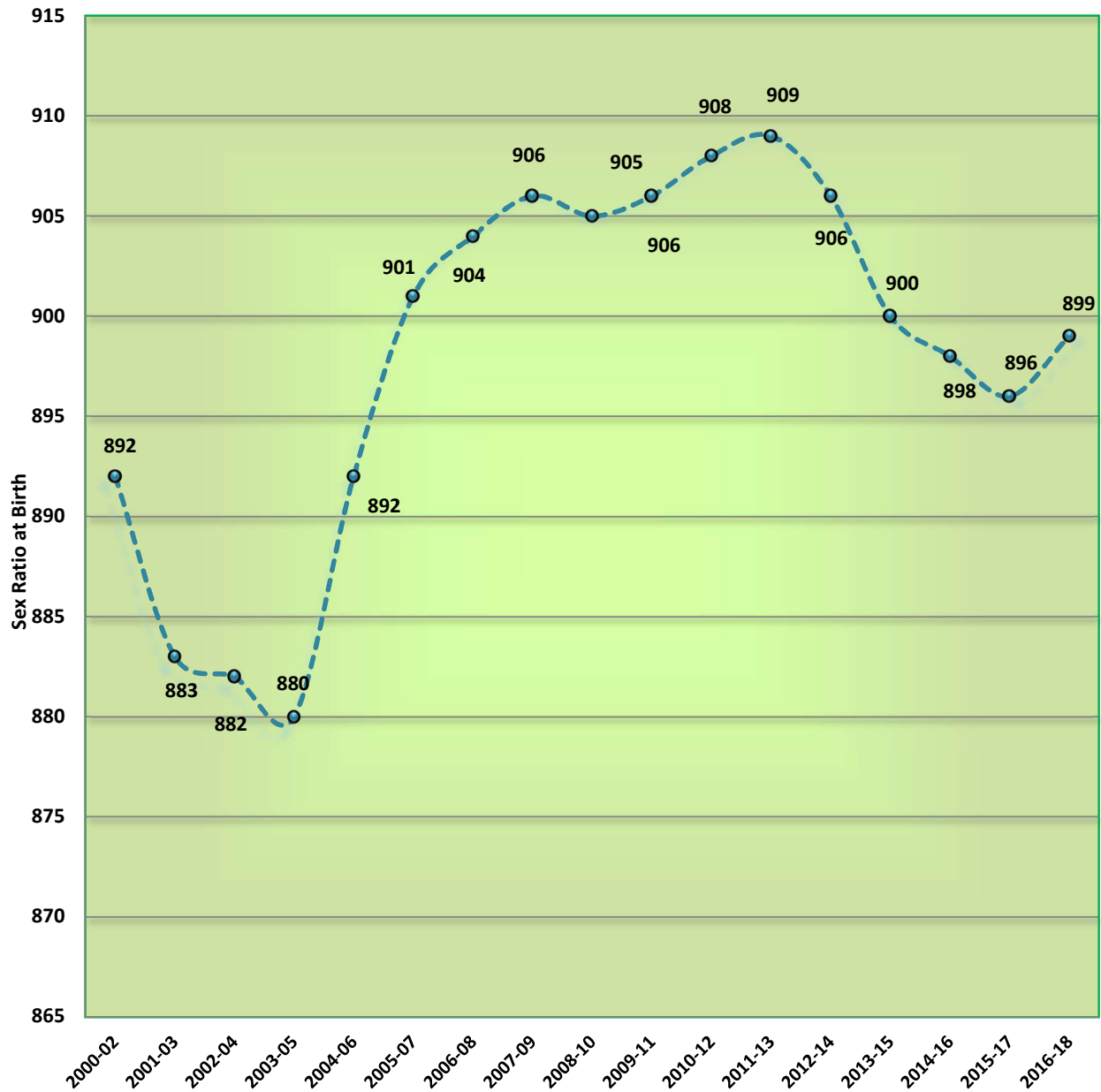
Table: 8 shows the data for the Sex Ratio at Birth, which is presented separately in Table: 8 for just females born out of 1000 males. At the national level, it is predicted that 909 boys died between 2012 and 2014, with 899 dying between 2016 and 2018. In Maharashtra, it is predicted that 896 out of 1000 males died in 2012-14, compared to 880 out of 1000 males in 2016-18. The number of females is consistently lower than the number of males.²⁸⁷

²⁸⁷Sample Registration System, Office of Registrar General, India

TRENDS IN SEX RATIO AT BIRTH IN INDIA

Sample Registration System
Office of Registrar General, India

Trends in Sex Ratio at Birth in India (SRS)



3.4.5 – Conclusion

Unfortunately, all these works done by the girl child is either unremunerated or so meagerly remunerated as to warrant mention. Even if the girl child is engaged in paid employment, she is, oftener than not, discriminated against, in wages also. Workplace hazards for a girl child are numerous and she is simply bullied to silence if she raises any voice of dissent or protest. This wage discrimination is to be found in bidi-binding, seri- culture, tea-industry and such like establishments. As they (girl children) cannot organize trade unions, they suffer most. Parents, too, find it convenient to expend the girl child, instead of the boy child, for such jobs. The *Bandlwa Mukti Morcha case*²⁸⁸ is doing some women's job in respect of the child labour. But that touches only the fringe of the problem. We have reasons to believe that thousands and lakhs of young women and girl children are paying for their bonded parents by working in the fields of the landholders. This situation is very much strong in the Bihar and U. P. There has been, recently, a great demand for young girls for purposes of prostitution. Tourists from abroad and rich males have a special fancy for child prostitutes. The tendency is on the increase as tourism develops – a feature of modernization of a country. But a society's modernization amounts to deceleration of the girl child.

All this shows how a girl child suffers from multiple-bind of the family and society. To get out of the all-pervading rut, a total structural change, with human face of course, is necessary.

Dowry system is good if it is contemplated as a gift²⁸⁹ given to the bride by her parents. But if the parents of the groom demand money to marry the bride *i.e.*, Dowry then it should be considered as completely illegal and bad for the society.

²⁸⁸ (1984)3SCC161.

²⁸⁹ Dowry system is good if it is contemplated as a gift, India, available at: <https://www.thehindu.com/features/metroplus/woman-uninterrupted-its-not-dowry-its-just-a-gift/article8198165.ece> (Last visited on July 31, 2021).

Chapter – IV

Gender
Discrimination
and Inequality
Issues in India

Chapter – IV

Gender Discrimination and Inequality Issues in India

4.1 – Women’s Status in India

The intentional killing of Female foetus in mother’s womb has received a different form. There is a huge difference between practical and theory. In postcolonial feminist theory, In the 70s and 80s, Indian women’s movements were the first gatherings to bring new genetic testing for foeticide and determining the only breeding/nurturing of male fetuses to the attention of the system in modern India.

Thereafter, the analysis started by the Governmental officials, then Female foeticide and Female infanticide and the elocation of overpopulation, and examines the ways in which Female foeticide and Female infanticide is engraved, rationalized and elocation of population control after the colonial system in India.

The notion of modern society, development of country, control the population, and new advanced mechanisms worked at the same time to declare the mother’s body and objectify, procuring machine of male child only, and to name Female foeticide and infanticide as informed choice and family planning. This elimination girl child is historical; it’s not a new thing, and colonialist Female foeticide and Female infanticide in an unmediated way to 19th century practices of Female infanticide this country. Such interpretations are a continuist history of Female foeticide and infanticide in terms of the misogynist and male chauvinist bias of Indian traditions. “Lata Mani have conclusively shown that explanations concerning the oppression of Indian women that center on Indian traditions are in fact a product of colonialist discourses.”²⁹⁰

As a result, feminist studies that focus solely on Indian traditions risk ignoring histories of resistance, diverse places, and historical discontinuity. Female foeticide and infanticide are forms of postcolonial ferocity assisted by patriarchal rules, modern technologies, the nation-state, and global agencies’ and international organizations’ discourses.

Female infanticide statistics are quite contradictory, and it is emblematic of this crime of Female oppression. “In 1998 the Indian Association for Women’s Studies reports that 10,000 Female fetuses are killed every year in India. The editorial of a national

²⁹⁰(EPW 21.7, 26 April 1986).

daily puts the annual figure at 50,000 Female fetuses.²⁹¹ Another indicator of this genocide is the decline in sex ratio in India. In colonial India the gender imbalance indicated by the 1901 census is a sex ratio of 972 Females per 1,000 males. After India's independence this gender imbalance is exacerbated rather than redressed: the 1981 census shows that the Female to male ratio drops to 935 Females per 1,000 males. The number of missing women increased to 22 million in independent India from 3 million under colonial rule. This trend continues unabated, currently the Female to male ratio is 933 Females per 1,000 males.”

Women outweigh men around the world, men outnumbered women in India. The casual sex ratio favours Female births; nevertheless, India's sex ratio has been rapidly declining in favour of male baby births. This phenomenon of missing girls demonstrates that not only the Female foetus is in risk, but many Indian women's lives are also in jeopardy.²⁹²

4.2 – Women and Constitution of India

“You can tell the condition of a nation by looking at the status of its women.”

- Jawaharlal Nehru

Women's empowerment and gender inequality has been acknowledged as the national a problem in assessing women's status, Women's Empowerment is a component aimed at ending their subordination and establishing equality. The concept of liberation is one that should be embraced. It will necessitate optimistic government measures to help people who'll be encouraged. Constitution of India allows the government to intervene on behalf of those who are marginalized. The law can generate such empowerment through conferring rights directly on the person who will be empowered, as well as imposing liability on other people who will be empowered.²⁹³

²⁹¹ Times of India, Aug. 6, 1994.

²⁹² R. D. Bhatnagar, R. Dube, *et.al.*, *Female Infanticide in India – A Feminist Cultural History* 1-3 (State University of New York Press, 1st Edn. 2005).

²⁹³ Dr. C. L. Patel, “Empowerment of Women and Law” 390 *Central India Law Quarterly* IX (2010).

“Half of the Indian population are women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities, inequality and discrimination”.

-Justice K. Ramaswamy²⁹⁴

Women constitutes half of the nation’s population, but being discriminated, tortured and exploited socially, economically, physically and sexually is their ill-fate.²⁹⁵ Social hustles and discriminatory practices against women continued. The leadership women in independent movement were, however, gave an equal status, dignity and honour to women, in the society. The Indian Constitution, which established the country, treated all sexes equally and protected women from discriminating due to their vulnerable status in society.²⁹⁶

“Constitution is the fundamental legal document in a democratic society. The Indian Constitution, which came into force on 26th January, 1950.” It establishes the structure and primary functions of the State’s organs of government, as well as the principles that govern their operation. The Constitution strives to establish new legal norms, social philosophy, and economic principles in order to achieve the desired community goals by striking a balance, harmony, and fundamental adjustment between individual rights and communal interests.

It establishes the foundation for the country’s government, delegating tasks to various organizations such as the administration, legislature, and judiciary. The Preamble, which describes the values that the state should strive to provide for its citizens, has taken care of the social and economic components. Social, economic, and political justice; liberty of thought, expression, belief, faith, and worship; equality of status and opportunity; and fraternity, which recognizes both the individual’s dignity and the nation’s unity and integrity, are among these ideals. These ideas have been put into action by safeguarding specific rights that the constitution’s authors regarded sacred and basic. Some of these have been presented in the form of specific goals that the government should achieve over time. Certain groups of people have been given

²⁹⁴ *Madhu Kishwar v. State of Bihar* (1996)5 SCC 145.

²⁹⁵ “Social Empowerment of Women through Education” 3(1) *Immigration Human Rights Law Review* 48 (2012).

²⁹⁶ Dr. C.L. Patel, “Empowerment of Women and Law” 390 *Central India Law Quarterly* IX (2010).

particular protection because they are unable to fully benefit from the socio-economic change being envisaged on their own.

“The ideals enshrined in the Preamble of the Constitution are to be secured to all the citizens of the country. As every person, who has a domicile in India, and who was born in India, or either of his parents were born in India or who has been resident of India for not less than five years before the commencement of the Constitution, is a citizen of India, women residing in India and fulfilling these conditions are automatically citizens of this country.”

Women have the same rights, obligations, duties, and protection as any other citizen of the country under the Constitution. Only until all citizens, including both sexes, have the essential conditions for the flourishing of their individual personalities, will the Constitution’s aspirations be realized.

The notion of Socio-Economic justice in the Preamble has been translated by the creators of the Constitution into specific provisions in “Part III (Fundamental Right) and Part IV (Directive Principles of State Policy) of the Constitution.”

As pointed out by Glanville Austin²⁹⁷ “The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet despite the permeation of entire Constitution by the aim of national renaissance, the core of commitment to the resolution lies Parts III and IV, in the Fundamental Rights and in the Directive Principles of State policy. These are the conscience of the constitution.”

The Preamble, as stated by, is the key to the Constitution’s creators’ minds being opened. Part IV’s Directive Principles of State Policy are its foundational ideal. It was here that the drafters of the Constitution put out their best efforts to lay out the humane socialist ideas that codified the people’s goals and aspirations and declared them to be fundamental in the country’s government. They are definite orders from the supreme sovereignty to the state authorities, who are the ones who drafted the Constitution, “to secure to all citizens justice - social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity and to promote among them all fraternity of the assuming dignity of the individual

²⁹⁷ Glanville Austin, *The Indian Constitution: Cornerstone of a Nation*, 50 (Oxford, 1966).

and unity and integrity of the nation.”²⁹⁸

4.2.1 – Social Justice and Constitution of India

The Constitution of India consists of fundamental principle ‘Social Justice’ which is essential for making the citizen liberal and independent. Justice is genus form and Justice does not exist without social justice. Social justice is a dynamic process that seeks to alleviate the suffering of the poor, weak, *dalits*, tribals, and other disadvantaged members of society.

Because social justice and equality are mutually beneficial, both should be preserved. As a consequence of rule of law is a proven social justice tool for achieving equality of outcomes.²⁹⁹

The purpose of social justice is to help reduce socioeconomic disparities and imbalances, and it is based on the underlying principle of socio-economic justice.

Social justice tends to harmonize the rival claim and interest different class in society. It is only by giving social justice to masses that we can really fulfill the dream of Welfare state.³⁰⁰

“Part III Fundamental Rights and Part IV Directive Principles of State Policy of the Constitution” provide strength to achieve the objectives and goals of social and economic justice to Women and children.

Because all sections of the Constitution apply equally to all citizens, Parts III and IV, which serve as the foundation for protective laws for women, deserve special attention. Citizens have basic rights, those are recognized and conferred under Constitution’s Part III. These rights have a unique position in the Constitution, under Article 13.

Article 14³⁰¹ of the Parent Act guarantees equality before law for all citizens.

In the Muslim law, its mentioned that status of women is half of men but socially and constitutionally it has not been accepted. Under the mentioned Article, disproportionate remuneration to males and Females in Industrial or any employment is still unapproved.

²⁹⁸ D. D. Basu, *Directive Principle of State policy, Commentary on the Constitution of India* 3(Lexis Nexis, Butterwoths Wadhwa Nagpur, 8th Edn. 2008).

²⁹⁹ *Air India Statutory Corporation v. United Labour Union*, AIR 1997 SC. 645.

³⁰⁰ *Crown Aluminium Works v. Their Workmen*, AIR 1958 SC 30.

³⁰¹ *Supra* note 39 at 15.

“Article 14 of the Constitution puts an obligation on the State that it shall not deny to any person (which includes women and children) ‘equality before the law’, or ‘the equal protection of the law’. Discrimination on the ground of ‘sex’ only is prohibited.”

Article 15³⁰² is clearer on discriminatory treatment. It prevents inequalities on the basis of religion, race, caste, sex, or birth place.

Article 20(2)³⁰³ The Government is prohibited from creating any especial arrangements for the improvement of socially and educationally backward persons, as well as Scheduled Castes and Tribes.

Special arrangements for women and children can be made by the Government. “The Fundamental Rights and Directive Principles” since the war for statehood, principles have been deeply rooted. They are included in the Constitution as a sign of hope and expectation that one day India will bloom with the flower of individual liberty.

Although these fundamentals are not justifiable by the court alone, but these fundamental should be absolute under the governance of the country. “Fundamental Rights should be incorporated in the light of Directive Principles of State Policy.”³⁰⁴

The “Directive Principles of State Policy” have been explained as forerunners of the U. N. “Convention on Right to Development as an Inalienable Human.”³⁰⁵

Equal opportunity for all citizens is guaranteed in relation to employment or nomination to any position under the state, and no discriminate on the grounds of sex is authorized.

Article 16³⁰⁶ equal opportunity in terms of public employment, that: All citizens shall have equal opportunity in relation to employment or appointment to any State office. No citizen will be denied or discriminated against in any State position or office solely because of his or her religion, race, caste, sex, descent, birth-place, domicile, or any combination of these characteristics.

³⁰² *Supra* note 86 at 45.

³⁰³ The Constitution of India, art. 20 “Protection in respect of conviction for offences.—

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.”

³⁰⁴ *Akhil Bharatiya Soshit Kamachari Sangh v. Union of India*, AIR 1981 SC 298 : (1981)1 SCC 246.

³⁰⁵ *AIR India Statutory Corporation v. United Labour Union*, AIR 1997, SC 645.

³⁰⁶ *Supra* note 85 at 45.

The wider exercise of Part III (Fundamental Rights) can be made possible only through the implementation of Directive Principles. In fact, it is in the Directive Principles that the germs of the socialist state are found. Directive Principles are thus complementary and supplementary of fundamental rights. They are so intertwined that it is impossible to separate them and talk of distributive justice in isolation.³⁰⁷ In a sense distributive justice is ingrained in the theme of fundamental rights and directive principles of state policy are conjointly and harmoniously construed.³⁰⁸

Article 19(1) of the Indian Constitution, “all citizens shall have the right, to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; to assemble peaceably and without arms; to reside and settle in any part of the territory of India; and to practice any profession, or to carry on any occupation, trade or business.”

Article 20³⁰⁹ no one shall be convicted of a crime until it is committed in violation of current law, no one shall be charged and prosecuted again and again for the same offence, and no alleged perpetrator of an infringement shall be forced to testify against him.

The state owes it to the people to promote their well-being, especially women and children, by establishing and safeguarding a social order in which justice, social economics, and politics are reflected in all aspects of national life. Inequalities in status, amenities, and opportunity should be eliminated by the state.

Protection of life and personal liberty of all citizens is secured under Article 21.³¹⁰

According to Article 21A³¹¹ of the Indian Constitution, the state must provide free and compulsory education to all children between the ages of six to fourteen in such a manner as the state may determine by legislation.

As per Article 22³¹² of the Constitution, No one may be detained without being told of

³⁰⁷ Dr. S. K. Sharma, *Directive Principles and Fundamental Rights -Relationship and Policy Perspectives, Primary of Directive over the Fundamental Rights: An Appraisal of Values*. 88-89 (Deep and Deep Publications, New Delhi).

³⁰⁸ *Grit, Kalyan Kendra Workers' Union v. Union of India*, (1991)1 SCC 619: AIR 1991 SC 1173. 19

³⁰⁹ *Supra* note 303 at 132.

³¹⁰ *Supra* note 39 at 16.

³¹¹ The Constitution of India, art. 21A “Right to education.—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

³¹² The Constitution of India, art. 22 “Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the

the basis for their detention, and they must be brought before a magistrate within 24 hours of their arrest.

Article 23³¹³ of the Constitution prevents “the traffic in human beings and forced labour.”

Article 24³¹⁴ No kid under the age of fourteen is permitted to work in a factory or mine, or in any other hazardous occupation.

“Article 23(2)³¹⁵ of the Universal Declaration of Human Rights 1948 says – Everyone without discrimination has the right to equal pay for equal work. The relevant provisions of the International Covenant on Economic, Social and Cultural Rights, 1966” are: -

grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

[(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)];

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under [sub-clause (a) of clause (4)].”

³¹³ *Supra* note 81 at 42.

³¹⁴ The Constitution of India, art. 24 “Prohibition of employment of children in factories, etc.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

³¹⁵ *Supra* note 81 at 42.

Article 3³¹⁶- The state parties to the current covenant agree to ensure that men and women have equal access to the “economic, social, and cultural rights” outlined in the document.

Article 6³¹⁷- The states parties to the present covenant respect the right to work, which includes the freedom of everyone to labour that he or she chooses or accepts freely, and will take appropriate efforts to protect this right.

Article 7³¹⁸- The states parties to the present covenant recognize that everyone has the right to work under just and favourable conditions that provide, in particular, health and safety.

Equality between Sexes as to Livelihood:

“The Supreme Court in *Madhu Kishwar’s*”³¹⁹ the case focused on Article 39(a), which requires to ensure that both sexes have equal access to basic means of subsistence.

“To protect the economic interests of tribal women who rely on agriculture for a living, it was decided that after the death of the last male landowner in an agricultural tribal family, the dependent Female members have a constitutional right to keep the

³¹⁶ International Covenant on Economic, Social and Cultural Rights of 1966, art. 3 “*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.*”

³¹⁷ International Covenant on Economic, Social and Cultural Rights of 1966, art. 6 “*1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

³¹⁸ International Covenant on Economic, Social and Cultural Rights of 1966, art. 7 “*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:*

(a) Remuneration which provides all workers, as a minimum, with:

Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

³¹⁹ *Madhu Kishwar v. State of Bihar*, AIR 1996 SC 1864 : (1996)5 SCC 125.

land as long as they are economically dependent on it. The Female members will be left penniless if this does not happen.”

As per Article 24³²⁰ of the Constitution, it is illegal to employ children “under the age of fourteen in a factory or mine, or in any other hazardous occupation.”

Under Article 25(1)³²¹ of the Constitution, “everyone has the right to religious freedom, including the freedom to proclaim, practise, and propagate their faith.”

As per Article 27³²² no person shall be compelled to pay any taxes whose earnings are specifically appropriated in payment of expenses for the promotion or preservation of any particular religion or religious denomination, according to the Indian Constitution.

No one who attends a state-recognized educational institution or receives state assistance is obligated to participate in religious instruction or attend any religious worship that may be held there, according to Under Article 28(3)³²³ of the Indian Constitution.

Though discrimination against women is expressly forbidden in Articles 15 and 16 of the Indian Constitution, this restriction is jumbled with prohibitions against discrimination on the basis of religion, ethnicity, caste, and place of birth. In all other fundamental rights, the terms ‘citizen’ and ‘person’ are interchangeable. As a result, both men-women have the right to have all of their basic rights safeguarded. In terms of the constitutionally guaranteed fundamental rights, there is no discrimination against women.

³²⁰ International Covenant on Economic, Social and Cultural Rights of 1966, art. 24 “*Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.*”

³²¹ International Covenant on Economic, Social and Cultural Rights of 1966, art. 25 “*Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.*”

³²² International Covenant on Economic, Social and Cultural Rights of 1966, art. 27 “*1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.*

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.”

³²³ International Covenant on Economic, Social and Cultural Rights of 1966, art. 28 “*The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.*”

Article 39³²⁴ flows as if there was a golden thread running through the entire fabric women's and children's socio-economic justice. It stipulates that the state's policies must be directed toward ensuring adequate living conditions for men and women, as well as equal reward for equal effort.

4.2.2 – “Equal Pay for Equal Work:”

Both sexes performing similar job should be paid equally. The court should adopt a broad approach in deciding whether the work done is equivalent, and any discrimination based on sex should be struck down.

“The Equal Remuneration Act of 1976, was passed to ensure equal remuneration to male and female employees for the same or similar job.”

“*Randhir Singh v. Union of India* the principles of equal pay for equal work are not expressly declared to be a fundamental right by our Constitution, but they are unquestionably a constitutional goal that must colour the interpretation of Articles 14 and 16, so as to be elevated to the rank of fundamental rights, the denial of which must result in a ‘irrational classification,’”³²⁵ the Court said. It should be noted that the Equal Remuneration Act is rarely implemented in India's unorganized sector, which employs over 300 million people. Over 93% of the work force is employed in the unorganized sector, which is dominated by women. Women working in the unorganized sector have been particularly vulnerable.

Article 39A which provides for Equal Justice and free Legal Aid was inserted in the Constitution by 42nd Amendment Act, 1976.³²⁶

Legal Aid is essential for effective implementation of various rights in Part III to help the needy and the indigent.

In 1987, Parliament has enacted the Legal Service Authority Act 1987 to implement the Directive in Act 39A.

4.2.3 – Directives Principles – Women

“Various directions to the State are written in Part IV of the Constitution's Directive

³²⁴ *Supra* note 82 at 42.

³²⁵ *Randhir Singh v. Union of India*, AIR 1982 SC 879: (1982) ISCC 618 (Para 8).

³²⁶ The Constitution of India, art. 39A “*Equal justice and free legal aid— that state shall secure that the operation for the legal system promotes justice, on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure their opportunities for securing justice and not denied to any citizen by reason of economic or other disabilities.*”

Principles of State Policy, which include many directives to the State to better the status of women and to safeguard them.”

“Article 42³²⁷ provides a crucial guarantee for women’s rights is included in the Constitution. The state needs to make measures for reasonable and humane working conditions as well as maternity leave. The Maternity Benefit Act of 1961 was enacted by the state in an attempt to carry out this mandate.

Article 44³²⁸ directs the state to provide residents with a unified civil code throughout India’s territory. This particular goal is geared toward achieving gender equality. Despite the fact that the government has yet to make “any efforts to develop a Uniform Civil Code in India, the judiciary has acknowledged the importance of consistency in the execution of civil laws such as marriage, succession, adoption, and maintenance.”

“In the case of *Sarla Mudgal v. Union of India*³²⁹ and other cases.

Aside from these specific provisions, all other sections of the Constitution apply to both men and women equally. This clearly indicates the purpose of the Constitution's framers to better women’s social, economic, educational, and political position so that they can be treated on equal footing with men.”

4.2.4 - “Women and the Uniform Civil Code”

Article 44 of the Constitution is intended to establish a uniform personal law for the sake of national consolidation. It is based on the premise that in a civilized society, there is no need to maintain a relationship between religion and personal law. Because the Constitution guarantees freedom of conscience and religion (Article 25), it strives to segregate religion from personal law and social relations, as well as laws controlling inheritance, succession, and marriage, as Muslim countries like Turkey and Egypt have done.

The purpose of Article 44 is to bring all Indian communities together on a common platform in order to achieve India's unification. On issues that are currently handled by a variety of personal laws but are not central to any religion, such as divorce

³²⁷ The Constitution of India, art. 42 “*Provision for just and humane conditions of work and maternity relief. The State shall make provisions for securing just and humane conditions of work and for maternity relief.*”

³²⁸ The Constitution of India, art. 44 “*Uniform civil code for the citizens.—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.*”

³²⁹ (1995, 3 SCC 635: AIR 1995 SC 1531).

maintenance for divorced wives.

Women's rights in the family are jeopardized in the lack of uniformity in Law. Within the family, injustice and prejudice against women are perpetuated throughout the guise of culture and religion. Polygamy and unilateral divorce by pronouncing talaq three times in front of two witnesses, for example, are unjust, unfair, insulting, humiliating, and discriminatory towards Muslim women on the basis of sex.

According to Prof. D. D. Basu "anybody who now raises an objection to the implementation of Article 44 becomes guilty of violation of Preamble, Article 44 as well as Article 51A of the Constitution."

"According to Dr. Tahir Mahmood in pursuance of the goal of secularism, the state must stop administering religion-based personal laws."

"In *Shah Bano's* case Supreme Court observed – It is also a matter of regret that Article 44 of our Constitution has remained a dead letter." It provides that "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India."³³⁰

In the case at hand, a Muslim divorced wife filed a support petition under the Criminal Procedure Code's Section 125.³³⁰ Although she was paid during the *iddat*

³³⁰ The Code of Criminal Procedure, 1973, s. 125 "Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.—For the purposes of this Chapter,—

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

time, her husband refused to pay maintenance, therefore according to Muslim personal law, he is not bound to support her till she does not remarry. According to the Apex Court, even then the *iddat* period, the husband is required to support a separated wife under Section 125, and Muslim personal law cannot interfere.

There was a lot of debate and controversy about Muslim women's claim to maintenance under Section 125. Following intense pressure from Muslim fundamentalist organizations, the government enacted the Muslim Women (Rights to Protection on Divorce) Act, 1986, to avoid the “*Shah Bano*’s ruling” The Act limited Muslim women’s rights to maintenance, and made filing an application under this Section, is subject to both parties’ approval.³³¹

The present Act of 1986 was challenged in *Danial Latifi*’s case³³² “Supreme Court held that Muslim Women should not be discriminated as the Act deprives the Muslim Women to claim maintenance under section 125 of Cr.P.C. Therefore, it is the liability of the husband to pay maintenance to the wife even after the *iddat* period.”

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month’s [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife’s refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent.”

³³¹Supra note 331 at 139.

³³²*Danial Latifi and another v. Union of India*, AIR 2001 SC 3262.

“*Sarala Mudgal*³³³ and *Lily Thomas*”³³⁴ cases ‘Will a prior marriage be dissolved if a person converts to a different religion?’ the Supreme Court decided. It was argued that converting another religion doesn’t really immediately end a previous wedding, and therefore re-marriage is void and penal under section 494 of the IPC unless the previous marriage is dissolved. The Supreme Court ruled that religion is not a commodity that may be used at one’s leisure mockingly. The Court highlighted the need of having a uniform civil law so that a husband cannot convert to Islam in order to have a second wife without divorcing his first.

“*John Vallamathom v. Union of India*”³³⁵ the Supreme Court upheld section 118 of the Indian Succession Act as unconstitutional and in violation of Article 14 (which put arbitrary “restrictions on their donation of property for religious or charitable purposes by will).” For failing to execute Article 44 of the Constitution, Court dismissed. The judiciary, as well as legislators, has made significant attempts to achieve social and gender justice. There have been various new enactments as well as revisions to laws in recent years to establish de facto equality for women, such as the Hindu Marriage Act, 1955, Hindu Adoptions and Maintenance Act, 1956, Hindu Succession Act, 1956, and Indian Divorce Act, 1869. However, there is still much to be done and a long way to go.

The object of Article 46³³⁶ is to remove social and economic inequalities and social disabilities that cripple the weaker sections, so as to place them on a footing on equality (Article 14)³³⁷ with the rest of the Nation and to improve quality of their life – social, economic and cultural pursuits, to render meaningful their “‘right to life’ guaranteed by Article 21.” Few Acts may be referred here in this context; “Protection of Civil Rights Act, 1955, Abolition of Bonded Labour System Act, 1976, Protection of Women and Domestic Violence Act, 2005.”

“India has been making a marked shift in its approach to women’s issues from welfare

³³³ *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

³³⁴ *Lily Thomas v. Union of India*, AIR 2000 SC 1650 (2000)6 SCC 224.

³³⁵ *John Vallamathom v. Union of India*, AIR 2003 SC 2902.

³³⁶ The Constitution of India, art. 46 “Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

³³⁷ *Supra* note 39 at 16.

to development while keeping the empowerment of women as the central issue in determining their status in the society. The National Commission for Women was set up by an Act of Parliament in 1990 to safe-guard the rights and legal entitlements of women. The 73rd and 74th Amendments to the Constitution in 1993 have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision-making at the local levels under Articles. 243 D(3),³³⁸ 243 D(4),³³⁹ 243 T(3)³⁴⁰ and 243T(A)³⁴¹ of Constitution of India.”

For empowerment of women a number constitutional rights have been bestowed upon her. But it is difficult to enforce and realize these cluster of rights without a corresponding duty on another person in a democratic society.

The 42nd Amendment Act of 1976 has inserted a complete chapter enumerating Fundamental Duties under Article 51A,³⁴² such as to abide by the Constitution, to

³³⁸ The Constitution of India, art. 243D(3) “Not less than one-third (including the number of seats reserved for women belonging to the Schedule Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a panchayat.”

³³⁹ The Constitution of India, art. 243D(4) “Not less than one-third of the total number of offices of Chairpersons in the panchayats of each level to be reserved for woman.”

³⁴⁰ The Constitution of India, art. 243 T(3) “Not less than one-third (including the number of seats reserved for women belonging to Scheduled Caste and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allowed by rotation to different constituencies in a Municipality.”

³⁴¹ The Constitution of India, art. 243T(4) “The offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a state may by law provide.”

³⁴² The Constitution of India, art. 51A “Fundamental duties.—It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

[(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.].”

defend the country, to promote, harmony and fraternity, to renounce prejudicial practices to the dignity of women. For example - abandoning the bride at marriage hall is full and complete violation of Article 51, affecting the dignity of women³⁴³

Education is the most powerful weapon for the women's empowerment. Women's Status in society indicates the national overall development. Education improves the earning potential and productivity of women and helps them in organizing for asserting their rights.³⁴⁴

Empowerment does not mean only to create rights, duties, legislations and declarations *etc.* but Empowerment means to get opportunity, to feel strengthened, and to realize equality, dignity and self-respect.

"Prof. Amartya Sen points out that when he took up issues of women's welfare, he was accused in India of voicing foreign concerns: I was told Indian women don't think like that about equality. But would like to argue that if they don't think like that, they should be given a real opportunity to think like that."

Empowerment of women is not only the responsibility of Government but it can be ensured from home, family, community, work place, public places and offices. There have been several legislations, strategy development, plans, and programmes focused towards the development of women in various sectors.

"India has ratified various International Conventions and Human Rights instruments to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993."

"The National Plan of Action for the Girl Child (1991 – 2000) is to ensure survival, protection and development of the girl child."

The 12th plan³⁴⁵ document of the "Planning Commission has recommended setting up of a high level inter-ministerial committee on 'Care and Protection of Girl Child for monitoring, multi-sectoral interventions for addressing the adverse child sex ratio.'"³⁴⁶

In the history of empowerment of Indian women, the National Mission for

³⁴³ *Noor Mohammad v. Mohammed Jaiddin*, AIR 1992 MP 244.

³⁴⁴ Dr. Jubair Ahmad Khan and Hina Vashney, "Social Empowerment of Women through Education" *Indian Human Rights Law Review*, Vol 3, No. 1, June 2012, Page 49.

³⁴⁵ Gender: The Hindu Tuesday, December 18, 2012, page 4.

³⁴⁶ 1000:914 in Census of India, 2011.

Empowerment of Women is a landmark incident, “It was launched by the Government of India on International Women’s Day in 2010” with the goal of promoting all round development of women. There are various schemes such as “Poverty Alleviation and Economic Empowerment of Women, Social Empowerment and Education, Health and Nutrition, Empowerment of Vulnerable and Marginalized Groups.”

Gender equality and women’s empowerment, as well as the elimination of violence against women, are the cornerstones of general societal progress. “Equal participation of women in civil, cultural, economic, political, and social life at the national, regional, and worldwide levels, as well as the abolition of all forms of sex disparity, should be the international community’s top priorities.” Empowerment of women is a requirement for achieving the Constitutional aim of equality.

4.3.1 – Women as Victim of Crime

Indeed, ‘victimology’ is a branch of criminology that developed after the Second World War. “The First International Conference on victimology was held in 1973 under the auspices of the United Nations.” Large number of Seminars and deliberations were done on victimology on the regional, national and international level thereafter. The focus was on the plight and problems of victims, their legal standing in criminal proceedings, compensate them and so on.

The law appears to be lacking in properly recognizing the victim's right to participate in the trial of cases initiated based on a police file. For example, even in heinous offence the “State reserves the discretion not to prefer an appeal against an order of acquittal of the accused by the Trial Court in a criminal case instituted by the Police. The State power may be misused for political and other extraneous considerations. The victim of crime becomes victim of criminal justice system.” In most part, he/she is a helpless bystander a silent spectator.

When victims relate to offences involving property, the criminal justice system hardly proves beneficial to them. When it comes to serious and brutal crimes like grievous hurt, rape or murder, what is left in the victim is a nightmarish experience often too deep tear. What might be disparately needed were adequate medical treatment, including psychiatric treatment in given cases, legal aid, restitution and suitable compensation. But they are hard to come by if at all. Insult is added to injury.

The pitiable plight of the victim is glaringly manifest in case of sexual assault upon women. For example, grievances of the victims of rape are many and often genuine. Right from the time a victim of rape approaches the police station and faced with aggressive and often unsavoury interrogation leading to unpleasant medical examination and eventually landing up in a seemingly unfavourable and hostile court room proceedings, her story unfortunately is one harassment, of unnecessary harassments and delay.

Physically bruised and emotionally battered, it is all a trial of traumatic experience for the victim who might painfully realize at that, it's the criminal justice system's fault. has failed her, only making her miseries multiplied. In such a situation, as Supreme Court has repeatedly said, "the Court should not sit as silent Spectator and play a passive role while the victim of crime is cross-examined by the defence. It must effectively control the recording of evidence in the Court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the Court, must also ensure that all cross-examination is not made a means or harassment or causing humiliation to the victim of rape. The Supreme Court has further said that sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a Female. It is a serious blow to her supreme honour and offends her self-esteem and dignity." Similarly, the in a case where there is a lot of evidence, it's important to evaluate it a rape victim, the approach of the Court has to be realistic and sensitive *i.e.*, sensitive to the social situation of the victim girl and her peculiar perspective. She should be viewed not with sympathy but with empathy.

4.3.2 – Women, Apex Court in Victim Justice

"*State of Punjab v. Gurmeet Singh*,³⁴⁷ the Supreme Court in respectful agreement with the exposition of law in this regard in *State of Maharashtra v. Chandraprakash Kewalchand Jain*,"³⁴⁸ is it necessary to state that a prosecutrix of a sex crime cannot be compared to an accomplice? In truth, she is a victim of the crime. Her testimony cannot be accepted unless it is substantiated in material particulars, according to the

³⁴⁷ AIR 1996 SC 1393: 1996 Cr LJ 1728.

³⁴⁸ AIR 1990 SC 658.

Evidence Act. Under Section 118,³⁴⁹ she is definitely a qualified witness, and her testimony should be accorded the same weight as that of a victim of physical violence. Her evidence must be evaluated with the same level of care and concern as if she were an injured complainant or witness, but no more. What is essential is that the Court be aware that it is hearing testimony from someone who has a stake in the result of the allegation levelled against her.

If the Court keeps this in mind and is convinced that it may act on the prosecutrix's evidence, there is no rule of law or practise in the Evidence Act that forces it to look for corroboration, analogous to illustration (b) of section 114.³⁵⁰

If the Court is hesitant to place implicit trust in the prosecutrix's testimony for any reason, it may look for evidence that can lend assurance to her testimony without requiring the corroboration that is required in the instance of an accomplice. The type of evidence required to support the prosecutrix's testimony is always decided by the facts and circumstances of the case. If a prosecutrix is an adult with full awareness, however, the Court has the right to rely on her testimony unless it is proven to be flawed and untrustworthy. If the totality of the circumstances on the record of the case reveals that the prosecutrix has no significant motivation to falsely implicate the person charged, the Court should have no problem with it, has no strong reason to falsely implicate the person charged, the Court should generally have no issue in admitting this evidence.

"In *Ranjit Hazarika v. State of Assam*,³⁵¹ the Apex Court, citing Gurmeet Singh's case, also stated that when evaluating evidence, courts must keep in mind that in a case of

³⁴⁹ The Evidence Act, 1872, s. 118 "*Who may testify. — All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.*

Explanation. — A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them."

³⁵⁰ The Evidence Act, 1872, s. 114 "*Court may presume existence of certain facts. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars; as to illustration (b) — a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;"

³⁵¹ (1998)8 SCC 635.

rape, no self-respecting woman would come forward in court to make a humiliating statement against her honour, such as that which is involved in the commission of rape on her. When the victim's testimony alone inspires trust and is judged to be reliable, the courts should have no trouble convicting an accused. In such instances, seeking confirmation of her assertion before relying on it is, in most cases, adding insult to injury.”

“In *State of Karnataka v. Krishnappa*,”³⁵² according to the Supreme Court, in the event of crimes against women, it is preferable to have a judge who is socially sensitive legislative armour than long paragraphs of penal statutes with intricate exclusions and provisos.

4.3.1 – Women as Victim of Compensation

In victimology, compensations to the victim ought to be of serious concern. In fact, compensation means something that has to be given in recompense. Indian society is like afflicted by disease, destitution and distress, punishment for the offender may somewhat heal the wounds of a victim’s heart but that might not be good and adequate enough for a criminal justice system where there is hardly anything effecting to make good the material loss a serious crime brings in its wake to the victim. There is limited statutory provision to substantially assist the persons miserably victimized by the crime. “The State virtually fails to give proper protection to its citizens by making good the loss suffered by victims of crime.”

By a civil proceeding “a victim of crime may be entitled to get compensation though it is again quite complicated and time consuming.” U/S 357(1)³⁵³ of CrPC, the

³⁵² AIR 2000 SCC 1470.

³⁵³ The Code of Criminal Procedure, 1973, s. 357 “Order to pay compensation.—

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses of properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such

Criminal Court can pass the sentence and fine and the Court is at liberty to give any portion of this amount of fine to the victim as compensation and the provisions of section 357(3)³⁵⁴ of the CrPC might still look apparently better but the point is, their applications are few and far between.

“The Supreme Court in the case of *Hari Kisan v. Sukhbir Shingh*,”³⁵⁵ U/S 357(3) of the CrPC was considered. The victim was assaulted by the accused, was hurt, and the convicted were granted probation, although no fine was imposed on them. When the case reached the Supreme Court, it was ordered that the convict pay 50,000₹ in compensation to the victim U/S 357(3) of the CrPC. This was a historic decision, and the SC urged all lower Criminal Courts to use its discretion in granting compensation to victims of crimes so that they do not have to turn to civil action.³⁵⁶

property is restored to the possession of the person entitled thereto.”

³⁵⁴ The Code of Criminal Procedure, 1973, s. 357(3) “When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

³⁵⁵ AIR 1988 SCC 2127.

³⁵⁶ The Code of Criminal Procedure, 1973, s. 360 “Order to release on probation of good conduct or after admonition.—(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years, imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision. (5) When an order has been made under this section in

“In *Gudalure M. J. Cherian v. Union of India*,³⁵⁷ the victim of rape was given a substantial sum of 2,50,000₹ as compensation by the Apex Court. In “*Bodhisattwa Gautam v. Subhra Chakrabarty*,³⁵⁸ the Court made basic rights enforceable even against private organizations and people. In a case brought under “Sections 312,³⁵⁹ 420,³⁶⁰ 493,³⁶¹ 496³⁶² & 498A³⁶³ of the Indian Penal Code,” the Court ordered

respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”

³⁵⁷ 1995 SCC (Cr) 925.

³⁵⁸ 1996 SCC (Cr) 133.

³⁵⁹ *Supra* note 23 at 12.

³⁶⁰ Indian Penal Code, 1860 (Act 45 of 1860), s. 420 “Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

³⁶¹ Indian Penal Code, 1860 (Act 45 of 1860), s. 493 “Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

³⁶² Indian Penal Code, 1860 (Act 45 of 1860), s. 496 “Marriage ceremony fraudulently gone through without lawful marriage.—Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

³⁶³ Indian Penal Code, 1860 (Act 45 of 1860), s.498A “Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

Goutam to pay Subhra Chakraborty a monthly sum of 1000₹ as interim compensation while the criminal case was pending in a different Court. Bodhisattwa Gautam infringed on his most prized fundamental human right to live in dignity. Payment of compensation, in fact, goes to the extent of ensuring the victims' human rights are protected.

Another flaw in this branch is that many police officers at the police station do not properly inform the victim about the authority's actions in regard to the commission of crime reported to the cops, which could be due to either legal carelessness or a lack of knowledge. During the prosecution's trial, there are essentially no statutory provisions for alerting the victim of the case's status.

“*Bhagwant v. Commissioner of Police*,³⁶⁴ before discharging the accused on the basis of a final report submitted by the Police under section 173³⁶⁵ the Code of Criminal

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]”

³⁶⁴ 1985 Cr LJ 1521: AIR 1985 SC 1285.

³⁶⁵ The Code of Criminal Procedure, 1973, s. 173 “*Report of police officer on completion of investigation.—(1) Every investigation under this Chapter shall be completed without unnecessary delay.*

[(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C 2 [376D or section 376E of the Indian Penal Code (45 of 1860)].]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

Procedure, the Judicial Magistrate must give the victim ‘informant’ an opportunity to be informed of the results of the Police investigation and to raise any objections, if any. If the police and the prosecution could follow the same approach to keep the victim informed of the case’s development during the investigation and trial, it would be extremely beneficial and just.”

The judiciary has shown its serious concern for Female inmates. *Sheela Barse*, a journalist, filed a plea based on a letter alleging that women prisoners in the police lockup in Bombay were subjected to custodial assault. Bhagwati J. (as he was then) emphasized the significance of providing legal aid to Female inmates.³⁶⁶

Article 42³⁶⁷ of The Constitution of India provides for “just and humane conditions of work and maternity relief.”

“In *Associate Banks Officers’ Association v. State Bank of India*”³⁶⁸ the Supreme Court discussed the origins and growth of the idea of ‘equal compensation for equal effort.’ Women who have faced sex-based discrimination in wage levels for men and women doing the same or similar work in the same organization have long chanted ‘same pay for equal labour’ Equal pay for men and women workers is an Indian statute that strives to abolish sex-based employment prejudice against women. The Equal Pay Act of 1970 and the Equal Pay Amendment Regulations of 1983 were both enacted in England to achieve the same goal.

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

³⁶⁶*Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.

³⁶⁷*Supra* note 328 at 138.

³⁶⁸(1998, 1 SCC 428)

“In *Air India v. Nargesh Meerza*”³⁶⁹ the Court decided that the advantage bestowed on women under the Act is not absolute and unconditional because Section 16³⁷⁰ expressly enables restrictions on salary to be paid by the employer if the appropriate government makes a declaration under it.

“In *Mackinnon Mackenzie and Co. v. Audrey D'Costa*”³⁷¹ the Court ruled that a settlement reached between management and employees could not be used to discriminate in wages between male and Female employees performing the same or similar work.

4.3.2 – Women and Personal Laws

Right to be treated equally is an inherent right of every human being. In Indian society treating a woman below graded than man is very natural, especially in property rights. Despite of any religion, it can be seen that women have an inferior position than a man. However, a so many steps has been taken to improve the position of woman in Indian society, but is it so unfortunate so say that in this 21st century also women are struggling for their paternal property rights.

“*The Hindu Succession Act, 1956*”

The Act applies to all Hindus, Buddhists, Jains, and Sikhs, and it established uniformity for those who are ruled by “*Mitakshara* and *Dayabhaga* schools,” other schools as well. It was a reply to India’s ostensibly enlightened society. It tried to overcome the discrimination between daughter and son in the family, and brought a drastic change in the Property Law. After this enactment legislations were criticized badly.

This Act made the sons coparceners in the *Mitakashara* coparcenary, which was a combined family *Mitakashara* coparcenary. When a male Hindu died after the Act’s enactment, his property would pass through law of survivorship rather than the Act’s provisions.³⁷²

³⁶⁹ [(1981) 4 SCC 335]

³⁷⁰ The Equal Remuneration Act, 1976, (Act No. 25 Of 1976), s. 16 “Power to make declaration.—Where the appropriate Government is, on a consideration of all the circumstances of the case, satisfied that the differences in regard to the remuneration, or a particular species of remuneration, of men and women workers in any establishment or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect, and any act of the employer attributable to such a difference shall not be deemed to be a contravention of any provision of this Act.”

³⁷¹ [(1987) 2 SCC 469].

³⁷² The Hindu Succession Act, 1956 s. 6 “Devolution of interest in coparcenary property.—

When a *Mitakshara* coparcener dies with a Female or male heir of Class I or II, the interest is passed by “testamentary or intestate succession,” rather than the law of survivor, as provided by the Act.

The Act reformed the personal law; despite of limited rights to property the Hindu

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted.

Explanation.—For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004 *Explanation.—For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]”*

women got the absolute and full ownership. Act provides, “that any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as a full owner thereof and not as a limited owner.”³⁷³

Section 14(1) of the Act, different methods were applied to enumerate how the property should be acquired and the nature of the ‘property’ whether the property is both moveable and immovable *Stridhana* is her property immediately before the enactment of this Act.

If a Hindu woman dying intestate, then the order of inheritance, it will pass according to Sections³⁷⁴ of the Act. Section 15(1) provides that “if a Hindu Female dies intestate, then her property will devolve according to the rules set out in Section 16³⁷⁵

³⁷³ The Hindu Succession Act, 1956 s. 14 “*Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.*

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

³⁷⁴ The Hindu Succession Act, 1956 s. 15 “*General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—*

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

³⁷⁵ The Hindu Succession Act, 1956 s. 16 “*Order of succession and manner of distribution among heirs of a female Hindu.—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate’s property among those heirs shall take place according to the following rules, namely:—*

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

as, firstly upon the sons and daughters (including the children of any predeceased son or daughter) and the husband; secondly, upon the heirs of the husband; thirdly upon the mother and father; fourthly upon the heirs of the father; and lastly upon the heirs of the mother.” If a woman Hindu, dies without leaving behind any child or grandchild, the property inheritance depends on from where she has inherited the property from her maternal house or in-laws house.

Section 15(2), if a Hindu Female inherits any property from her parents, and she dies without any child or grandchild, then her property passes to the heirs of her father.

“The Amendment Act, 2005 has added some more heirs to the list of Class I heirs who are daughter’s daughter’s daughter, daughter’s son’s daughter and son’s daughter’s daughter and daughter’s daughter’s son.”

The Apex Court of India handed down a major decision in the case on August 11, 2020, “*Vineeta Sharma v. Rakesh Sharma*”³⁷⁶ stating that the Hindu Succession (Amendment) Act, 2005³⁷⁷ will have a retrospective effect. The 2005 Amendment amended Section 6 of the Act in order to align with the constitutional belief of gender equality. Under the amendment, the daughter of the coparcener shall by birth become a coparcener in her own right in the same manner as the son. *Vineeta Sharma case* settled the matter in the question – whether the 2005 Amendment had deemed the daughter to have the same right as of a son in the coparcenary property irrespective of the father being alive before the Amendment.”

“The judgment was decided by a three – Judge Bench comprising of Arun Mishra, M. R. Shah and S. Abdul Nazeer, JJ. and was authored by Arun Mishra, J. It stated that as the right of being a coparcener is by birth for a son and so is it for a daughter post the 2005 Amendment, and even if the father was not alive on 9-9-2005, it does not obstruct a daughter’s right from claiming her share in the coparcenary property. This judgment resulted in overruling the Supreme Court’s earlier judgments in *Prakash v.*

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate’s death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate’s death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father’s or the mother’s or the husband’s as the case may be, and such person had died intestate in respect thereof immediately after the intestate’s death.”

³⁷⁶(2020) 9 SCC 1.

³⁷⁷Hindu Succession (Amendment) Act, 2005.

*Phulavati*³⁷⁸ and *Mangammal v. T. B. Raju*³⁷⁹ which had held otherwise. Hereby, *Vineeta Sharma* judgment re-affirmed equality in the treatment of sons and daughters by the law for the purposes of succession.”

Vineeta Sharma judgment is a step forward in the direction of society; it will raise a lot of difficulties in future. The judgment quoted that “Once a daughter, always a daughter ... son is a son till he is married.” This statement has been celebrated, although it has deep meaning and paternal love behind it. The Court expressed that a daughter can never be apart from her own coparcenary as she was always under the shelter of her father, grandfather, brother, husband, or son. This has established an exceptional situation sons can start their own coparcenary.

“Women’s Right to succession and Inheritance under Muslim, Christian and Parsi Law” Every property should have an owner, without owner there no property. Only the private property is transferable, and when the owner dies, they will vest to another person immediately. Law approves the transfer of property of the owner to any one person or legal entity whomever he/ she wants to transfer it. Law permits to make a will and it will execute after his death of the person, it is called testamentary succession, but when a person dies without making any will then the law is called intestate succession.

If a person dies without making a will, but he/ she expressed his/ her desire about the share of property, then the property will be shared according to the desire of the deceased person. The relatives or legal heirs will have the right to inherit the property.

“Inheritance rights of women under Muslim Law”

Muslim law, prior to the revelation of the Holy Quran the customs and usages were followed by tribes of Arabia was in use. But after that the *Quranic* principles and the *Hadith* of the Prophet were modified and substituted with those old customs and rules. “The Muslim Personal Law (*Shariat*) Application Act, 1937” this *Shariat* Law had the power to abrogate all traditions pertaining to succession and personal law. This statute becomes an essential part of Islamic Law of Inheritance, especially for the who has been converted to Islam. But it is not applicable for those persons who have consummated their marriage under “The Special Marriage Act, 1954.” Females and

³⁷⁸(2016) 2 SCC 36.

³⁷⁹(2018) 15 SCC 662.

cognates were not allowed to participate from inheritance.

After the manifestation of Quran, the old customs and usages were substituted for blood ties. According to the Prophet (PBUH), “no link was stronger than the blood tie,” and succession rights were given to the intestate's blood relatives, regardless of gender. As a result, blood relations who had previously been barred were dubbed ‘Quranic sharers.’ “Distinct Rule’s of Inheritance under *Shia* and *Sunni* Laws”

The Sunnis continued the old customs and holds the old set up of *Quranic* principles. The *Shias* mixed the old rule and the new rule together. They modified the old custom and usages of Arabian with keeping in mind the new Quranic principles; it was different than Sunnis law.

Women have a particular property right which she inherits, “whether as a daughter, sister or mother, with full powers of alienation.” There is no forcibility to change her own personality, even after her marriage, nothing will be change in her maternal house, only the blood relations of the woman will be her heirs, no preference will be given to her husband.

Muslim are not allowed to bequeath the full property, if they want to do so then it’s essential to take permission from the legal heirs. So, a Muslim is not able to make a will of his whole property, the property will go intestate.

“Sunni Law of Inheritance”

If the principal heirs are present, they cannot be excluded, and the property will be passed down to them. Surviving Spouse, Son, Daughter, and Mother/Father are their names.

The son will always inherit property, but if there is any residuary, he will receive the residuary. The deceased's children and spouse will receive set shares.

If a widower has a surviving kid or son’s child, he will receive $\frac{1}{4}$ of the deceased woman’s property; if there is no child, the widower spouse will receive $\frac{1}{2}$ of the overall property. If the husband dies without a kid or son's child, his widow receives $\frac{1}{4}$ of his estate; if there is a child or son’s child, the mother receives $\frac{1}{8}$. If there are more than one widow present, they will each take $\frac{1}{4}$ or $\frac{1}{8}$, depending on the case, and the appropriately will be divided evenly among them.

If there is no son, a daughter inherits property as a sharer, single daughter owns $\frac{1}{2}$ of the land, and if there are two or more daughters, they own $\frac{2}{3}$ of the property

collectively. If there is no son, the daughter does not inherit as a sharer, but rather as a residuary with him, taking a share equal to $\frac{1}{2}$ of his part.

The father is the major heir, with a fixed share of $\frac{1}{6}$, and he inherits alongside a child or son's child. If there are no heirs, the father will inherit the residuary and the entirety of the estate.

In the absence of a child or son's child, or if there are two or more brothers and sisters, or even a single brother-sister, whether they were related to the deceased by full blood, consanguine, or uterine relationship, the mother's share is enhanced to $\frac{1}{3}$ in the absence of a child or son's child, or if only one brother or sister is present.

"Shia Law of Inheritance"

Shia has split the group into two groups: sharers and residuaries. Under Shia law, there is no category for distant relatives. The parents, surviving spouse daughter, full and consanguine sister, and uterine brothers and sisters are among the nine sharers, three of whom are males and six of whom are Females.

When a Shia Female dies, her husband is entitled to a set $\frac{1}{4}$ portion in the presence of lineal descendants and a $\frac{1}{2}$ stake in the lack of lineal descendants. A kid or lineal descendant, whether son or daughter, would effect the surviving spouse's part of the estate. In the case of a male decedent, the widow will receive $\frac{1}{8}$ as a sharer in the presence of lineal descendants and $\frac{1}{4}$ in the absence of lineal descendants.

Both parents, as well as their spouses and descendants, inherit. In the presence of lineal offspring, the father inherits as a sharer, taking a fixed $\frac{1}{4}$ share, while in the absence of lineal descendants, he inherits as a residuary. In the existence of lineal descendants, the mother's share is $\frac{1}{6}$. A daughter inherits as a residuary from the son and receives a share equal to $\frac{1}{2}$ of his share. A residuary is passed down to the son.

Despite the fact that women are given a portion, their entitlement is just a quarter of that of male heirs in the same category. The daughter's portion, for example, is $\frac{1}{2}$ (1:2) of the son's share. Since, the Women's inheritance and succession laws were enacted at a time when they were reliant and incapable of providing for themselves; this prescription is based on equity rather than equality. As a result, a Muslim male cannot deny his wife or daughter of their lawful property part by forming a Hindu undivided family (HUF) or by leaving a Will that excludes women from their property share. This is seen as a beneficial characteristic of Islamic law.

“Inheritance rights of women under Christians and Jews laws”

Christians and Jews were controlled by the "Indian Succession Act of 1865" or their own customary rules in British India. The Indian Succession Act, which applies to all communities except Hindus, Buddhists, Jains, Sikhs, and Muslims, was re-enacted in 1925. The Act, however, provides for a unique portion of succession for Parsis. If they are not Hindus, persons who marry or whose marriage is registered under the provisions of the "Special Marriage Act, 1954" are subject to the provisions of this Act in succession proceedings.

The widow/widower and both spouses have an equal right to inherit under this Act, which is $\frac{1}{3}$ if the intestate has left any lineal descendants. In the lack of lineal descendants but the presence of intestate's kindred, the widow or widower receives $\frac{1}{2}$ percent of the estate, while the other $\frac{1}{2}$ percent goes to the intestate's kindred. In the absence of relatives, the widow or widower inherits the entire estate.

The mother will not inherit with the father, but she will be able to inherit with her siblings. This provision is blatantly biased toward mothers. In terms of parental property, it gives daughters and boys equal rights. In the absence of sons and daughters, the inheritance is passed down to their descendants. The descendants' spouses (*i.e.*, sons and daughters) are not heirs. In comparison to "Hindu (Hindu Succession Act, 1956), Muslim, and Parsi (until it was altered in 1991)" legal systems, the concept of ancestral property or coparcenary is also not recognized, offering more protection for women.

Many groups in India continue to maintain pre-conversion succession laws even after conversion. Most Christian groups maintained to observe the discriminatory law that prevents the daughter from inheriting the parental property, known as coparcenary or joint Hindu family property.

"A leading case in this regard, *Abraham v. Abraham*,³⁸⁰ decided by the Privy Council in 1863, was concerned with the issue of succession to the property of a Roman Catholic who had subsequently converted to the Protestant sect. The dispute was between the widow and her husband's brother. The brother pleaded that although they had converted to Christianity, they continued to follow the Hindu law of coparcenary. The Privy Council laid down a rule regarding conversion and held such a property as

³⁸⁰(1863) 9 MIA 195.

joint family property. The matter gain came up before the court, subsequent to the coming of the Indian Succession Act, 1865, in *Tellis v. Saldanha*,³⁸¹ which held that after the enactment of the Indian Succession Act, the Christian converts are governed by its provisions. Again, this view was overruled by the decision of the Bombay High Court in *Francis Ghosal v. Gabri Ghosal*,³⁸² which held that Christians are governed by the Hindu law of coparcenary.”

The “Cochin and Travancore” ordinance was particularly harsh on women’s daughters. The right of girls was limited to $\frac{1}{4}$ percent of the portion of the son or 5000 ₹, whichever was less, under the “Travancore Christian Succession Act, 1910.” Similarly, the portion of girls under “the Cochin Christian Succession Act, 1922” was $\frac{1}{3}$ percent of the son's part or 5000₹, whichever was less. If there is any remaining property, it will be inherited by sons, and if there are no sons, it will be inherited by the closest male relatives. The Cochin and Travancore High Court ruled in 1957 that Christians in the region were not subject to the India Succession Act and that the princely states’ discriminatory policies applied to them.

The High Court of Madras, in “*Solomon v. Muttiah*,”³⁸³ adopted a progressive stand and ruled that the Travancore Succession Act stood repealed after the Independence and Christians in the region were not governed by this discriminatory statute, but by the Indian Succession Act, 1925, which was later overruled by Madras High Court in *D. Chelliah Nadar v. Lalitha Bai*,³⁸⁴ which reaffirmed that Christians in Tamil Nadu were governed neither by the Progressive provisions of Indian Succession Act nor by the Hindu Succession Act, but by the un-codified Hindu customary law and under this law, the son was the sole heir to the father’s property to the exclusion of the daughter.”

In “*Mary Roy v. State of Kerala*,”³⁸⁵ where the court struck down the discriminatory provisions on a technical ground that after Independence, the laws enacted by the erstwhile princely states which were not expressly saved had been repealed. The court declared unconstitutional those provisions of the Travancore Syrian Christian Act,

³⁸¹(1886) ILR 10 Mad 69.

³⁸²(1907) 31 Bom. 25.

³⁸³(1974) 1 MLJ 53.

³⁸⁴ AIR 1978 Mad 66.

³⁸⁵ AIR 1986 SC 1011.

1916 and the Cochin Succession Act, 1921, which limited the right of a Syrian Christian woman to her paternal property. In *John Vallamattom v. Union of India*,³⁸⁶ the Supreme Court declared unconstitutional, the provisions of Section 118³⁸⁷ of the Indian Succession Act, 1925 which required that no Indian Christian who had living relatives, could leave his property for religious and charitable purposes unless provided for or by a Will, a year before his death.”

“Inheritance rights of women under Parsis laws”

The Parsi immigrants moved to India to flee Persia’s religious persecution. They followed the customs of the first location they sought refuge. In civil and criminal concerns, a Panchayat, or assembly of elders, made decisions, while personal matters were ruled by priestly judgements. In the former, Parsis followed traditional laws, whilst in the latter, they were ruled by English laws. In the Mofussil Parsis, women were barred from inheriting and had only a right to maintenance. However, under English law, the widow of an intestate had an absolute portion of his property equal to $\frac{1}{3}$ of his estate, and the daughter was treated equally to the son. This varied situation was brought to an end by “the Parsi Intestate Succession Act, 1865,” it framed a uniform portion for all Indian Parsis and increased the share of a widow and a daughter to a specific absolute ownership more than a claim of maintenance, which was again amended in 1925, 1937 and then post-independence on 1991, the changes were effective and it was a gender-just law for the Parsis.

Prior to 1991, Female heirs were entitled to $\frac{1}{2}$ of their male sharer's share, *i.e.*, the

³⁸⁶ AIR 2003 SC 2902.

³⁸⁷ The Indian Succession Act, 1925, s. 118 “*Bequest to religious or charitable uses.-No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons:*

Illustrations

A having a nephew makes a bequest by a will not executed and deposited as required—

for the relief of poor people;

for the maintenance of sick soldiers;

for the erection or support of a hospital;

for the education and preferment of orphans;

for the support of scholars;

for the erection or support of a school;

for the building and repairs of a bridge; for the making of roads;

for the erection or support of a church;

for the repairs of a church; for the benefit of ministers of religion;

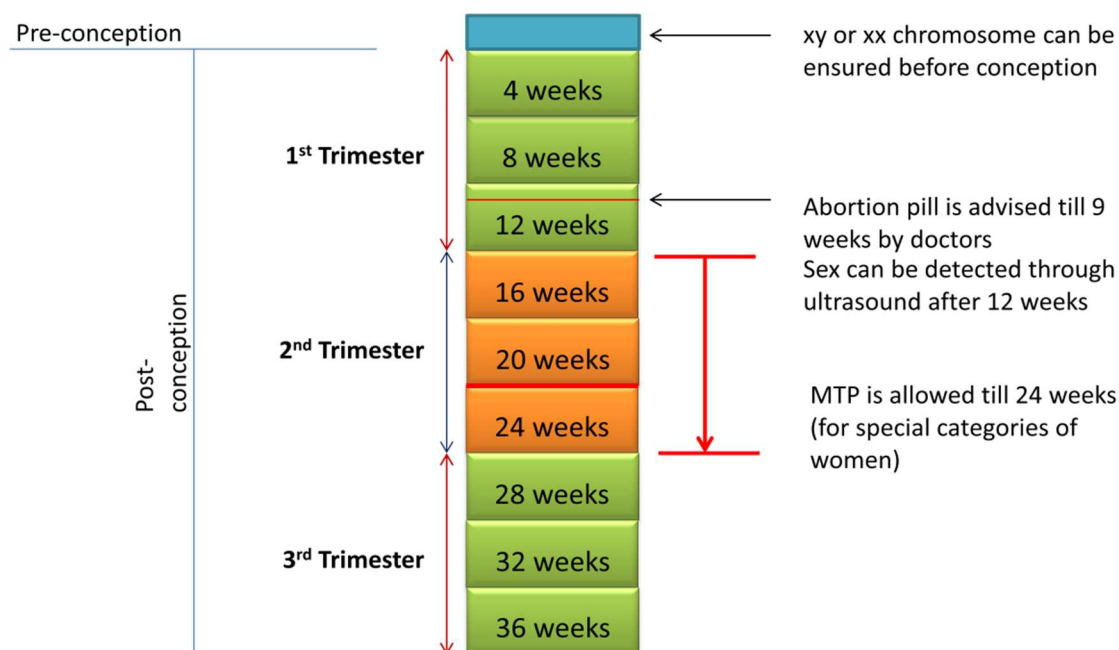
for the formation or support of a public garden; All these bequests are void.”

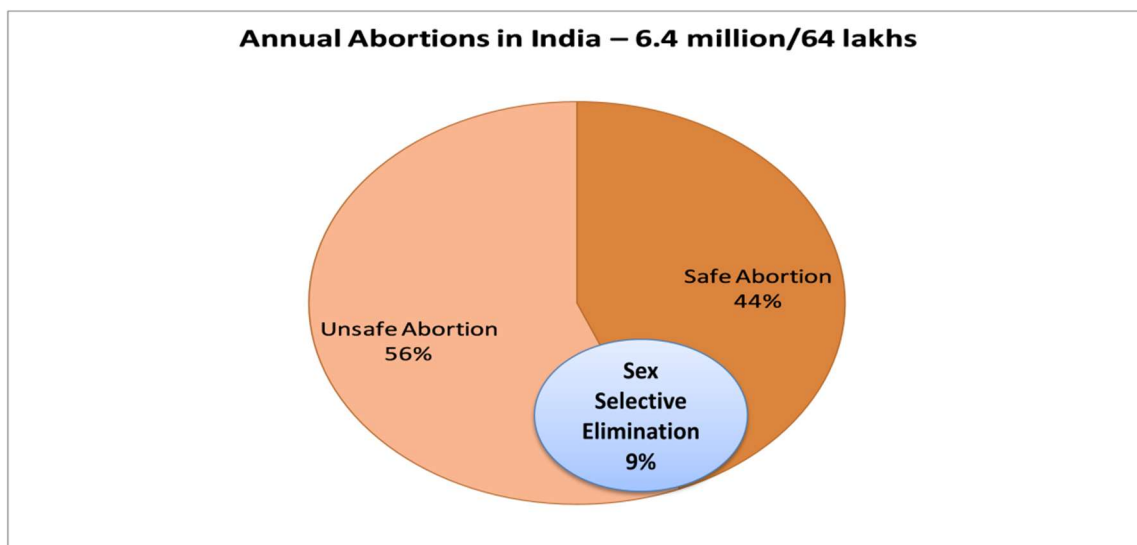
daughter was entitled to $\frac{1}{2}$ of the son's part and the mother was entitled to $\frac{1}{2}$ of the father's share, even if they were all co-heirs. The 1991 amendment ended the discrimination against women and made sons and daughters, mothers and fathers, on an equal footing. Now, the surviving husband and children (both son and daughter) receive equal shares, while the mother and father receive half of each child's portion. According to this law, not only the intestate's surviving spouse, but also the intestate's predeceased daughter's spouse, as well as other lineal descendants, are heirs.

4.5.1 – Gender Discrimination became a grave concern in India. Here is collected data of performing the MTP Act rampantly

Vital Statistics

- **Abortion:** ‘The Abortion Assessment Project-India’ by Ravi Duggal and Vimala Ramachandran suggests that “6.4 million/64 lakhs abortions take place every year in India.”
- **Unsafe abortion:** Lancet study (2003-04) indicates that 3.6 million/36 lakhs abortions are unsafe. This contributes to “56 per cent of the total abortions in the country which leads to 8 percent of all maternal deaths - close to the death of 10 women per day (calculated estimates from RGI SRS2001-03).”
- **Estimated missing Female births:** According to UNFPA’s publication “Trends in ‘Sex Ratio at Birth (2001-12)’, on an average 0.46 million/4.6 lakh girls were missing at birth every year during the period 2001-12. Again, between 2013 and 2017, **about 4.6 lakh girls were 'missing' at birth in India each year** (State of World Population 2020, UNFPA).”



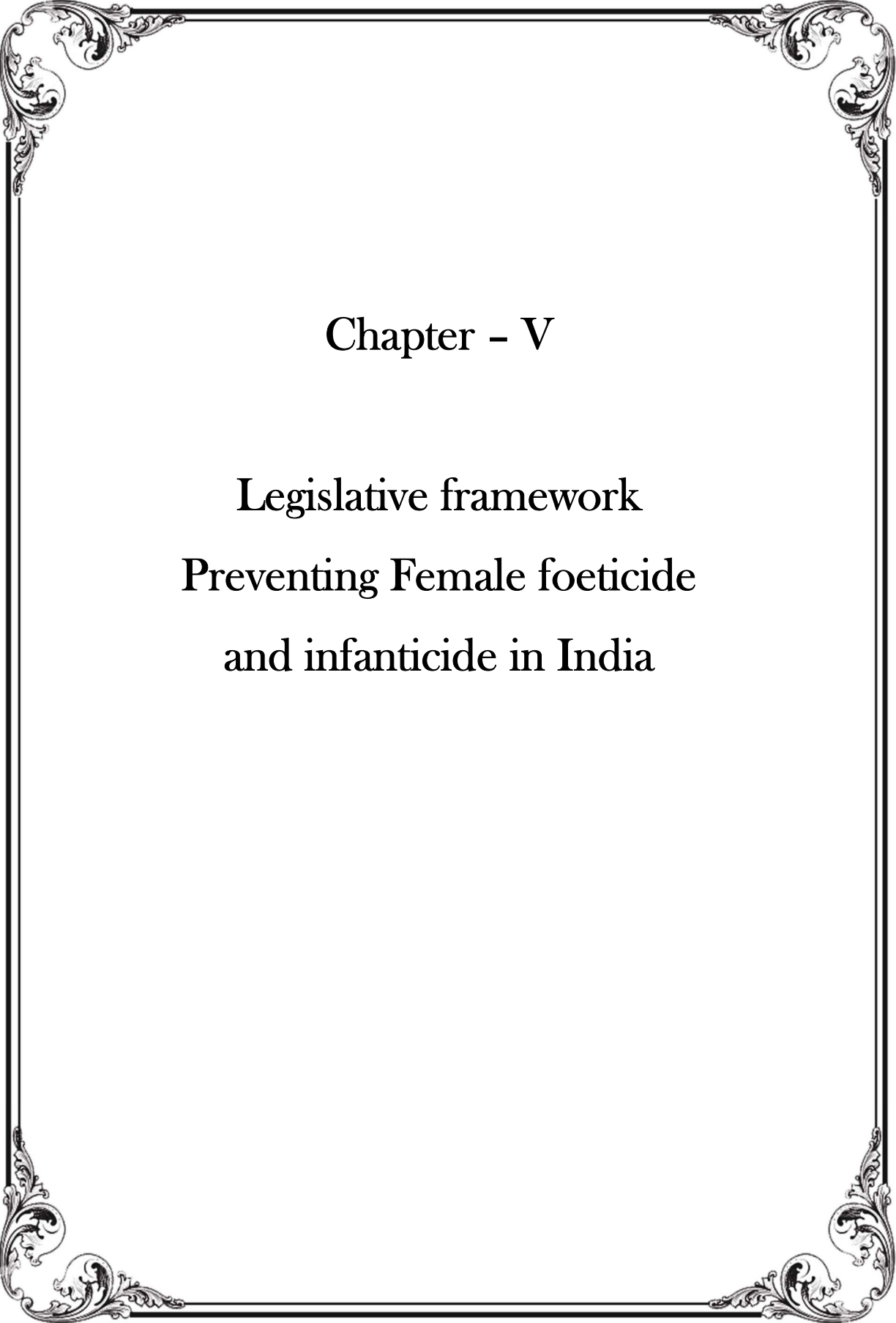


4.5.2 – Concluding remarks

The logical conclusion is that secret criminal activities are impossible to detect by the official eye. One is reminded of the fact that when it suited the surveillance apparatus of empire the secret criminal activities of the tribe of Thugs in Madhya Pradesh were recorded and the tribe was hunted down and eradicated. Yet here is document after document lamenting the impossibility of detecting child-killing. Indeed, Cave Brown's passage goes a step further. He elaborates Erskine's representation by suggesting that British administrative intervention, far from protecting children and punishing the criminal, will have the deleterious effect of driving the perpetrators into 'deeper privacy.'³⁸⁸

Laws alone will not ensure that citizens in society have access to justice. In an uneven society, achieving equality requires ongoing concerted work on the part of individuals, communities, governments, and the judiciary. That's what women in India's constitutional democracy must realize as a group in collective battle for fair and justice. Personal laws that discriminate against male and female contradict basic entitlements and go against the Constitution's Preamble's declaration of parity of opportunity.

³⁸⁸Rashmi Dube Bhatnagar, Renu Dube, and Reena Dube *Female Infanticide in India A feminist Cultural History* 52 (State University of New York Press, Albany 2005).



Chapter – V

Legislative framework Preventing Female foeticide and infanticide in India

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“Legislative framework Preventing Female foeticide and infanticide in India”

5.1.1 – Introduction

The Government of Maharashtra, the “Maharashtra Regulation of Use of Pre-Natal diagnostic Techniques Act, 1988 brought into force on 10th May, 1988”. The Act establishes the conditions under which a Pre-Natal Diagnostic Test may be performed, as well as prohibits the use of prenatal procedures and technology for the goal of determining a gender of foetus before she is born, which can lead to Female foeticide. Thereafter a National Law was passed in this regard namely “Pre-Natal Diagnostic Techniques Act, 1994”. Lakshmana observed “the root cause for the gender discrimination is basically due to religious beliefs and out-moded socio-cultural values and practices. The technological advancements and developmental programs, instead, abridging the gap has accentuated it.”³⁸⁹

“The Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994” is blessing for the ill-fated girl child who are killed before they born, only because they are daughters. The common practice in this country is the diagnosis of gender of the foetus in the womb itself. The practice got inspired by the advent of ultrasound in the early 1990s. The discrimination of daughters among the society and preference for sons have encouraged Female foeticide. The clear mindset of people the daughter is burden, upbringing of a daughter is economically expensive, they have security issues, property right deserves only son, because son will support in old age, son will continue the family lineage. It’s sad but true that the use of these techniques is more random in urban area rather than rural areas. According to every Census report the inclination in child sex ratio is triggering the reason more and more.

The main purpose of the Act is to make it illegal to use “Pre or post-conception sex-selection techniques, and the use of pre-natal diagnostic techniques” for illegal abortion. Nobody knows what will trigger selective killing in the future, or what crises people will confront in the next decades.

5.1.2 – The Indian Constitution

Reproductive Rights

³⁸⁹Lakshmana, Mamati, *Changing Social Structure in report of a seminar “Rights of the child”*, NSIU, Bangalore. Pp. 117-18.(1990),

Right of women “to make reproductive choices, as a part of personal liberty under Article 21³⁹⁰ of the Indian Constitution.” Women in India have many rights but the mental health, the physical health, the reproductive health, and the types of reproductive rights regarding adoption of child, removing of reproductive organs, discrimination of gender bias, implants and *etc.*, are enshrined in the Indian Constitution.

There are few countries which participated and adopt the Reproductive rights and India was also one of them. In 1968, it has been first marked as inalienable human rights. Human rights are recognized as an extended hypothesis of various rights, like “right to health, right to life, personal liberty and right to equality” which are established under Indian Constitution. But the irony of situation is that the health system in India, particularly the public sector, facing a wide range of issues that has deteriorated the availability, accessibility, acceptability and more importantly, the quality of reproductive healthcare, which should have been otherwise properly ensured by the state. The reproductive right of women in India is challenged by various factors like diverse cultural, social and economic circumstances. Although there are many challenges that need to be reformed to attain a progressive society that ensures an unbiased reproductive right to its women, the judiciary in India has a significant role in ensuring women’s reproductive rights. “The Apex Court in *Suchita Srivastava & Another v. Chandigarh Administration*³⁹¹ observed that a woman’s right to make reproductive choice is also a dimension of ‘personal liberty’ under Article 21 of the Constitution of India, 1950. UN has helped India as a country for the protection of women and their reproductive rights.” The legal control of homicide including infanticides is governed in India under sections, 299, 300 and 304A of IPC which runs as follows:

Section 299³⁹² of the IPC, a human being’s death must have been caused by doing an action with the intent to cause death, or with the understanding that such an act will almost certainly result in death. The simple fact that a person has passed away is insufficient. An act resulting in death cannot be considered responsible homicide unless one of the mental states listed in element is present. It is necessary to

³⁹⁰ *Supra* note 41 at 15.

³⁹¹ 2009 (9) S. C. 1 (India).

³⁹² *Supra* note 223 at 104.

demonstrate intent.

The section 300³⁹³ the definition of culpable homicide is enlarged in this section. Each of the four clauses demands that the act that results in death be done with the knowledge or means of understanding that death will occur as a result of the act. It is not always essential to have the intent to kill in order to prove a case of murder. Knowing that the natural and likely outcome of an act is death is sufficient for a conviction U/S 302³⁹⁴ of the IPC, 1860.

The criterion of culpable homicide must be met for a crime to be considered murder; this section simply illustrates the instances in which culpable homicide is considered murder. An act of responsible homicide, on the other hand, may not be the same as murder. “An instance of culpable homicide is not considered murder because it does not fall under any of Section 300’s exceptions. To be termed culpable homicide murder,” the case must fall under one of Section 300’s one to four clauses and not be subject to any of the five exceptions.

“Section 304A³⁹⁵ was added to the IPC, 1860, by the IPC (Amendment) Act, 1870 (27 of 1870)”, to include circumstances in which a person caused the death of another by reckless or careless acts, but there was no intent to take one’s life or understanding that the act would take one’s life. Only if the case is not covered by sections 299 and 300 will it fall under this section.

For a person to be held responsible within this Act, the rushed or careless act must be the immediate or immediate reason for death. The section discusses homicides that occur as a result of negligence.

Children in Indian Legal Scenario

In a civilized society, the child’s well-being comes first, and the state must never overlook the nation's most valuable asset – the child. The state must take all essential measures to ensure children’s proper growth and development. As a result, the Indian Constitution and other legislations include specific guidelines for the safety, welfare, and overall growth of children, in accordance with international norms and regulations, ensuring that they have access to their basic human rights while also

³⁹³ *Supra* note 224 at 105.

³⁹⁴ The Indian Penal Code, 1860, s. 302 “*Punishment for murder.—Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.*”

³⁹⁵ *Supra* note 35 at 14.

being protected from exploitation and abuse.

Constitutional Provisions

A country's constitution should embody its people's goals and solve their concerns. The explanation of its legislations should always be in line with the country's societal set-up, demonstrating a thorough awareness and profound understanding of society's evolving needs, the nation's expanding needs, today's burning challenges, and the complex difficulties confronting the people.³⁹⁶ The Constitution establishes Basic Rights to ensure that citizens' liberty is a reality rather than a promise. The Constitution's Directive Principles of State Policy guarantee citizens a better life with access to social justice. They are equally important in promoting the Constitution's aims and objectives, which are explicitly expressed in the preamble.

Preamble

"The Preamble of our Constitution declares to secure to all its citizens: JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity, and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation."

From this, it is evident that the 'children' are inherently included in the word 'citizen' like all other citizens in the country and they are also entitled to receive all those immunities guaranteed in the Preamble.

In the Preamble, the term 'social justice' refers to the acknowledgement of a better situation for a wider number of people without violating anyone of their rights. Their social justice requires both equality and liberty. In India, as a developing country, the government must work to better the lives of the poor and vulnerable, especially children, and provisions have been made in the constitution to that end. The concept of 'social justice' encompasses a number of values that are critical to the growth and development of every citizen, including children.

The underlying objective hidden beneath the term of 'economic justice' is to create a socialist society. It aims to feed the hungry, clothe the poor, provide homes, and provide opportunity for Indian citizens, particularly the poorer parts, to advance. The

³⁹⁶*Pathuma v. State of Kerala*, AIR 1978 SC 771.

prohibition of man-made barriers on the basis of religion, race, sex, colour, place of residence, and other factors ensures equality of status and opportunity.

The Preamble also guarantees fraternity to all of its citizens, protecting the dignity of individuals as well as the unity and integrity of the nation. It is the principle that provides social life its coherence and solidarity, without which neither liberty nor equality would be meaningful. The phrases ‘Justice,’ ‘Liberty,’ ‘Equality,’ and ‘Fraternity’ express the major goals that the Constitution aims to achieve.³⁹⁷ The Constitution stipulates various steps for the welfare of children, protection against exploitation, and abolition of child labour from society, which are provided proper importance on a regular basis.

Children and the Fundamental Rights

Fundamental Rights are the ideas that our country's citizens hold dear, and they aim to protect individual dignity and promote conditions that allow each individual being to grow and evolve himself or herself. They established a method for guaranteeing the fundamental structure of human rights while imposing restrictive responsibilities on the government to refrain from interfering with individual liberty in any form.

The first Fundamental Right secured to the people of India is the ‘Right to Equality’. Accordingly, Article 14³⁹⁸ provides, the obligation imposed on the state for the benefit of all persons within India’s territory, and thus no one, even children, should be denied any equality of status or opportunity because all are equal in the eyes of the law.

Clause (1) of Article 15³⁹⁹ a statute can be found invalid if it discriminates on the basis of religion, race, caste, sex, place of birth, or any of these factors. Article 15(3),⁴⁰⁰ The State is permitted to make any particular provision for women and children, according to section of the Constitution, indicating that it intends to defend the interests of women and children and nothing else. Because of their unique nature, mothers and children require specific treatment. The word ‘and’ in the preceding clause can be read as ‘and’ or ‘or,’ and such exceptional provisions can be introduced

³⁹⁷ *Atma Prakash v. State of Haryana*, AIR 1986 SC 859: (1986) 2 SCC 349.

³⁹⁸ *Supra* note 39 at 16.

³⁹⁹ *Supra* note 86 at 45.

⁴⁰⁰ *Ibid.*

by legislation or executive order.⁴⁰¹

According to Article 19 (1) (a),⁴⁰² the right to freedom of speech and expression is guaranteed to all citizens, including children.

The most important Article, *i.e.*, Article 21⁴⁰³ all citizens, including children, have the right to freedom of speech and expression. The concepts ‘right to life’ and ‘personal liberty’ are particularly difficult to define in terms of safeguarding life and personal liberty, as they are not restricted to the taking of life. It refers to “something more than merely physical survival, not only the right to maintain one’s animal existence.” The right to a dignified life would be included,⁴⁰⁴ as well as all the parts of life that make a person’s life meaningful, complete, and worthwhile to live.⁴⁰⁵

“*Sunil Batra v. Delhi Administration*”⁴⁰⁶ the term ‘life protection’ means the right to live in a manner that is consistent with human dignity and decency. According to this Article, the state is obligated to ensure that no one’s fundamental rights, whether adult or child, be violated, as this right is open to everyone.

Article 21-A⁴⁰⁷ Part III of the Constitution declares education from the age of six to fourteen to be a fundamental right. For the purposes of this Article, a ‘kid’ is defined as a child who is an Indian citizen. The Constitution (86th Amendment) Act of 2002 amended Article 21-A to include a new replaced Article 45⁴⁰⁸ and a new clause (k) in Article 51-A.⁴⁰⁹

Furthermore, the ‘Right against Exploitation,’ as defined in Articles 23⁴¹⁰ and 24⁴¹¹ is crucial since it attempts to restore a person’s dignity and crystallizes the idea of child

⁴⁰¹ *Balaji v. State of Mysore*, AIR 1963 SC 649.

⁴⁰² The Constitution of India, art. 19 (1) (a) “Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right— (a) to freedom of speech and expression;”

⁴⁰³ *Supra* note 41 at 15.

⁴⁰⁴ *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others*, AIR 1981 SC 746.

⁴⁰⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 579. See also *Board of Trustees v. Nadkarni*, AIR 1983 SC 109.

⁴⁰⁶ AIR 1978 SC 1675.

⁴⁰⁷ The Constitution of India, art. 21A “Right to education.—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

⁴⁰⁸ The Constitution of India, art. 45 “Provision for early childhood care and education to children below the age of six years.— The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

⁴⁰⁹ *Supra* note 343 at 142.

⁴¹⁰ *Supra* note 81 at 42.

⁴¹¹ *Supra* note 314 at 134.

welfare. Clause (1) of Article 23 prohibits two types of forced labour: human trafficking and begging, as well as other similar forms of forced labour; and any violation of the restriction is penalized by law.

Although children are not specifically mentioned in Article 23, it is reasonable to assume that they are included in its contours because children are the most defenseless and can be abused at any time. The word ‘human trafficking’ refers to dealings with men, women, and children for a variety of reasons. Slavery is included in the definition of ‘human trafficking,’ albeit it is not explicitly stated. The word “forced labour” has a broad definition, encompassing any type of work performed against one’s will, whether physically or intellectually, for which remuneration may or may not be paid. This article specifically targets child labour, or whatever kind it may be, because it is inhumane.

Article 24 is inextricably linked to child labour. It forbids the employment of children under the age of fourteen in any factory, mine, or other hazardous occupation that poses a threat or risk to children’s physical or mental health. As a result, the Supreme Court determined that construction work is a dangerous occupation for children under the age of fourteen, and that no kid under the age of fourteen can be employed in any construction activity.⁴¹² Work in a factory or mine is *ejusdem generis* when the phrase “any other dangerous employment” is used. As a result, Article 24 provides a broad framework for bringing a variety of child labour instances to the attention of courts.

“Directive Principles of State policy”

Part IV of the Constitution lays forth the ideas and goals that the government must achieve in order to establish a welfare state in India that aspires to promote social welfare and the common good while also ensuring social and economic fairness for all citizens. Thus, under “Part IV of the Constitution, several important provisions important provisions are also embodied for the welfare of children. This part mainly imposes the duty on the State to follow the directives to give economic and social justice to the common man in general to weaker sections including children in particular. The essence of the Directive Principles lies under Article 38⁴¹³ which

⁴¹² *Labourers Working on social Hydro Project v. State of Jammu & Kashmir*, AIR 1984 SC 177: 1983 Lab. I.C. 502: 1983 SCC (L&S) 289.

⁴¹³ The Constitution of India, art. 38 “*State to secure a social order for the promotion of welfare of the people.—1 [(1)] The State shall strive to promote the welfare of the people by securing and protecting*

requires the State to promote the welfare of people by securing and protecting as effectively as it may, a social order in which justice — social, economic and political shall inform all the institutions of national life.”

Protective measures are in place to guarantee that children’s vulnerable ages should not be exploited, and no citizen will be forced by financial needs to engage in any employment or work that is unsuitable for their age or strength, according to Article 39(e)⁴¹⁴, of the Indian Constitution. As a result, it makes it illegal to employ minors in any job that puts children’s lives in danger.

The provision contained in Article 39 (f)⁴¹⁵ urges upon the Children should be provided opportunity and proper facilities to develop in a healthy manner, as well as independence and dignity, and infancy and youth should be protected from all forms of exploitation as well as moral and material abandonment.

Article 41⁴¹⁶ and 42⁴¹⁷ it does not include the word ‘children’ specifically in their provisions dealing with the right to labour and working circumstances, the aim behind these two Articles is the welfare of children. Article 42 implicitly seeks for a healthy and favourable working environment for children, as Article 24 does not completely prohibit their employment.

Article 45,⁴¹⁸ Article 45 has been removed and replaced by a new regulation named Compulsory early childhood care and education for children.

The object of Article 46⁴¹⁹ is to remove social and economic inequalities and social disabilities that cripple the weaker sections, so as to place them on a footing on equality (Article 14) with the rest of the Nation and to improve quality of their life –

as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

[(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]”

⁴¹⁴ *Supra* note 82 at 42.

⁴¹⁵ *Supra* note 82 at 42.

⁴¹⁶ The Constitution of India, art. 41 “Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

⁴¹⁷ *Supra* note 327 at 138.

⁴¹⁸ The Constitution of India, art. 45 “Provision for early childhood care and education to children below the age of six years.— The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

⁴¹⁹ *Supra* note 337 at 141.

social, economic and cultural pursuits, to render meaningful their “‘right to life’ guaranteed by Article 21.”

In the matter of nutrition, standard of living and public health, the Constitution of India under Article 47⁴²⁰ categorically speaks that, the state must improve the nutrition and living standards of its citizens. The State’s principal responsibility is to improve public health, and in particular, the State must make every effort to prevent the consumption of intoxicating beverages and substances that are harmful to one’s health, unless for medicinal purposes. Because the kid has a right to nutrition, among other rights, it is the State’s and society’s primary responsibility to ensure that he does not lose that right, because the nation’s future depends on the appropriate overall development of its children.

“Children and the Fundamental Duties”

Part IV-A of the Constitution, which contains the Fundamental Duties of the citizens of The Constitution (42nd Amendment) Act of 1976 included India, which only has Article 51A. However, the Constitution (86th Amendment) Act of 2002, also known as Article 51A(k), included a new clause (k) that puts a fundamental duty on a parent, guardian, or ward to give chances for education to his child or, as the case may be, between the ages of six and fourteen years.

“Besides the constitutional mandates, several legislations are there for the protection of Child Rights, and over all development and welfare of children. These are;

- (a) Indian Penal Code,1860;
- (b) The Guardian and Wards Act,1860;
- (c) The Code of Civil Procedure,1908,
- (d) The Factories Act,1948;
- (e) The Hindu Adoptions and Maintenance Act,1956.
- (f) Immoral Traffic Prevention Act,1956;
- (g) The Young Persons (Harmful Publications) Act,1956;
- (h) The Probation of Offenders Act,1958,

⁴²⁰The Constitution of India, art. 47 “Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

- (i) The Code of Criminal Procedure, 1973;
- (j) The Bonded Labour System (Abolition) Act, 1976,
- (k) The Child Labour (Prohibition and Regulation) Act, 1986;
- (l) The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994;
- (m) The Commission for Protection of Child Rights Act, 2005;
- (n) The Prohibition of Child Marriage Act, 2006;
- (o) The Protection of Children from Sexual Offences (POCSO) Act, 2012; and
- (p) The Juvenile Justice (Care and Protection of Children) Act, 2015.”

The aims and objectives of some of these legislations relating to protection and welfare of children, their rights as well as offences against children, may be pointed out as follows; “*In this regard, the Indian Penal Code, 1860 deals with foeticide;⁴²¹ infanticide;⁴²² abetment to commit suicide of minor;⁴²³ crime against children by parent or others to expose or to leave them with intention of abandonment;⁴²⁴ kidnapping for extortion;⁴²⁵ kidnapping from lawful guardianship;⁴²⁶ kidnapping for ransom;⁴²⁷ kidnapping for camel racing etc.;⁴²⁸ kidnapping for begging;⁴²⁹ kidnapping to compel marriage;⁴³⁰ kidnapping for slavery etc.;⁴³¹ kidnapping for stealing from its person under ten years of age only;⁴³² Procurement of minor girls by inducement or by force to seduce or have illicit intercourse;⁴³³ selling of girls for prostitution,⁴³⁴ buying of girls for prostitution;⁴³⁵ rape;⁴³⁶ and unnatural sex;⁴³⁷ etc.*

(B) “*The Guardian and Wards Act, 1890*” is a Statute that consolidates and

⁴²¹ The Indian Penal Code, 1860 (45 of 1860), ss. 315, 316.

⁴²² The Indian Penal Code, 1860 (45 of 1860), s. 315.

⁴²³ The Indian Penal Code, 1860 (45 of 1860), s. 305.

⁴²⁴ The Indian Penal Code, 1860 (45 of 1860), s. 317.

⁴²⁵ The Indian Penal Code, 1860 (45 of 1860), s. 360.

⁴²⁶ The Indian Penal Code, 1860 (45 of 1860), s. 361.

⁴²⁷ The Indian Penal Code, 1860 (45 of 1860), ss. 363, 384.

⁴²⁸ The Indian Penal Code, 1860 (45 of 1860), s. 363.

⁴²⁹ The Indian Penal Code, 1860 (45 of 1860), s. 363-A.

⁴³⁰ The Indian Penal Code, 1860 (45 of 1860), s. 366.

⁴³¹ The Indian Penal Code, 1860 (45 of 1860), s. 367.

⁴³² The Indian Penal Code, 1860 (45 of 1860), s. 369.

⁴³³ The Indian Penal Code, 1860 (45 of 1860), s. 366-A.

⁴³⁴ The Indian Penal Code, 1860 (45 of 1860), s. 372.

⁴³⁵ The Indian Penal Code, 1860 (45 of 1860), s. 373.

⁴³⁶ The Indian Penal Code, 1860 (45 of 1860), s. 376.

⁴³⁷ The Indian Penal Code, 1860 (45 of 1860), s. 377.

modifies the laws concerning guardians and wards. The Act establishes guidelines for the appointment and declaration of guardians, as well as their rights, responsibilities, and liabilities.

(C) “*The Code of Civil Procedure, 1908*” wishes to protect children to some extent. As a result, Order 32 was enacted to safeguard children's interests and guarantee that they are depicted in cases or procedures by qualified individuals. Without the appointment of a guardian, everything that is harmful to a child's interests is null and void. In this sense, the Code has sixteen rules.

(D) “*The Factories Act, 1948,*” The term ‘child’ is defined as a person under the age of fifteen years,⁴³⁸ although it only implies fourteen years for the purposes of prohibiting child labour.⁴³⁹ According to this Act, a ‘young person’ is someone who is under the age of fourteen or under the age of eighteen.⁴⁴⁰ This Act covers a number of significant measures dealing to children’s health,⁴⁴¹ safety,⁴⁴² and welfare,⁴⁴³ as well as the employment of young people.⁴⁴⁴ Section 67 states that no kid under the age of fourteen shall be forced or permitted to work in a factory. The punishment for violating this provision is imprisonment for 3 months to one year or a fine of 10,000₹ to 20,000₹, or both, as stipulated another Act also.⁴⁴⁵

(E) “*The Hindu Adoption and Maintenance Act, 1956*” is an Act that amends and codifies the Hindu law on adoption and maintenance. Following the passage of this Act, sons and daughters are treated equally in succession matters. In the case of adoption, equality of status is also recognised. As a result of the provisions of this Act, both boys and girls can now be adopted. Furthermore, a woman could adopt herself as an individual. Conditions for a legal adoption,⁴⁴⁶ people who are competent of adopting, persons who may be adopted;⁴⁴⁷ proof of adoption; maintenance of children⁴⁴⁸ etc. are some of the

⁴³⁸The Factories Act, 1948, s. 2 (c).

⁴³⁹The Factories Act, 1948, s.67.

⁴⁴⁰The Factories Act, 1948,s.2(d).

⁴⁴¹The Factories Act, 1948, ss. 11 to 20

⁴⁴²The Factories Act, 1948, ss.21 to 41.

⁴⁴³The Factories Act, 1948, ss.42 to50.

⁴⁴⁴The Factories Act, 1948, ss.67 to 77.

⁴⁴⁵Section 15 of the Child Labour (Prohibition and Regulation) Act, 1986. section 15, of Child Labour (Prohibition and Regulation) Act,1986.”

⁴⁴⁶The Hindu Adoption and Maintenance Act, 1956, s. 11.

⁴⁴⁷The Hindu Adoption and Maintenance Act, 1956, s 7.

major provisions with specific regard to the safety and welfare of children.

(F) “*The Immoral Traffic Prevention Act, 1956*” increases the punishments for crimes involving child and minors, as well as broadening the scope of the law to include both sexes who are sexually exploited for profit.

(G) “*The Young Persons (Harmful Publications) Act, 1956*” According to Section 2(a) of the Act, any book, magazine, pamphlet, leaflet, newspaper, or other like publications that consists of stories told with or without the aid of pictures or entirely in pictures depicting wholly or primarily the commission of offences, acts of violence or cruelty, or incident of a repulsive or horrible nature in such a way that it is intended to prevent the dissemination of certain publications harmful to young persons. It is also against the law to sell or distribute any of the Act's forbidden destructive publications.⁴⁴⁹

(H) “*The Probation of Offenders Act, 1958*” was adopted with the intent of allowing certain types of offenders to be released on probation or after a period of admonition. The Act's goal is to prevent juvenile offenders from becoming criminals as a result of their interaction with more experienced criminals if they are sentenced to jail. Section 6⁴⁵⁰ limits the time that criminals under the age of twenty-one can be imprisoned. The Act establishes the appointment and duties of Probation Officers, as well as the court's authority to release certain convicts on good-conduct probation.

(I) “*The Code of Criminal Procedure, 1973*” has also some relevant provisions for the children. These are in the juveniles case's jurisdiction;⁴⁵¹

⁴⁴⁸The Hindu Adoption and Maintenance Act, 1956, ss.20, 22(1), 23(1), 23(2), and 25.

⁴⁴⁹ The Young Persons (Harmful Publications) Act, 1956, s. 3.

⁴⁵⁰ The Probation of Offenders Act, 1958 ACT NO. 20 OF 1958 s. 6. “*Restrictions on imprisonment of offenders under twenty-one years of age.—(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.*

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1), the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.”

⁴⁵¹ The Code of Criminal Procedure, 1973,s. 27 “*Jurisdiction in the case of juveniles.—Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he*

restoration of abducted Females (including a Female child below eighteen years of age);⁴⁵² maintenance of children;⁴⁵³ release on probation of good conduct;⁴⁵⁴

appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.”

⁴⁵²The Code of Criminal Procedure, 1973, s. 98 “Power to compel restoration of abducted females.— Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.”

⁴⁵³*Supra* note 331 at 139.

⁴⁵⁴The Code of Criminal Procedure, 1973, s. 360 “Order to release on probation of good conduct or after admonition.—(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years, imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the

and special reasons to be recorded certain cases⁴⁵⁵ etc.”

(J) “*The Bonded Labour System (Abolition) Act, 1976*” the purpose of the Act is to provide for the eradication of the bonded labour system in order to avoid the economic and physical exploitation of the weaker parts of the population, as well as for things related to or incidental to that.

(K) “*The child Labour (Prohibition and Regulation) Act, 1986*” was enacted with the goal of ending child labour, and it stipulates sanctions and penalties for employing children under the age of fourteen in a variety of dangerous jobs and operations. The State Governments are given the authority to create rules for the health and safety of children, wherever their employment is permitted, under this Act. This legislation also regulates working conditions, such as setting work hours, weekly holidays, age disputes, maintaining registers, and muster rolls, among other things. Child employees working in hotels and dhabas up to the age of fourteen have been brought under the Act's jurisdiction by a notification.

(L) “*The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of misuse) Act, 1994*” intends to regulate the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders, chromosomal abnormalities, or certain congenital malformations of sex-linked disorders, and to prevent the misuse of such techniques for the purpose of pre-natal sex determination leading to Female foeticide, as well as for matters related to or incidental to those purposes.

(M) “*The Commission for Protection of child Rights Act, 2005*” provides for

observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”

⁴⁵⁵The Code of Criminal Procedure, 1973, s. 361 “Special reasons to be recorded in certain cases.— Where in any case the Court could have dealt with,— (a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958); or (b) a youthful offender under the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.”

the establishment of a National Commission and State Commissions for the Protection of Child Rights in each state and union territory, as well as the establishment of Children's Courts for the speedy trial of offences against children or violations of child rights, as well as matters related to or incidental to those offences. Examining and reviewing legal safeguards provided by or under any law for the protection of child rights, and recommending measures for their effective implementation are among the functions and powers of the National Commission and State Commissions. They also investigate violations of child rights and raise awareness about them.

(N) “*Child Marriage Restraint Act, 1929*” The Prohibition of Child Marriage Act, 2006, was abolished with the implementation of a new Act, The Prohibition of Child Marriage Act, 2006. The main features of this Act are that any marriage can be annulled at the request of the contract party who was a minor at the time of the marriage. In addition, when a nullity decree is issued, the Court must issue an order requiring the parties, parents, and guardians to return any money, jewellery, ornaments, or other presents received. The Court shall also make a suitable order for the custody and support of children of child marriages under this Act.

(O) “*The Protection of Children from Sexual Offences Act, 2012 (POCSO)*” Children are India's future, and they are safeguarded by a slew of laws, both implicit and explicit. The major purpose of the Act was to protect children from various sorts of sexual abuse and offences. Child sexual abuse crimes were dealt with under the Indian Penal Code, 1860, prior to the POCSO Act⁴⁵⁶ of 2012. While the court has stated that the POCSO Act, 2012 was never intended to punish a teenage guy who enters into a relationship with a minor girl by treating him as an offender, the court has clarified the basic spirit of the POCSO Act, 2012. The current case is a rape case in which both the accused and the victim eloped after having a romantic relationship, and the court gave the accused bail under Section 482⁴⁵⁷ of the CrPC. With the guidance of existing court decisions and an examination of the POCSO Act, 2012.

⁴⁵⁶ *Vijayalakshmi and Another v. State Rep. by Inspector of Police and Another* 2021 SCC OnLine Mad 317.

⁴⁵⁷ *Supra* note 247 at 112.

(P) “*The Juvenile Justice (Care and Protection of Children) Act, 2015*” which is a comprehensive law that provides for the proper care, protection, and treatment of children in conflict with the law and children in need of care and protection by catering to their developmental needs, using a child-friendly approach in adjudication and disposition of matters in the best interests of children, and ultimately rehabilitating them through various institutions established under the Act. It complies with the United Nations Convention on the Rights of the Child (1989), the United Nations Standard Rules for the Administration of Juvenile Justice (The Beijing Rules) from 1985, the United Nations Rules for the Protection of Juveniles Deprived of Liberty from 1989, and all other relevant national and international instruments. The Act also specifies the age at which both boys and girls must be treated as children as being eighteen years old. This Act also distinguishes between a juvenile criminal and a child who has been neglected. It has prioritised child rehabilitation and social reintegration, as well as institutional and non-institutional child care and protection.

Aside from these statutes, there are a variety of other general statutes, labour laws, and personal laws that provide for the protection, rehabilitation, and care of children. Not only that, but these legal documents reflect the children’s concerns about their rights, health, education, family life, exploitation, and protection, among other things.

5.1.3 – “The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994”

With advent of technology and medical research, the process of prenatal sex determination has been widely misunderstood, if not outright abused, in India. Even in the twenty-first century, the blessing of having a Female kid does not bring joy to the majority of Indian families. This medical breakthrough is being misused to destroy the foetus in the mother’s womb. Prenatal diagnostic centres have recently sprung up all throughout the country, particularly in urban regions. Such centres became burning centres and attained remarkable development as the girl child is an unwelcome species with heartfelt love in most of the families in India. As a result such medical technique has remarkably reduced the status of women in the society, whereas in the concept of Indian mythology a woman is regarded as a Goddess. Various non-profit

organisations are working in the sphere of upliftment of women have raised their concern and their heads against such an abuse. Then the Parliament realised the necessity of bringing the legislation to curb this menace and to prevent the Female foeticide.

The decline in child sex ratio is a matter of grave concern, it was discussed in Parliament and the “Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill, 1991” was commenced in the Lok Sabha. The Parliament after deliberations adopted the motion for reference of the said Bill to a Joint Committee of both the Houses of Parliament in September, 1991. The Joint Committee prepared and presented its report in December, 1992 and on the basis of the recommendations of the Committee, the Bill was re-introduced in the Parliament. Finally, the Parliament passed “the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, which came into force from 01-01-1996.”

By Section 3 of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 (14 of 2003) the name of the Act has been amended and now it stands as THE PRECONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994 (57 OF 1994).

The use of prenatal sex determination techniques is regulated by this Act. It allows for the use of prenatal sex determination techniques to discover genetic or chromosomal diseases, certain congenital malformations, or sex-related problems, but not to murder the foetus. The said Act has the following objectives: —

- i. prohibiting the use of pre-natal diagnostic techniques for determining the sex of a foetus, resulting in Female foeticide;
- ii. prohibiting the advertisement of pre-natal diagnostic techniques for detecting or determining sex;
- iii. allowing and regulating the use of pre-natal diagnostic techniques for the detection of specific genetic abnormalities or disorders;
- iv. allowing the regent to use such techniques only under certain conditions;
- v. Punishment

“THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994”

Preamble⁴⁵⁸ - this Act is intended to prohibit sex-determination pre or post conception, re regulate pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities, metabolic disorders, chromosomal abnormalities, certain congenital malformations, or sex-related disorders, and to prevent their misuse for sex-determination that leads to an increase in Female foeticide, as well as for matters related to or incidental to these activities as well.

The newly named, “The Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994” consists of 8 Chapters and 34 Sections. This Act brings a control on the use of pre-conception and pre-natal Diagnostic techniques and it also prohibits pre-natal sex selection not only by any common person such as medical practitioners, Gynecologists and paediatricians, as well as any genetic counselling centre, genetics laboratory, or clinic, can provide this information.

“Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinic According to Section 3 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, genetic counselling centres, genetic laboratories, genetic clinics, unless registered under the said Act, cannot conduct or associated with, or help in, conducting activities relating to pre-natal diagnostic techniques.”

They cannot employ or cause to be employed or take the services of any person who does not have the prescribed qualification, such as a medical geneticist, gynaecologist, or paediatrician, or cause or aid in the conduct of any prenatal diagnostic methods performed outside of a registered facility, whether on an honorary or paid basis.

“Prohibition of Sex Selection”

The newly added Section 3A of the Act, sex-selection of would be mother or would be father or both or on any issue, embryo, conceptus, fluid or gametes destined from one of them or both of them is prohibited.

“Prohibition on Sale of Ultrasound Machine, etc.”

Sale of any USG machine, imaging machine, scanner, or other equipment capable of diagnosing sex of foetus, embryo to any genetic counselling centre, genetic

⁴⁵⁸Subs. by Act 14 of 2003.

laboratory, genetic clinic, or any other person who is not registered under the Act is forbidden, according to new Section 3B of the Act.

“Regulation of Pre-natal Diagnostic Techniques”

In terms of Section 4(2) of the Act of 1994, Prenatal diagnostic tests must be prescribed and carried out in order to discover any of the aforementioned abnormalities: if the prospective mother or father has any previous medical history,

- (i) “chromosomal abnormalities;
- (ii) genetic metabolic disease;
- (iii) haemoglobinopathies;
- (iv) sex-linked genetic diseases;
- (v) congenital anomalies; and
- (vi) any other abnormalities or disease as may be specified by the Central Supervisory Board.”

“Pre-condition to use Pre-natal Diagnostic Techniques”

“No prenatal diagnostic techniques shall be used or performed unless the person qualified to do so is satisfied that any of the following conditions are met, for reasons to be documented in writing, as stipulated in Section 4(3) of the Act:”

- (i) “the pregnant woman’s age is greater than 35 years;
- (ii) the pregnant woman has had two or more spontaneous abortions or foetal loss;
- (iii) the pregnant woman has been exposed to potentially teratogenic agents such as drugs, radiation, infection, or chemicals;
- (iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as spastic or any other genetic disease;
- (v) any other condition as determined by the Central Board.”

Provided, however, that the person performing ultrasonography on a pregnant woman shall keep a complete record of the procedure in the clinic in the manner prescribed, and any deficiency or inaccuracy discovered therein shall constitute a violation of Section 5 (written consent of the pregnant woman and prohibition of communicating the sex of the foetus) or Section 6 (sex determination prohibited), unless the person performing the ultrasonography proves otherwise.

Except for the reasons stated above, no one, including a pregnant woman’s relative or

spouse, wanted to seek or induce prenatal diagnostic procedures to be used on her.

“Consent of and Communication to Pregnant Woman”

According to Section 5 of the Act, a 1994 Pre-Natal Diagnostic Procedure cannot be performed unless the following conditions are met:

- (i) all side and after effects of the procedure have been explained to the concerned pregnant woman;
- (ii) her written consent to undergo the procedure has been explained in a language that she understands; and
- (iii) a copy of her written consent has been given to the concerned pregnant woman.

It is forbidden to communicate the sex of the foetus to the concerned pregnant woman, her relatives, or anyone else through words, signs, or any other means.

“Determination of sex prohibited”

No genetic counselling centres, genetic laboratories, genetic clinics, or any person can undertake or cause to be conducted pre-natal diagnostic methods such as ultrasonography for the purpose of determining the sex of the foetus, according to Section 6 of the Act. No one has the authority to cause or authorize the determination of sex pre or post conception.

“CENTRAL SUPERVISORY BOARD”

The Central Supervisory Board is established under Section 7 of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The Central Government is empowered under this provision to establish a Board to exercise the powers and perform the tasks granted on the Board by the aforementioned Act, the Board is known as the Central Supervisory Board.

Constitution of Central Supervisory Board

According to Section 7(2) of the Act, the Central Supervisory Board shall be composed of the following members:

- (i) “the Minister in charge of the Ministry or Department of Family Welfare, who shall serve as Chairman, *ex-officio*;
- (ii) the Secretary to the Government of India in charge of the Department of Family Welfare, who shall serve as Vice-Chairman, *ex-officio*;
- (iii) three members to be appointed by the Central Government to represent the

Ministries of Central Government in charge of women and children ten members to be appointed by the Central Government, two each from amongst—

- (a) eminent medical geneticists;
 - (b) eminent gynaecologists and obstetricians or experts in “*stri-roga*” or ‘*prasuti-tantra*’
 - (c) eminent paediatricians;
 - (d) eminent social scientists; and
 - (e) representatives of women’s organisations.
- (iv) three Female members of Parliament, two of whom will be chosen by the House of Commons and one by the Council of States.
- (iv) four members, two in alphabetical order and two in reverse alphabetical order, to be selected by the Central Government by notation to serve as a representative for the states and union territories

These appointments shall be made on the recommendation of the State Government or as the case may be the Union Territory.”

Ex-officio, the Member Secretary shall be an officer in charge of Family Welfare who is not below the rank of Joint Secretary or equivalent in the Central Government. Other than a ‘ex-officio’ member, the term of office for all other members is three years. (Section 8)

Meeting of the Board – U/S 9(1) of the Act, the Board, *i.e.*, the Central Supervisory Board, shall meet at such time and place as may be provided by regulations, and shall follow such rules of procedure in regard to the transaction of business at such meetings (including the quorum at such meetings):

“Provided that the Board shall meet at least once in six months”

Section 9(2) of the Act provides that the Chairman and, in his absence, the Vice-Chairman shall preside at the meeting of the Central Supervisory Board.

If the Chairman or Vice-Chairman is unable to attend a meeting of the Central Supervisory Board for whatever reason, the meeting will be presided over by any other member chosen by the members present [(Section 9(3)].

All questions before the Central Supervisory Board must be resolved by a majority of the votes cast by the persons elected, with the Chairman or, in his absence, the person

presiding, having and exercising a second or casting vote in the event of a tie. [Section 9(4)].

Members who are not ‘ex-officio’ members are entitled to such allowances as the Central Supervisory Board may determine [Section 9(5)].

“Authentication of orders and other instruments of the Board”

All orders and decisions of the Central Supervisory Board shall be authenticated by the signature of the Chairman or any other member authorized by the Board in this behalf, and all other instruments issued by the said Board shall be authenticated by the signature of the Member Secretary or any other officer of the Board authorized in the like manner, according to Section 13 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.”

“Disqualifications—for Appointment as member”

Disqualifications for appointment as a member are outlined in Section 14 of the Act. According to this section, a person is ineligible to be appointed as a member if he –

- (i) “has been convicted and sentenced to imprisonment for an offence involving moral turpitude in the opinion of the Central Government; or
- (ii) is an undischarged insolvent; or
- (iii) is of unsound mind and has been declared so by a competent court; or
- (iv) has been removed or dismissed from the service of the Government or a corporation
- (v) has a financial or other interest in the use or promotion of pre-natal diagnostic techniques for identifying sex or any sex selection technique, which, in the judgement of the Central Government, is likely to impair his performance of his functions as a member; or
- (vi) has been associated with the use or promotion of any sex selection technique, in the opinion of the Central Government.”

“Eligibility of Member for Re-appointment”

Any person ceasing to be a member shall be eligible for re-appointment as such member under Section 15 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994:

Except for ‘ex-officio’ members, a member cannot be appointed for more than two

terms in a row.⁴⁵⁹

“Functions of the Central Supervisory Board”

“The Central Supervisory Board's Functions”

The Central Supervisory Board, according to Section 16 of the Act, has the following responsibilities:

- (i) Advise—to advise the Central Government on policy problems relating to the use of prenatal diagnostic and sex-selection procedures, as well as the misuse of these tools.
- (ii) Evaluate and Monitor—to review and monitor the Act's and Rules' implementation, and to make recommendations to the Central Government for modifications to the Act and Rules. Public awareness—to raise public understanding about the practise of pre-conception sex selection and prenatal foetal sex determination, which leads to Female foeticide.
- (iii) Code of Conduct—to establish a Code of Conduct for employees of Genetic Counseling Centers, Genetic Laboratories, and Genetic Clinics.
- (iv) Oversight of Entities' Performance—to monitor the performance of various bodies established under the Act and take appropriate steps to ensure correct and effective implementation.
- (v) any additional duties that may be assigned.

“State Supervisory Board”

The Amendment Act of 2003 incorporates this provision. The Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 now includes Section 16-A, which establishes the State Supervisory Board and the Union Territory Supervisory Board at the state level.

According to Section 16-A(1) of the Act, A State Supervisory Board or a Union Territory Supervisory Board shall be established in each State and Union Territory with a Legislature, as the case may be.

“Functions of State Supervisory Board and Union Territory Supervisory Board”

As provided under Section 16-A(1) of the Act, the Board shall have the following functions namely-

- (i) Public Awareness—to raise public awareness about the practise of pre-

⁴⁵⁹Ins. By Act 14 of 2003, Section 12.

conception sex selection and pre-natal determination of the sex of the foetus in the State, which leads to Female foeticide;

- (ii) Review—to examine the activities of the State’s Appropriate Authorities and recommend appropriate action against them.
- (iii) Implementation of Provisions—to monitor the implementation of the Act’s and rules’ provisions and make appropriate recommendations to the Board; and
- (iv) Reports—to send such consolidated reports as may be prescribed in respect of the various activities undertaken in the State under the Act to the Central Supervisor any
- (v) other functions as may be prescribed under the Act.

“Constitution of State Supervisory Board”

According to Section 16-A(2) of the Act, the State Supervisory Board shall be comprised of:

- (a) the State Minister in Charge of Health and Family Welfare, who shall serve as Chairperson, ex-officio;
- (b) the Secretary in Charge of the Department of Health and Family Welfare, who shall serve as Vice-Chairperson, ex-officio;
- (c) Secretaries or Commissioners in Charge of the Departments of Women and Child Development, Social Welfare, Law, and Indian System of Medicines,
- (d) ten members nominated by the State Government, two from each of the following categories:
 - (i) eminent social scientists and legal experts;
 - (ii) eminent women activists from non-governmental organizations or elsewhere;
 - (iii) eminent gynaecologists and obstetricians or experts of *stri-roga*
 - (iv) eminent paediatricians or medical geneticists;
 - (v) eminent radiologists or sinologists
- (e) an ex-officio Member Secretary who is not lower than the position of Joint Director in charge of Family Welfare.

As required by Section 16-A (3) of the Act, the State Supervisory Board must convene at least once every four months.

- (f) ten members to be appointed by the State Government out of which two each shall be from the following categories:—

- (i) eminent social scientists and legal experts;
- (ii) eminent women activists from non-governmental organizations or otherwise;
- (iii) eminent gynaecologists and obstetricians or experts of *stri-roga* or *prasuti-tantra*;
- (iv) eminent pediatricians or medical geneticists;
- (v) eminent radiologists or sonologists.
- (g) an officer not below the rank of Joint Director in charge of Family Welfare, who shall be the Member Secretary, *ex-officio*.

The State Supervisory Board shall meet at least once in four months as provided under Section 16-A (3) of the Act.

“Term and Proceedings of State Supervisory Board”

A member’s term of office, excluding *ex-officio* members, shall be three years, as stipulated in Section 16-A(4) of the Act.

If there is a vacancy in the office of any member who is not a ‘*ex-officio*’ member, the vacancy must be filled by a new appointment. [Section 16-A(5)].

If a member of the Legislative Assembly or the Legislative Council who is also a member of the State Board becomes Minister, Speaker, or Deputy Speaker of the Legislative Assembly, or Chairperson or Deputy Chairperson of the Legislative Council, he will resign from the State Board. [Section 16-A(6) of the Code of Federal Regulations].

The quorum for the State Supervisory Board is one-third of the total number of members [Section 16-A(7)].

Appropriate Authority/Advisory Committee—For Union Territories and States - Under Section 17(1) of the Act, the Central Government may designate one or more appropriate authorities for each of the Union Territories for the purposes of this Act by notifying them in the Official Gazette. As a result, the Central Government has the authority to form relevant bodies for each of the Union Territories.

Given the severity of the problem of prenatal sex determination leading to Female foeticide, the State Government is empowered under Section 17(2) of the Act to appoint one or more appropriate authorities for the purposes of this Act.

Establishment of Appropriate Authorities.— Appropriate Authorities are established under Section 17(3) of the Act. The officers appointed as Appropriate Authorities

shall be: (a) when appointed for the entire State or Union Territory, consisting of three members:

- A. officer of or above the rank of Joint Director of Health and Family Welfare—Chairperson;
- B. an eminent woman representing women's organizations; and
- C. an officer of the State or Union Territory concerned's Law Department:

Provided that within three months of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 entering into force, the State or Union Territory concerned shall form a multi-member quorum of Appropriate Authority.

Also, any vacancy that occurs therein must be filled within three months of the occurrence.

“Functions of the Appropriate Authority”

The Appropriate Authority's functions are outlined in Section 4 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: —

- a) Suspension or Cancellation of Registration – to grant, suspend, or revoke the registration of a Genetic Counselling Centre, Genetic-Laboratory, or Genetic-Clinic;
- b) Enforcement – to enforce the genetic Counselling Centre's requirements. Genetic Clinic and Genetic Laboratory:
- c) Investigation.
- d) Consideration of Advice – to seek and consider the advice of the Advisory Committee, created under Section 17(5), on applications for registration and complaints for suspension or cancellation of registration.
- (e) Legal Action – to take appropriate legal action against the use of any selection techniques by any person at any place, *suo-motu* or brought to its notice and also to initiate independent investigation in such matter.
- (f) Public Awareness – to raise public awareness about sex selection and prenatal gender determination.
- (g) Supervision of Execution – to oversee the implementation of the Act's and Rules' provisions;
- (h) Recommendation – to recommend to the Board and State Boards any necessary

rule changes in response to technological or social changes.

- (i) Taking Action – to act on the Advisory Committee's recommendations for suspension or cancellation of registration that were made after an investigation of the complaint.

“Constitution of Advisory Committee”

In accordance with Section 17(5) of the Act, the Central Government or the State Government, as the case may be, shall form an Advisory Committee for each Appropriate Authority to assist and advise the Appropriate Authority in the discharge of its functions, and one of the members of the Advisory Committee shall be appointed as its chairman.

The Advisory Committee will be made up of the following people, according to Section 17(b) of the Act:

- (a) three medical experts, including gynaecologists, obstetricians, paediatricians, and medical geneticists;
- (b) one legal expert;
- (c) one officer to represent the State Government's or Union Territory's information and publicity department;
- (d) three eminent social workers, including at least one from among representatives of women's organizations.

Appropriate Authority Powers Recently added the powers of the relevant Authority are outlined in Section 17-A of the current Act: — will summon anyone in possession of information about a violation of the provisions of this Act or the rules issued there under

- (i) the production of any document or material object pertaining to clause (1) above;
- (ii) the issuance of a search warrant for any location suspected of engaging in sex-selection technique or pre-natal sex-determination; and
- (iii) any other matter prescribed.

“REGISTRATION”

Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics Newly added Section 18(1) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 declares that:

“No person shall open any Genetic Counsel Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex foetus and sex selection or render services to any of them, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such centre, laboratory or clinic is duly registered under the Act.”

As a result, it is a legal requirement. In other words, “no Genetic Counselling Centre, Genetic Laboratory, or Genetic Clinic, including clinics, laboratories, or centres with ultrasound or imaging machines or scanners or any other technology capable of determining the sex of a foetus or sex selection, can be opened unless it is duly registered under the Act.” After performing an investigation and determining that the applicant has met all of the Act's requirements, he will be issued a certificate of registration, which will be renewed upon payment of the necessary fees.

“Cancellation or Suspension of Registration”

According to Section 20(1) of the Act, the Appropriate Authority may issue a notice to the Genetic Counselling Centre, Genetic Laboratory, or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons stated in the notice, either on its own initiative or in response to a complaint.

Following a hearing and consideration of the Advisory Committee's recommendations, the Appropriate Authority may cancel, suspend, or reinstate the registration of such laboratory, centre, or clinic.

It is possible to appeal a decision of the Appropriate Authority. The Appropriate Authority's order of suspension or cancellation of registration is appealable to the Central Government within thirty days of the date of the impugned order, as specified by Section 21 of the Act, when the appeal is against the Central Appropriate Authority's order. However, if the appeal is against a State Appropriate Authority order, the appeal will be heard by the State Government.

“Prohibition of Advertisement Relating to Pre-Conception and Pre-natal sex Determination Techniques”

Advertisements referring to pro-conception, prenatal sex determination, or sex-selection are illegal under Section 22 of the Act. A violation of the abovementioned

law is punishable by up to three years in prison or a fine of up to 10,000₹.

Offence by Companies

If a company commits an offence punishable under the Act, every person in charge of and responsible to the company for the conduct of the company's business at the time the offence was committed, as well as the company, is deemed guilty of the offence and is liable to be prosecuted and punished accordingly, according to Section 26(1) of the Act.

This section, on the other hand, will not subject anyone to punishment if it can be demonstrated that the crime was done without his knowledge or that he did everything possible to prevent it. Every offence under the Act must be cognizable, non-bailable, and non-compoundable, according to Section 27.

Thus, “the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 is intended to prohibit Female foeticide across the country which has become constant evil in the society. The Parliament in its wisdom attempted to check the disparity of sex ratio.”

5.1.4 – The Dowry Prohibition Act, 1961,

“...The degradation of society due to the pernicious system of dowry and the unconscionable demands made by the greedy and unscrupulous husbands and their parents and relatives, resulting in an alarming number of suicidal and dowry deaths by women, has shocked the legislative conscience to such an extent that the legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil.”

*Brij Lal v. Prem Chand*⁴⁶⁰

Kanyadaan, which literally means ‘gift of a virgin,’ is the most religious rule involved with a Hindu marriage. Perhaps it is the regulation, but no one has ever been able to donate their own daughter. According to the Shastras, ‘she’ should be properly dressed with jewellery. However, the meritorious deed of *dana* was not complete until the receiver was granted *dakshina*. It was *Varadakshina* who was given something in cash or kind along with *Kanyadaan* to the bridegroom or *Vara*. This was a completely voluntary act.

⁴⁶⁰1989 Supp (2) SCC 680:1991 SCC (Cri) 394.

Meaning

“According to Webster’s New Dictionary, dowry means

1. The money, goods or estate which a woman brings to her husband in marriage; a bride’s portion on her marriage;⁴⁶¹
2. A natural talent, gift or endowment: as poetry was her dowry; and
3. A gift of money or property by a man to or for his bride. The meaning of the term ‘dowry’ as per *Wharton’s Law Lexicon* is;

Dowry or *dote* (*dos mulieris*) otherwise called *maritagium* or marriage goods [are] that which the wife brings to the husband in marriage.”

The Britishers also never had seen the dowry a good practice. The malice was also recognized by Indian social reformers. In Pre-independence, to bring a halt to the evil of dowry, “the then Provincial Government of Sind passed an enactment known as the Sind Deti Leti Act, 1939” to have been dealt. This Act prevented the transaction of dowry as an integral part of marriage; it prescribed limits and punishments for taking dowry.⁴⁶²

What appeared to be isolated occurrences of suicides or deaths caused by kerosene stove explosions soon escalated as dowry deaths. Following their disappointment and complaints, a small number of women banded together to seek effective legislation on the hot topic of dowry deaths.

Objects and reasons

The Act’s goal is to make the abhorrent practise of dowry giving and taking illegal. The conferral of higher pro women’s rights on the “Hindu Succession Act, 1956,” was one of the remedies used to alleviate this problem, which is essentially a societal one. However, it is believed that making the practise criminal while also ensuring that any dowry provided is for the wife's sake will go a long way toward informing public opinion and eradicating this immorality. Both inside and outside of Parliament, there has been a constant call for such legislation. As a result, the current Bill was drafted. It does, however, take care to exclude gifts in the form of clothing and jewellery that are usual at weddings, as long as their worth does not surpass 2,000₹. A provision like

⁴⁶¹ Webster’s New Twentieth Century Dictionary (1956).

⁴⁶² P. Diwan and P. Diwan, *Women and Legal Protection* (Deep & Deep Publications, 1994).

this appears to be required to make the law workable.⁴⁶³

The purpose behind enforcement of the “Dowry Prohibition Act, 1961 (DP Act) was explained in *Bachni Devi v. State of Haryana*⁴⁶⁴ (Bachni Devi). The Act’s purpose was to prohibit the giving and receiving of dowries, as well as to protect married women from cruelty and violence in the matrimonial household from their husbands and in-laws. The simple demand for dowry prior to marriage, during the marriage, or at any point afterward is illegal. The definition of dowry in Section 2 demonstrates that the term is broadly defined to include properties of all kinds, as it includes ‘any property or valued security’ supplied or agreed to be given in connection with marriage, either directly or indirectly. However, dowry does not include ceremonial presents and firearms presented by the bride’s parents upon the birth of a grandchild.⁴⁶⁵

The DP Act is a small piece of penal legislation with only a few parts. Full dowry transaction is punishable,⁴⁶⁶ ‘dowry,’ if granted, was to be treated as a trust in favour of the bride for whose benefit it was given. “The Act made the offences non-cognizable, non-bailable, and non-compoundable.” The Central Government was permitted to adopt laws to carry out the Act’s aims.⁴⁶⁷

Finally, the “A. P. Dowry Prohibition Act, 1959 and the Bihar Dowry Restraint Act, 1950” were repealed, making the Act of 1961 uniformly applicable to the whole country. The Central Government, taking into consideration a variety of customs prevalent in different parts, allowed State Governments to process and amend the Act of 1961 in the light of regional diversities. Thus, the States of “Bihar, West Bengal, Orissa, Haryana, H. P. and Punjab” passed enactments⁴⁶⁸ amending the D. P. Act, 1961 in application to their respective States.

Despite the efforts of both the federal government and state governments, the Dowry Prohibition Act has proved completely failure. The Indian Committees on the Status of Women stated:

⁴⁶³ Gazette of India, 1959, Extra., Pt. II, S. 2, 397. See, Joint Committee Report, II9I-193.

⁴⁶⁴ (2011) 4 SCC 427; (2011) 2 SCC (Cri) 580.

⁴⁶⁵ *Narayanamurthy v. State of Karnataka*, (2008) 16 SCC 512; (2010) 4 SCC (Cri) 322

⁴⁶⁶ *Supra* note 120 at 63.

⁴⁶⁷ The Constitution of India, art. 246(2) and 254(2).

⁴⁶⁸ Constituted by a resolution of Ministry of Education and Social Welfare which submitted report titled “Towards Equality” (1974).

After reviewing the Act,⁴⁶⁹ it was determined that there were some flaws in some clauses that made it weak.

- 1) the definition of dowry;
- 2) the Act's punishment was insufficient; and
- 3) the definition of dowry;

It was also unclear who would bring the lawsuit if both the donor and the receiver of dowry were in breach of the Act. The Act is silent on whether a person who fails to repay a woman's dowry is liable to prosecution. A lack of societal acceptance and acceptability was one of the most noteworthy reasons for the Act's failure and the alarming rise in dowry cases.

Despite non-acceptance, the Joint Committee highlighted the role of legislation according to Pandit Jawahar Lal Nehru as:

Ordinarily, regulations cannot tackle deep-seated social issues on its own. One must approach people in other ways as well, but legislation is required and crucial in order to provide that push and educational aspect, as well as legal sanction, that aids in the shaping of public opinion.

The Joint Committee of Parliament observed that the evil targeted to be eradicated by the DP Act, on the other hand, has grown by leaps and bounds and has now reached grotesque and alarming proportions.

Thus, taking into account the loopholes in the DP Act and on the basis of the following recommendations of the Joint Committee, the Amendment Act 1984 was passed:

1. The Joint Committee proposed that the definition of dowry in Section 2 of the DP Act be changed by removing the phrase "as consideration for marriage" because it is impossible to prove that anything given was given as a consideration for the marriage. As a result, it was suggested that the phrases 'in connection with the marriage' be replaced with the words 'as consideration for the marriage.'
2. 'Presents given willingly (with conditions) at, before, or after marriage should not be considered dowry for Section 3 reasons.' The value of the donation, however, should not exceed 20% of the income or 15,000₹, whichever is

⁴⁶⁹*Supra* note 132 at 66.

smaller.

3. Section 4 of the DP Act, which deals with penalty, should be changed to make punishment more severe in order to make the Act more deterrent.
4. The time limit⁴⁷⁰ within which the woman's dowry should be returned was proposed to be decreased from one year to three months, and the punishment for failure to do so was increased.⁴⁷¹ If a person is convicted of failing to return the dowry to the woman concerned within a given term, the court may, in addition to imposing a penalty, issue a direction compelling him to return the property to the lady within the time stated in the direction. In the event of noncompliance, the value of the property might be collected from the person as if it were a fine, and the money could be paid to the woman or her heirs.
5. It was suggested that the offence be rendered cognizable.

Several states, including Andhra Pradesh, Orissa, and Bihar, have made changes to Section 2.⁴⁷² Not only does the Act make it illegal to receive dowry, but it also makes it illegal to demand dowry before marriage.

*"S. Gopal Reddy v. State of A. P."*⁴⁷³ (*S. Gopal Reddy*).

Any property or valued security given or agreed to be given to the other party by one party to the marriage, either directly or indirectly, would be considered dowry under the Act, according to the meaning of the term 'dowry' in Section 2. To be considered 'dowry,' however, it must be offered or demanded in conjunction with the mentioned party's marriage."

*"State of H. P. v. Nikku Ram"*⁴⁷⁴ (*Nikku Ram*),

The Supreme Court stated: [A]ddition of Even if the demand is made several years after the marriage, the terms 'any time' before the expression after the marriage' would clearly demonstrate that it might still be regarded dowry if the other conditions of the clause are met. To widen the scope of the concept of dowry, the terms 'in connection with the marriage of the specified parties' were replaced for the phrases 'as compensation for the marriage.' It is common to see the bride's family put under

⁴⁷⁰The Dowry Prohibition Act, 1961, to be included in s. 6.

⁴⁷¹ Subs. by Act 43 of 1984 (*w.e.f.* 1911-1986) and further amended by Act 43 of 1986.

⁴⁷² In Haryana vide Haryana Act 28 of 1972, S. 2 (*w.e.f.* 5-8-1976); in Bihar vide Act 25 of 1950, Orissa – by Orissa Amendment Act, 1976.

⁴⁷³ 155. (1996) 4 SCC 596: 1996:SCC (Cr.)792.

⁴⁷⁴ (1995) 6 SCC 219: 1995:SCC (Cr.)1090.

duress after the wedding to make up for the so-called 'deficiencies' at the time of the wedding. As a result, the Joint Committee noted that dowry is not a one-time payment made at the moment of marriage or prior. It continues after marriage, and if the relationship is clear, it falls under the dowry umbrella.”

“Traditional presents not included in dowry

*Vinod Kumar Sethi v. State of Punjab*⁴⁷⁵(*Vinod Kumar*) that a voluntary and affectionate offering of dowry and traditional presents would clearly fall beyond the scope of the Act’s term, rendering the rest of the Act’s provisions ineffective.”

But, the real difficulty arises, pointing towards the flaw in the Act, in making a distinction between voluntary and extorted gifts. The coercive element in cases of dowry becomes very difficult to prove. In this regard, it may be right to point out the observations made by the committee:

The committee believes that gifts given to the bride voluntarily, that is, without coercion or compulsion, either directly or indirectly, by parents, relatives, friends, or others at or before or after marriage in the form of cash, ornaments, clothing, or other articles, should not be considered dowry.

Dower is not dowry

“*Kunju Moideen v. Sayed Mohammed*⁴⁷⁶ because the Act applies equally to Muslims, Parsis, Christians, Jews, or anyone else solemnizing a marriage in India, the exclusion of *mahr* from the scope of Section 2 is significant. *Mahr* is defined as a sum of money or other property that the wife is entitled to receive from the husband in consideration of marriage.”

Dowry and *stridhana*

Supreme Court examined the entire concept of *stridhana* in the light of old textual law as well as existing provisions under the Hindu Succession Act, 1956, in its famous pronouncement made, in *Pratibha Rani v. Suraj Kumar*⁴⁷⁷(*Pratibha Rani*). The court observed that, the bride’s *Stridhan* is made up of all the presents she receives, including jewellery, clothing, furniture, and utensils. The jewels, sarees, and other goods provided to the bride for her use do not, by any stretch of the imagination, belong to her husband as well.

⁴⁷⁵ 1982 SCC Online P & H 96: AIR 1982 P&H 372.

⁴⁷⁶ AIR 1986 Ker 48.

⁴⁷⁷ (1985) 2 SCC 370: 1985 SCC (Cri) 180.

In *Vinod Kumar Sethi*,⁴⁷⁸ “in the context of criminal breach of trust, the court held: The inevitable presumption during the existence or the imminent breakup of the matrimonial home, is one of joint possession of the spouses which might be dislodged by the special terms of a written contract. However, to be precise, this presumption of joint possession of properties within the matrimonial home can subsist only as long as the matrimonial home subsists or on the immediate break up thereof it would be equally untenable to hold that the expulsion of one of the spouses from the matrimonial home would result in entrusting dominion over the property one belonging to the other so as to bring the case within the ambit of Section 405⁴⁷⁹ IPC, *i.e.*, criminal breach of trust.” Overruling the above decision in *Pratibha Rani*,⁴⁸⁰ “the court held that if, despite demands, the husband and his wife the articles given in marriage, its parents refuse to return to the amounts to a criminal breach of trust.

It is a figment of the High Court’s mind, as high courts have entirely ignored the reality that, given the obvious claims in the complaint, the spouse might also be accused of [criminal breach of trust] under Sections 405 or 406⁴⁸¹ IPC. In other words, the High Court just refuses to believe that such an entrustment could exist, and even if it did, no crime would have been committed. Such an approach amounts to a major distortion of the criminal law, culminating in the High Court’s committing a grievous and substantial miscarriage of justice against the wife. Such an erroneous and perverse approach will not be tolerated.

“The Act discourages the very demand of dowry. Though the Act is silent as to the time during which the demand should be made, the Supreme Court in *S. Gopal Reddy*,⁴⁸² held that the demand, even if made before the marriage, amounts to an offence under Section 4 of the Act.”

The court held in this case that the mere demand of dowry is sufficient to bring the

⁴⁷⁸ *Vinod Kumar Sethi v. State of Punjab*, 1982 SCC OnLine P & H 96: AIR 1982 P&H 372.

⁴⁷⁹ The Indian Penal Code, 1860 (Act 45 of 1860), s. 405 “*Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits ‘criminal breach of trust’.*”

⁴⁸⁰ *Pratibha Rani v. Suraj Kumar*, (1985) 2. SCC 370: 1985 SCC (Cri) 180.

⁴⁸¹ The Indian Penal Code, 1860 (Act 45 of 1860), s. 406 “*Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*”

⁴⁸² *S. Gopal Reddy v. State of A.P.*, (1996) SCC 6 4 _C 59 : 1996 SCC (Cri) 792.

offence home to an accused, and that any demand of money, property, or valuable security made by the bridegroom or his parents from the bride or her parents or other relatives, or vice versa, would fall under the Act's dowry mischief. The Supreme Court made the point that dim marriage in this context would cover a prospective marriage as well, more specifically, if the non-fulfillment of the dowry demand results in the marriage not taking place at all.

“*Inder Sain v. State*⁴⁸³ and *Kashi Prasad v. State of Bihar*,⁴⁸⁴ the High Court offered a very restricted interpretation, ruling that a simple claim for 'dowry,' if not accompanied by the assent of the other party, would not be subject to the DP Act's requirements. That is, for the demand to be considered an offence, it had to be accepted by the other party as well.”

The Supreme Court in “*L. V. Jadbav v. Shankarrao*,⁴⁸⁵ declined to confine the import of dowry to such narrow contours. Their Lordships observed:

We believe that, in light of the Act's purpose, the term ‘dowry,’ as used in Section 4 of the Act, should be construed broadly to include any property or valuable security that, if consented to be provided in response to a demand, would constitute 'dowry,' within the meaning of Section 2 of the Act. We further believe that the purpose of Section 4 of the Act is to discourage the demand for property or significant security in exchange for a marriage between the parties. Section 4 of the Act bans the demand for 'providing' property or valuable security, which, if met, would be a violation of Section 3 read with Section 2 of the Act. There is no basis for believing that the initial demand for property or valued security would not be an offence, and that an offence would only occur if the demand was repeated after the party to whom the demand was made consented to comply.”

“In *Nikku Ram*,⁴⁸⁶ the Supreme Court observed:

Dowry, dowry, dowry this is the painful repetition that confronts, and at times haunts, many parents of girl children in our holy nation, ‘where, in good old days, the conviction was that where woman is worshipped, there is residence of God.’ We’ve mentioned dowry three times since it’s demanded at three different times:

⁴⁸³1981 Cri LJ III6 (Del).

⁴⁸⁴ 172. 1980 BBCJ 612 (Pat).

⁴⁸⁵ 173. (1983) 4 SCC 231: 1983 SCC (Cri) 813.

⁴⁸⁶*State of H.P. v. Nikko Ram* (1995) 6 SCC 219: 1995 SCC (Cri) 1090.

- i. before marriage,
- ii. during the marriage, and
- iii. after the marriage.

Because greed is infinite, in many circumstances, the demands grow insatiable, leading to torture of the girl and, in some cases, suicide or murder.”

“*K. R. Soorachari v. State of Karnataka*,⁴⁸⁷ the sentence of one year of harsh imprisonment and a fine of 10,000₹ imposed under the DP Act was appealed to the Supreme Court. In the present case, there was proof of a dowry demand. The fact that an amount was paid to the accused prior to marriage by the deceased's mother and sister-in-law does not justify the conclusion that the prosecution failed because sister-in-law failed to state in her deposition that she had accompanied the deceased's mother to hand over the dowry amount to the accused.”

Thus, the court sentenced under Sections 3, 4 and 6, DP Act. The object, ambit and scope of Sections 3 & 4, of DP Act and Sections 304B and 498A⁴⁸⁸ IPC were discussed in “*State of U.P. v. Santosh Kumar*”⁴⁸⁹ Sections 304B⁴⁹⁰ and 498A were considered to be different offences, with cruelty being a common essential ingredient for both the offences. On one hand, U/S 304B, dowry death is punishable which occurred within 7 years of marriage; whereas, U/S 498A, time period is not mentioned and at any moment throughout the marriage, the husband or his relatives would be responsible for cruelty to the wife. Demand for dowry is essential to attract Section 304B; however, under Section 498A, it is not the basic ingredient. Therefore, explaining the difference, it was held by the court that even if there is acquittal U/S 304B IPC, there can still be conviction under Section 498A under the law. The purpose of Section 4, DP Act is to abolish the very demand of dowry as a consideration of marriage. Section 4 prohibits the any kind of demand for giving or taking property or valuable security, if satisfied, it would constitute an offence U/S 3 with the Section 2 of the Act; thus, the area of Sections 3 and 4 of the Act is different from that of Sections 304B IPC. Ban on advertisements for dowry.

⁴⁸⁷(2005) II SCC 214; (2006) I SCC (Cri) 101.

⁴⁸⁸ *Supra* note 364 at 149.

⁴⁸⁹(2009) 9 SCC 626; (2010) I SCC (Cri) 88.

⁴⁹⁰ *Supra* note 126 at 64.

5.1.5 – The Indian Penal Code, 1860

Infanticide

In India infanticides have been practiced with prosperity as well as rural tribes and poor people. S. K. Ghosh (1993) reports, “Rich people preferred to keep their property and business within the family which the daughters divide after marriage. Certain tribal communities and some poor Muslims in Hyderabad are allegedly getting rid of their Female off-spring because they cannot afford to give dowry. It was reported that there was rampant practice of Female infanticides among the poverty ridden Karrar community of Usilampatti Taluk in Madurai district of Tamilnadu. The killers resorted to infanticides on fear of dowry menace.”⁴⁹¹

A body of a new-born girl was discovered in a plot in a Jaipur residential complex in 2012, and the corpse of a new-born girl was taken from a dumpster the following day. The police were looking into it. Some passers-by discovered the infant girl’s body wrapped in a piece of cloth in a vacant plot in Ambabari, a rich area in the city.⁴⁹²

In 2013, a newborn baby girl died of her injuries after being found horribly buried alive in an Indian forest.

- The infant had only been alive for 24 hours when she was abandoned.
- She was discovered alive but died the next day from her injuries.
- In India, Female infanticide and foeticide are common since many families desire boys.

The infant was only one day old when she was discovered wrapped in no cloth and half buried under earth and stones in Mandleshwar forest, outside of Indore in Madhya Pradesh’s central state. She was brought to the hospital, but she succumbed to her injuries.⁴⁹³

In Punjab, Female infanticide was reported in 2019, and the mother of the twin daughters filed a police report, which led to the woman and her son being jailed.

Even as the centre promotes its ‘*Beti Bachao Beti Padhao*’ campaign, the widespread

⁴⁹¹ Ghosh. S. K., *Women and Crime* (Ashish Publishing, New Delhi, 1993).

⁴⁹² Another newborn girl’s body found in Jaipur, available at: <http://www.ndtv.com/jaipur-news/another-newborn-girls-body-found-in-jaipur-473857> (Last visited on April 23, 2016).

⁴⁹³ Newborn baby girl found buried alive in Indian forest in ANOTHER tragic case of female infanticide, available at: <http://www.dailymotion.co.uk/news/article-2356252/Newborn-baby-girl-buried-alive-Indian-forest-ANOTHER-case-female-infanticide.html#ixzz47fQmew7t> (last visited on April 23, 2016).

practise of Female infanticide continues to claim more lives. A mother in Punjab's Bathinda allegedly dropped her twin grandchildren in a canal just two hours after birth, in a tragic event.

In India, there has been a long-standing custom of favouring boys above daughters. This is fueled by the assumption that a son will carry on the family name and care for the parents in their later years, whereas daughters will cost them dowries.⁴⁹⁴

The child, who amazingly survived the ordeal, was discovered by a couple and a few labourers who were there to bury their stillborn daughter in Bareilly, Uttar Pradesh, in 2019.

- The newborn was discovered buried 3 feet underground in a big pot.
- Police said this was an obvious example of Female infanticide because the baby child was just 3 days old when she was admitted to a local hospital's ICU.⁴⁹⁵

A guy and his family allegedly murdered his one-month-old daughter in 2018, after becoming enraged over the birth of a Female. They desired a son. When Sangita arrived home from work, she discovered her daughter had died. Rajesh and his relatives assaulted her as she began to protest. Sangita was locked up in a room, and the baby was buried. In 2019, statistics on sex ratios at birth from 132 villages in Uttarkashi district, Uttarakhand, revealed that no girl child had been born in these places in the previous three months, at a time when the centre was promoting its "*Beti Bachao Beti Padhao*" initiative.

According to records, 216 infants were born in the district's 132 villages in the last three months, but there was not a single girl among them, which has perplexed the district administration.⁴⁹⁶

In 2022, a day after a two-month-old girl was discovered dead inside a microwave oven in Chirag Dilli, South Delhi, police detained a 26-year-old lady on suspicion of

⁴⁹⁴ Woman Allegedly Dumps Twin Granddaughters In Punjab Canal After Birth, *available at:* <https://www.ndtv.com/india-news/female-infanticide-punjab-bathinda-woman-allegedly-dumps-twin-granddaughters-in-canal-after-birth-2107871> (Last visited on March 23, 2022).

⁴⁹⁵ Newborn 'Sita', Found 3 Feet Underground At UP Cremation Site, In ICU, *available at:* <https://www.ndtv.com/india-news/bareilly-uttar-pradesh-newborn-sita-found-3-feet-underground-at-bareilly-up-cremation-site-in-icu-2117303> (Last visited on March 23, 2022).

⁴⁹⁶ No Girl Born In 132 Villages In Uttarkashi In 3 Months: Report, *available at:* <https://www.ndtv.com/india-news/no-girl-born-in-132-villages-in-uttarkashi-in-3-months-report-2073090> (Last visited on March 23, 2022).

murder based on circumstantial evidence. Dimple, the accused, is suspected of killing her child on Sunday night and spending the entire night with the body before hiding it in the oven on the second floor.⁴⁹⁷

Explanation

The ways used to murder Female infants in India's various areas and communities:

- (a) Suffocating the baby by wrapping a wet blanket around her face.
- (b) Poisonous berries and herbs are ground and mixed with milk before being fed to the newborn.
- (c) Putting a few grains of paddy in the mouth of the baby. These paddy grains enter the nasal route and strangle the kid; if the youngster manages to swallow the grains, they cut the child's delicate intestines, resulting in immediate death.
- (d) Strangling the youngster with a hefty bag of sand or salt over her face.
- (e) Giving the baby a large amount of opium, effectively putting her to sleep indefinitely.
- (f) The baby may be abandoned in a deserted area to perish.
- (g) The baby could be dropped while in the womb.
- (h) The notion that sacrificing a Female child will result in the birth of a boy is the most heinous.

The attitude to girl child is scathingly described by Bajpai (1990) in the following words: “she is a burden, a curse and a liability. She is used, abused, misused, married and murdered. Sure, we do have laws but she is guilty of a crime undefined in Indian Penal Code used - the crime of being born as a girl in India.”⁴⁹⁸

Foeticide

There is also an increasing trend of foeticide through advancement of technology in India. General attitude of Indian people is that ‘*santaan*’ means a son and not a daughter. As a consequence, when a woman is conceives, sex-determination tests

⁴⁹⁷ Delhi infant murder case: Mother spent two days with corpse before hiding it in oven, *available at: <https://www.indiatoday.in/cities/delhi/story/delhi-mother-spends-entire-night-with-two-month-old-baby-s-corpse-after-killing-her-arrested-1928499-2022-03-23#:~:text=A%2026%2Dyear%2Dold%20woman,night%20before%20hiding%20the%20body>*. (Last visited on March 23, 2022).

⁴⁹⁸ Asha Bajpai, (1990), *The Girl child and the Law, in Seminar on Rights of the Child*, National Law School of India University, Bangalore, pp. 118-25.

have become essential than any other tests, although it is totally illegal, but it is rampant. If the foetus is girl, the embryo/foetus has to die or eliminated. Sex-selection test or Amniocentesis has is inter-related with Female foeticide.

“Between 1978 and 1983, around seventy-eight thousand Female foetuses were aborted following amniocentesis. The data collected from six hospitals in Bombay in 1990 reveal that out of 8000 foetuses aborted 7999 Female. The test is certainly being misused to identify the sex of the foetus and destroy it if it is a girl.”⁴⁹⁹

“CAUSING OF MISCARRIAGE AND OF INJURIES TO UNBORN CHILDREN”

“Sections 312 to 318 of the Indian Penal Code, 1860 deal with the commission of causing of miscarriage and of injuries to unborn children the exposes of the infants and causing of miscarriage is not a penal offence if it is done with the consent of the victim and in certain circumstances.” S. 312⁵⁰⁰ of IPC reads as under:

There are two essential ingredients:

- (1) “Voluntarily causing miscarriage of woman with child.
- (2) Such miscarriage should have been caused in good faith for saving the life of the pregnant woman.”

“The term a woman ‘with child’ means pregnant woman. The expression miscarriage implies premature expulsion of the child or foetus from the womb of mother before the period of gestation. No offence is committed if the miscarriage is conducted for the purpose of saving life of the woman and the same is caused in good faith.”

The expression ‘quick with child’ connotes that a different feeling by a pregnant woman when the embryo in the mother’s womb starts moving which is usually felt after 4th or 5th month of pregnancy.

Section 312 punishes not only the person who causes the miscarriage, but also the lady who causes the miscarriage herself.

Section 313⁵⁰¹ the Code punishes the guilty person who engages in abortion the woman has not consented in it, whereas Section 312 the Code punishes the woman also who consents on abortion.

Section 314⁵⁰² of the IPC will work into field when the result of abortion brings death

⁴⁹⁹ *Supra* note 499 at 204.

⁵⁰⁰ *Supra* note 23 at 12.

⁵⁰¹ *Supra* note 29 at 13.

⁵⁰² *Supra* note 32 at 13.

of woman. The act of miscarriage should have been performed by the intention to cause miscarriage.

“The Apex Court in *Surrender Chauhan v. State of Punjab*”⁵⁰³ there were parallel evidence that Mr. Chauhan had an unlawful relationship with the deceased, as a result of which she became pregnant and was referred to Dr. Sharma, who holds a Bachelor of Medicine or Electro-Homeopathy degree. Dr. Sharma lacked the necessary qualifications and facilities to put an end to their lives. His clinic lacked even the most basic abortion facilities. Mr. Chauhan brought the deceased (named Alpena) to Dr. Sharma’s clinic with the goal of causing her miscarriage, and subsequently Dr. Sharma caused her death by causing abortion. Dr. Sharma’s act was done in furtherance of both Dr. Sharma and Mr. Chauhan’s common intention. The Supreme Court ruled that there is no way to get out of a conviction under Section 314/34 of the Indian Penal Code 1860. As a result, the doctor’s conviction under Section 314 of the Code was proper.

Section 315⁵⁰⁴ acts that are injurious to a baby’s life, prior to the actual birth, are included.

Section 316⁵⁰⁵ deals with the crime of killing unborn children while they are in an advanced stage of pregnancy beyond the time of quickening, that is, when death occurs after the ‘quickening’ but before the child’s delivery. The principle laid down in Section 301⁵⁰⁶ is applied here. In this situation, the offence of culpable homicide applicable to a person (victim) would be applied because the victim is an unborn child whose death is caused by any act or omission of nature that would have resulted in the death of a living person as previously stated.

Section 317⁵⁰⁷ punishes the parents or guardian for their failure to give proper care to

⁵⁰³ AIR 2000 SC 1436.

⁵⁰⁴ *Supra* note 37 at 14.

⁵⁰⁵ *Supra* note 38 at 14.

⁵⁰⁶ The Indian Penal Code, 1860 (Act 45 of 1860), s. 301 “Culpable homicide by causing death of person other than person whose death was intended.—If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.”

⁵⁰⁷ The Indian Penal Code, 1860 (Act 45 of 1860), s. 317 “Exposure and abandonment of child under twelve years, by parent or person having care of it.—Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention wholly abandoning such child, shall be punished with imprisonment of either

the children of tender age.

This section's essential elements are as follows:

- (1) The child's father, mother, or guardian must be the offender.
- (2) The child must be younger than twelve years old.
- (3) The infant must be exposed or left in any location with the intention of entirely abandoning it.

A mother of an illegitimate 6-month-old kid left the child with a blind woman, promising to return soon, but never did, as evidenced by the fact that she never returned. However, she was not charged U/S 317 of the IPC. The child must be left without any protection in order for the crime to be committed. Without these safeguards, the kid would be exposed to the dangers of the environment, wild animals, and other similar threats, all of which might result in immediate death, depriving the child of the vital protection at such a young age.

With the view to curb infanticide, this Section 318⁵⁰⁸ was designed. This section applies where birth of child is concealed by secretly disposing of body.

The following are the essential ingredients of this section:

1. The child's deceased body is secretly buried or otherwise disposed of.
2. It makes no difference if the death occurs before, after, or during the child's birth.
3. Intention to hide the child's birth by burying or disposing of the body in a hidden location.

The Section applies where one person is trying to hide the birth of a child intentionally from the world. If the child has born alive and it is developed enough.⁵⁰⁹

It constitutes the offence after the birth *i.e.*, the delivery of a child, dead or living, is hidden by any mean.⁵¹⁰

description for a term which may extend to seven years, or with fine, or with both.

Explanation.-This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequences of the exposure."

⁵⁰⁸ The Indian Penal Code, 1860 (Act 45 of 1860), s. 318 "Concealment of birth by secret disposal of dead body.- Whoever, by secretly burying or otherwise, disposing of the dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

⁵⁰⁹ Radha, (1899) 1 Bom. L.R. 155.

⁵¹⁰ Lallu, (1898) Unrep. Cr. C. 961.

5.1.6 – The Code of Criminal Procedure, 1973

“The High Court is the only judicial tribunal which the law has vested the powers of postponing the execution of a sentence of death confirmed by it. This is an instance of a case contemplated by S. 362⁵¹¹ in which High Court after signing the judgment, may after or review or alter the same.”⁵¹² By postponing the execution of a pregnant woman, it is deferred until delivery, but the High Court may also reduce the sentence to imprisonment for life. This is commutation of a sentence already confirmed and is distinct from the powers in s. 368.⁵¹³ Pregnancy should be confirmed by the certificate of a qualified physician.⁵¹⁴

The Code of Criminal Procedure giving recognition to the life of foetus indirectly,⁵¹⁵ the It is essential for the High Court to order that the implementation of death sentences pregnant woman be postponed or reduced to life imprisonment. The Code is prioritizing the entity of unborn child or foetus. But some unscrupulous people are trying to eradicate the girl child from the world itself.

5.1.7 – “The Medical Termination of Pregnancy Act, 1971”

“The Indian Penal Code of 1860,” which came into force, more than a century ago on the basis of then-British law, included several rules concerning abortion. Abortion was a crime for which both the woman and the abortionist might be prosecuted, with the exception of induced abortions to preserve the mother's life and a few exceptional conditions. This rigorous law was followed throughout the country. This little-known branch of law was a major contributor to the early deaths of pregnant women. Furthermore, medical facilities were insufficient under the circumstances at the time.

⁵¹¹The Code of Criminal Procedure, 1973, s. 362 “*Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.*”

⁵¹² R. Ranchhoddas and D. K. Thakore, *The Code of Criminal procedure* 650 (Wadhwa, Nagpur, 15th edn., 2000).

⁵¹³The Code of Criminal Procedure, 1973, s. 368 “*Power of High Court to confirm sentence or annul conviction.—In any case submitted under section 366, the High Court—*

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.”

⁵¹⁴ S. C. Sarkar, *The Law of Criminal Procedure* 1241 (India Law House, New Delhi, 7thedn., 2001).

⁵¹⁵*Supra* note 21 at 10.

In recent years, health services have developed, and hospitals' services are now used by people of all socioeconomic strata. Doctors have frequently encountered extremely ill or dying pregnant women whose uterus had been tampered with in order to cause an abortion, and who had suffered greatly as a result. The Medical Termination of Pregnancy Bill was tabled in Parliament to save the health, strength, and occasionally lives of pregnant women.

“The Medical Termination of Pregnancy Act, 1971, provides for the termination of certain pregnancies and for matters connected therewith or incidental thereto by registered medical Practitioners.”

Pregnancies terminated by the Registered Medical Practitioners

“In terms of Section 3⁵¹⁶ of the Medical Termination of Pregnancy Act, 1971, a pregnancy may be terminated by a registered medical practitioner under the following circumstances when the length of the pregnancy does not exceed twelve weeks, if a medical practitioner is of opinion, where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of opinion formed in good faith; that the continuance of the pregnancy may induce a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or there is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.”

In other words, registered medical practitioners can terminate a pregnancy if it is less than 12 weeks old. When the pregnancy is more than 12 weeks but less than 20 weeks, at least two medical practitioners believe that continuing the pregnancy poses a risk to the mother's life or fatal injury to her physical or psychological health, or that there is a significant risk that the child will be born with such physical or mental malformations or physical disabilities.

Exception, when pregnancy of a woman who is under eighteen years or who is insane the pregnancy can be terminated only, with the consent writing of her guardian [Section 3(3)1.

Pregnancy can be terminated at a government registered hospital built or sustained by the appropriate authority or at a location designated by the government, according to

⁵¹⁶*Supra* note 22 at 11.

S. 4⁵¹⁷ of the “Medical Termination of Pregnancy Act, 1971.”

According to Section 8⁵¹⁸ of the Act, “no suit or other legal proceedings can be brought against any registered medical practitioner who causes any damage by doing or intending to do something in good faith under the Medical Termination of Pregnancy Act, 1971.”

In the name of contraceptive failure and unwanted pregnancy the racket is rampant under the blanket “The Medical Termination of Pregnancy Act, 1971.”

5.1.8 – “Indian Medical Council Act, 1956”

After repealing the “Indian Medical Council Act of 1933,” this Statute was passed. The Act's goal is to re-establish the Medical Council of India as a regulatory body for medical practise and education. It has jurisdiction over the entire country of India. The Medical Council of India's constitution, composition, powers, and functions are all outlined in this Act.

The Medical Council of India is a legal entity with perpetual succession and a common seal, capable of acquiring and holding both movable and immovable property, as well as contracting, and shall sue and be sued under the stated name (section 6⁵¹⁹). It is made up of members from various state and union territory universities that offer undergraduate or postgraduate medical education. It is made up of delegates from several state governments. One elected member from each State Medical Council in which a State Medical Register is maintained, to be elected from amongst themselves by persons enrolled on such Register who possess the medical qualifications listed in the first or second Schedules, or in Part II of the Third Schedule (section 3C⁵²⁰) of the Act, is nominated by the Central Government.

⁵¹⁷ The Medical Termination of Pregnancy Act, 1971, s. 4 “Place where pregnancy may be terminated.-No termination of pregnancy shall be made in accordance with this Act at any place other than,-

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government.”

⁵¹⁸ The Medical Termination of Pregnancy Act, 1971, s. 8 “Protection of action taken in good faith.-No suit for other legal proceedings shall lie against any registered medical practitioner for any damage caused likely to be caused by anything which is in good faith done or intended to be done under this act.”

⁵¹⁹ The Indian Medical Council Act, 1956, s. 6 “Incorporation of the Council.—The Council so constituted shall be a body corporate by the name of the Medical Council of India, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue and be sued.”

⁵²⁰ The Indian Medical Council Act, 1956, s. 3C “Power of Central Government to give directions.—1 [(1) Without prejudice to the provisions of this Act, the Board of Governors or the Council after its

The Council follows three different schedules. The First Schedule (section 11⁵²¹) contains a list of recognized medical degrees offered by a number of Indian universities and institutions, as well as the Indian government and the medical council. The second schedule is a list of medical degrees conferred outside India that are recognized by the Medical Council of India and the Government of India (section 12⁵²²). There are two portions to the Third Schedule (section 13⁵²³). The medical

reconstitution shall, in exercise of its powers and in the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time.

(2) The decision of the Central Government whether a question is a matter of policy or not shall be final.]”

⁵²¹ The Indian Medical Council Act, 1956, s. 11 “Recognition of medical qualifications granted by Universities of medical institutions of India.—(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.”

⁵²² The Indian Medical Council Act, 1956, s. 12 “Recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity.—

(1) The medical qualifications granted by medical institutions outside India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) The Council may enter into negotiations with the Authority in any State or country outside India which by the law of such State, or country is entrusted with the maintenance of a register of medical practitioners, for the settling of a scheme of reciprocity for the recognition of medical qualifications, and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette amend the Second Schedule so as to include therein the medical qualification which the Council has decided should be recognised, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

(3) The Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Second Schedule by directing that an entry be made therein in respect of any medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date.

(4) Where the Council has refused to recommend any medical qualification which has been proposed for recognition by any Authority referred to in sub-section (2) and that Authority applies to the Central Government in this behalf, the Central Government, after considering such application and after obtaining from the Council a report, if any, as to the reasons for any such refusal, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein and the provisions of sub-section (2) shall apply to such notification.”

⁵²³ The Indian Medical Council Act, 1956, s. 13 “Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule.—

(1) The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(2) The medical qualifications granted to a citizen of India—

(a) before the 15th day of August, 1947, by medical institutions in the territories now forming part of Pakistan, and

degrees given by Indian universities or institutes that are not listed in the First Schedule are listed in Part I of the Third Schedule.

Part II of the Third Schedule includes a list of foreign medical qualifications not found in the Second Schedule. In the Indian Medical Council Register, the Indian Medical Council keeps track of its members. The record contains the names, addresses, and qualifications of all medical practitioners who are enrolled with any State Medical Council. When a medical graduate with a recognized medical degree registers with one of India's State Medical Councils, his name is also added to the Medical Council of India's database. Similarly, if the name of an already-registered medical practitioner is erased or removed from the appropriate State Medical Council's register, the name of the medical practitioner is also removed from the Indian Medical Council's registration.

The Council's primary duty is to regulate and maintain the quality of medical education and examinations at the undergraduate and postgraduate levels throughout the country. Based on the findings of the inquiry, the medical council recommends to the Government of India temporary or usual recognition or non-recognition of a degree, or de-recognition of an already recognized degree, including a foreign degree. The proposal of the Council must be followed by the Central Government.

One of the key tasks of the Indian Medical Council is to maintain the Indian Pharmacopoeia. The Medical Council of India provides advice and assistance to the

(b) before the 1st day of April, 1937, by medical institutions in the territories now forming part of Burma, which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(3) The medical qualifications granted by medical institutions outside India which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country or State granting the qualification, or if he has not undergone any practical training in that country or State, he has undergone such practical training as may be prescribed.

(4) The Central Government, after consulting the Council, may by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India which is not included in the second Schedule.

(5) Any medical institution in India which is desirous of getting a medical qualification granted by it included in Part I of the Third Schedule may apply to the Central Government to have such qualification recognised and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend Part I of the Third Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of Part I of the Third Schedule against such medical qualification declaring that it shall be a recognised medical only when granted after a specified date."

Medical Council of India and the State Medical Councils must examine and decide on the evidence provided to them, with extreme caution exercised to ensure that the code is not infringed in any way.

Any allegation of professional misconduct should, of course, be reported to the Medical Council for disciplinary action. The appropriate Medical Council shall investigate an allegation of professional misconduct and give the licenced medical practitioner the opportunity to be heard in person or by the pleader after receiving the allegation. If a medical practitioner is found guilty of professional misconduct, the appropriate Medical Council may impose any penalty it sees fit, including the complete or partial removal of the delinquent practitioner's name from the register. The removal of his name from the Register will be widely publicized in local newspapers, as well as in publications from other medical associations, societies, and organizations.

Within 'six months,' a decision on a complaint against a delinquent physician must be made. The punishment of removing a name from the register is only temporary, and the competent Council might order that the name be returned to the record once the term for which it was ordered to be removed has passed.

The medical profession is, without a doubt, a noble one. The gratification of thinking highly of a person who is not known to the doctor, not even a relative, but the doctor is concerned about an unknown person, the doctor-patient relationship is more valuable than the amount of money that may be made in a person's lifetime. A grassroots contribution could be made in the form of training for health professionals who can at the very least cater to basic medical needs. In isolated rural locations, telemedicine facilities can be made available.

In truth, technological advancements and the resulting highways for information movement can make this a reality. The City Council should make proper use of technology in order to benefit the inhabitants. For example, the Medical Council can make database of only Registered Doctors, it should be regularly updated and made user friendly. People should be informed of it so that they can avoid being taken advantage of by 'quacks.'

With the changing contours of society and the changing requirements of society, the world is becoming increasingly interconnected, and medical education and new opportunities such as medical tourism are also expanding. In these changing

circumstances, the duty and obligation of The Medical Council of India Act, 1956 ensures that our students' training does not fall short of international standards.⁵²⁴

Ms. Varsha Deshpande, in National Human Rights Commission, Delhi, “started with an argument saying that decline in sex ratio is a ‘crime and not a social issue’ and pointed that there has been a decline in the sex ratio in majority of the state of the country. She said that gaps must be bridged between departments to implement policies like *Beti Bachao, Beti Padhao* and to improve the sex ratio. She also stated that the conviction rate is extremely low when it comes to the cases of crime against the girl child and there is no accountability of prosecution as well. She also said that there should be compulsory provision for equal division of land and property between the male and Female child. Pointing out at various publications by the government departments, she said that it must be overseen that there is no depiction of sex determination or illustrations that may hint towards the same.”⁵²⁵

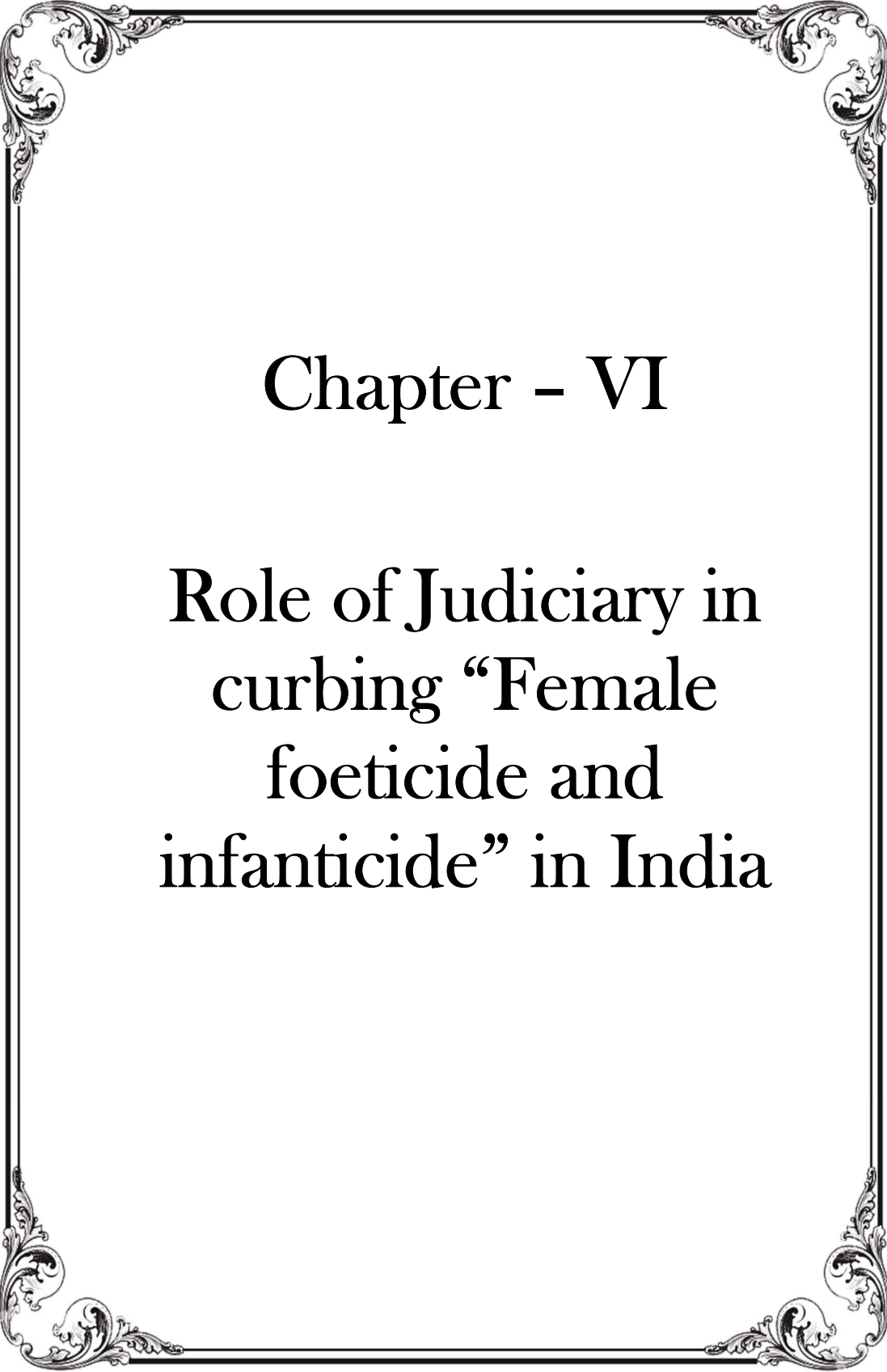
5.1.9 – Concluding Remarks

The Preamble of the Constitution “secures to all its citizens fraternity, assuring the dignity of the individual, unity and integrity of the nation. It is the principle which gives unity and solidarity to social life without which both liberty and equality will have no meaning. The main objectives to be secured by the Constitution are thus expressed by the words ‘Justice’, ‘Liberty’, ‘Equality’ and ‘Fraternity’. For the welfare of the children, protection from exploitation, for eradication of child labour from the society, the Constitution provides certain provisions which are given due weightage from time to time.”

The effectiveness of laws somehow lacking behind. The monitoring of the system is not proper towards the crimes. Three branches of Government mechanism have been failed.

⁵²⁴ A part of the speech by Her Excellency the President of India Smt. Pratibha Devi Singh Patil, at the concluding function of the Platinum Jubilee celebration of the Medical Council of India - New Delhi 1st March, 2009.

⁵²⁵ Minutes of the meeting of the Core Group on Women held on 25th October 2019 at 11:00 am on ‘Decline in sex ratio in India’ and ‘Work-life balance of working women’ in Room No. 508, Manav Adhikar Bhawan, C-Block, GPO Complex, INA, New Delhi.



Chapter – VI

Role of Judiciary in curbing “Female foeticide and infanticide” in India

Chapter – VI

Role of Judiciary in curbing “Female foeticide and infanticide” in India

6.1.1 – The Judicial Response

In reply to a Public Interest Litigation filed by the “Centre for Enquiry into Health and Allied Themes (CEHAT) which is a research center of the *Anusandhan* Trust based in Pune and Mumbai, *Mahila Sarvangeen Utkarsh Mandal* (MASUM) based in Pune and Maharashtra.” Dr. Sabu M. George who has a wealth of knowledge and experience in the field, urging effective implementation of the Pre-Natal Diagnostic Techniques (PNDT) Act, the Supreme Court passed an order on 4th May, 2001(AIR 2001 SC 2007) directing the authorities to ensure implementation of the Act and plug its loopholes. The same petitioners again filed a Writ Petition (civil) no. 301 of 2000. “In this petition, it was inter alia prayed that as the Pre-natal Diagnostic Techniques contravene the provisions of the PNDT Act, the Central Government and the State Governments be directed to implement the provisions of the PNDT Act:

- a) by appointing appropriate authorities at State and District levels and the Advisory Committees;
- b) the Central Government be directed to ensure that Central Supervisory Board meets every 6 months as provided under the PNDT Act; and
- c) for banning of all advertisements of pre-natal sex selection including all other sex determination techniques which can be abused to selectively produce only boys either before or during pregnancy.”

On September 10, 2003, Justices M. B. Shah and Ashok Bhan of the Supreme Court while delivering their judgment on the above issue observed: “It is unfortunate that for one reason or the other, the practice of Female infanticide still prevails despite the fact that gentle touch of a daughter and her voice has soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of Female infanticide whereby the Female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advanced medical techniques. Unfortunately, developed medical science is misused to get rid of a girl child before birth. Knowing full well that it is immoral and unethical as well as it may amount to an offence,

foetus of a girl child is aborted by qualified and unqualified doctors or compounders. This has affected the overall Sex Ratio in various States where Female infanticide is prevailing without any hindrance”.⁵²⁶

The Court also directed the Central Supervisory Boards to determine if it is necessary to alter this act in the future, order to remove difficulties in its implementation and make it more equipped to deal with present and future technological advancements. “Directions that appropriate authorities should be appointed at District and Sub-District levels and the list of members appointed should be published in the print and the electronic media. These authorities were required to send quarterly reports to the Central Supervisory Boards and in general directions were given to spread awareness against the practice of Pre-natal sex determination and the risks associated with it. The Supreme Court directed the State governments to take further steps to enforce the law and the Department of family welfare was directed to file an affidavit indicating the status of actions taken. The Supreme Court directed 9 companies to supply the information of the machines sold to various clinics in the last 5 years. Details of about 11,200 machines from all these companies were collected and fed into a common data base. Addresses received from the manufacturers were also sent to concerned States to launch prosecution against those bodies who were using ultrasound machines without getting themselves registered under the Act. The court directed that unregistered ultrasound machines/scanners be sealed and seized. The Indian Medical Association [IMA], Indian Radiologist Association [IRA], and the Federation of Obstetricians and Gynecologists Societies of India [FOGSI] were asked to furnish details of members using these machines.”

“*Vijay Sharma v. Union of India*”⁵²⁷ the legislations of the “Pre Conception and Pre Natal Diagnostic Techniques Act” were found to be plain, unambiguous, and timely in relation to its approved purpose.

“*Vinod Soni v. Union of India*”⁵²⁸ “The Pre-Conception and Pre-Natal Diagnostic Techniques Act”’s constitutionality was questioned. Every kid has the right to complete development, according to the Higher Court of Bombay. As a result, under “Article 21 of the Indian Constitution, a child conceived has the right to full

⁵²⁶*CEHAT v. UOI*, (2003) 8 SCC 398.

⁵²⁷AIR 2008 BOM 31.

⁵²⁸2005 Cr LJ 3408.

development. The court also decided that the right to personal liberty does not include the freedom to determine the sex of one's offspring because liberty cannot be expanded to prevent a foetus from being born because nature has the last say."

Governments have been forced to take action against ultrasound centres that promote Female foeticide as a result of the Apex Court's involvement, the "Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. For the first time since then and enactment of this law about eight years ago that States have started registering the ultrasound machines for a better supervision of their use."

"The Indian Medical Association, too, has called for action against doctors for helping in such sex-selection procedures. Activist Sabu George says,⁵²⁹the problem with foeticide is that doctors are promoting and encouraging it is one organized crime against women encouraged by professionals."

"Not only is sex determination a crime against women, but achieving a balance in sex ratio is also a crucial part of population stability. Expressing its concern, an NGO, Centre for Enquiry into Health and Allied Themes (CEHAT), filed a PIL highlighting this issue. Expressing concern over this issue, the Supreme Court in *Centre for Enquiry into Health and Allied Themes v. Union of India*⁵³⁰ moved in to stop illegal sex determination and directed all States to confiscate ultra-sound equipment from clinics that are being run without licences. The Health Secretaries of Punjab, Haryana, Delhi, Bihar, Uttar Pradesh, Maharashtra, Gujarat, Andhra Pradesh, Kerala, Rajasthan and West Bengal were present to implement the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994."

"In *Centre for Enquiry into Health and Allied Themes v. Union of India*,⁵³¹ a Bench comprising Arijit Pasayat, M. B. Shah and B. N. Agarwal JJ said, State Governments are directed to take immediate action if such machines were being used in clinics without licence. The machines are to be seized and sealed for the time being. When the petitioner's counsel Indira Jaisingh said that the State Governments were casually granting licences to ultrasound clinics, the court said, 'The authorities should not grant certificate of registration if the application form is not complete.' The court also

⁵²⁹ The Times of India 7-5-2002.

⁵³⁰ (2003) 8 SCC 410.

⁵³¹ WP (C) No. 301 of 2000, order dt. 2.9-1-2002 (SC).

asked the manufacturers of ultrasound machines to give the names and addresses of the clinics and persons in India to whom they sold these machines in the last five years. ‘This,’ the court said, ‘would help the government find out whether these clinics or persons were registered.’”

The Apex Court warned yet again in a previously resumed hearing that “Health Secretaries of States failing to implement its orders banning sex-determination of foetus would be required to be present before the court in the next hearing.”

“Shocked at the laxness of the Union and the State Governments, the Supreme Court in *Centre for Enquiry into Health and Allied Themes v. Union of India*⁵³² again asked the authorities to file within six weeks status reports regarding implementation of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. A Bench comprising M. B. Shah and R. P. Sethi JJ said, we make it clear that there is total slackness on the part of administration in implementing the Act. It asked the authorities to implement the Act and prosecute clinics, centres and laboratories which aid and abet identification of the sex of the foetus illegally. When counsel for a number of states stated that the authorities had issued warnings to various unlicensed ultrasound centres, an outraged Bench voiced amazement and wondered aloud whether the implementing authorities were aware of the legislation.”

“In *Centre for Enquiry into Health and Allied Themes v. Union of India*,⁵³³ the Supreme Court provided additional instructions. The Centre and State Governments were ordered to produce public service announcements to raise public awareness that there should be no discrimination between male and female children, and to publish annual reports from appropriate agencies for the public’s information. The National Monitoring and Inspection Committee will continue to operate in order to ensure the Act’s successful implementation. State Supervisory Boards and multi-membered relevant bodies were required to be appointed in certain states.”

“*Malpani Infertility Clinic (P) Ltd. v. Appropriate Authority*,⁵³⁴ the petitioners sought to overturn the ruling suspending the petitioners’ diagnostic center’s registration under the terms of the PCPNDT Act. An NGO, CEHAT, has also filed a writ case

⁵³² (2003) 8 SCC 406.

⁵³³ (2003) 8 SCC 410.

⁵³⁴ AIR 2005 Bom 26.

challenging the actions that are prohibited by the PCPNDT Act. In their affidavit, the petitioners defended sex determination on the grounds of ‘family balancing.’ They later apologized in a separate affidavit.”

The petitioners’ diagnostic centre was allegedly carrying out prohibited activities involved in pre-natal sex-determination tests which resulted in Female foeticide. *Prima facie* there was some material before the authority, a prosecution was lodged on the basis of which, and the authority had adequate power under the Act to suspend the licence pending prosecution.

“*Chitra Agarwal v. State of Uttaranchal*,⁵³⁵ under the PCPNDT Act, the petitioner, a practicing doctor with an ultrasonography centre, was registered. The petitioner’s registration was first suspended, then terminated. The ultrasonography centre was also the subject of a criminal investigation. An appeal was filed against the district level appropriate authority’s decision to cancel the registration. The petitioner was notified that his appeal will be dismissed due to ongoing criminal proceedings. In the current writ petition, this refusal was also challenged.”

“The court stated in its conclusion that the commencement of criminal actions against the ultrasonography centre, or the pending criminal proceedings before the court, is not a bar to the court's decision on the appeal against the termination of registration. It cannot be used as a justification for refusing to consider and rule on the natal Diagnostic Techniques (Prohibition of Sex Selection) Rules. The cancellation is due to a violation of the PCPNDT Act and its requirements. The action is being taken against the ultrasound center's registration, not the center's owner. Both activities are self-contained and can be carried out at the same time. The fact that a criminal case is pending should not prevent the appellate body from hearing the appeal filed against the registration cancellation.”

“*Vijay Sharma v. Union of India*,⁵³⁶ the terms of the PCPNDT Act, as revised by the Amendment Act, 2002, are clear, straightforward, and consistent with their stated purpose, according to the High Court. None of the clauses asserted in the petition are in any way unclear. As a result, the Central Government does not need to publish any orders addressing the removal of obstacles in the Official Gazette.”

⁵³⁵ AIR 2006 Utt 78.

⁵³⁶ AIR 2008 Bom 29.

*“Voluntary Health Assn. of Punjab to Union of India,”*⁵³⁷ The court voiced concern over the sex ratio's deterioration. The court voiced worry about reports that a few medical professionals perform sex-selective abortions while fully aware that the only reason for the abortion is that the foetus is a Female. The Medical Termination of Pregnancy Act of 1971 was also being deliberately violated and abused. The PCPNDT Act, which has its roots in Article 15(2) of the Indian Constitution, was adopted by Parliament to combat foeticide.”

*“Health and Allied Themes v. Union of India”*⁵³⁸ despite many arguments, the 2011 census data reveals a significant decrease in the Female sex ratio, demonstrating that the Act’s provisions are not being adequately and successfully enforced.”

“The Central Government amended the Act and regulated the use of mobile equipment capable of identifying the sex of the foetus with GSR 80(E) dated 7 February 2002. The Central Government also notified an amendment by inserting a new Rule 3.3(3) with the purpose of regulating illegal registrations of medical practitioners in genetic clinics, as well as amending Rule 5(I) by raising the application fee for registration of every genetic clinic, genetic counselling centres, laboratories, ultra sound clinic, or imaging centre, via GSR 418(E) dated 4 June 2012. However, many clinics were completely uninformed of the revisions and continued to operate in the same manner.”

In such circumstances, the court thought it appropriate to issue the following directions, inter alia:

1. “The Central/State/UT Supervisory Board constituted under the PCPNDT Act would meet at least once in six months to supervise the effective implementation of the PCPNDT Act.
2. The State and District Advisory Committees should monitor breach of provisions of the PCPNDT Act and take steps to seize records, seal machines and institute legal proceedings against them.
3. The above Committees should report the details of charges framed and conviction to State Medical Councils for proper action, including suspension of registration of the unit and cancellation of licence to practice.

⁵³⁷ (2013) 4 SCC I: (2013) 2 SCC (Cri) 287.

⁵³⁸ (2003) 8 SCC 410.

4. The authorities should ensure that all genetic counselling centres, laboratories, clinics, infertility clinics, scan centres, *etc.* using pre-conception and pre-natal diagnostic techniques and procedures should maintain all records and forms required to be maintained under the Act.
5. The State and District Advisory Boards should ensure that all manufacturers and sellers of ultrasonography machines do not sell the machine unregistered centres.
6. All centres/labs/clinics to maintain statutory forms A, E and H provided under the Rules and in case of violation appropriate action be taken.”

Although the termination of pregnancy is illegal in India, still in certain cases it is allowed. In “*D. Rajeshwari v. State of Tamil Nadu*”,⁵³⁹ because the pregnancy was caused by rape, the Court allowed the termination of the pregnancy. In this case, the petitioner, an eighteen-year-old schoolgirl, petitioned the Madras High Court for an order to abort the child in her womb, claiming that bearing the unwanted pregnancy of a three-month-old child, because the pregnancy was caused by rape, had left her mentally unwell and that sustaining the pregnancy had caused significant suffering in her head, resulting in grave impairment to her mental health. Taking into account the relevant provisions (Sections 3 and 4) of the Medical Termination of Pregnancy Act, 1971, as well as the facts of the case, the Court was forced to come to the conclusion that unless the petitioner's pregnancy was terminated, she would suffer not only mental shock and anguish, but also irreparable loss that could not be remedied, and thus granted permission to terminate the pregnancy.

“*V. Krishnan v. G. Rajan alias Madipu Rajan*,”⁵⁴⁰ the request for a pregnancy abortion was turned down. In this case, the highest Court of Madras reviewed whether the guardian of a young girl has the right to petition the court for an order directing the termination of the minor girl's pregnancy when the pregnant minor girl is unwilling to do so. This issue does not appear to have been raised before any Indian court. It is extremely important in today's society, when the number of teenage pregnancies is on the rise. The Court cited various authorities on the subject and

⁵³⁹1996 Cri LJ 3795.

⁵⁴⁰(1994) 1 Mad LW (Cri) 16.

concluded that the life of the child in the embryo cannot be taken away for the reasons argued by the petitioner-guardian, and after considering the facts and circumstances of the case, held that the petitioner-request guardians could not be granted, and issued appropriate directions in the girl's best interests as to the care and attention to be given to her during her pregnancy and for the girl's best interests as to the care and attention to be given to her during her pregnancy.

“*Dr. Nisha Malaviya and another v. State of Madhya Pradesh*, ”⁵⁴¹ the guilty had raped a little girl at the age of twelve and made her pregnant. Two additional co-accused were accused of kidnapping a girl and terminating her pregnancy. The case against them is, first and foremost, abortion without the child’s consent. The Court found that all three defendants were convicted of aborting a pregnancy without the mother as girl’s consent.

Where the abortion is done without consent, in that case the doctor is also liable, as held in “*Shri Bhagwan Katariya and others v. State of Madhya Pradesh*, ”⁵⁴² a doctor is permitted to terminate a pregnancy under specific circumstances, and if the pregnancy was terminated in line with the law, it must be presumed that it cannot be done without the mother’s permission. In this scenario, the woman’s heart and soul have been permanently scarred by the deprivation of her child. In such cases, the doctor will be held accountable for his actions.⁵⁴³

“In *Surendra Chauhan v. State of Madhya Pradesh*, ”⁵⁴⁴ according to medical opinion, the dead died of vaginal inhibition as a result of an abortion performed without anaesthetic or owing to anxiety. In this instance, neither the accused No. 2 (Dr. Sharma) nor his facility got the government’s approval to terminate the pregnancy. In his clinic, even the most basic abortion facilities were unavailable. Accused No. 1 (Chauhan) took the deceased to Dr. Sharma with the goal of causing her miscarriage, and subsequently the accused No. 2 (Dr. Sharma) caused her death while performing the abortion. As a result, both accused parties, who were neither competent nor authorized to terminate the pregnancy, were found guilty U/S 314/34 of the IPC.

⁵⁴¹ 2000 Cri LJ 671.

⁵⁴² 2002 Cri LJ 1674.

⁵⁴³ *Supra* note 22 at 11.

⁵⁴⁴ AIR 2000 SC 1436.

“*Dr. Meeru Bhatia Prasad v. State*”⁵⁴⁵ the victim was subjected to ultrasonography and amniocentesis tests, after which she developed septicemia as a result of the insertion of an infected needle into her abdomen, necessitating surgery. Even if she had consented to such testing, she had not consented to the insertion of a needle that would cause her to become septic. The defendant was found guilty.

“Similarly, in *State v. Dr. Joaquin, Antonio D’silva*,”⁵⁴⁶ the accused was also incompetent and unqualified to abort the pregnancy. In this instance, there was no evidence that the respondent's location was an approved location for medical termination of pregnancy, that he was authorized and competent to do it, or that it was done to take the life of the deceased, hence the accused was found guilty.

“In *Alka Sharma v. State*,”⁵⁴⁷ it was claimed that the complainant's mother-in-law and sister-in-law gave her a sachet containing some powder/medicine, ostensibly for her health, but it was actually supplied to prevent the kid from being born. Despite the fact that the infant was born alive, it was determined that the crime had been committed. In this case, it was also claimed that the complainant's husband threatened her by pouring boiling water on her, which was finished by her brother-in-law and sister-in-law. The accused parties were found guilty U/S 506/34 of the IPC for making a bold threat to prevent a child from being born.

Regarding murder of newly born Female child, the Court in *Laxman Harlal Rathod v. State of Maharashtra*,⁵⁴⁸ observed that there was no dispute regarding coming of chandralekha to the house of Laxman and at that time she was pregnant and that in the house of Laxman she delivered a Female child. What is disputed is that the child was still born and that the child was not killed. The medical evidence was clear that the child was live-born child and that the child died after birth and that the child died due to respiratory failure due to gagging. Thus, it is clear that gagging was effected by inserting cotton swabs in the mouth of the child. The cotton swabs were not in the nose but they were in the mouth. The child after death was taken in the field for burying and not in the burial ground. Hence the conviction under Sections 318 and 201 of Indian Penal Code upheld.

⁵⁴⁵ 2002 CriLJ 1674, 94 (2001) DLT 597, 2001 (60) DRJ 594.

⁵⁴⁶ (1999) 4 Crimes 244 (Goa).

⁵⁴⁷ (2006) 3 Crimes 369 (Del.).

⁵⁴⁸ AIR 1983 P & H 252.

In terms of termination of pregnancy and husband consent, the woman does not need anyone's permission to end her pregnancy if she meets the requirements laid down in the MTP Act. However, if the husband sought court intervention rather than terminating the pregnancy, it could lead to conjugal discord.

In this regard in "*Satya v. Siri Ram*,"⁵⁴⁹ it was decided that the wife's having herself aborted twice against her husband's desires, amounted to mental abuse on the husband's part. The Delhi High Court was likewise confronted with similar challenges. In "*Sushil Kumar Verma v. Usha*,"⁵⁵⁰ in which it was stated that if a wife had an abortion to spite her husband, the act of having herself aborted could be considered cruel in some instances. In this case, it was clear from the evidence that the respondent became pregnant after marrying the appellant and decided she didn't want the kid, so she had the pregnancy terminated. The appellant has testified that he did not provide his approval to the respondent's pregnancy abortion. The Court determined that aborting the foetus in the first trimester through a deliberate act without the husband's consent was cruel.

However, in English law, a minor girl's judgement is essential if she is capable of understanding the repercussions. In instances of abortion, the parents' or natural guardian's opinion is immaterial.

The Kerala High Court granted a plea to terminate the pregnancy of a 10-year-old girl who was raped and impregnated by her father in Kollam district in 2022.

The HC Bench headed by Justice PV Kunhikrishnan allowed the petition filed by the child's mother, seeking permission for her daughter to have her pregnancy terminated under the provisions of the Medical Termination of Pregnancy Act, 1971, despite the fact that the rape victim is only 10 years old and there is a risk of health complications.

"The alleged culprit is her own father. If the allegation is correct, I am ashamed of and of course, the entire society should bow their head for the same reason. I am sure that the long arm of our legal system will punish him in a manner known to law, the HC bench was quoted as saying by the English daily."

"Since the victim child is only 10 years, there is a chance for medical complications to

⁵⁴⁹ AIR 1983 P & H 252.

⁵⁵⁰ AIR 1987 Del 86.

her health. Considering the entire facts and circumstances of the case, according to me, this is a case in which this court should invoke the jurisdiction, the court said.

Acting on the plea on March 7, 2022, the court had ordered to form a medical board to examine the victim's stage of pregnancy."

"The High Court said it was an unfortunate that a 10-year-old rape victim was pregnant and the medical board reported that there was 80 per cent chance of the baby surviving."⁵⁵¹

Convictions of wrong doers under the PCPNDT Act:

Dr. Shivaji Sanap, who runs a private maternity clinic on Jalna Road in the city, was charged on June 3, 2012, under various sections of the Indian Penal Code (IPC), the Pre-conception and Pre-natal Diagnostic Techniques (PCPNDT) Act, and the Medical Termination of Pregnancy (MTP) Act, for abortions performed after the fifth month of pregnancy.

Mr. Mandlik stated that the abortions in these two cases were performed at Dr. Sanap's clinic, and that one was an unmarried Female from Pune and the other was a married woman from Georai tehsil in Beed district.

Two ladies who worked at Dr. Sanap's hospital were arrested on Saturday for reportedly throwing the foetuses in the river.

Aside from these two illegal abortion cases, police said they discovered another case in which a six-month foetus of a 17-year-old unmarried Female was aborted at the same facility.

The girl's parents took the aborted Female foetus to Kakad-Hira hamlet in Patoda tehsil in the district, where police found the embryo wrapped in a textile.⁵⁵²

However, this isn't the first time this has happened in Maharashtra. Vijaymala Patekar of Beed district died on May 18, 2012, while undergoing an illegal abortion. Dr Sudam and Dr Saraswati Munde were arrested as a result of this. A year before his imprisonment, Munde was again accused of conducting sex determination tests.

⁵⁵¹ Kerala HC allows 10-year-old raped, impregnated by father to end pregnancy *available at:* <https://www.timesnownews.com/mirror-now/in-focus/kerala-hc-allows-10-year-old-raped-impregnated-by-father-to-end-pregnancy-article-90162895> (Last visited on March 25, 2022).

⁵⁵² A doctor in Maharashtra was arrested for allegedly carrying out three illegal abortions, including on a minor girl, police said on Sunday, *available at:* <https://www.thehindu.com/news/national/other-states/article60009353.ece> (Last visited on March 5, 2022).

Despite the charges, he was able to continue his practise. This investigation resulted in the arrest of seventeen people. The trial is still ongoing after five years.

Sangli and Beed, by the way, are the two districts in the state with the lowest kid sex ratios. Since 1991, the sex ratio in Beed has been steadily decreasing.

The foetuses were fed to dogs by a doctor and his wife who were imprisoned for abortion. According to an anti-abortion NGO, a doctor couple who ran an abortion clinic in the Marathwada town of Beed performed nearly a lakh illegal abortions and gave the foetuses to dogs.

Dr Sudam Munde and Dr Sarawati Munde, who were sentenced to six years in prison in 2010 for unlawful abortion, allegedly dumped the foetuses in a nearby well, according to Lek Ladki Abhiyan, the NGO that exposed the physicians' crimes in 2010.

In three cases of Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection Act) registered in 2010, 2011, and 2012, Dr Sudam, an MS (Surgeon), and Dr Sarawati, an MD (gynaecology), were convicted.

During a sting operation by her NGO in 2010, Varsha Deshpande of Lek Ladki Abhiyan stated that Dr. Munde boasted of performing abortions and feeding the foetuses to five of his dogs.

The sting operation included lawyer-activist Prerana Bhilare, who was pregnant at the time, and her escort Shailaja Jadhav.

The couple has been sentenced to six years in prison by Judicial Magistrate First Class Laxmikant Pache.

She claimed that the Mundes could have easily carried out 90,000 to one lakh abortions in the last 25 years. They used to visit roughly 90 patients per day and do about 25 procedures. People came from all over Maharashtra to see them for abortions, she said.

They had four dogs in the hospital complex and fifteen in their field, she added, and they used to discard aborted foetuses in wells, which her NGO had urged the CID to dig. The death of a woman due to bleeding during an abortion was the subject of the 2012 lawsuit against the doctor pair, while the recovery of foetuses in the hospital's surroundings was the subject of the 2013 case. Deshpande claimed that, these two cases are still ongoing before the courts doctors had been unable to gain bail.

Census 2011 revealed Maharashtra's declining sex ratio of 883 Females for 1,000 males. In addition to being lower below the national average of 914, the figure was a far cry from the state's previous high of 913 in 2001. In a decade, this equates to a drop of 30 girls for every 100 boys. Not surprisingly, the sex ratio in Beed district decreased by 93 in 2011, from 894 in 2001 to 801 in 2011.

The Centre and Maharashtra governments' tireless campaigns have resulted in a minor improvement in the condition.⁵⁵³

6th of March, 2017 as you enter Mhaisal hamlet in Sangli district, on the Maharashtra-Karnataka border, a board with the motto '*beti bachao beti padhao*' greets you. The Bharati Hospital of Dr Balasaheb Khidrapure, the doctor who was arrested for allegedly running an illegal abortion and Female foeticide business, is just a few metres away.

Swati Jamdade died on March 1st after Balasaheb Khidrapure conducted an abortion on her. During the inquiry, authorities discovered 19 fetuses, some in a condition of development and some buried near the hospital under a creek. A horrible story of Female foeticide gradually emerged. "Swati Jamdade died on 1 March while undergoing an abortion performed by Khidrapure. Following Swati's death, her husband Praveen Jamdade was arrested. During investigation, police found 19 fetuses, some in a state of decay, some buried under a stream close to the hospital. Gradually, a horrifying tale of Female foeticide unfolded.

Swati had gone to Khidrapure's hospital on March 1 for sonography, during which the doctor allegedly told the couple the sex of the foetus. She then had an abortion, which resulted in her death. Swati's parents filed a police report after suspecting foul play. According to the investigation, she had an unlawful abortion because the baby's sex was a Female. Following the filing of a case against Khidrapure, he fled the village. He and his wife were eventually apprehended in Belgaum, Karnataka. He also possessed a well-equipped hospital with an operating theatre in the basement, according to the authorities.

Khidrapure was a homoeopath who couldn't legally do surgery. The authorities suspected a cross-border racket including Maharashtra and Karnataka. This resulted in

⁵⁵³ Doc couple jailed for abortion had fed fetuses to dogs available at: <https://www.deccanherald.com/content/484951/doc-couple-jailed-abortion-had.html> (Last visited on February 24, 2022).

the arrest of 12 people to date, three of whom are doctors, including Khidrapure. Dr. Shrihari Ghodke (homoeopathy) of Kagwad and Dr. Ramesh Devgikar (MBBS) of Vijapur have been arrested. These doctors have operatives in both states who would deliver cases to the doctors. In the absence of doctors, the compounder or the nurse would execute the abortion, according to the investigation. They would bury the foetus, flush it down the toilet with acid, or feed it to the dogs after the abortion. The entire scandal began when some foetuses were placed in plastic bags and buried underground.

‘Doctors would charge Rs 25,000 every abortion,’ said an agent who did not want to be identified. Patients have been told that it was a girl foetus when it was actually a male foetus for the sake of money.

Last year, a complaint against Khidrapure was lodged, prompting a raid by health department authorities, who now say that nothing was discovered during the operation. However, after the police complaint was filed, another raid was undertaken this year, and it was discovered that illegal drugs were being utilized, the operation theatre was unlawful, and the doctor had been operating without a licence for years.

‘On the basis of a tip, a raid was carried out. However, the official claimed that he had not found anything, thus no action was taken.’ According to Archana Patil, additional director of health services. ‘Police can only take action if there is a criminal element involved.’ Because of Swati’s death, we may be able to start the investigation. But why aren’t health officials doing anything about it? There were a lot of things that could have sparked suspicion. However, they only performed one raid and claim to have discovered nothing. ‘Everything smells fishy,’ a cop investigating the matter remarked.⁵⁵⁴

Dr. Ashwini was granted bail by the HC on June 4, 2018, on the condition that she refrain from practicing medicine until the trial is over.

Dr. Jadhavar was granted bail on the same terms by the Pandharpur sessions court a fortnight later. Last year, Dr. Ashwini petitioned the HC for a waiver of the restriction, and the court accepted her plea on February 20, allowing her to resume practise.

⁵⁵⁴ Bombay HC allows gynaecologist accused of illegal abortions to resume medical practice, *available at*: <https://www.hindustantimes.com/india-news/hc-allows-gynaecologist-accused-of-illegal-abortions-to-resume-medical-practice/story-3ZKYpzSJyEkIOHGARKITUJ.html> (Last visited on March 5, 2022).

Dr. Jadhavar then petitioned the Sessions Court for a similar parity exemption, but the court dismissed his plea, prompting him to file an appeal with the HC.

According to Justice CV Bhadang, Dr. Jadhavar could not have been denied the same relief as the other co-accused in the case. The conviction under the PCPNDT Act of 1994, according to the court, was an afterthought.

The judge stated, “In my opinion, the consideration must be primarily limited to the current instance.” The parity cannot be refused once the said condition has been relaxed in respect of the co-accused, and the reasons for such relaxation are that the co-accused Dr. Ashwini Jadhavar has complied with the said condition and that there is no likelihood of the trial ending in the near future (which also apply to the petitioner’s case), he said.

5th of February, 2019 in Maharashtra’s Aurangabad district, nine people, including four doctors, have been detained for running a scam in which Female foetuses were illegally aborted. The scam had been going on for several years in the MIDC, CIDCO, and Osmanpura sectors of the district, according to an official. He went on to say that one of the doctors arrested, Varsha Rajout, is a government medical officer. ‘We believe these individuals performed at least 200 abortions in hospitals and clinics,’ said the prosecutor. According to Rahul Khade, Deputy Commissioner of Police for the city of Aurangabad.⁵⁵⁵

1st of April, 2020 the Bombay High Court’s Aurangabad Bench has granted provisional bail to a doctor accused of killing a woman after executing an illegal abortion on her and ordered him to volunteer in the battle against COVID-19 in Aurangabad.

On January 23, 2022, the Aurangabad Sessions Court denied the doctor's bail application.

16th of January, 2022, Maharashtra Home Minister Dilip Walse-Patil has promised a comprehensive investigation into the ‘serious and horrifying’ abortion racket discovered by Maharashtra Police in Wardha, promising to prosecute those responsible.

According to the minister, four people have been arrested and another is being

⁵⁵⁵Maharashtra: Illegal abortion racket busted; 4 doctors among 9 held, *available at*: <https://timesofindia.indiatimes.com/city/mumbai/maharashtra-illegal-abortion-racket-busted-4-doctors-among-9-held/articleshow/67856544.cms> (Last visited on March 5, 2022).

investigated, and cases will be filed under the “Medical Termination of Pregnancy Act of 1971 and the Pre-Conception & Pre-Natal Diagnostic Techniques (PCPNDT) Act of 1994 of the Indian Penal Code.”⁵⁵⁶

Following the secret abortion done on a 13-year-old girl here on January 4, Dr. Rekha Kadam (43), a nurse Sangeeta Kale (38), and two others were detained. Krishna Sahare (42) and his wife Nallu (40), the parents of a 17-year-old boy, are the other two defendants. The 12 unidentified skulls and 54 additional bones, as well as bloodstained clothing and other evidence discovered, are undergoing forensic investigations. The hospital records have been collected and are being compared to see if any abortions were legal or illegal.⁵⁵⁷

27th of January, 2022 Doctors from Gurugram have been arrested for selling illegal abortion kits.

Two alleged quacks were apprehended here on Thursday for performing illegal abortions in Badshahpur and Fazilpur while posing as medical store owners, police said. Both medical stores were shut down by the Drug Controller.

A tip was received at Civil Surgeon Virendra Yadav’s office about two individuals selling abortion kits from their stores, according to deputy civil surgeon Pradeep Kumar. A team was organised based on the information, and a pregnant woman was utilised as a decoy at both locations, and the two accused were captured.

Khalid Hussain, a doctor at Muskan Medical Store near Sanjeevni Hospital in Badsahpur, was one of the culprits, according to the police. For Rs 600₹ each kit, he was selling MTP kits. The health authorities conducted a second raid at Divya Medicoe in Fazilpur, when they apprehended the other offender, Sandeep Kumar, who was working as a doctor there.

He was charging 800₹ for an MTP kit. MTP is a combination medicine that is used to end a pregnancy medically. Hussain and Kumar are the subjects of two distinct FIRs.

At Badshahpur Police Station, their associates Rahul, Dinesh Kumar, and Bhawna

⁵⁵⁶ Maharashtra Home Minister assures thorough probe in Wardha illegal abortions case available at: <https://www.deccanherald.com/national/west/maharashtra-home-minister-assures-thorough-probe-in-wardha-illegal-abortion-cases-1071599.html> (Last visited on February 24, 2022).

⁵⁵⁷ Court has granted temporary bail to a doctor, accused of causing the death of a woman after performing an illegal abortion on her, available at: <https://www.thehindu.com/news/cities/mumbai/court-grants-bail-to-doctor-accused-of-illegal-abortion/article31231384.ece> (Last visited on March 3, 2022).

Dhingra were also charged under various sections of the Indian Penal Code, MTP Act, Indian Medical Council Act, and Drugs and Cosmetics Act.⁵⁵⁸

The Gurgaon administration has announced a prize of Rs 1 lakh for people and organizations who provide information about “Female infanticide.”

While the “child sex ratio” in Gurgaon has improved in recent years, it still lags below neighboring Haryana districts. The administration has undertaken a particular campaign to prevent prenatal sex determination and Female infanticide, indicating that it is serious about improving it.

‘Recently, many incidences of baby girls being thrown in rubbish and abandoned areas have been reported. We’ve started a campaign to stop it,’ a government official was cited as saying by the Press Trust of India news agency.

According to him, the health department also raided some maternity facilities to look into pre-natal sex determination.

The ratio of Females per 1,000 boys in Gurgaon has surpassed 900, although the district still lags behind neighboring Haryana districts.

According to state government data, the child sex ratio in Karnal, Hisar, Yamunanagar, Sirsa, Kurukshetra, Panipat, Palwal, and Narnaul was 953, 972, 974, 976, 980, 993, 1,217, and 1,279, respectively.

In Uttar Pradesh, too, a new initiative to address Female foeticide was recently established.

The government of Uttar Pradesh has introduced the ‘*Mukhbir Yojana*’ (Informer Scheme), which aims to lower the number of Female foetuses aborted. Under this strategy, informers would alert state authorities to such activities and incidents.⁵⁵⁹

Government Initiative

6.1.2 – “*Beti Bachao Beti Padhao* (save the girl child, educate the girl child)⁵⁶⁰ and Sukanya Samridhi Account (Girl Child Prosperity Account)”⁵⁶¹

⁵⁵⁸ 2 Gurugram ‘doctors’ arrested for selling illegal abortion kits, India, *available at*: <https://zeenews.india.com/india/2-gurugram-doctors-arrested-for-selling-illegal-abortion-kits-2431325.html> (Last visited on March 28, 2022)

⁵⁵⁹ Gurgaon Announces Rs 1 Lakh Reward For Providing Information On Female Infanticide, *available at*: <https://everylifecounts.ndtv.com/gurgaon-announces-rs-1-lakh-reward-providing-information-female-infanticide-14813> (Last visited on March 23, 2022).

⁵⁶⁰ *Beti Bachao Beti Padhao*, *available at*: https://en.wikipedia.org/wiki/Beti_Bachao_Beti_Padhao (Last visited on February 24, 2022).

⁵⁶¹ Sukanya Samridhi Account, *available at*:

Prime Minister Mr. Narendra Modi launched various schemes to safeguard daughters of India. Among these the *Beti Bachao, Beti Padoo* and *Sukanya Samridhi* Account on 22nd January, 2015 in a bid to enhance the safety and literacy of the girl child.

This scheme has been started with a one hundred crore corpus fund at the initial level.

Main objectives of *Beti Bachao Beti Padoo* Scheme

- i. To prevent Female infanticide and foeticide;
- ii. To ensure that every Female is safe;
- iii. To ensure that every girl receives an education.
- iv. Targets under the Scheme

The initial focus of the scheme should be applied on 100 districts which have low child sex ratio. At least one district is covered from each State. 12 districts have been chosen from Haryana where the child sex ratio is dismally low around 875 Females per 1000 males, according to census data.

Improve sex ratio by 10 points in 100 districts in a year *i.e.*, 10 more girls per 1000 babies born. Increase the number of girls in secondary schools by 79% up to 2017.

Separate toilets for girls in secondary and primary schools. Open 50 more Kasturba Gandhi Bal Vidhalayas by 2015. Celebrate girl child day on 24th January.

“The government spent a whopping 80% of funds under its flagship *Beti Bachao, Beti Padhao* (BBBP) scheme on media campaigns and must now revisit this strategy and invest in measurable outcomes in health and education for girls, noted the Parliamentary Committee on Empowerment of Women in its report tabled in Lok Sabha.”

“The Committee finds that out of a total of ₹446.72 crore released during the period 2016- 2019, a whopping 78.91% was spent only on media advocacy,” said the report. It adds, “over the last six years, through focused advocacy BBBP has been able to capture the attention of political leadership and national consciousness towards valuing the girl child. Now, it is time to focus on other verticals by making ample financial provisions to help achieve measurable outcomes related to education and health envisaged under the scheme.”

Action Plan

https://en.wikipedia.org/wiki/Sukanya_Samriddhi_Account (Last visited on February 24, 2022).

A reward of one crore will be given for the innovative village which attains a balanced sex ratio. Promote early registration of pregnancy and institutional delivery. Hold panchayat responsible for child marriage. Create Parliamentary Forum of MP's representing 100 districts.

Sukanya Samridhi Account

“Developed as part of the government's ‘*Beti Bachao, Beti Padhao*’ campaign, *Sukanya Samridhi Yojana* or *SSY* is a welfare scheme designed for the girl child.” Investing in this child insurance plan allows parents or legal guardians to ensure financial security for a girl child aging ten years or below. Under the *Sukanya Samridhi Yojana*, an account in the name of the girl can be opened across any of the private and public sector banks for 21 years. The tenure of investment under *SSY* is 21 years, starting from the account's opening date.

Sukanya Samridhi Yojana

Sukanya Samridhi Yojana is a saving scheme of Central Government aimed at betterment of girl child in the country. *Sukanya Samridhi Yojana* is launched to provide a bright future for the girl child and enables parents to build a fund for the future education expenses of their girl child.

“*Sukanya Samridhi Yojana*, also referred to as *SSY*, is a deposit scheme made especially for the girl child. This scheme was introduced to ensure a financially secure future for the girl child.”

This deposit scheme will help you save regularly for your little girl. Through regular deposits, you can create a sufficient corpus as the year's pass. This corpus can be used to meet your girl child's goals such as education or marriage etc.

It is one of the multiple schemes that the Government introduced under its *Beti Bachao Beti Padhao* Yojana launched in the year 2015 by Prime Minister Narendra Modi. ‘Dhanlakshmi Scheme’, ‘Ladli Scheme’ were some of the other schemes launched.

If you want to open your account under *Sukanya Samridhi Yojana* Scheme then you can do so by visiting either of the following.

- a) Banks
- b) Post offices

Sukanya Samriddhi Yojana- Interest Rates

The rate of interest that you will receive in your *Sukanya Samriddhi Yojana* account currently stands at 7.6% p.a. This interest rate is applicable from 1st April 2020. This is down from the earlier rate which stood at 8.4%.

However, if you have deposited between 12th December 2019 to 31st March 2020 then you will earn 8.4% p.a.

- a) Interest is payable to you yearly
- b) Interest is credited at the end of every financial year only
- c) Interest rate is decided by the government and change every quarter
- d) No interest will be provided if the girl becomes an NRI

Sukanya Samridhi Account Scheme has proposed to start a special small saving scheme for the education of the girl child. Under the scheme accounts of the girls could be opened from their birth till they attain the 10 years of age. The account can be opened with a minimum amount of one thousand rupees and an amount up to one lakh fifty thousand may be deposited in to it in a financial year. “Investment made under the scheme is also exempted from tax under section 80C of Income Tax Act, 1961”. Government will provide interest at the rate of 9.1% for this saving account. After reaching the age of 18, the girl kid can withdraw half of the money. The account will be active until she reaches the age of 21.

6.1.3 – Concluding Remarks

The impact of large-scale Female feticide in the past three decades is already manifesting the form of a skewed sex ratio and lack of brides for boys of marriageable ages. “The Pre-conception and Pre-natal Diagnostic Techniques (prohibition of Sex selection) Act as amended in 2002” is a well drafted and timely attempt and a bold step which is proving effective in checking Female feticide to some extent. The dwindling sex ratio needs to be balanced and this can be done only when the State, media, journalists, non- governmental organizations, medical practitioners, women groups and the public themselves take concerted steps to ensure that provisions of anti-Female feticide law are implemented fully and effectively.

It is difficult to eradicate social evils with the help of legislation alone. There is an urgent need to sensitize the general public in order to curb the practices discriminatory against and derogatory to the dignity of women.

The 1991 Census disclosed a significant decrease in the child sex ratio, the problem was detected, and in due course of time, to-day Female foeticide and infanticide has posed a great challenge before the society. Although many laws have been adopted to address this, there are still certain flaws in the current rules. Whereas most laws are enacted with zeal, their proper implementation is the key difficulty.

Another practical difficulty is that law alone cannot do anything. To give strength to it, much awareness and sincere commitments towards the society is badly needed. Last but not the least, we have to change our narrow thinking regarding gender inequality and traditional mindset. It should start first from our own families and then only we can hope for a better tomorrow, and will *see* a line of laugh in all the lips of the girl children in India.

Chapter – VII

An Empirical
Study in the State
of Maharashtra

Chapter – VII

An Empirical Study in the State of Maharashtra

7.1.1 – Methodology Adopted

The study is based on purposive sampling method wherein the items for the sample are selected deliberately by the researcher; her choice concerning the items remains supreme. In other words, under non-probability sampling the organizers of the inquiry purposively choose the particular units of the universe for constituting a sample on the basis that the small mass that they so select out of a huge one will be typical or representative of the whole. The researcher has collected the primary data and information from three rural districts are Thane Commr., Nasik Commr. and Yavatmal in Maharashtra. The researcher prepared the questionnaire in three languages English, Hindi and Marathi (according to the understanding of rural people). The researcher found most rural places in those districts, the respondents were divided into two categories; *i.e.*, literate and illiterates. The first category respondents data collected through a questionnaire through in the same places, the second category respondents data has been taken from the three rural districts are Thane Commr., Nasik Commr. and Yavatmal in Maharashtra, and the respondents contacted directly by the researcher through Schedule Method. The respondents were random married women, men and few unmarried persons also. The researcher adopted purposive sampling method. The sample size of the data was four hundred people. Out of the four hundred sample size, two hundred fifty-four were married women, one hundred were married men and rests were unmarried persons (only girls) of the same areas. Those are the three populations chosen by researcher out of which maximum were married women.

The Research Scholar has adopted the following strategy in data collection for the conclusion of the research:

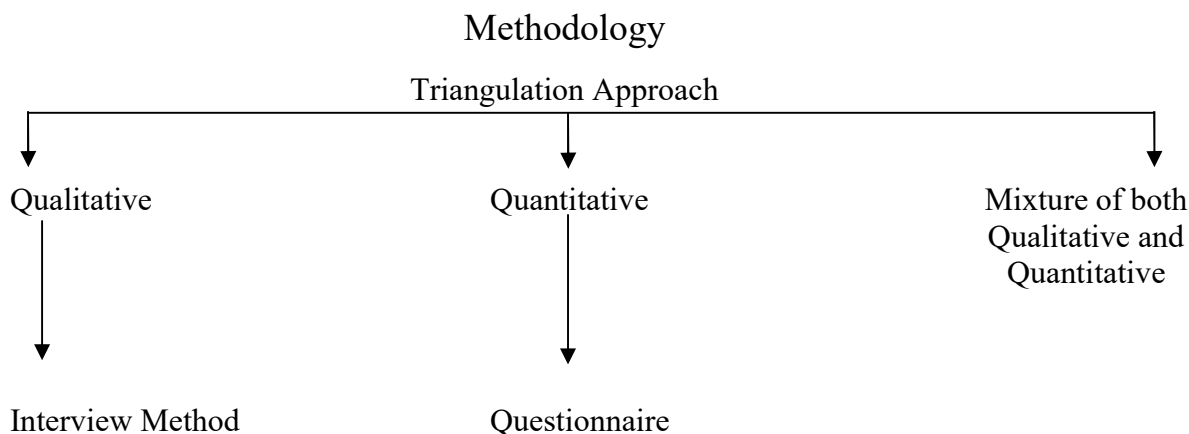


Table: 1 Questionnaire

Category of Respondents	<i>Modus operandi</i>
Married women (both literate and illiterate)	Questionnaire / Schedule
Married men (both literate and illiterate)	Questionnaire / Schedule
Unmarried (girl students)	Questionnaire

Questionnaire	Schedule
Category (Literate married respondents) =158 Unmarried (girl Students) = 54	Category (Illiterate married respondents) =205
Grand Total Respondents = 417	

Table: 2

Interview Method		
Names		Designation
Advocate Deshpande	Varsha	A lawyer, practicing in the State of Maharashtra, a Social Activist, Salam India Award winner, leads crusades against female foeticide, she has done more than fifty sting operations across the state hunting for clinics that offer illegal gender-selection abortions. She is a member of the Pre-Conception and Pre-natal Diagnostics Technique Act's National Inspection Monitoring Committee. She is leading <i>Lek Ladki</i>

	<i>Abhiyan</i> in Maharashtra, she is also a part of <i>Dalit Mahila Vikas Mandal</i> .
Mr. Rizwan Parwez	Last twenty years of his association with non-profit organizations, he has worked in different capacities on the issue of gender-biased sex selection, declining child sex ratio, women's access to safe and legal abortions, and livelihoods for women and girls. He has led field-based interventions on pre and post birth discrimination against girls, which gave him the opportunity to work closely with the state officials, legal and medical fraternity, civil society organizations, media, local community and panchayats. Training of stakeholders on MTP and PCPNDT Acts has been a special area of interest. He had served as the member of the National Inspection and Monitoring Committee constituted under the PNDT Division of the Ministry of Health and Family Welfare, Govt. of India, and currently serving as the member of the State Supervisory Board, constituted under the PC-PNDT Act by the Govt. of NCT of Delhi.
Dr. Sabu George	Dr. Sabu George spent 35 years working on the issue of female foeticide. He studied at IIT Bombay, completed Master's from John Hopkins and PhD at Cornell University. He has travelled extensively and engaged with people at the ground. That comes from his dedication towards this cause. In 1990s he had already predicted that the 2001 census will be bad. He has a very good sense of the situation in states like Kerala and Rajasthan and a fair sense of many other states in India. All this comes from his experience and knowledge gained from working at the ground level.

The respondents especially in direct contact, somehow worried or hesitating to give their responses. Although they are providing their opinion according to the need of the hour, the body language of the people are not matching with their answers. Few women are fearlessly claiming that, they are happy with their single daughter, there are no differences between son and daughter and they are happy that God has blessed them with a child despite the gender.

The researcher has visited two NGOs one is Seva Sahayog Foundation and another is Bethel Gospel Charitable Trust. According to them, they haven't seen any kind of situation related to Female infanticide and foeticide in their NGOs at least.

In another perspective, the researcher tried to gather some knowledge from a laboratory, named Nexus, they explained their views about Sex determination of the Foetus, they said, they don't have such experience, expecting mother or her family members they used to come for tests or USG prescribed by medical practitioners only to check the growth and health of the foetus and they have some posters also in their laboratory with the message that sex determination is a punishable offence.

7.1.2 – Sampling frame: As regards study of opinion survey of the respondents regarding their perception of having daughter, law and justice, punishment of the offenders, legal process the random method of sampling was adopted and collected from the three rural districts are Thane Commr., Nasik Commr. and Yavatmal in Maharashtra.

7.1.3 – Sampling population/units: The sample size of the data was four hundred people. Out of the four hundred sample size, two hundred fifty were married women, one hundred were married men and rests were unmarried of the same areas.

The first part of the Report Focuses on opinion survey of two hundred fifty-four were married women in the three rural districts are Thane Commr., Nasik Commr. and Yavatmal in Maharashtra regarding their perspective on girl child, dowry system, law, legal system *etc.* this is the main part of the research. Out of the four hundred sample size, one hundred were married men in the same place of Maharashtra.

7.1.4 – The following tables using the simple percentage will give the accurate data:

Table – 1 “Married/ Unmarried”

Answer	Percentage
Yes	86.73%
No	13.72%

In the Table – 1 the data is showing, according to the Methods of Data Collection the researcher has approached maximum married women, married men then few unmarried persons. Out of 100% population 86.73% is married men and women, and rest 13.72% are unmarried.

Table – 2

“Preference of Son and Daughter”

Answer	Percentage
Both	67.81%
Son	10.32%
Daughter	21.87%

In the Table – 2 the preference of Son, daughter and both out of 100% total population 67.81% is desirous to both children, 10.32% choice is son and 21.87% of daughters.

Table – 3

“Preference on a single child”

Answer	Percentage
Daughter	72.97%
Son	27.03%

Table – 3 is strictly on either daughter or son, the maximum preference is daughter, it's about 72.97%, and son is 27.03%. The statistics is according to need only. It seems like people are worried to give their answers.

Table – 4

“Preference of male child with specific reason”

Answer	Percentage
“Son is required to preserve the tradition and values of family.”	73.22%
“Son will support you in old age.”	4.91%
The upbringing of a male child is economically convenient and more manageable.	3.44%
Who wants a daughter this question is irrelevant for them.	9.34%
The daughter can become a social and economic burden.	0.49%
All of the above.	8.60%

Table – 4 shows the real face of the society, in India maximum people's mind set toward male child, “Son is required to preserve the tradition and values of family.” As

its showing 73.22%, the percentage itself is showing the reality. The rests are correlated only. 4.91% of people are saying Son will support you in old age. Only 3.44% people are saying the upbringing of a male child is economically convenient and more manageable, 9% are in opinion. Few people who chose the option of daughter instead of as on they preferred not answer the question. But 0.49% are saying the daughter can become a social and economic burden, from the history feminism this is the only reason, for what daughters are unwanted. Rests 8.60% are saying all of the above, they totally supporting the welcoming of male child.

Table – 5

“Familiar with the term Female Infanticide or Foeticide”

Answer	Percentage
Yes	82.06%
No	17.94%

Table – 5 shows that people are how much familiar with the word Infanticide and foeticide. Although the percentage has another story, face to face they are saying that the concept of having on son is an old school concept, in 21st century people have no choice. 82.06% people are of opinion that they know about the Infanticide and foeticide, but rest 17.94% of sample population has no idea about it.

Table – 6

“The primary cause for Female Infanticide or Foeticide”

Answer	Percentage
Poverty.	7.62%
Dowry.	13.51%
“Girl child considered as a burden.”	22.36%
“Pressure from family.”	9.58%
All of the above.	46.44%
Dowry, Pressure from family.	0.49%

According to Table – 6 this question is inter-related with the heinous crime, why this discrimination in society, why people are worried of having a girl child in their home. In India poverty is a common problem, 7% people are supporting it. As well Dowry, it is the fear of people always, parents are able spent lacs of money in their daughter marriage but not in education, 12% of sample population agrees with it. Girl child considered as burden it's a very common issue, 22% people are accepting that, even those people also accept who has a single daughter. 13% of the sample population

accepting that it is pressure from the family, that they need son not daughter, they consider a woman as a son procuring machine, if a woman has son, she has respected status in the society, but a mother of a daughter has to face so many consequences. It is very common and 46% of the populations are agreeing on all the reasons.

Table – 7

“Women’s contribution on the Female Infanticide or Foeticide”

Answer	Percentage
Agree	55.04%
Strongly agree	16.95%
Disagree	20.15%
Strongly disagree	7.86%

Table – 7: It is very pathetic to say that Women also have contribution on the Female Infanticide or Foeticide, it is very much related to the answer of Table – 6 that pressure of family is dragging the mother in this condition. In this world, whether it is a male or Female, beauty or ugly, good or bad every child is beautiful in their mothers’ eye, always have love for them in their mothers’ heart. The 55.04% sample populations are agreeing on this question it’s unfortunate. 16.95% are strongly agree it’s more unfortunate, only 20.15% and 7.86% are disagree and strongly disagree.

Table – 8

“The large-scale abortions are taking place only to eliminate Female foetus”

Answer	Percentage
Agree	62.90%
Strongly agree	16.71%
Disagree	16.95%
Strongly disagree	3.44%

Table – 8: Abortion is a tool which is protecting the social menace. Statute is there to enabling “the safe abortion under the umbrella of the Medical Termination of Pregnancy Act, 1971.” Morally abortion itself is a killing of an organism, whether it is killing a male foetus (rarely happens) or Female foetus. Out of the whole population 62.90% people are agreeing, 16.71% are strongly agree, 16.95% disagree also, and rest 3.44% are strongly disagree with this opinion.

Table – 9

“The decline in child sex-ratio and scarcity of women will improve their position”

Answer	Percentage
Agree	48.40%
Strongly agree	3.44%
Disagree	33.91%
Strongly disagree	14.25%

Table – 10: It is very much obvious when the mindset of the people will change towards girl child the “decline in child sex ratio and scarcity of women will improve their position itself.” Although the answer answers 48.40% of the sample population are agree, 3.44% are strongly agree, 33.91% are disagree and rest 14.25% are strongly disagree.

Table – 10

“Knowledge of the methods of Sex-determination”

Answer	Percentage
Yes	58.48%
No	41.52%

Table – 10: More or less half of the sample population is claiming that they are not aware or familiar with the concept of sex-determination. 58.48% of the sample populations are agreeing and rest 41.52% are saying no to the question. Although the sample populations were from rural place.

Table – 11

‘Selective Killing’ ought to stop or not

Answer	Percentage
Agree	48.40%
Strongly agree	3.44%
Disagree	33.91%
Strongly disagree	14.25%

Table – 11: The deep meaning of ‘Selective Killing’ is very much cruel. The 48.40% of the sample population are agreeing to stop it, 3.44% are saying it should be stopped immediately, where in the same place few people disagree (33.91%) and strongly disagree (14.25%) with it.

Table – 12

“The advancement of technology is responsible for Female Foeticide”

Answer	Percentage
Agree	46.93%
Strongly agree	19.16%
Disagree	29.98%
Strongly disagree	3.93%

Table – 12: The advancement of technology is responsible for Female Foeticide this question was little bit confusing because in this era where whole world is connected on online platform, whether it is education, business or parliamentary meeting. So how anyone can blame the technology. In this context technology is being misused by few unscrupulous people. So the answer of the sample population is agree is 46.93%, strongly agree is 19.16%, disagree is 29.98% and 3.93% is strongly disagree.

Table – 13

“The existing laws are adequate and effective”

Answer	Percentage
Yes	49.39%
No	50.61%

Table – 13: The existing laws are adequate and effective in statute; it needs to be effective in real also. Every state has to monitor its systems regularly. So the answer is here also half-half, 49.39% of the sample populations are saying its effecting and 50.61% of sample populations are saying no its not.

Table – 14

“The statute is stringent enough to punish those guilty of committing Female infanticide and foeticide”

Answer	Percentage
Agree	54.05%
Strongly agree	16.71%
Disagree	17.69%
Strongly disagree	11.55%

Table – 14: Obviously the statute is stringent enough to punish those guilty of committing Female infanticide and foeticide but here also the situation is similar with Table – 13. Regular monitoring system, proper supply of data, proper reporting cases are very much necessary. Out of the total sample population agree and strongly agree is very much noticeable *i.e.* 54.05% & 16.71%, whereas disagree and strongly disagree is 17.69% & 11.55%.

Table – 15
“Better education of women can improve the situation”

Answer	Percentage
Agree	84.03%
Strongly agree	12.78%
Disagree	2.46%
Strongly disagree	0.74%

Table – 15: No one will be able to deny the fact, that better education of women can improve the situation, educating girl child should be responsibility of all parent. In India parent are very much aware about their daughters’ marriage, but not education. If the daughter will be independent then they won’t be considered as a burden. Government has raised the marriage age of the girl child, so they can at least understand; can live life on their own perspective. Here the answers are very much positive maximum of sample population are of 84.03% & 12.78% are agreeing, and rest 2.46% & 0.74% are disagreeing.

Table – 16
“Being a woman, feeling insecurity having a girl child”

Answer	Percentage
Yes	15.23%
No	60.20%
Not Applicable for Male	24.57%

Table – 16: Till today, women are there who feel insecure of having a girl child, the in- laws house, the society underestimates the women who delivers girl child. 15.23% of the sample populations are saying they feels they are insecure as they have daughter, whatever the reason may be. But 60.20% of sample populations are saying they are not worried about their daughter at all. Rest 24.57% are Married Male, this question is not applicable to the men.

Table – 17
“Considering girls as responsibility, not a liability”

Answer	Percentage
Yes	77.64%
No	22.36%

Table – 17: This question has an important role in this survey, considering girls as responsibility 77.64% has opined. Rests 22.36% who expect or wish to have male child or they are worrisome to the upbringing of a girl child. Girls are liability for them.

Table – 18

“The man and woman in the family should be treated equally”

Answer	Percentage
Agree	43.00%
Strongly agree	54.55%
Disagree	0.74%
Strongly disagree	1.23%

Table – 18: Hoping that, the society will change one day, the man and woman in the family will be treated equally. Unfortunately, it is not in practical. Although the responses are very much positive towards the question. The percentage of agree and strongly agree are of 43.00% & 54.55%, and disagree and strongly disagree is of 0.74% & 1.23%.

7.1.5 – The total analysis of the Survey

The researcher has approached maximum married women, married men then few unmarried Female students. The maximum respondent has chosen daughter. Although it's not the real face of the society, in India maximum people are tilted toward male child, “Son is required to preserve the tradition and values of family.” Answer of Table 4 is showing 73.22%, is showing the reality. The rests are correlated only. Few people who chose the option of daughter instead of a son they preferred not to answer the question. But 0.49% are saying the daughter can become a social and economic burden, from the history feminism this is the only reason, for which daughters are unwanted. People are how much familiar with the word Infanticide and foeticide, the percentage has another story, face to face they are saying that, the concept of having on son is an old school concept, in 21st century people have no choice. 82.06% people are of opinion that they know about the Infanticide and foeticide, but rest of the population has no idea about it.

It is an important question and inter-related with the heinous crime, why this discrimination in society, why people are worried of having a girl child in their home. In India poverty is a common problem, people are supporting it. As well Dowry, it is the fear of people always, parents are able spent lacs of money in their daughter marriage but not in education, girl child considered as burden it's a very common

issue, 9.58% of the sample population accepting that it is pressure from the family, that they need son not daughter, they consider a woman as a son procuring machine, if a woman has son, she has respected status in the society, but a mother of a daughter have to face so many consequences. It is very common and of the populations are agreeing on all the reasons.

It is very pathetic to say that Women also have contribution on the Female Infanticide or Foeticide, it is very much related to the answer of Table – 6 that pressure of family is dragging the mother in this situation. In this world, whether it is a male or Female, beauty or ugly, good or bad every child is beautiful in their mothers' eye, always have love for them in their mothers' heart. Illegal abortion is a tool which is protecting the social menace. "Statute is there to enabling the safe abortion under the umbrella of the Medical Termination of Pregnancy Act, 1971." Deep meaning of 'Selective Killing' is very much cruel. The advancement of technology is responsible for Female Foeticide this question was little bit confusing because in this era where whole world is connected on online platform, whether it is education, business or parliamentary meeting. So how anyone can blame the technology. In this context technology is being misused by few unscrupulous people. The existing laws are adequate and effective in statute; it needs to be effective in real also. Every state has to monitor its systems regularly. The statute is stringent enough to punish those guilty of committing Female infanticide and foeticide but here also regular monitoring system, proper supply of data, proper reporting cases are very much necessary. No one will be able to deny the fact, that better education of women can improve the situation, educating girl child should be responsibility of all parent. In India parent are very much aware about their daughters' marriage, but not education. If the daughter will be independent then they won't be considered as a burden. Government has raised the marriage age of the girl child, so they can at least understand; can live life on their own perspective.

Till today, women are there who feel insecure of having a girl child, the in-laws house, the society underestimates the women who delivers girl child. 15.23% of the sample populations are saying they feels they are insecure as they have daughter, whatever the reason may be. People consider girls as responsibility maximum has opined. Who expect or wish to have male child or they are worrisome to the upbringing of girl child . Girls are liability for them.

7.1.6 – Interview Method:

The researcher has also done an interview method of collecting data in the personal interview method. It was in the form of direct personal oral investigation. The interview was in online mode. The researcher has collected the information personally from the sources concerned.

Advocate Varsha Deshpande⁵⁶²

“But the technology to choose a baby’s gender even before conception – at the inception itself – already exists, and soon it will become cheaper,” she said. “What will we do then? In the 1980s and 1990s, the situation was bad. Now it has simply become unmanageable.”⁵⁶³

Q: What is your opinion about title of the Research Paper?

A: I have an objection to the title; ‘Foeticide’ is not an appropriate name. The person who breathes and is killed, it is ‘abortion’ not foeticide. Once you say foeticide, then somebody is killing the foetus, she will be the killer and that will be the mother. But we support including me and all people who work for the declined Child Sex Ratio, we work for the safe and legal abortion rights of women. But using foeticide as a term to address killing of foetus is inappropriate. Because the issue is not about killing, it is about discrimination.

Q: According your perspective, why is this happening?

A: Women, minorities, and *Dalits*, are treated as second-grade civilians, and proved culturally. It can be found in *Manusmriti* as well. In majority of country, crimes against women, minorities, and Dalit happen because of discrimination.

Q: Why the crime is committed?

A: Even though biologically women are stronger than men, yet we experience discrimination resulting in violence. Due to the socialization theory of crime, a girl and a boy is discriminated almost everywhere since their birth. Yet West Bengal or Kerala stands as an exception to this discrimination. Among all the other seven sisters

⁵⁶² A lawyer, practicing in the State of Maharashtra, a Social Activist, Salam India Award winner, leads crusades against female foeticide, she has done more than fifty sting operations across the state hunting for clinics that offer illegal gender-selection abortions. She is a member of the Pre-Conception and Prenatal Diagnostics Technique Act’s National Inspection Monitoring Committee. She is leading Lek Ladki Abhiyan in Maharashtra, she is also a part of Dalit Mahila Vikas Mandal.

⁵⁶³ Lawyer fights female foeticide is one of India’s affluent states, available at: <https://www.thenationalnews.com/world/asia/lawyer-fights-female-foeticide-in-one-of-india-s-affluent-states-1.607444> (last visited on February 26, 2003).

of India, West Bengal follows matriarchy. But present scenario in West Bengal is not appealing as well because of the rapid growth of infertility centers in Gokulnagar *i.e.*, in Kolkata. For that reason, people from all over India are rushing to Kolkata even if it means to disobey law. Orissa, Bengal, Kerala, Assam has good Sex Ratio. But various kinds of trafficking prevail there as well. Maharashtra may be the fourth place in the Child Sex Ratio. But according to 2001 data, first is Punjab, Haryana is second, third is Gujarat.

Q: Is there any authenticated data which can guide me better?

A: NCRB Data of 2015 is not authentic, so you will have to follow census. If you want to find out what is happening with the decline in sex ratio you have to follow SRB (Sex ratio at birth). The decline in ratio is same in Punjab, Haryana, Gujarat, and Maharashtra as well. Madhya Pradesh is no less than Maharashtra. But UP and Bihar may be worse than that. You can't get the data of UP and Bihar accurately as people there don't register their birth date. They don't register for birth certificate, as they don't want to pay the cost of registration procedure. As compared to UP, Bihar, declaring Maharashtra worst isn't accurate.

Q: What is your opinion about the execution of “The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994”?

A: I am working on women's issues for past 30 years. It became a priority from 2004 because I was a member of the advisory committee of “The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994” in Satara. In 2001, Satara was in its worst phase. So, we started doing decoys in Satara and then continued throughout Maharashtra. Maximum decoy operations we performed were in Satara, Western Maharashtra. We started filing cases and hypothesized people will follow law and order from now on. But that was not the actual scenario.

Q: What happened after filing the suits?

A: After filing suits, we realized just filing did not give favorable outcome. We followed the trial of the case in Court as well because only enacting the law is not enough in India. You have to ensure the process of the implementation. Just taking the action is not enough, you have to go to Court and ensure that it will get a conviction. Even after getting a conviction after a trial may not be satisfactory. You might have to follow the trials of the case till Supreme Court.

Q: Is the mechanism of judiciary in accord with statute?

A: In India, there are more than 42 Laws violence related and eradicating discrimination related women in India. Yet you will find negligible convictions in the Court.

Q: What about awareness of people?

A: People perform awareness campaign and other social activities but when it comes to crime and discrimination against women, people often ignore or advise to change mindsets. Changing the mindset may take decades. If you take the law in hand and start acting on it, you can witness the scenario within one year, particularly about the decline in child sex ratio. Only once when she conceives it takes nine months to find out what has happened. So it's not that difficult. Political will in Indian society indirectly handle our politicians, our judicial systems, our organizations, our academicians. Majority of people defy the law. If there is an Act in India for particular crime, that does not ensure you accurate justice. To carry forward the accurate justice you will also have to do your part sincerely. You will have to file and you will have to struggle as well.

Q: Is there any way to save a Girl Child?

A: If you want to save a baby child, you have to save the mother first. Abortion is allowed in India. But, *"When there is a will, there is away"*.

Q: Why foeticide happens?

A: Because there is determination of sex. The cause of decline in Sex Ratio is sex selection and sex determination and also the illegal sex-selective elimination. *Dalits*, minorities, and women face crime because of discrimination. "We have promised in our Constitution that there should not be any discrimination on basis of caste, creed, religion, and sex." Yet from last 75 years we experience same plight of women over and over again. Even if you witness all statutes related to protection of women at present and in World's history, women were rewarded nothing without pathetic struggle. History never witnessed that women get anything by changing the mindset of her husband or her family. Our country's history signifies that, if you are a Dalit, or minority, or a woman, you will have to fight for your Constitutional Right. Till date, what they have achieved are government policies, educational rights, human rights, health rights, property rights, freedom of movement, or freedom of speech, we have to

fight out for all of the things legally and constitutionally.

Q: Which place is the worst in India?

A: Among all of the matter that are related to the crime, we should find out the root cause of the fact. According to this India has two parts, one is North and West and the other part is South and East. North-West part will include, Punjab, Haryana, Himachal, Delhi, Gujarat, M. P., U. P., Bihar, and part of Maharashtra and parts of Karnataka. South-East part includes West Bengal, Assam, Orissa, Andhra Pradesh, Kerala, Tamil Nādu, Telangana to part of Karnataka down there and Andaman Nicobar, Diu Daman. States like Diu Daman is experiencing rise in Sex ratio. Particularly Silvassa which is very adjoining to Gujarat and Maharashtra. The issue of discrimination is the cause of illegal sex-selective abortions resulted in violating three Acts: “Pre-Conception and Pre-natal Diagnostic Techniques Act; Medical Termination of Pregnancy Act; and Drugs and Cosmetics Act.” We play around with these three Acts. Because in our country girl child are considered as burden till date it is in practical practice. Whether it is West Bengal or Kerala because you raised a girl, give her education, help her to get the job. So total investment to a girl child is wrong, and they also think that living with a girl child is also wrong. She considers a liability. When you choose privatization of each system of the public sector. when you chose to cost-effective governor. When you choose to capitalist American kind of economy. Then definitely every relationship also you go and see what is cost-effective. Human behavior is also. If a woman is a working woman, then she will get married soon, although she was not as beautiful. Being not beautiful is compensated by her job. So, in every relation, there has to be cost affectivity. And here money matters, along with a woman every time their money matters. If you notice from *Sati pratha* it was before independence. From the British colonial era till now if anything changed those are only technology and *modus operandi*. But nothing has changed in our mindset. In that era, *Sati* had to die because she may claim property rights. Raja Ram Mohun Roy and Ishwar Chandra Vidyasagar are from West Bengal, they had to fight with the British and remove *Sati paratha*. That is the first social Act, *Balika Hatya Bandi* and *Sati pratha*. That has come from West Bengal. But that was because of the property rights.

Q: Your perception towards Infanticide.

A: In Tamil Nadu, everywhere infanticide was practiced. Which cancerous growth

has shown from the West Bengal from Maharashtra, if a girl born then people will say that nothing had happened, then in a clay pot they buried the girl child or sink in milk. Even nowadays in the Jalgaon district, in Lamand cast, Rathore, Mohammedan tribes, they put tobacco powder in girl child's mouth and they leave in the morning for work, when they return in the evening in the meantime the baby dies.

It is deliberate. Get rid of the child because they can't access the technology which we people can access. They are poor working class; security of the girl child is an issue. So, they want to get rid of the child. And infanticide still we are witnessing. On record, Asha worker will show that it's stillbirth. Or maybe because of some post-delivery complications the child died. That may not come on the record. For this issue, there has to be a law.

Q: Why you started the work?

A: We are already struggling with many issues of women. That would be S. 376 of IPC, we are running a free Legal Aid Centre. We are working for deserted women, dowry deaths, preventing child marriage, and any issue of S. 376 of IPC. Moreover, we have prioritized this issue. Because we are facing that when decline in Child Sex Ratio has occurred then we will see the violence will slowly increase in child, adolescence and with an adult also.

Q: When did the litigation starts?

A: We have seen in 2004, that in 2001 two organizations of Maharashtra *CEHAT* and *MASUM* has knocked on the door of the "Supreme Court for the first time." Before that Maharashtra is the first State where the Act has enacted and it was in the 80s. In the 1980s the technology had come and a survey was done over about 200 ultrasonography centers and abortion centers in Mumbai City held by Dr. Sanjeev Kulkarni. Dr. Sanjeev Kulkarni wrote a paper that "If you want to control the population, but for the population controlling mechanism MTP Act is not at all a right-based act. It has been enacted to allow a male population to enjoy the sex and women to go for an abortion." That was in 1971 to control the population. That is still not right based Act, because it says a married woman and contraception failure. It is not giving the right to any woman to abort. This is more necessary for those who are unmarried, widows, or prostitutes. But it says the main condition of abortion is a married woman and contraception failure is the main condition. So, the MTP Act,

1971, has made for population controlling mechanism basis but it is not good for women. But they have got the right to abortion, which has not been legalized yet in western countries like America, Europe, or Australia. They don't have clear abortion rights. But India we have this right. So, you can't say it right, its health right, it's not a fundamental right. Only the doctor the service provider can offer abortion to any woman under a certain condition. So, Dr. Sanjeev Kulkarni wrote an article and says, "You are using this machine, which is called as a sonography machine and people instead of seeing well-being of a child or a woman or womb, they are seeing the genital of the child and communicating the sex of the foetus. And girls are getting eliminated." That is the survey of only 200 Ultrasound Centres of Mumbai City. That was the first time and this survey was taken very seriously by all the likeminded women organizations, social organizations that moment in Maharashtra, and Private Bill was brought into our house and that was being discussed to Pratibha Patil, was our president in 2015. At that time in congress's tenure, she was our *Mahila Bal Kalyan Mantri*. In her tenure, the law has passed PNDDT, not PCPNDDT. Because that is not the time, we are discussing our pre-conceptions. Pre-conception is recent, after 2000 is started infertility and test-tube baby and all this. So, in PNDDT, we got the law, as I said we were very happy. I was a law student at that time and we just heard about the law and we were scared of this law.

Q: "I was a law student at that time and we just heard about the law and we were scared of this law." Why?

A: The Act was issued, and we implemented the Act in two ways. When the Act was implemented by the Police, then they prepared the case against doctors but they accused the woman. That's why I told you before, don't take it otherwise. I scared the word 'foeticide'. If foeticide will occur then it will harm the body of the woman and with the woman, who is adult, talented, educated despite all of that if she goes with sonography and aborts her child, then technically and practically if anybody sees this perfectly correct. She will be listed as an accused.

Q: In your opinion do women have decision making power?

A: Till today, women in our country women can't decide their marriage, their decision about contraception. In our country an adult educated woman can choose our Prime Minister but can't choose her husband, she can't choose when will be she

marry or which cast she will be married to. In a democratic nation, she can't choose her sex partner, which cast she will be married to when she has a baby, or which contraceptive she will use. She can't choose any of this. If she has any problem in her womb, also she has to ask her family. In our society which we call marriage, the ritual is only for a girl who has been sent to from one another family and just to the reproduction of a male child. In marriage, there used to be a blessing that, '*Ashta Putra soubhagyavati bhava*'. You have killed eight daughters then *Lord Krishna* has born in *Mahabharata*. Like in *Ramayana* they have four male children. Nobody knows if they have any Female children or not. That means till the date, in our society there will marriage because of reproduction of male child. We are born girls who buy products in India in our families. When I was born maybe there were no sonography machines for that we are three sisters and then our brother. Because they are waiting for a male child. If the male has born in the first place, maybe then we too had not been born. So, in our country, if a marriage has been consummated then giving birth to a baby boy is mandatory and she is compelled to do it.

Q: Why do you have objection with this law?

A: If you start saving the girls and distinct the woman as an accused, for that reason we have a problem with this law. So, we said we save the girls but not the cost of the women standing in the position of the accused. So, we made a law in 1988, but we had to execute the law. After that India has taken the law of Maharashtra and then there is no change till 2000, only the discussion continues. Then in 2000, when Sabu George of *CEHAT* and *MASUM*, who is from Kerala, works around the whole country for this issue. I want you also discussed with him. Because without him nobody can complete their Ph.D. Already an advocate has done a self-guided Ph.D. from Mumbai, Pune Law Department in this subject. He is Adv. Uday Warunjikar has done this Ph. D. We are about to publish his thesis now. Recently, we fight it in court in Google.

Q: How can we find the latest data?

A: If you search foeticide there is nothing you can find but if you search for sex selection anywhere Google or YouTube, then you will get many more. There is a girl's count network working all over India. The office is in Jangpura you can contact Mr. Rizwan Parvez there. Our office is located in Jangpura, Maharashtra, it is a national-level network, for those who are working in decline in "Child Sex Ratio and

Sex-Selective Abortion.” We are working on safe and legal abortion also *i.e.*, girls count. I am happier because you have chosen Maharashtra.

Q: Then on which data we can rely?

A: You refer through census or you refer through SRB (Sex Ratio at Birth). You have to refer to SRB because we have not census 2021 now. SRB is the latest. We have 2001, 2011, When you want to share the Child Sex Ratio, you should know the authenticated data is SRB and Census of India, not NCRB. If you go and refer to Child Sex Ratio then you will find the worst is Punjab. You are referring to the general population. When you want to do a Ph. D. in infanticide and foeticide you said. Which I don’t like to utter that word also. In infanticide and decline in Child Sex Ratio. Then you should refer to the child population or Sex Ratio at Birth. It should again 1000:952 is the index; if it is going below that can be called is a skewed number. when you refer to the data after seeing the adult population data. Then you are referring to before 40 years. This should be wrong. Your focus point should be 0-6 years old child, not more than that. Now you keep your focus on Maharashtra. But write down the worst is Punjab.

Q: What can be the reason of choosing Maharashtra?

A: Because Maharashtra enacted the law first and they got more convictions. So, you can justify why you have chosen Maharashtra for your Ph. D. But the first is Punjab, the second is Haryana, third was Himachal in 2001, but it has Himachal changed.

Q: What happened with CEHAT & MASUM?

A: In 2000 the *CEHAT* and *MASUM* case was there and the decline in Child Sex Ratio was a national issue. Then for the first-time law was taken seriously, especially the Central Supervisory Board. Because when you buy a car, this is not just enough you have to pay for driver and fuel also. There was the same condition because the law was enacted in 1994 and 1988. But there were no rules for who will implement it that were also not decided. The whole law is connected; it is about a medical crime. These doctors are medical terrorists. You have to implement the law against them. So that was given the responsibility to the Health Department or all Appropriate Authorities have been chosen Central Supervisory Board, State Supervisory Board. If you go and see the law, have you gone through the legal books. Then the scheme was made, it was decided who will implement the law. Then I came into the committee.

Q: Are you in National Inspection Monitoring Committee?

A: Yes, now I am on National Inspection Monitoring Committee. In 2004, I started with a decoy operation. I am the first person, who did the decoy operation in India. But the first conviction was in the Faridabad, Haryana in Palwal. The first conviction was not mine. But the first decoy operation was mine, that was in 2004, Satara, Maharashtra.

Q: The law was enacted on 1984, and you started the decoy operation in 2004, what was the scenario in between?

A: In 1984, we got the law, 1994 it became Pan India Law. But we did a decoy operation in 2004. Because in 2002, we got the Supreme Court directions for our *Sansad* there should be some amendments. *Firstly*, the name of the law was changed. It was called PCPNDT because, by that time genetic counseling lab and genetic counseling center has been a major issue, it was IVF and everything. *Secondly*, we didn't use the law in 1988 and 1994, because the mother was listed as an accused. Section 24 was added to the law, which said pregnant women cannot be listed as an accused, only it is otherwise proved. So, I could do decoy operations. I gave strength to a mother, a pregnant mother to exercise her Constitutional Right not to discriminate against her unborn child. So, focus should be on discrimination not on violence.

Q: Why this problem arises?

A: In our country, despite religion, caste, creed, women are victims of discrimination. Then they face the different forms of crimes. We are here to ensure that, there should not be discrimination. If there will be no reason then there won't be any results. To destroy the reason. Infanticide, foeticide, rape, mal-nourishment, dowry death, sexual violence at the workplace, POSCO nothing will happen. If we don't discriminate against our daughters in our country.

Q: In this plight what should we do now?

A: We have to stop socialization, such as saying you are a girl or treating her like a second-grade civilian in our society. We will give them equal property rights. Why this crime is less in West Bengal and Kerala as compared to Maharashtra. Because in Maharashtra male chauvinism and patriarchy are exists, which is not in West Bengal. They worship *Durga Devi* more culturally. In Kerala also property rights go to mother to daughter not son. In Maharashtra, *Ganpati Utsav* is most celebrated.

Q: What happened after the amendment of the PCONDT Act?

A: For the whole issue, we added Section 24 and then we started decoy operations. We used spy cameras, used Walkman for audio recording, and then by taking pregnant women and planting traps, we caught the doctors. First of all, we faced some trouble, after that these doctors have given us another doctor's name. Like the first doctor gave the second doctor's name and then the second doctor gave the third doctor's name, likewise, we got our culprits like a chain.

Q: Till today how many sting operations or decoy operations you have done?

A: We conducted more than 50 decoy operations. By taking pregnant women and filing cases against them.

Q: After the Decoy Operations was the path of legal process smooth?

A: But that is not enough. Because the public prosecutor in our country, whichever state may they belong to, don't work for Government, they take money for being silent. So, we noticed, this is not about the police case, it's not a civil surgeon or DHO (District Health Officer) or CMHO (Chief Medical & Health Officer) from Kolkata or Punjab, they file the case directly in Court. For that case, the Public Prosecutor has to take action. But they take money from the doctor for being silent. So, we decided if we have taken the case to a conviction then we have to go to court. When the trial court gives a conviction then we have satisfied. Then we noticed the case is going out of the hand in Session Court. Then we stand in Session Court also, till now we are struggling to the High Court and Supreme Court also. We have to get a conviction in a hundred and more cases in Maharashtra. But as an NGO we can't follow up on all cases. So, we are following around 28 cases with some support. In Section 24, she will be not listed as an accused; she will get presumption only it is otherwise proved.

Q: Is the State is not interested in taking these cases?

A: No, we cannot say that the State isn't interested. Because the monitoring of the system of the State isn't proper. To whom the duty has been imposed, is he doing it properly or not there is no accountability. The officers are not held accountable in the state.

Q: What can be the reason of this?

A: Because the selection of a Public Prosecutor is political, and business works here. The Public Prosecutor changes as the Government changes, as they work for the

Government. The selection and appointment should be done on a merit basis. We have to change the system. No one is worried about the law or stringent punishment; they are aware that if they pay some money, they will get rid of any case. Defense lawyers are the richest person in the state.

Q: Is there any case where they go for appeal?

A: There are few cases when the accused is acquitted because it is a matter of huge money saying that the case is not fit for appeal.

Q: Why did you conduct decoy operations?

A: It wasn't enough to do the decoy operation; it was essential to take the cases to court, the CMHO took it to the court but we have to follow up with our witnesses also because doctors were offering them money one by one. So, this is basically about the money. It's not about only saving the daughters, eliminating the daughters, or getting rid of them. In our country, it doesn't matter however the law is, how much rigorous the punishment will be, Money is the biggest turn over.

Q: Is there any improvement?

A: There are twenty cases we are following up till High Court and Supreme Court. We are looking forward to that, in which places we conducted decoy operations. But I'm able to promise you that, Sex Ratio now is normal in those places, no it is not. Till today on large scale, there have been sex determination, sex selection, and elimination also. If you have to understand the whole matter. That this is technical law and medical crime attached to the law. You are going to give justice to an unborn child, anybody can do advocacy of an unborn child. Saying that this is India, it promised you Constitutional Equality. We can't let you play with equality before birth. Whether it is a girl or boy, your mother and your parent want you to be born, so you have to be born. You will get all of your dreams to be fulfilled as child, whether you are a son or a daughter. But only being a girl every year, more than six lakhs of a girl child have been eliminated in India. Only Maharashtra contributed fifty-three thousand per year. And the turns were not done with only one sonography. The rate is one lac per elimination. This data is according to census data, it is in UNFPA.

Q: People are worried to give responses in survey?

A: People know there is a law. What is in their mind if they say, they may face problems, so they don't answer properly. They have fear of the law, but that does not

mean they don't commit crimes. They know very well, where they will get the services, they know very well that they are doing the offence because they want to get rid of their daughters. Raising a girl child, educating them, availing property rights is an issue. The economic system which we have adopted, in this situation, girls are a burden. We can give a speech only, but everybody can't be the Indira Gandhi or Jhansi's Rani Lakshmibai. If there was a farmer's girl, but could not be easy for the farmer to raise the girl child. If he goes to the field for farming, he cannot take care of his girl all of the time. But anything happens with the girl, like sexual assault or sexual violence crime committed. Then the girl is called of the reason for infamy. Who committed the crime will make himself very proud. There are three issues, first is dowry, second property rights, and third security to the girl child. In these three issues, we are discriminatory here. After 70 years of freedom, we cannot change the thing. Our thought is still very old.

Q: If there is law, then why people practicing this till now?

A: Ensure the property rights, old age responsibility should be taken by the government, women can avail the health right. Neither there is a right policy decision nor proper implementation. They said *kanyadan yojana*, *lakshmi Yojana*. The government is giving marriage expenses but not giving education expenses. What kind of Government is this? This government is encouraging dowry. Whether they are West Bengal Government or Maharashtra Government, why do they are given expenses? They said *kanyadan yojana*, *lakshmi Yojana*. What is this *Kanyadan*? Who can *daan* (charity) their *Kanya* (Girl)? But this is about to encourage the dowry system.

Q: In perspective of dowry what would you say?

A: In north India, our big politicians, they held marriage ceremony about 4 to 5 days and it had crores of rupees expensive. Firstly, we have to ban these kinds of marriages. In that expense when the black money comes out then we should implement tax law. Then everybody will understand that they are doing wrong.

Q: What is the condition of women in Indian even after marriage?

A: After her marriage, a girl goes to her own home, not any other's home and her maiden home will always be open for her. Don't give her blessing like *Paraya Dhan* or like you don't come even if you will be dead. So, this should be right culturally and

practically. If a married girl came back to her maiden house, then her maiden family becomes afraid. All of their savings they used in a girl's marriage, not in her education.

Q: What is the reason behind it?

A: These all are cultural faults, but that does not mean that doctors have the right to eliminate them. We have to suffer years for this. These all are educated doctors, who are double triple graduated. The most intelligent kid in our home becomes doctors. They go to Europe and they do not understand that to go by the law. Why they are breaking the law? The doctors should tell them that educate your girl child. I have seen lady doctors also. But she should tell them that see I have become a doctor you should educate you, girl child, eliminate her. Why the lady doctor can't tell them that? But in our country, everyone is busy with their own business; no one is professional about their job. Shahrukh Khan said, "Don't underestimate the power of a common man". We said, common women. Because he is a male chauvinist man, so he went for a third child with surrogacy. As an academician, we don't do that particular work that we need to do. You have chosen this; people don't choose such Ph. D. subjects, which have no use. You are helping her to do a Ph. D. such a subject, which we can use as evidence on the ground. So, I am happy, that you are writing about Maharashtra. So, this Ph. D. we can use when we go to the Court. From all the angles you write, but the evidence, use the proper, somebody comes and challenges that this data was not correct. So, it goes into a lot many screenings. So, we can use your Ph.D. for evidence. As a professor as a guide, you are helping her to do a Ph.D. with such a subject, this can be used in the field for a social cause, legal cause, for the betterment of a girl child. So, this good that you are choosing such kind of subject. But the ground reality is, people like academicians don't want to take all this risk. To stay to right is also become a very difficult area now. You will be judged what political party will think about this. Whose thought will be hurt? Nowadays, we can't say about this. But you choose this subject. I am willing to share some things with you and after you will have any doubt or need something while writing or discussing the subject. You can ask me. I will be happy for there with you. Please go to the 2001 census, there is the census of India website. Please go and visit the UNFPA website. You find all those standard operative guidelines; I am a writer of that book. That has been

published by the government of India and *Beti Bachao, Beti Padhao* supported technically. You will find all the judgments compiled there. All over India, whatever we have right now High Court, Bombay High court, and everything is there. The judgments also you quote. You can connect to Sabu George, Rizwan Parvez, Doctor Neelam Singh, she is a gynecologist from Lucknow. Right now, she is a member of the Central Supervisory Board. You can quote a person who is sitting there. I am a NIMC member but she is in Supervisory Board member. Then you can connect to Ifat, General consultant, Government of India in Nirman Bhavan, New Delhi. So, I think every stakeholder you quote, you take their views. So, that that will help you to have wider and even Ph.D. Adv. Varun Chikale also compared with Korea. We have there no, ask her to call me in the evening so I'll connect to my daughter she can help to get access with all these things. That advocate Anuja Gulati, is a Program Officer, from Punjab and she stays in Mumbai right now or must be in Delhi. You can connect to them also. They can help you to connect with more people. Thanks for choosing Maharashtra. If you find anything to come in the period can get something to talk to or Maharashtra officials, our health Officials also. Then you talk to our health officials, our politicians, Mahila Bal Kalyan Mantri, and then the health Minister of Maharashtra. Because you are being Ph. D. take it to that label. Let's have a quote from the Health Minister of Maharashtra. He is accessible. Tell me what your perception is. What he thinks what his views, talk to some MPs from Maharashtra, from all the sector does? You bring them on the board and have a quote. Chandigarh is the worst place for decoy operation, Hoshiarpur and Mohali. But Haryana is changing, they have now good Governors. The fellow who is the health officer of Haryana did a lot of decoy operations across the state. He goes all the way to Delhi, Gurgaon, Noida, and also MP. There is very work in Haryana, but the condition of Punjab is not good till the date. After Kisan Andolan, the Government of Punjab does not care about this issue. It lost its priority. We will see what happened after the election. Our Health Minister in Delhi is very proactively taking in this to Delhi also.

Mr. Rizwan Parwez⁵⁶⁴

Q. How the “birth of a Female child” is restricted?

A. We can understand this through an example. Take a population of hundred couples with strong son preference. Let the first 50 couples visit IVF Centre to get a male child. These 50 couples will certainly have a male child through procedure. So, now the probability of Female birth remains with only 50 couples.

Out of these 50 couples, if 25 couples decide to go to an ultrasound centre for sex determination test, they will have to wait till 12th week of pregnancy. Suppose the medical practitioner conducts the sex determination test on these 25 pregnant women and confirms 10 male foetus and 15 Female foetus. So, what these 15 couples will do now? They will go for sex selective abortions while the 10 couple will continue their pregnancy. And this is very unfortunate that “most of the sex selective abortions are done by misusing the provisions of the Medical Termination of Pregnancy Act.”

The last set of 25 couples with strong son preference will wait for delivery to see if it is a male or Female birth. This is how 60 out of 100 couples restricted the birth of girl child.

Q: Do you think that existing laws are stringent enough to punish those found guilty of committing Female infanticide and foeticide?

A: The PC-PNDT Act was enacted to regulate the “Pre-Conception and Pre-Natal Techniques” in gender-biased sex determination. The Act is strong enough to create deterrence among the wrong doers. The problem lies with its implementation. It is up to the implementing authorities how effectively they implement this Act to regulate the tradition of gender-based sex selection.

Q: Did you find any lacunae in law relating to Female foeticide and infanticide and suggest changes to plug them?

⁵⁶⁴ Last twenty years of his association with non-profit organizations, he has worked in different capacities on the issue of gender-biased sex selection, decline in child sex ratio, women’s access to safe and legal abortions, and livelihoods for women and girls.

He have led field based interventions on pre and post birth discrimination against girls, which gave him the opportunity to work closely with the state officials, legal and medical fraternity, civil society organizations, media, local community and panchayats. Training of stakeholders on MTP and PCPNDT Acts has been a special area of interest.

He had served as the member of the National Inspection and Monitoring Committee constituted under the PNDT Division of the Ministry of Health and Family Welfare, Govt. of India, and currently serving as the member of the State Supervisory Board, constituted under the PC-PNDT Act by the Govt. of NCT of Delhi.

A: Women need abortions for different reasons and the MTP Act provides safe and legal abortions to them. Sex selection is not the reason for abortion under this Act though we have lost millions of girls at birth in the last few years. What we need is the effective implementation of the Acts whether it is MTP or PCPNDT.

Q: Do you agree that the advancement of technology is responsible for sex selective abortions?

A: Technological advancement is good for any nation. Problem begins when we start misusing the advancement in technology. We have the example of rising cases of sex selection and sex determination test. We need more technological advancement in medical field but regulation is equally important. It is up to the medical fraternity to stop “the misuse of medical technology and ensure that technology is not misused to detect the sex of the foetus.”

Q: The registration data regarding SRS, how will it be proved that this data is authenticated?

A: The Sample Registration System (SRS) data is released by “the Office of the Registrar General & Census Commissioner, India - Ministry of Home Affairs, Govt. of India.” The SRS Statistical Report includes chapter on Sex Ratio at Birth on a regular basis. This data is based on sample.

Q: Is it available on government websites?

A: Absolutely, this data is released in a gap of one year. Last SRS Statistical Report was released for the year 2017-2019. United Nation Population Fund (UNFPA) also uses this source and analyzes the Sex Ratio of Birth. SRS is the source and SRB is the type of data. “Sex Ratio is calculated at levels -

- Sex ratio at birth
- Child sex ratio (0-6 age group)
- Population sex ratio/ overall sex ratio”

Because of the Covid-19, the Census 2021 data has not been released. This was expected to be released in February 2021 but we are still waiting for the data.

Q: As we had not had the Census 2021 in our hand, how we will defend this 0 to 6 years data is suitable for our research?

A: Census of India releases data on “sex-ratio in 0-6 year’s age group” which includes death of children after birth. So, the adverse sex-ratio in 0–6 year group includes

different “reasons for the decline in child sex ratio including the misuse of technology.”

However, the SRS Statistical Reports and NFHS data on Sex Ratio Birth clearly shows the misuse of technologies in sex selection and sex determination test because they calculate the number Female born for every 1000 male born. The Census of India does not include data on Sex Ratio at Birth.

Q: If this study is only about Maharashtra, then what should we do?

A: “Census of India releases child sex ratio (0-6 age group)” data for every state and union territory. This is very much in public domain. You may look at the child sex ratio data from Census 1981 onwards to know the trend for any state you want. The data is available on Census of India website. We will have to wait for the Census 2021.

Q: How you used to gather the Census data?

A: Census data is released by the Government. The data has always been in public domain. I would suggest checking their website for updates on Census 2021.

Q: The data you’ve shared last time, what data is this?

A: I shared the data from SRS Statistical Reports. You can also refer to the “National Family Health Survey (NFHS-5) for Sex Ratio at Birth.”

Q: Is there 0-6 years of data available?

A: Yes 0-6 age group data is released by Census of India, and it is available for previous decades. Census 2021 is data is awaited. In the meantime, you should also use Sex Ratio at Birth data.

Q: How it is going to be helpful for us for Female foeticide and infanticide?

A: When it comes to foeticide it means sex selective abortion of a Female foetus. Sex selective abortion is possible only when one knows the sex of the foetus. Here the misuse of medical technology comes in which is illegal. The medical technology is misused at two levels – before conception and after conception. The pre-conception technique is misused before a woman conceives. For instance, a couple who wants a male child can visit an IVF Centre and get the procedure done illegally. Here, no sex selective abortion takes place as X & Y chromosome are selected on demand.

The practice of infanticide has gradually changed. This is now largely seen in girl child ‘neglect’. You can find the evidence in gender differentials in neo-natal

mortality, infant mortality, child mortality *etc.*

Q: Doing something illegal, legally right?

A: As I said earlier most of the sex selection abortions are safe, and conducted illegally under the MTP Act by citing reasons such as contraceptive failure, incomplete abortions *etc.* This is the fact that “the MTP Act does not allow sex selective abortion but still 4.6 lakhs girls are missing at birth every year in India.”

Q: Is there “schemes/steps taken by the government, particularly on protecting the girl child”?

A: The Union and state governments have started several schemes to promote the value of girl child. These are incentive-based schemes and are limited to a particular group of people. *Beti Bachao Beti Padhao* is the national level flagship program of Govt. of India to address daughter aversion. This is a communication-based campaign and in my opinion, emphasis should be more on addressing discrimination in various forms against girls.

Q: The role of the Maharashtra State Human Rights Commission on Female foeticide and infanticide.

A: As far as the practice of gender-biased sex selection is concerned, the National or the State Human Rights Commissions has no role play because gender-biased sex selection is related to the misuse of medical technology such as ultrasound.

Other aspect is that an embryo is considered a non-person. A foetus has a legal status or not can be debated, and it might then contradict the abortion law of the country.

Q: Give some suggestions to curb the heinous crime.

A: ‘There is a demand so there is a supply’. All of us need to come out of this notion and work together “to regulate the misuse of medical technology in sex selection.” The private associations/ bodies of medical doctors can play a big role in addressing this problem. Discrimination against women and girl on the other hand needs to be addressed by engaging adolescents and youth.

Dr. Sabu George⁵⁶⁵

Q: What is your opinion on “Pre Natal Diagnostic Techniques Act”?

A: The Legislature enacted the “Pre Natal Diagnostic Techniques Act” because the doctors were not practicing ethically. Today’s sex-determination and illegal abortion has become a thousand-crore business for the doctors and therefore the execution of the “Pre Natal Diagnostic Techniques Act” is absolutely imperative; the states have not taken the implementation seriously. Practically what happens except in the State of Maharashtra, where more than forty-seven doctors have been convicted thanks to the efforts of Varsha Deshpande and others in the state. Another state has completely ignored this problem. Our District Advisory committee, State Supervisory Boards only doing registration of clinics and remaining, ignoring the fact that you know who want sex determination gets it all around the country.

Q: What is the campaign that you are campaigning about sex-ratio, how much do you feel this law is implementing, in which state this law is being followed? In what way is it happening? In which state is it not happening?

A: Maharashtra has done very well in terms of implementation there is a lot of deterrence for the misuse of “sex determination” in Maharashtra. Thanks to the work of Varsha Deshpande and others. In other states basically, ultrasound clinics are registered but there’s practically no regulation of ultrasound. So, there is no question of any conviction and therefore, there is practically no deterrence of the law.

Q: Mr. George, your aim on the campaign of awareness about sex determination, then how far you are successful in this?

Answer: “In the last 10 to 12 years because of the efforts of the Supreme Court and the efforts of civil society and the media, today people are talking about sex determination.” Unfortunately, the unethical medical professionals who make huge amounts of money are not seen as criminals, who eliminate millions of girls in our country. Today when there is so much public outrage over crimes against women, against rapes. The most heinous type of violence perpetrated against women, sex

⁵⁶⁵ Sabu George spent 35 years working on the issue of female foeticide. He studied at IIT Bombay, completed Master’s from John Hopkins and PhD at Cornell University. He has travelled extensively and engaged with people at the ground. That comes from his dedication towards this cause. In 1990s he had already predicted that the 2001 census will be bad. He has a very good sense of the situation in states like Kerala and Rajasthan and a fair sense of many other states in India. All this comes from his experience and knowledge gained from working at the ground level.

selection is ignored and we hope in this context that the State Government would facilitate the functioning of the National Inspection Monitoring Team. Because this is the only way for the Union of India and the other bodies to know what is happening at all levels district, state in terms of implementing the Act.

Q: Does this need any amendment, with which you are fighting from a long back? Are there any lacunae in it?

A: See we have a very good Act. Because the Act is very powerful; we are getting a lot of convictions in Maharashtra. Because people like Varsha Deshpande have used the law effectively. In other states, there is practically no implementation. Instead of finding out the doctors, who practiced sex determination, the state machinery harasses harness doctors.

Q: What are differences you can see in the census during last few decades?

A: Women live longer in India. Women by late 80 we have seen we have seen women taking over men. When the British has done a census in 1861 they were afraid that they have missed women around the world. The sex ratio is men per women they have found that men are less than women but in India, it is women per men as women are less compared to men. It is about another hundred years that they have found that it was not undercounting of women it is because of extreme *dis form* of discrimination women survives less, fortunately, last 80 or 90 years the survival of women is increasing that is very significant. If you even look at Punjab of 1991 or 2001 women are living longer today in Punjab than living 50 or 100 years before. So, in that context, we are worried about the vanishing of girls. After a very long century that women have started living longer, we see today our social practices for the last 30 years.

Q: What does that means ‘Vanishing Girls’?

A: Since we have hundred of millions of girls who have been eliminated before birth, not a hundred it will like more than 11 or 12 million still very large in terms of reference when in the context of genocide people normally talk about hollow cast which was about 6 million but in the last 10 years, we have eliminated more number of girls and number of Jews which are eliminated. I think whenever we talk about discrimination and whenever we talk about the vanishing of girls we should recognize what we are dealing with through genocide and that is not the paradigmatic which

discussion takes place.

Q: What is the Present Scenario?

A: I am very worried in the last few years there is a delusion that things are getting better. I travel extensively around the country and I don't see that. If I just take two states alone Bihar and U.P. why do I say Bihar and U.P. because they are more than one-third of girls born in the country are only in these two states, I have been to 5 or 6 districts of Bihar in the last two month. I go to U.P very often again next week I will be going to U.P twice I don't see any likely hood of any improvement in these two states. unlike Punjab and Haryana which are base barely 2 percent of the population U.P Bihar are huge when U.P Bihar drops country drops substantially. I will come back to this delusion later but first, at birth, there are more boys or girls, more boys or more girls. Actually, at birth, there are 5 percent more boys because nature produces little more boys. After all, in the first year of life in early childhood more boys die. The conception 30 percent of boys are normal but by the time of birth, it is only 5 percent because the lots of early conceptions which are predominately boys.

7.1.7 – Concluding Remarks Suggestions and recommendations

There are few Suggestions from those three people who are very much inter-related with the situation from grass root level

Adv. Varsha “we discussed about discrimination sex determination and selection; we are not against abortion. Sex selective abortions are illegal, but abortions are a woman’s right. According to law she is allowed to abort. Here the issue is about discrimination, determination and sex selection through illegal abortions. Up to 20 weeks abortion is legal in India to which we support as a health right as a woman. There is a thin line, but a clear cut line, once sex determination is done, sex selection is possible and if selection is possible sex selective abortion happen.

We talked about sonography machines, about ultrasound and misuse of the technology. But in recent times IVF and pre-conception is also possible. People are selecting the foetus using these technologies too. Earlier it was very costly, but as the cost reduces in Metros more and more people are using this technology. These IVF centres are not following the PCPNDT Act. It is important know what is happening with the PCPNDT Act in the IVF clinics and also in the genetic counselling labs and clinics. So as science and technology are growing, it helps people to use technology to

discriminate and get rid of the Female foetuses. So, we have to monitor not only ultrasonography centres but also IVF and genetic centres.”

“This is now 24 to 26 years of implementation on the ground but she thinks the goals have not been achieved. During this Covid-19 time the very important PCPNDT Act provision has been removed which was illegal because there was no consultancy. She has information through her networks, media and CSO that sex determination is aggressively being done at this time. A few cases have been put up. She has got information; nobody is looking at it. Sex determination is being done unscrupulously during this time. This will be proved later on, but her efforts will continue.”

Mr. Rizwan concluded that, ‘Unwantedness’ for girls and ‘preference’ for sons over daughters has been inherent in our society. Over the last two decades, there was a gradual decline in the child sex ratio which stems from both pre-birth discriminatory practices such as sex determination and post-birth practices such as neglect of girl child and poor access to healthcare, leading to adverse survival rates for girls.

Female foeticide is thought to be one of the main causes of the country's declining child sex ratio.

We have two challenges with us – “one is to regulate the misuse of medical technology in sex selection and improve the sex ratio at birth. And another is to address the different forms of discrimination against girls and raise their value so that son preference is minimized.”

According Dr. Sabu George “Motivating Scholarship among Women’s Studies Scholars He raised the importance of Women’s Studies Scholar to look at;

- what’s happening in your district, in your sub-district, in your state, in your neighboring district areas, and State
- To understand and use data from different sources: Census, SRS, NFHS, NHM (incomplete), CRS (birth registration-incomplete). Some of this data is incomplete, but all put together
- Then, asking family, friends to know what is happening in the practice of sex determination, identify doctors who are doing it,

Encourage scholars to attempt to appreciate the practice of sex selection. In some areas, in Western UP for *e.g.*, in the 1980s like Meerut Medical College started sex determination in 1978, when it was stopped in Government institutions in Delhi.

Although it is difficult, scholars could collect information about the practice from family, friends, ethical doctors, find notorious clinics, go with decoy patients, random visits in urban areas and villages. If possible, target high risk groups, privileged, upper caste groups.

Unfortunately, 2021 census will be conducted only in 2022. Find case studies and revisit the qualitative information that you may have collected.

As scholars of women's studies, we need to understand the situation and highlight the difficulties. Without you understanding the extent of genocide happening, it is unlikely that the government or anybody else will take it up.

Some of the studies that can be revisited from 1980s, 1990s;

- Earlier village studies in Haryana, 1995-98 undivided Rohtak district
- North Tamil Nadu, 1986-90
- South Tamil Nadu, 1995-98 with micro finance groups and pulse polio
- North Karnataka, 1998-2001, Bagalkot, 2 Talukas with sugar factory. Finally, the Covid-19 Pandemic lockdown impact

Evidence of increased domestic violence, media reports and women's organizations.

And also, suspension of PCPNDT Act from April to June 30th 2020. There is a likelihood of an increase in sex determination in these months. There's going to be a much more masculine birth in the coming years.

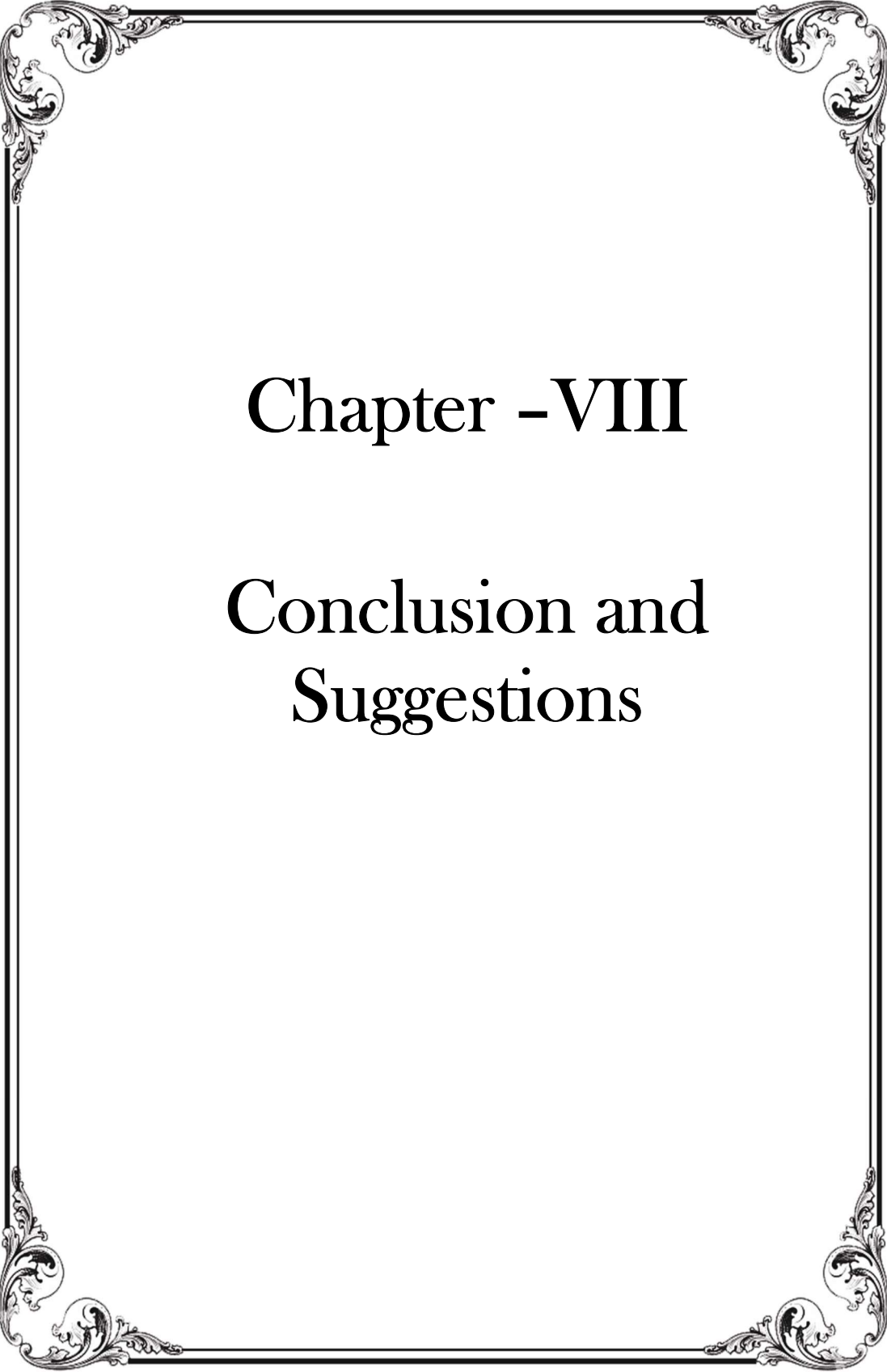
The mindset is not in concrete. Violence against women has increased, dowry or sex determination. If we don't highlight our tolerance for discrimination. Our tolerance for discrimination is important. Indian and Chinese immigrants abroad too practice sex determination. We are worried about IVF clinics that conduct sex determination. He said big labs are easier to control, but small clinics are more difficult to catch. India will soon cross China if we are not able to stop elimination of girls."

The answers, opinions of the respondents have been taken directly by the researcher. The people are not free to answer. Although they are providing their opinion according to the need of the hour, the body language of the people are not matching with their answers. Few women are fearlessly claiming that they are happy with their single daughter, there are no differences between son and daughter and they are happy that God has blessed them with a child despite the gender.

The interview of Advocate Varsha Deshpande, member of the "Pre-Conception and

Pre- natal Diagnostics Technique Act”’s National Inspection Monitoring Committee. She is leading *Lek Ladki Abhiyan* in Maharashtra, she is also a part of *Dalit Mahila Vikas Mandal*, Rizwan Parvez, member of State Supervisory Board of the “Pre-Conception and Pre-natal Diagnostics Technique Act”, Dr. Sabu George, Social Activists, an anti-Female foeticide campaigner has been taken by the Researcher, a few online meetings and telephonic conversations, and a few articles or videos from YouTube created on their views personally.

Concluding the Empirical Study with a hope, the society will change one day, the man and woman in the family will be treated equally. The Sex Ratio will be equal one day.



Chapter –VIII

Conclusion and Suggestions

Chapter –VIII

Conclusion and Suggestions

As a researcher, from past gathered information and further analysis it can be concluded that disparity in “Child Sex Ratio” (CSR) in India, caused and increased due to the “Advancement of technology, non-implementation of the legislations and a disregard for ethics by the noble profession.” The issue was first recognized in the 1990s, when the Census of 1991 revealed a significant decrease in the “Child Sex Ratio.” In present days, issues of Female foeticide and infanticide are a great challenge to the society. To tackle this, no doubt various legislations have been enacted; still there are some lacunas in the enacted laws. Although, the laws were made with great ebullency, but their execution in proper place is filled with flaws. On the other hand, while the law is trying to punish the outlaws, involved in “sex-determination,” still it is ineffective, the “Medical Termination of Pregnancy Act, 1971” which allows abortion upon some special circumstances. This relies upon the doctors to decide and is openly being exploited for their economic benefit. Moreover, there is no documentary prove of outcome of the “sex-determination test.” which is very difficult to prove. Furthermore, it is troublesome to prove the proper reason of the abortion whether it is for Female foetus or contraceptive failure.

Another practical difficulty is that law alone cannot do anything, the three wings of Government need to monitor the system accurately. To give strength to it, much awareness and sincere commitments towards the society is strictly needed. People have to change the illiberal thinking regarding gender inequality and traditional mindset. The change should start from every Indian family which will act as a ray of hope for a better tomorrow that will put smile on the faces of girl children in India. The Indian Society considers women as a second-grade civilian. People are trying to set up a situation with the help of technology, where every mother will give birth only to male child without any secondary option *i.e.*, Female child. This process is directly affecting the 0-6 years “Child Sex Ratio.” The mindset of the people toward girl child should be changed in order to bring socio-cultural changes in the society. Gender equality should not only be taught, but also practiced through social groups and the educational system. Public awareness must be created to treat girls equally on par with boys. People should beware of the result of Female foeticide and infanticide. The

state should provide special incentives for the welfare of girls. Free education should be provided at school levels to girls. Efforts have to be made to make them feel as they are assets, not a liability.

However, blaming the one side is not justifiable, in Indian society women has a notion that they've born to appease the male members of their family. Various books, Acts are totally ineffective if the women herself is not capable enough to understand her own rights. Rights and duties are correlated; from born to death women always tries fulfil their duties only. The main aim of providing "Economic, Social and Cultural rights" to women to wipe out the inequality and discrimination from people's mind. Many women who don't want a daughter have a fixed mindset that son is the only support to them in old age and they are responsible to continue the family lineage.

In this cruel society, women are often judged at every step they take; they are treated as a marriage tool; a machine which will produce strictly male child; and not as a personality to live up to their dreams. Dreams are myth for them; they have no right to dream. Even in this era, where a girl starts off her career just like any other man in the society, most of them are questioned or suggested to marry as soon as they complete their traditional education or join a job, who has no contribution in their life. If after marriage she is unable to give birth to a child, society calls them barren and career-oriented women. Due to the long tiresome race to cope-up with the advancing world, suitable age for marriage might get passed. In the worst case, they are losing their fertility and the joy of becoming parents. People, who are helpless and crave for their child but cannot conceive, are becoming a parent through surrogacy, test-tube baby, IVF (In vitro-fertilization), *etc.* Some people even decide to adopt a baby irrespective of sex. But people who are blessed to have their child, instead of thanking God they run after not to have a girl child. Despite praising for the efforts, they are putting into build a healthy society, sex determination commotion has been persistent. With the help of advancement of technology, few IVF Centers are playing with the natures rule, in the time of pre-conception they implanting the male foetus with the help of xy or xx chromosome which can be ensured before conception.

The improper implementation of the statutes witnessed India's decline in sex ratio. The Female foeticide is taking its place in a demand and supply basis, if the sex-determination and abortion would stop by legal enforcements then it would be

possible for the girls to see the light and inhale the world's air. Currently, there is no direct Female infanticide; nevertheless, indirect infanticides may persist until the economic, social, and ritual reasons for girls change.

“Guru Nanak asserted that women were not at all inferior to men:

From the woman is our birth, in the woman's womb are we shaped; To the woman we are engaged, to the woman we are wedded; The woman is our friend and from the woman is the family; If one woman dies, we seek another, through the woman are the bonds of the world; Why call woman evil who gives birth to kings? From the woman comes the woman, without woman there is none; O Nanak, God alone is the one Who is independent of the woman (because He is unborn).”⁵⁶⁶

Female foeticide and infanticide are one of the social evils which by which woman is denied her basic rights *i.e.*, right to life. To battle against the tradition of Female foeticide in the country through exploitation of technology, the “Pre-Conception and Pre -Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994” was passed. Despite, the law Female foeticide and infanticides are on the rise and there is no proper implementation of the law. Implementation has been the big issue in India and many violators have been left scot free. Laws like “Dowry Prohibition Act, PNDT Act” should be stringently implemented. An effective monitoring mechanism should be developed for effective implementation of the PNDT Act. Even though the State has various specific statutes, policies to deal with the heinous crime, but the factor which is drowning the society with the help of dowry, poverty, and woman's economic dependence *etc.* rendering to the problem of foeticide and infanticide more and more. In order to bring about socio-cultural changes, people's attitudes regarding girls need be changed. This may be accomplished by assuring the involvement of numerous religious groups, social organizations, and the school system, which should be modified to not only teach but also practise gender equality. It is necessary to raise public knowledge in order to treat Females and boys equally. Girls should have access to free education at all levels, as well as job reservations in the public and private sectors. Efforts must be made to provide equal opportunities for girls and to maintain gender equality as a major priority.

The research does not address all of the issues; *e.g.*, it does not address the tragic

⁵⁶⁶ (Var Asa Mohalla 1, 2-19, p-473) (Reproduced from Sikhism Philosophy Network)

aspects of motherhood such as stress, domestic violence, and infanticide, and it does not explain any difference between the experience of “being a mother to a son and a mother to a daughter.” In between all these events from conception to delivery of the child, or unfortunately, conception to sex-determination and then pathetic decision-making of abortion. The mental agony of the woman, unbearable physical pain, and psychological pressure on her is presently negligible.

Awareness is the one way to the people to enlighten the way, and another way is education. These are weapons to combat the growing threat that has engulfed our country and caused the child-to-adult ratio to plummet. “Female foeticide and Female infanticide” have also viewed in a serial named “*Na Aana Is Desh Meri Lado*” which used to be aired on Colors channel, “National Commission of Women issued a notice of being violative of the Indecent Representation of Women (Prohibition) Act, 1986 as well as Cable T.V. Networks (Regulation) Act, 1995.”

Everything is conceived and taught in India, a country of unity and diversity, on the basis of spiritual consciousness and cultural concerns. Since ancient times, women have always held a respectable position. The misleading problem in society is “Female foeticide and infanticide,” which violates “the right to birth and the protection of the life of the foetus and newborn.” The Child Sex Ratio in the last three censuses is a disgrace.

Chapter – I is discussing the Concept and definitions of Foeticide and Infanticide with Objectives of the study.

Chapter – II is on “History of Female foeticide and Infanticide in India,” the role of International Human Rights Instruments which recognizes women’s “Economic, Social and Cultural rights.” Protection against Sexual Exploitation and Trafficking of Children in India, Indian Laws Dealing with “Commercial Sexual Exploitation of Children and Trafficking, then Philosophy of Feminism with some philosophers’ thought towards feminism including Feminism in India.”

And important aspect of this Chapter is Status of Women in Different Ages *i.e.* In Vedic period, Women in British period and in contemporary India.

Chapter – III is focusing on the Growing reasons and Consequences of “Female foeticide and Infanticide” in India. *Firstly*, causes of “Female foeticide and

infanticide” in India are including some reasons; Obsession for Son in Indian Society, “Evolution of Dowry in India,” Dowry system still prevalent in India, Dowry system in India with suitable Case

Laws. The Dowry Prohibition (Amendment) Bill 2010, Girls are always considered as financial Burden, the misuse of Advancement of the Technology (PCPNDT).

Secondly, Consequences of Female foeticide and Infanticide, is indulging Discrimination against Girl Child and increasing Crimes against women. *Thirdly*, it also included another perspective of Consequences of “Female foeticide and Infanticide:”

“The data of Percentage of population in the age group 0-4 years to total population by sex and residence, in Maharashtra,2010;”

“Neo-natal mortality rates and percentage share of Neo-natal deaths to Infant deaths by residence, India and bigger States,2010;”

“Early neo-natal mortality rates and percentage share of Early neo-natal deaths to Infant deaths by residence, India and bigger States, 2010;”

“Estimated death rates for children aged 0-4 years by sex and residence India and bigger States, 2010;”

Under-five Mortality Rates (U5MR) by sex and residence, India and bigger States, 2010; Sex Ratio at Birth.

Chapter – IV is comprised of *firstly*, Gender Discrimination and Inequality Issues in India, it has included Women’s Status in India. Women’s position in the Indian Constitution, its adequateness to provide Social Justice, “Equal Pay for Equal Work” and its effectiveness, Directives Principles – Women, “Women and the Uniform Civil Code.”

Secondly, Women as Victim of Crime, Women, Supreme Court in Victim Justice, Women as Victim Compensation.

Thirdly, Women and Personal Laws, the property is very much important aspect, because the fight is endless for the property, whether is a husband-wife or brother-sister. Maximum women are unaware of their own Right to succession and Inheritance in any Law. “Women’s Right to succession and Inheritance in Hindu Law, Women’s Right to succession and Inheritance under Muslim, Christian Parsi and Jews Law.”

Gender Discrimination became a grave concern in India. A collected data has been interpreted, performing the MTP Act rampantly.

Chapter – V is discussing about the protectionist approach of the legislature towards the children, the Legislative framework regarding “Female foeticide and infanticide in India,” the role of Indian Constitution. As well as other statutes *e.g.* “The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, The Dowry Prohibition Act, 1961, The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973, The Medical Termination of Pregnancy Act, 1971 and The Medical Council Act, 1956” *etc.*

Chapter – VI is completely based on the Role of Judiciary in curbing Female foeticide and infanticide in India, with Judicial responses, with various case laws, and few recent true incidents.

It is also discussing the Government initiatives “*Beti Bachao Beti Pado*” and “*Sukanya Samridhi Account*” to protect the girl child.

Chapter – VII is consisting on An Empirical Study in the State of Maharashtra, with interview of some eminent persons who have achieved a respected place in child rights, with their hard work.

Present enacted legislations on “Female infanticide and foeticide” are not stringent enough to defence the vile crime. The mindset of the people towards women needs to be changed. “The Pre Conception and Pre-natal Diagnostic Technique Act, 1994” already there is to penalize accused accurately who is involved in the crime. To achieve proper and better execution of the Act, political will must be mobilized. The detrimental exercise of “Female foeticide and coercive abortions” need to bring climax. “The Pre-natal Diagnostic Technique (Prevention and Misuse) Act, 1994” is a triumph statute which prohibits “Female foeticide in India.” The main feature of this enactment is to maintain the balance of the “sex-ratio.” The legislature, Judiciary, Executive, administrator, NGOs and the society need to stand against the social menace. “The Pre Conception and Pre- natal Diagnostic Technique Act, 1994” Act, 1994 should be strictly implemented by all the monitoring system. Legal actions alone will not be able to bring about a dramatic shift in women's predicament, but they can serve as a supplement. Media and electronic gadgets, as well as communications, play a critical role in ending sex discrimination and promoting the girl child’s good

influence in society. Nothing is simple if one never tries, and changing people's attitudes toward Female children overnight is not doable. It will take a long to persuade others to change their minds. The government has started many schemes like “*Beti Bachao, Beti Padhao* and *Sukanya Samridhi Account*” to enhance the birth of girl and promote literacy of girl child and also bring a stop to gender biasness. The Government should keep vigilance whether these schemes are properly implemented or not. Finally, “the Central Advisory Board and Appropriate Authority” should firmly follow the directives and judgments of the courts regarding the prevention of Female foeticide.

Despite all these efforts, the sex ratio of India still decline in. “According to the 2011 Census, there are approximately 940 girls out of 1000 boys.” Everyone should be aware of the consequences of their actions, and that each action has an equal and opposite reaction. Due to unchecked Female foeticide, scarcity of women has resulted in a situation where individuals are buying and selling girls like commodities, resulting in a rise in crimes against women and girl children, prostitution, and flesh trafficking. Females are the only ones that suffer in one way or another. People must recognize the value of a Female. Women, after all, make up half of the population. If a single vote determines whether a political party wins, it may be a Female voter who, like a man, expresses her opinion on the polity. Women should be given the same priority and respect as males.

“The National Plan of Action for the South Asian Association for Regional Co-operation (SAARC) Decade of the Girl Child (1991-2000)” It attempts to make certain, that every girl child has the same status as her male counterparts by achieving certain goals for her survival with dignity and mental and physical development. Human life is regarded as sacred by laws all throughout the world, and particular legal protections have been developed to safeguard both the born and unborn.

The issue of ‘Female foeticide and infanticide’ is clearly more common in older families. The socio-cultural factors should essentially be considered to be changed from timely, according to the needs of society, *i.e.*, people who hold positions in society, people respect and follow them, NGOs, media, doctors; at the absolute least, the Medical Council/Association and law enforcement officers should collaborate so that the daughter can see the world and breathe in this country (by enforcing medical

ethics and penalties on deviant doctors).

In India, where people worship numerous Goddesses and women are revered as “Maa Laxmi’s avatars,” people touch their feet for blessings and worship of young girls and children. as a form of worship, Female foeticide and infanticide are prevalent (Kanya Puja). Despite the fact that the deliberate death of girl children is on the rise. This is an Indian Society Multiple Personality Disorder (MPD). “Every Indian woman’s fundamental rights include education, health, and empowerment.” The horrific unethical practise of “Female foeticide and infanticide” must be ended by tough regulations and a shift in public opinion. A girl youngster must be preserved for a brighter future!!!

Finally, the research found that while many laws have been enacted and enforced, they are unable to prevent “Female foeticide and infanticide.” As a result, it is the moment to recognize your duties and put an end to this horrific act. It must be kept in mind that such laws and regulations should be adopted for the sake of and to preserve the existence of women.

Suggestions and Recommendations

The following are the “suggestive measures for preventing Female foeticide and infanticide:”

1. The government should implement stern policies against these crimes by removing the child sex recognizing centers and banning their licenses. Strict punishment should be given to the culprits who are involved in this heinous crime –Female foeticide.
2. Dowry and poverty are interrelated problem in India, women establish about half of the total population of the country, if women also become economically independent, then the monopolistic nature of choosing son may change.
3. Although, there are certain existing schemes for providing economic support for the girl child. Government should review existing schemes and try to promote the education of girl child, and give financial support specially for education not marriage.

4. In this sector, the government should initiate various employment initiatives for women, including a few reservations for women in occupations such as teaching, nursing, and telephone operators, among others.
5. Moral education in schools should be taught. Children should be educated to respect values and avoid dowry, Female foeticide and gender discrimination. Children will be so indoctrinated at a young age that they will grow up to be adults who view dowry and Female foeticide, infanticide to be immoral.
6. The Indian Succession Act should place constraints on the testation right, comparable to those imposed under Muslim law; women in all religions should have equal property rights to men.
7. There should be proper executive guidelines towards regulation of expenditure at weddings; keep amending and updating them from time to time; and ensure their effective implementation.
8. Better education and economic independency of women may lessen the bride burning cases in India.
9. In dowry death cases the police conduct and prompt an impartial investigation within stipulated time.
10. As recommended by the Supreme Court in the case of *Bhagwant Singh v. Commissioner of Police*, more women police officers should be involved for proper investigation of crime against women.

Bibliography

Books

1. A Emery. E. H. & Mullier R. F., Elements of Medical Genetics Churchill Livingstone, London, (1992).
2. Bajpai, A., Child Right in India, Oxford University Press, New Delhi, (2018).
3. Basu D. D.: Directive Principle of State policy, Commentary on the Constitution of India, Lexis Nexis, ButterwothsWadhwa Nagpur, (2008).
4. Bentham J., Theory of Legislation, N.M. Tripathi, Bombay 1979.
5. Bhat P. I., Law & Social Transformation, EBC, Lucknow, 2009.
6. Bhatnagar J. P., Law Relating Women and their Rights, Asoka Law House, New Delhi (1998).
7. Bhatnagar R. D. & Dube R., *et.al.*, Female Infanticide in India – A Feminist Cultural History, State University of New York Press, (2005).
8. Bhimani Dr. A. Sexual Abuse of the Girl Child, (ed.), Ashish Publishing House, Delhi, (1994).
9. Brandon S. in Borland M. Violence in Family, (ed.) (1976).
10. Chakrabarti Dr. N. K. & Chakrabarty Dr. S., Gender Justice, R. Cambray & Co. Private LTD. Kolkata, (2018).
11. Chawla M., Gender Justice Women and Law in India, Deep & Deep Publications, Delhi (2014)
12. Deewan K. Law Relating to Offences against Women: With Detailed Case Laws of Supreme Court and Different High Courts, Asia Law House, Hyderabad, (2020).
13. Desai N. and Raj M. K., Women and Society in India, Ajanta Publications, New Delhi, (1987).
14. Dewan V. K., Law Relating to Offences Against Women, Asia Law House, Hyderabad, (2000).
15. Diwan & Diwan, Women and Legal Protection, Deep & Deep, New Delhi (1994).
16. Ernest B., Greek Political Theory: Plato and His Predecessors, Methuen, London (1960).
17. Fineman M. A., Preface in Fineman M. A. and Mykitiuk R. The Public Nature of

- Private Violence: The Discovery of Domestic Abuse (eds.), (1994).
18. Gaur K. D. Indian Penal Code, Universal Law Publishing Co. Pvt. Ltd., Delhi, (2016).
 19. Glanville Austin, The Indian Constitution: Cornerstone of a Nation, (1966).
 20. Jain M. P. Indian Constitutional Law, Lexis Nexis, Haryana, 2014.
 21. Jaswal Dr. P. S. Directive Principles Jurisprudence and Socio-Economic Justice in India, A. P H. Publishing Corporation, New Delhi (1996).
 22. Macdonell, A. A. and Keith, A. B., Vedic Index of Names and Subjects, John Murray, London, (1912).
 23. Mack. M. P., Jeremy Bentham: An Odyssey of Ideas, Columbia University Press, London, (1963).
 24. MacKinnon C. A., Feminism Unmodified Discourses on Life and Law, Havard University Press, (1994).
 25. Mehta R., Socio-Legal Status of Women in India, Mittal Publications, New Delhi, (1985).
 26. Mehta. R, Socio-Legal Status of Women in India, Mittal Publications, New Delhi (1985).
 27. Misra S. N. The Code of Criminal Procedure, 1973, Central Law Publications Allahabad, (2012).
 28. Mulgan R. G., Aristotle's Political Theory: An Introduction for Students of Political Theory, Clarendon Press, Oxford, (1977).
 29. Nidhi Mishra Law and Child, (ed.) (2004).
 30. Okin. S. M., Women in Western Political Thought, Princeton University Press, New Jersey, (1979).
 31. Pandey Dr. J. N. Constitutional Law of India, Central Law Publications, Allahabad, (2011).
 32. Parshley H. M., The Second Sex, Alfred Knopf, New York, 1983.
 33. Ranchhoddas R. & Thakore D. K., The Code of Criminal Procedure, Wadhwa, Nagpur, (2000).
 34. Rao M., Law relating to Women and Children, Eastern Book Company, (2018).
 35. Ratanlal & Dhirajlal, The Indian Penal Code, Wadhwa, Nagpur, 2006.
 36. Sarkar S. C., The Law of Criminal Procedure India Law House, New Delhi,

(2001).

37. Schochet. G. J., Patriarchalism in Political Thought, Basil Blackwell, Oxford, (1975).
38. Sen A. Gender and Co-operative Conflicts. In: Irene Tinker Women and World Development, (ed.), Oxford University Press, New York.
39. Wadley S. S. & Jacobson D., Women in India: Two Perspectives, Manohar, New Delhi, (1977).

Article/ Essays

1. Altekhar. A. S., “The Position of Women in Hindu Civilization”, Motilal Banarsidass, Delhi, 1962.
2. Anand A. S., “Victims of Crime – The Unseen Side” (1998) 1 SCC 3.
3. Ansari S. N., THE RIGHT TO LIFE: FEMALE INFANTICIDE AND FETICIDE: AN ANALYSIS OF INDIA, (2018).
4. Arora M., Cry Still Unheard: A Menace of Female Foeticide Societal Attitude towards Female Foeticide, (2013).
5. Banerjee P. R., Dowry in 21st Century India, (2004).
6. Basumatary A., Study of Institution of Female Infanticide in Colonial India, (2015).
7. Broome J. H., Rousseau, A Study of His Thought, Edward Arnold, London, (1963).
8. Buchanan K. L. *et. al.* Stress and the evolution of condition-dependent signals, (2000).
9. Das V., The Mythological Film & its Framework of Meaning, (1981).
10. Desai N., “Born to Die”, in The Indian Post, Bombay, 1988.
11. Desai. N. and Raj M. K., “Women and Society in India”, Ajanta Publications, New Delhi, (1987).
12. Dey I. and Chaudhuri R. N., Gender Preference and its Implications on Reproductive Behavior of Mothers in a Rural Area of West Bengal (2009).
13. Dhagamwar V., Law, Power and Justice: The Protection of Personal Rights in the Indian Penal Code (1992).
14. Diaz, A. A., Amniocentesis and Female Foeticide, (1988).
15. Gangrade K. D., Sex Determination – A Critique (1988).

16. Goffman E., *The Arrangement Between the Sexes*, (1977).
17. Gordon D. A., *The Unborn Plaintiff*, (1965).
18. Khan Dr. J. A & Vashney H., *Social Empowerment of Women through Education*, (2012).
19. Khatun S. and Islam A., *Death Before Birth – A Study On Female Foeticide In India*, (2011)
20. Knoppers B. M., and Rosario M. I. *Regulatory approaches to reproductive genetic testing*, (2004).
21. Kolloor, T. M. *Female Infanticide: A psychological analysis*, Grass Roots Action, special issue on Girl Child, (1990).
22. Kumari R., *Female Foeticide, Infanticide, and Trafficking –A Evil to Society*, (2018).
23. Kushwaha N. J. S. & Sharma K. A., *Factors Responsible for Female Foeticide*, (2014)
24. Litke R., *Violence and Power* (1992).
25. Mathur K., *Body as Space as Site: Bodily Integrity and Women's Empowerment in India*, (2008).
26. McDonough J. F. & Sarri R., *The Trapped Woman: Catch-22 in Deviance and Control*, Sage Publications, New Delhi (1987).
27. Patel A. B., *Crises in Female Existence: Female Foeticide and Infanticide in India* (2013)
28. Patel Dr. C.L., *Empowerment of Women and Law*, (2010).
29. Potdar P., & Barua A., *et.al.*, *If a woman has even one daughter, I refuse to perform the abortion": Sex determination and safe abortion in India*, (2015).
30. Puri S., *Not Girls, only Boys for us- The (in)effectiveness of Pre-Conception & Pre-Natal Diagnostic Technique (PC & PNDT) Act 1994 of Government in addressing the Declining Child Sex Ratio in India*, Research Paper, ISS Hague, Netherlands, (2015)
31. Rahman T. A. & Siddiqui A. T., *Discrepancies in the laws on identifying foetal sex and terminating a pregnancy in India*, (2007).
32. R. Dr. & Basheer P., *Social Empowerment of Women through Education*, (2012).

33. Sarkar J. & Das D. Female foeticide is a menace in our modern Indian society: Critical analysis, (2018)
34. Scanlan G. & Ryan C., An Introduction to Criminal Law, (1986).
35. Sev'er A., Discarded Daughters: The Patriarchal Grip, Dowry Deaths, Sex Ratio Imbalances & Foeticide in India(2008).
36. Singh Dr. B. P., Sociology of Female Foeticide and Infanticide. Where does the Law Stand? (2011).
37. Srivastava A. K., Baranwal R. K., *et.al.* To Assess Awareness and Perspectives of Female Foeticide among School Children, 20(2), (2020).
38. Tandon, S. L., & Sharma, R. Female foeticide and infanticide in India: an analysis of crimes against girl children, (2006).
39. Vijayalakshmi S., The Menace Of Female Foeticide And Infanticide In India (2018).
40. Vinayak B. & Sarthak G. *et.al.* Dowry System in India (2021).
41. Yadav K. J., *et. al.* Awareness and perception regarding female foeticide among adolescents in rural community of Nalgonda district, Telangana, (2018).
42. Editorial, "Did the Doctor inject his wife with HIV virus?" Times of India, May 5, 2004.
43. Editorial, "Foeticide is still rampant in state" Times of India, June 9, 2016.

Conferences/ Seminars

1. Bajpai A. The Girl child and the Law, in Seminar on Rights of the Child, National Law School of India University, Bangalore(1990).
2. Norton E. D., & Tower E. I. in Higher Faces Challenge Inequality Battle, Speech delivered at the Education Conference, Michigan University, (1985).
3. Reylaura M. Cantave (2014) Female Foeticide, Infanticide and Gender Inequality Concerns in India: Role of Policy, (Research Paper, St. John's University, Annual NYSPSA Conference).

Acts / Constitution

1. The Bonded Labour System (Abolition) Act, 1976.
2. The Child Labour (Prohibition and Regulation) Act, 1986.
3. The Code of Civil Procedure, 1908.
4. The Code of Criminal Procedure, 1973.
5. The Commission for Protection of Child Rights Act, 2005.
6. The Constitution of India.
7. The Dowry Prohibition Act, 1961.
8. The Drugs and Cosmetics Act, 1940.
9. The Equal Remuneration Act, 1976, (Act No. 25 Of 1976).
10. The Factories Act, 1948.
11. The Guardian and Wards Act, 1860.
12. The Hindu Adoptions and Maintenance Act, 1956.
13. The Hindu Succession Act, 1956.
14. The Immoral Traffic Prevention Act, 1956.
15. The Indian Evidence Act, 1872.
16. The Indian Penal Code, 1860 (Act 45 of 1860).
17. The Indian Penal Code, 1860.
18. The Indian Succession Act, 1925.
19. The Juvenile Justice (Care and Protection of Children) Act, 2015.
20. The Maternity Benefit Act, 1961 (No. 53 of 1961).
21. The Medical Council Act, 1956.
22. The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971).
23. The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.
24. THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994 (ACT NO. 57 OF 1994).
25. The Probation of Offenders Act, 1958.
26. The Prohibition of Child Marriage Act, 2006.
27. The Protection of Children from Sexual Offences (POCSO) Act, 2012.
28. The Young Persons (Harmful Publications) Act, 1956.

29. Universal's Criminal Manual, Universal Law Publishing Co. New Delhi, 2012.

International Documents

1. Government of India, UN Convention for the Suppression of Traffic in Persons and of Exploitation of the Prostitution of Others. This was approved by the General Assembly resolution 317(iv) of 2 December 1949. In 1950, the ratified this convention.
2. Regional Office Save the Children Alliance, Report: Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead: A Broad Assessment of Anti-Trafficking Initiatives in Nepal, Bangladesh and Indi (UNICEF, 1999)
3. UN Convention for the Suppression of Traffic in Persons and of Exploitation of the Prostitution of Others. This was approved by the General Assembly resolution 317(iv) of 2 December 1949. In 1950, the Government of India ratified this convention.
4. UNICEF, UNICEF says education for women and girls a lifeline to development, (2011).
5. World Health Organization, Maternal Mortality, Fact Sheet No. 348, (Geneva, 2012).
6. International Covenant on Economic, Social and Cultural Rights of 1966.

Webliography

1. Ministry of Health and Family Welfare, Government of India. Press Information Bureau, <http://pib.nic.in/news/PrintRelease.aspx?relid=103437>
2. MEETING THE DRINKING WATER AND SANITATION THE URBAN AND RURAL CHALLENGE OF THE DECADE, https://www.who.int/water_sanitation_health/monitoring/jmpfinal.pdf
3. 'Child Trafficking in India', <http://www.haqcrc.org/sites/default/files/Child%20Trafficking%20in%20India-A%20Situational%20Analysis.pdf>
4. How Unsafe India is for Women, <https://www.news18.com/news/india/rape-every-16-minutes-dowry-death-each-hour-ncrb-data-shows-howunsafe-india-is-for-women-2925445.html>

5. Dowry, <https://www.bbc.com/news/world-asia-india-57677253><https://www.thehindu.com/news/national/Census-2011-population-pegged-at-1210.2-million/article14665518.ece>
6. Social issues since childhood and political history, <https://timesofindia.indiatimes.com/readersblog/social-issues-since-childhoodand-political-history/dowry-system-in-india-33961/https://www.haqcrc.org/sites/default/files/Child%20Trafficking%20in%20India-A%20Situational%20Analysis.pdf>
7. Dowry system a social stigma, <https://timesofindia.indiatimes.com/readersblog/akash-kumar/dowry-system-asocial-stigma-20030/https://www.indiatoday.in/cities/delhi/story/delhi-mother-spends-entire-night-with-two-month-old-baby-s-corpse-after-killing-her-arrested-1928499-2022-03-23#:~:text=A%2026%2Dyear%2Dold%20woman,night%20before%20hiding%20the%20body>
8. Over 24,000 children died by suicide from 2017 to 2019: NCRB, India, http://timesofindia.indiatimes.com/articleshow/84929224.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppsthttp://indianexpress.com/article/india/india-others/24771-dowry-deaths-reported-in-last-3-years-govt/#sthash.j28Ncyhz.dpuf
9. Census of India 2011: Child sex ratio drops to lowest since Independence, India, https://economictimes.indiatimes.com/news/economy/indicators/census-of-india-2011-child-sex-ratio-drops-to-lowest-since-independence/articleshow/7836942.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppsthttps://timesofindia.indiatimes.com/readersblog/akash-kumar/dowry-system-asocial-stigma-20030/
10. Census 2011: population pegged at 1,210.2 million, India <https://www.thehindu.com/news/national/Census-2011-population-pegged-at-1210.2-million/article14665518.ecehttps://www.bbc.com/news/world-asia-india-57677253>
11. India Today Magazine, India, <https://www.indiatoday.in/magazine/09-09-2002https://www.news18.com/news/india/rape-every-16-minutes-dowry-death->

each-hour-ncrb-data-shows-how-unsafe-india-is-for-women-2925445.html

12. Why India ranked as the dangerous place for women, India, <https://timesofindia.indiatimes.com/readersblog/why-india-is-not-safe-for-women/why-india-ranked-as-the-dangerous-place-for-women-22638/https://www.indiatoday.in/magazine/09-09-2002>
13. India Today Magazine, India, <https://www.indiatoday.in/magazine/09-09-2002https://www.timesnownews.com/mirror-now/in-focus/kerala-hc-allows-10-year-old-raped-impregnated-by-father-to-end-pregnancy-article-90162895>
14. India Today Magazine, India, <https://www.indiatoday.in/magazine/09-09-2002https://www.firstpost.com/india/sangli-doctors-arrest-unfolds-a-horrifying-tale-of-illegal-female-foeticide-racket-covering-maharashtra-karnataka-3339986.html>
15. Dowry deaths Supreme Court widens scope of Section 304B, India, <https://www.thehindu.com/news/national/dowry-deaths-supreme-court-widens-scope-ofsection-304-b/article34670458.ece>
16. Dowry deaths reported in last 3 years, India, <http://indianexpress.com/article/india/india-others/24771-dowry-deaths-reported-in-last-3-years-govt/#sthash.j28Ncyhz.dpuf>
17. Dowry system is good if it is contemplated as a gift, India, <https://www.thehindu.com/features/metroplus/woman-uninterrupted-its-not-dowry-its-just-a-gift/article8198165.ece>
18. Another newborn girl's body found in Jaipur, <http://www.ndtv.com/jaipur-news/another-newborn-girls-body-found-in-jaipur-473857>
19. Newborn baby girl found buried alive in Indian forest in ANOTHER tragic case of female infanticide, <http://www.dailymotion.co.uk/news/article-2356252/Newborn-baby-girl-buried-alive-Indian-forest-ANOTHER-case-female-infanticide.html#ixzz47fQmew7t>
20. Woman Allegedly Dumps Twin Granddaughters In Punjab Canal After Birth, <https://www.ndtv.com/india-news/female-infanticide-punjab-bathinda-woman-allegedly-dumps-twin-granddaughters-in-canal-after-birth-2107871>
21. Newborn 'Sita', Found 3 Feet Underground At UP Cremation Site, In ICU, <https://www.ndtv.com/india-news/bareilly-uttar-pradesh-newborn-sita-found-3->

[feet-underground-at-bareilly-up-cremation-site-in-icu-2117303](#)

22. No Girl Born In 132 Villages In Uttarkashi In 3 Months: Report, <https://www.ndtv.com/india-news/no-girl-born-in-132-villages-in-uttarkashi-in-3-months-report-2073090>
23. Delhi infant murder case: Mother spent two days with corpse before hiding it in oven, <https://www.indiatoday.in/cities/delhi/story/delhi-mother-spends-entire-night-with-two-month-old-baby-s-corpse-after-killing-her-arrested-1928499-2022-03-23#:~:text=A%2026%2Dyear%2Dold%20woman,night%20before%20hiding%20the%20body>
24. Kerala HC allows 10-year-old raped, impregnated by father to end pregnancy <https://www.timesnownews.com/mirror-now/in-focus/kerala-hc-allows-10-year-old-raped-impregnated-by-father-to-end-pregnancy-article-90162895>
25. A doctor in Maharashtra was arrested for allegedly carrying out three illegal abortions, including on a minor girl, police said on Sunday, <https://www.thehindu.com/news/national/other-states//article60009353.ece>
26. Doc couple jailed for abortion had fed foetuses to dogs <https://www.deccanherald.com/content/484951/doc-couple-jailed-abortion-had.html>
27. Bombay HC allows gynaecologist accused of illegal abortions to resume medical practice, <https://www.hindustantimes.com/india-news/hc-allows-gynaecologist-accused-of-illegal-abortions-to-resume-medical-practice/story-3ZKYpzSJyEkIOHGARKITUJ.html>
28. Maharashtra: Illegal abortion racket busted; 4 doctors among 9 held, <https://timesofindia.indiatimes.com/city/mumbai/maharashtra-illegal-abortion-racket-busted-4-doctors-among-9-held/articleshow/67856544.cms>
29. Maharashtra Home Minister assures thorough probe in Wardha illegal abortions case, <https://www.deccanherald.com/national/west/maharashtra-home-minister-assures-thorough-probe-in-wardha-illegal-abortions-case-1071599.html>
30. Court has granted temporary bail to a doctor, accused of causing the death of a woman after performing an illegal abortion on her, <https://www.thehindu.com/news/cities/mumbai/court-grants-bail-to-doctor->

[accused-of-illegal-abortion/article31231384.ece](https://zeenews.india.com/india/2-gurugram-doctors-arrested-for-selling-illegal-abortion-kits-2431325.html)

31. 2 Gurugram ‘doctors’ arrested for selling illegal abortion kits, India, <https://zeenews.india.com/india/2-gurugram-doctors-arrested-for-selling-illegal-abortion-kits-2431325.html>
32. Gurgaon Announces Rs 1 Lakh Reward For Providing Information On Female Infanticide, <https://everylifecounts.ndtv.com/gurgaon-announces-rs-1-lakh-reward-providing-information-female-infanticide-14813>
33. Beti Bachao Beti Padhao, https://en.wikipedia.org/wiki/Beti_Bachao_Beti_Padhao
34. Sukanya Samridhi Account, https://en.wikipedia.org/wiki/Sukanya_Samridhi_Account
35. Lawyer fights female foeticide is one of India's affluent states, <https://www.thenationalnews.com/world/asia/lawyer-fights-female-foeticide-in-one-of-india-s-affluent-states-1.607444>

Reports:

1. By Upendra Baxi, Vasudha Dhagamwar Raghunath Kelkar and Lotika Sarkar against the judgment.
2. Crime in India, Report: National Crime Records Bureau, Ministry of Home Affairs, 2019.
3. Gazette of India, 1959, Extra., Pt. II, S. 2, 397. See, Joint Committee Report, II9I-I93.
4. Government of India, Report: Committee on the Status of Women in India, Ministry of Education & Social Welfare, 1974.
5. Jain, D., “Indian Women”, Publication Division, Ministry of Information and Broadcasting, Government of India, 1975.
6. Minutes of the meeting of the Core Group on Women held on 25th October 2019 at 11:00 am on ‘Declining sex ratio in India’ and ‘Work-life balance of working women’ in Room No. 508, Manav Adhikar Bhawan, C-Block, GPO Complex, INA, New Delhi.

7. S. Kulkarni, (1986) "Pre-natal Sex Determination Tests and Female Foeticide in Bombay City" The Foundation for Research in Community Health, Bombay
Census of India, 2011.
 8. Sheela Barse, A Critique of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Mumbai, India: Neer Gaurav Research and Development Foundation).
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APPENDIX – I

QUESTIONNAIRE

Age:

Gender:

1. **Are you married?**
 - ☐ Yes.
 - ☐ No.
2. **Do you prefer a son or daughter?**
 - ☐ Son.
 - ☐ Daughter.
 - ☐ Both.
3. **If you could have only a single child, what would you desire?**
 - ☐ Son.
 - ☐ Daughter.
4. **If you prefer a male child, specify the reason.**
 - ☐ Son is required to preserve the tradition and values of family.
 - ☐ Son will support you in old age.
 - ☐ The upbringing of a male child is economically convenient and more manageable.
 - ☐ The daughter can become a social and economic burden.
 - ☐ All of the above.
5. **Are you familiar with the term female infanticide and foeticide?**
 - ☐ Yes.
 - ☐ No.
6. **According to you, what is the primary cause for female infanticide and foeticide?**
 - ☐ Poverty.
 - ☐ Girl child considered as a burden.
 - ☐ All of the above.
 - ☐ Dowry.
 - ☐ Pressure from family.
7. **Do you feel that women also contribute to the cause of female infanticide and foeticide?**
 - ☐ Agree.
 - ☐ Strongly agree.
 - ☐ Disagree.
 - ☐ Strongly disagree.
8. **Do you think large-scale abortions are taking place to eliminate female fetuses?**
 - ☐ Agree.
 - ☐ Strongly agree.
 - ☐ Disagree.
 - ☐ Strongly disagree.
9. **Do you agree with the view that the declining child sex ratio and scarcity of women will improve their position?**
 - ☐ Agree.
 - ☐ Strongly agree.
 - ☐ Disagree.
 - ☐ Strongly disagree.
10. **Are you aware of the methods of sex determination?**
 - ☐ Yes.
 - ☐ No.

11. **Do you agree that ‘selective killing’ ought to stop’?**
 - Agree.
 - Strongly agree.
 - Disagree.
 - Strongly disagree.
12. **Do you agree that the advancement of technology is responsible for female foeticide?**
 - Agree.
 - Strongly agree.
 - Disagree.
 - Strongly disagree.
13. **Do you feel that existing laws are adequate and effective?**
 - Yes.
 - No.
14. **Do you think that statute is stringent to punish those found guilty of committing female infanticide and foeticide?**
 - Agree.
 - Strongly agree.
 - Disagree.
 - Strongly disagree.
15. **Do you agree that the better education of women can improve the situation?**
 - Agree.
 - Strongly agree.
 - Disagree.
 - Strongly disagree.
16. **Being a woman, do you feel insecure having a girl child?**
 - Yes.
 - No.
17. **Do you think girls are the responsibility, not a liability?**
 - Yes.
 - No.
18. **The man and woman in the family should be treated equally; state your opinion.**
 - Agree.
 - Strongly agree.
 - Disagree.
 - Strongly disagree.

Thank you for agreeing to take part in the survey. If you do not feel to answer, you can quit anytime. We are conducting this survey to seek knowledge regarding female foeticide and infanticide. Your answers will be kept strictly confidential.

APPENDIX – II

RESEARCH PUBLICATION DETAILS

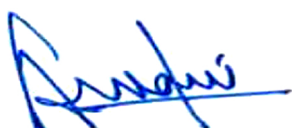
Sno.	Title of paper with author names	Name of journal	Published date	Issn no/ vol no, issue no	Indexing in Scopus/ Web of Science/UGC-CARE list (please mention)
1.	FEMALE FOETICIDE AND INFANTICIDE IN INDIA WITH SPECIAL REFERENCE TO WOMEN RIGHTS AND GENDER BIASNESS By: Jesmin Banu Khan & Dr. Showkat Ahmad Wani	Journal of Education: Rabindra Bharati University	April, 2022	ISSN : 0972-7175 Vol: XXV No.: 3(IV), 2022 Pages: 34-38	UGC-CARE, Peer Reviewed and Refereed Journal

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APPENDIX – III

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994

(ACT NO. 57 OF 1994) AND
THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND
PREVENTION OF MISUSE) AMENDMENT ACT, 2002
(No.14 OF 2003)

[20th September, 1994]

An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre- natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.**— (1) This Act may be called the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.
- (2) It shall extend to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.- In this Act, unless the context otherwise requires,—

- (a) “Appropriate Authority” means the Appropriate Authority appointed under section 17;
- (b) “Board” means the Central Supervisory Board constituted under section 7;
- (ba) ”conceptus” means any product of conception at any stage of development from fertilization until birth including extra embryonic membranes as well as the embryo or foetus;
- (bb) “embryo” means a developing human organism after fertilization till the end of eight weeks(fifty-six days);
- (bc) “foetus” means a human organism during the period of its development beginning on the fifty-seventh day following fertilization or creation (excluding any time in which its development has been suspended) and ending at the birth;
- (c) “Genetic Counseling Centre” means an institute, hospital, nursing home or any place, by what- ever name called, which provides for genetic counselling to patients;
- (d) “Genetic Clinic” means a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures.

Explanation- For the purposes of this clause, ‘Genetic Clinic’ includes a vehicle, where ultra- sound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during preg- nancy or selection of sex before conception, is used.

- (e) “Genetic Laboratory” means a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic test.

Explanation- For the purposes of this clause, ‘Genetic Laboratory’ includes a place where ultra- sound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the

potential for detection of sex during pregnancy or selection of sex before conception, is used.

- (f) “Gynaecologist” means a person who possesses a post-graduate qualification in gynaecology and obstetrics;
- (g) “Medical geneticist” includes a person who possesses a degree or diploma in genetic science in the fields of sex selection and pre-natal diagnostic techniques or has experience of not less than two years in such field after obtaining—
 - (i) any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956); or
 - (ii) a post-graduate degree in biological sciences;
- (h) “Pediatrician” means a person who possesses a post-graduate qualification in pediatrics;
- (i) “pre-natal diagnostic procedures” means all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chori-onic villi, blood or any other tissue or fluid of a man, or of a woman for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception;
- (j) “pre-natal diagnostic techniques” includes all pre-natal diagnostic procedures and pre-natal diagnostic tests;
- (k) “pre-natal diagnostic test” means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases;
- (l) “prescribed” means prescribed by rules made under this Act;
- (m) “registered medical practitioner” means a medical practitioner who possesses any recognized Medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, (102 of 1956.) and whose name has been entered in a

State Medical Register;

- (n) “regulations” means regulations framed by the Board under this Act;
- (o) “sex selection” includes any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex;
- (p) “sonologist or imaging specialist” means a person who possesses any one of the medical qualifications recognized under the Indian Medical Council Act, 1956 or who possesses a post-graduate qualification in ultrasonography or imaging techniques or radiology;
- (q) “State Board” means a State Supervisory Board or a Union territory Supervisory Board constituted under Section 16A;
- (r) “State Government” in relation to Union territory with Legislature means the Administrator of that Union territory appointed by the President under article 239 of Constitution.

CHAPTER II

REGULATION OF GENETIC COUNSELLING CENTRES, GENETIC LABORATORIES AND GENETIC CLINICS

3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.- On and from the commencement of this Act,—

1. no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques;
2. no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess qualifications as may be prescribed;
3. no medical geneticist, gynaecologist, paediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by

himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.

- 3A. **Prohibition of sex-selection-** No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.
- 3B. **Prohibition on sale of ultrasound machines, etc., to persons, laboratories, clinics, etc. not registered under the Act.-** No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.

CHAPTER III

REGULATION OF PRE-NATAL DIAGNOSTIC TECHNIQUES

4. ***Regulation of pre-natal diagnostic techniques.-*** On and from the commencement of this Act,—
1. no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);
 2. no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:—
 - (i) chromosomal abnormalities;
 - (ii) genetic metabolic diseases;
 - (iii) haemoglobinopathies;
 - (iv) sex-linked genetic diseases;
 - (v) congenital anomalies;

(vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board; 3. no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:—

- (i) age of the pregnant woman is above thirty-five years;
- (ii) the pregnant woman has undergone of two or more spontaneous abortions or foetal loss;
- (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
- (iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
- (v) any other condition as may be specified by the Central Supervisory Board;

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

4. no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2).

5. no person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both.

5. ***Written consent of pregnant woman and prohibition of communicating the sex of foetus.***

1. No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless—

- (a) he has explained all known side and after effects of such procedures to the

pregnant woman concerned;

- (b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and
- (c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

2. No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner.

6. ***Determination of sex prohibited.***- On and from the commencement of this Act,—

- (a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;
- (b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus;
- (c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.

CHAPTER IV

CENTRAL SUPERVISORY BOARD

7. ***Constitution of Central Supervisory Board.***-

- 1. The Central Government shall constitute a Board to be known as the Central Supervisory Board to exercise the powers and perform the functions conferred on the Board under this Act.
- 2. The Board shall consist of—
 - (a) the Minister in charge of the Ministry or Department of Family Welfare, who shall be the Chairman, *ex-officio*;
 - (b) the Secretary to the Government of India in charge of the Department of Family

Welfare, who shall be the Vice-Chairman, *ex-officio*;

- (c) three members to be appointed by the Central Government to represent the Ministries of Central Government in charge of Women and Child Development, Department of Legal Affairs or Legislative Department in the Ministry of Law and Justice, and Indian System of Medicine and Homoeopathy, *ex-officio*;
- (d) the Director General of Health Services of the Central Government, *ex-officio*;
- (e) ten members to be appointed by the Central Government, two each from amongst—
 - (i) eminent medical geneticists;
 - (ii) eminent gynaecologist and obstetrician or expert of *stri-roga or prasuti-tantra*;
 - (iii) eminent paediatricians;
 - (iv) eminent social scientists; and
 - (v) representatives of women welfare organisations;
- (f) three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States;
- (g) four members to be appointed by the Central Government by rotation to represent the States and the Union territories, two in the alphabetical order and two in the reverse alphabetical order:
Provided that no appointment under this clause shall be made except on the recommendation of the State Government or, as the case may be, the Union territory;
- (h) an officer, not below the rank of a Joint Secretary or equivalent of the Central Government, in charge of Family Welfare, who shall be the Member-Secretary, *ex-officio*.

8. ***Terms of office of members.***— (1) The term of office of a member, other than an *ex-officio* member, shall be,—
- (a) in case of appointment under clause (e) or clause (f) of sub-section (2) of section 7, three years; and
 - (b) in case of appointment under clause (g) of the said subsection, one year.

2. If a casual vacancy occurs in the office of any other members, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled by the Central Government by making a fresh appointment and the members so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.
3. The Vice-Chairman shall perform such functions as may be assigned to him by the Chairman from time to time.
4. The procedure to be followed by the members in the discharge of their functions shall be such as may be prescribed.

9. ***Meetings of the Board.-***

1. The Board shall meet at such time and place, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be provided by regulations:
Provided that the Board shall meet at least once in six months.
2. The Chairman and in his absence the Vice-Chairman shall preside at the meetings of the Board.
3. If for any reason the Chairman or the Vice-Chairman is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting.
4. All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote.
5. Members other than ex-officio members shall receive such allowances, if any, from the Board as may be prescribed.

10. ***Vacancies, etc., not to invalidate proceedings of the Board.-*** No act or proceeding of the Board shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Board; or
- (b) any defect in the appointment of a person acting as a member of the Board; or

- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

11. *Temporary association of persons with the Board for particular purposes.*

1. The Board may associate with itself, in such manner and for such purposes as may be determined by regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.
2. A person associated with it by the Board under sub-section (1) for any purpose shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a member for any other purpose.

12. *Appointment of officers and other employees of the Board.-*

1. For the purpose of enabling it efficiently to discharge its functions under this Act, the Board may, subject to such regulations as may be made in this behalf, appoint (whether on deputation or otherwise) such number of officers and other employees as it may consider necessary:

Provided that the appointment of such category of officers, as may be specified in such regulations, shall be subject to the approval of the Central Government.

2. Every officer or other employee appointed by the Board shall be subject to such conditions of service and shall be entitled to such remuneration as may be specified in the regulations.

13. *Authentication of orders and other instruments of the Board.-* All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other member authorised by the Board in this behalf, and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary or any other officer of the Board authorised in like manner in this behalf.

14. *Disqualifications for appointment as member.-* A person shall be disqualified for being appointed as a member if, he—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a Corporation owned or controlled by the Government; or
- (e) has, in the opinion of the Central Government, such financial or other interest in the Board as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has, in the opinion of the Central Government, been associated with the use or promotion of pre-natal diagnostic technique for determination of sex or with any sex selection technique.

15. ***Eligibility of member for reappointment.***- Subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a member shall be eligible for reappointment as such member.

Provided that no member other than an *ex-officio* member shall be appointed for more than two consecutive terms.

16. ***Functions of the Board.*** - The Board shall have the following functions, namely:—

- (i) to advise the Central Government on policy matters relating to use of pre-natal diagnostic techniques, ~~sex selection techniques~~ and against their misuse;
- (ii) to review and monitor implementation of the Act and rules made thereunder and recommend to the Central Government changes in the said Act and rules;
- (iii) to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide;
- (iv) to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics;
- (v) to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation;
- (vi) any other functions as may be prescribed under the Act.

16A. ***Constitution of State Supervisory Board and Union territory Supervisory***

Board.-

1. Each State and Union territory having Legislature shall constitute a Board to be known as the State Supervisory Board or the Union territory Supervisory Board, as the case may be, which shall have the following functions:-
 - i) to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide in the State;
 - ii) to review the activities of the Appropriate Authorities functioning in the State and recommend appropriate action against them;
 - iii) to monitor the implementation of provisions of the Act and the rules and make suitable recommendations relating thereto, to the Board;
 - iv) to send such consolidated reports as may be prescribed in respect of the various activities undertaken in the State under the Act to the Board and the Central Government; and
 - v) any other functions as may be prescribed under the Act.
2. The State Board shall consist of,-
 - a) the Minister in charge of Health and Family Welfare in the State, who shall be the Chairperson, ex-officio;
 - b) the Secretary in charge of the Department of Health and Family Welfare who shall be the Vice-Chairperson, ex-officio;
 - c) Secretaries or Commissioners in charge of Departments of Women and Child Development, Social Welfare, Law and Indian System of Medicines and Homoeopathy, ex-officio, or their representatives;
 - d) director of Health and Family Welfare or Indian System of Medicines and Homoeopathy of the State Government, ex-officio;
 - e) Three women members of Legislative Assembly or Legislative Council;
 - f) Ten members to be appointed by the State Government out of which two each shall be from the following categories:
 - i) eminent social scientists and legal experts;

- ii) eminent women activists from non-governmental organizations or otherwise;
 - iii) eminent gynaecologists and obstetricians or experts of *stri-roga or prasuti tantra*;
 - iv) eminent paediatricians or medical geneticists;
 - v) eminent radiologists or sonologists;
 - g) an officer not below the rank of Joint Director in charge of Family Welfare, who shall be the Member Secretary, *ex-officio*.
3. The State Board shall meet at least once in four months.
 4. The term of office of a member, other than an *ex-officio* member, shall be three years.
 5. If a vacancy occurs in the office of any member other than an *ex-officio* member, it shall be filled by making fresh appointment.
 6. If a member of the Legislative Assembly or member of the Legislative Council who is a member of the State Board, becomes Minister or Speaker or Deputy Speaker of the Legislative Assembly or Chairperson or Deputy Chairperson of the Legislative Council, she shall cease to be a member of the State Board.
 7. One-third of the total number of members of the State Board shall constitute the quorum.
 8. The State Board may co-opt a member as and when required, provided that the number of co-opted members does not exceed one-third of the total strength of the State Board.
 9. The co-opted members shall have the same powers and functions as other members, except the right to vote and shall abide by the rules and regulations.
 10. In respect of matters not specified in this section, the State Board shall follow procedures and conditions as are applicable to the Board.

CHAPTER V

APPROPRIATE AUTHORITY AND ADVISORY COMMITTEE

17. *Appropriate Authority and Advisory Committee.*- 1. The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.
2. The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.
3. The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,—
- (a) when appointed for the whole of the State or the Union territory, consisting of the following three members-
- i) an officer of or above the rank of the Joint Director of Health and Family Welfare-Chairperson;
- ii) an eminent woman representing women's organization; and
- iii) an officer of Law Department of the State or the Union territory concerned:
- Provided that it shall be the duty of the State or the Union territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:
- Provided further that any vacancy occurring therein shall be filled within three months of that occurrence.
- (b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.
4. The Appropriate Authority shall have the following functions, namely:—
- (a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic

Laboratory or Genetic Clinic;

- (b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;
- (c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;
- (d) to seek and consider the advice of the Advisory Committee, constituted under subsection (5), on application for registration and on complaints for suspension or cancellation of registration;
- (e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;
- (f) to create public awareness against the practice of sex selection or pre-natal determination of sex;
- (g) to supervise the implementation of the provisions of the Act and rules;
- (h) to recommend to the CSB and State Boards modifications required in the rules in accordance with changes in technology or social conditions;
- (i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

5. The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

6 The Advisory Committee shall consist of—

- (a) three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists;
- (b) one legal expert;
- (c) one officer to represent the department dealing with information and publicity of the State Government or the Union territory, as the case may be;

(d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

7. No person who has been associated with the use or promotion of pre-natal diagnostic technique for determination of sex or sex selection shall be appointed as a member of the Advisory Committee.

8. The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon:

Provided that the period intervening between any two meetings shall not exceed the prescribed period.

9. The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed.

17A. ***Powers of Appropriate Authorities.***- The Appropriate Authority shall have the powers in respect of the following matters, namely:-

a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;

b) production of any document or material object relating to clause (a);

c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and

d) any other matter which may be prescribed.

CHAPTER VI

REGISTRATION OF GENETIC COUNSELLING CENTRES, GENETIC LABORATORIES AND GENETIC CLINICS

18. ***Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics.*** (1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus and sex selection, or render services to any of them, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such centre, laboratory or clinic is duly registered under the Act.
2. Every application for registration under sub-section (1), shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.
3. Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged, either partly or exclusively, in counselling or conducting pre-natal diagnostic techniques for any of the purposes mentioned in section 4, immediately before the commencement of this Act, shall apply for registration within sixty days from the date of such commencement.
4. Subject to the provisions of section 6, every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged in counselling or conducting pre-natal diagnostic techniques shall cease to conduct any such counselling or technique on the expiry of six months from the date of commencement of this Act unless such Centre, Laboratory or Clinic has applied for registration and is so registered separately or jointly or till such application is disposed of, whichever is earlier.
5. No Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be registered under this Act unless the Appropriate Authority is satisfied that such Centre, Laboratory or Clinic is in a position to provide such facilities, maintain such equipment and standards as may be prescribed.

19. *Certificate of registration.-*

1. The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration in the prescribed form jointly or separately to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.
2. If, after the inquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act or the rules, it shall, for reasons to be recorded in writing, reject the application for registration.
3. Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.
4. The certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in a conspicuous place at its place of business.

20. *Cancellation or suspension of registration.-*

1. The Appropriate Authority may *suo moto*, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.
2. If, after giving a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.
3. Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate

Authority is, of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).

21. ***Appeal.*** The Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the Appropriate Authority under section 20, prefer an appeal against such order to—
- (i) the Central Government, where the appeal is against the order of the Central Appropriate Authority; and
 - (ii) the State Government, where the appeal is against the order of the State Appropriate Authority, in the prescribed manner.

CHAPTER VII

OFFENCES AND PENALTIES

22. Prohibition of advertisement relating to pre-natal determination of sex and punishment for con- travention.-

1. No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or com- municated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such centre, laboratory, clinic or at any other place.
2. No person or organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or pre- conception selection of sex by

any means whatsoever, scientific or otherwise.

3. Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

Explanation.—For the purposes of this section, “advertisement” includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal, light, sound, smoke or gas.

23. **Offences and penalties.**— (1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with

imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

2. The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

3. Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre- natal

diagnostic techniques on any pregnant women for the purposes other than those specified in sub-section (2) of section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

4. For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.

24. *Presumption in the case of conduct of pre-natal diagnostic techniques.-*

Notwithstanding anything contained in the Indian Evidence Act, 1872, the court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4 and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section.

- 25. *Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided.-*** Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

26. *Offences by companies.-*

1. Where any offence, punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable

to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Notwithstanding anything contained in sub-section (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals, and
- (b) “director”, in relation to a firm, means a partner in the firm.

27. ***Offence to be cognizable, non-bailable and non-compoundable.***—Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

28. ***Cognizance of offences.***

- 1. No court shall take cognizance of an offence under this Act except on a complaint made by—
 - (a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or
 - (b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.—For the purpose of this clause, “person” includes a social organisation.

2. No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
3. Where a complaint has been made under clause (b) of subsection (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

CHAPTER VIII

MISCELLANEOUS

29. *Maintenance of records.*

1. All records, charts, forms, reports, consent letters and all other documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed:

Provided that, if any criminal or other proceedings are instituted against any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, the records and all other documents of such Centre, Laboratory or Clinic shall be preserved till the final disposal of such proceedings.

2. All such records shall, at all reasonable times, be made available for inspection to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf.

30. *Power to search and seize records, etc. -*

1. If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place, such Authority or any officer authorised thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to

believe that it may furnish evidence of the commission of an offence punishable under this Act.

2. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

31. ***Protection of action taken in good faith.***- No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorised by the Central or State Government or by the Authority for anything which is in good faith, done or intended to be done in pursuance of the provisions of this Act.

31A. ***Removal of difficulties.***-

1. If any difficulty arises in giving effect to the provisions of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the said Act as appear to it to be necessary or expedient for removing the difficulty.

Provided that no order shall be made under this section after the expiry of a period of three years from the date of commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002.

2. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

32. ***Power to make rules.***-

1. The Central Government may make rules for carrying out the provisions of this Act.
2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (i) the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (2) of section 3;

- (ia) the manner in which the person conducting ultrasonography on a pregnant woman shall keep record thereof in the clinic under the proviso to sub-section (3) of section 4;
- (ii) the form in which consent of a pregnant woman has to be obtained under section 5;
- iii) the procedure to be followed by the members of the Central Supervisory Board in the discharge of their functions under sub-section (4) of section 8;
- (iv) allowances for members other than ex-officio members admissible under subsection (5) of section 9;
- (iva) code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics to be laid down by the Central Supervisory Board under clause (iv) of Section 16;
- (ivb) the manner in which reports shall be furnished by the State and Union territory Supervisory Boards to the Board and the Central Government in respect of various activities under-taken in the State under the Act under clause (iv) of sub-section (1) of section 16A;
- (ivc) empowering the Appropriate Authority in any other matter under clause (d) of section 17A;
- (v) the period intervening between any two meetings of the Advisory Committee under the proviso to subsection (8) of section 17;
- (vi) the terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee under sub-section (9) of section 17;
- (vii) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 18;
- (viii) the facilities to be provided, equipment and other standards to be maintained by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under sub-section (5) of section 18;
- (ix) the form in which a certificate of registration shall be issued under sub-section (1) of section 19;

- (x) the manner in which and the period after which a certificate of registration shall be re- newed and the fee payable for such renewal under sub-section (3) of section 19;
- (xi) the manner in which an appeal may be preferred under section 21;
- (xii) the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 29;
- (xiii) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody such documents, records or objects were seized under sub-section (1) of section 30;
- (xiv) any other matter that is required to be, or may be, prescribed.

33. ***Power to make regulations.***- The Board may, with the previous sanction of the Central Govern- ment, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for—

- (a) the time and place of the meetings of the Board and the procedure to be followed for the trans- action of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 9;
- (b) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 11;
- (c) the method of appointment, the conditions of service and the scales of pay and allowances of the officer and other employees of the Board appointed under section 12;
- (d) generally for the efficient conduct of the affairs of the Board.

34. ***Rules and regulations to be laid before Parliament.*** – Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive

sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

APPENDIX – IV

THE DOWRY PROHIBITION ACT, 1961

ACT NO. 28 OF 1961

[20th May, 1961.]

An Act to prohibit the giving or taking of dowry.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Dowry Prohibition Act, 1961.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definition of “dowry”.—In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before ²[or any time after the marriage] ³[in connection with the marriage of the said parties, but does not include] dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

⁴* * * *

Explanation II.—The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

3. Penalty for giving or taking dowry.—⁵[(1)] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable ⁶[with imprisonment for a term which shall not be less than ⁷five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more];

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than ⁸[five years].]

⁹[(2) Nothing in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf);

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf);

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

1. 1st July, 1961, vide notification No. S.O. 1410, dated 20th June, 1961, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

2. Subs. by Act 43 of 1986, s. 2, for “or after the marriage” (w.e.f. 19-11-1986).

3. Subs. by Act 63 of 1984, s. 2, for certain words (w.e.f. 2-10-1985).

4. The *Explanation I* omitted by s. 2, *ibid.* (w.e.f. 2-10-1985).

5. Section 3 renumbered as sub-section (1) of that section by s. 3, *ibid.* (w.e.f. 2-10-1985).

6. Subs. by s. 3, *ibid.*, for certain words (w.e.f. 2-10-1985).

7. Subs. by Act 43 of 1986, s. 3, for certain words (w.e.f. 19-11-1986).

8. Subs. by s. 3, *ibid.*, for “six months” (w.e.f. 19-11-1986).

9. Ins. by Act 63 of 1984, s. 3 (w.e.f. 2-10-1985).

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.]

¹[**4. Penalty for demanding dowry.**—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]

²[**4A. Ban on advertisement.**—If any person—

(a) offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative,

(b) prints or publishes or circulates any advertisement referred to in clause (a),

he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.]

5. Agreement for giving or taking dowry to be void.—Any agreement for the giving or taking of dowry shall be void.

6. Dowry to be for the benefit of the wife or her heirs.—(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

(a) if the dowry was received before marriage, within ³[three months] after the date of marriage; or

(b) if the dowry was received at the time of or after the marriage, within ³[three months] after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within ³[three months] after she has attained the age of eighteen years;

and pending such transfer, shall hold it in trust for the benefit of the woman.

⁴[(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor ⁵[or as required by sub-section (3),] he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine ⁶[which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with both.]

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

⁷[Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,—

(a) if she has no children, be transferred to her parents, or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.]

1. Subs. by Act 63 of 1984, s. 4, for section 4 (w.e.f. 2-10-1985).

2. Ins. by Act 43 of 1986, s. 4 (w.e.f. 19-11-1986).

3. Subs. by Act 63 of 1984, s. 5, for "one year" (w.e.f. 2-10-1985).

4. Subs. by s. 5, *ibid.*, for sub-section (2) (w.e.f. 2-10-1985).

5. Ins. by Act 43 of 1986, s. 5 (w.e.f. 19-11-1986).

6. Subs. by s. 5, *ibid.*, for "which may extend to ten thousand rupees" (w.e.f. 19-11-1986).

7. The proviso inserted by s. 5, *ibid.* (w.e.f. 19-11-1986).

¹[(3A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) ²[or sub-section (3)] has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, ³[her heirs, parents or children] the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, ³[her heirs, parents or children] within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, ³[her heirs, parents or children].]

(4) Nothing contained in this section shall affect the provisions of section 3 or section 4.

⁴[7. **Cognizance of offences.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) no court shall take cognizance of an offence under this Act except upon—

(i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognised welfare institution or organisation;

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of an offence under this Act.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.]

⁵[(3) Notwithstanding anything contained in any law for the time being in force a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.]

⁶[8. **Offences to be cognizable for certain purposes and to be bailable and non-compoundable.**—(1) The Code of Criminal Procedure, 1973 (2 of 1974) shall apply to offences under this Act as if they were cognizable offences—

(a) for the purposes of investigation of such offences; and

(b) for the purposes of matters other than—

(i) matters referred to in section 42 of that Code; and

(ii) the arrest of a person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be ⁷[non-bailable] and non-compoundable.]

⁸[8A. **Burden of proof in certain cases.**—Where any person is prosecuted for taking or abetting the taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under those sections shall be on him.]

1. Ins. by Act 63 of 1984, s. 5 (w.e.f. 2-10-1985).

2. Ins. by Act 43 of 1986, s. 5 (w.e.f. 19-11-1986).

3. Subs. by s. 5, *ibid.*, for “her heirs” (w.e.f. 19-11-1986).

4. Subs. by Act 63 of 1984, s. 6, for section 7 (w.e.f. 2-10-1985).

5. Ins. by Act 43 of 1986, s. 6 (w.e.f. 19-11-1986).

6. Subs. by Act 63 of 1984, s. 7, for section 8 (w.e.f. 2-10-1985).

7. Subs. by Act 43 of 1986, s. 7, for “bailable” (w.e.f. 19-11-1986).

8. Ins. by s. 8, *ibid.* (w.e.f. 19-11-1986).

8B. Dowry Prohibition Officers.—(1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:—

- (a) to see that the provisions of this Act are complied with;
- (b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;
- (c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and
- (d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(3) The State Government may, by notification in the Official Gazette, confer such powers of a police officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(4) The State Government may, for the purpose of advising and assisting Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an advisory board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under sub-section (1).]

9. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

¹[(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the form and manner in which, and the persons by whom, any list of presents referred to in sub-section (2) of section 3 shall be maintained and all other matters connected therewith; and
- (b) the better co-ordination of policy and action with respect to the administration of this Act.]

²[(3)] Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or ³[in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

⁴[**10. Power of the State Government to make rules.**—(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the additional functions to be performed by the Dowry Prohibition Officers under sub-section (2) of section 8B;
- (b) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (3) of section 8B.

(3) Every rule made by the State Government under this section shall be laid as soon as may be after it is made before the State Legislature.]

1. Ins. by Act 63 of 1984, s. 8 (w.e.f. 2-10-1985).

2. Sub-section (2) renumbered as sub-section (3) thereof by s. 8, *ibid.* (w.e.f. 2-10-1985).

3. Subs. by Act 20 of 1983, s. 2 and the Schedule, for certain words (w.e.f. 15-3-1984).

4. Subs. by Act 43 of 1986, s. 9, for section 10 (w.e.f. 19-11-1986).

APPENDIX – V

The Medical Termination Of Pregnancy Act, 1971 (Act No. 34 of 1971)

An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:

1. Short title, extent and commencement.-

- (1) This Act may be called the Medical Termination of Pregnancy Act, 1971.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.-In this Act, unless the context otherwise requires,-

- (a) "guardian" means a person having the care of the person of a minor or a lunatic;
- (b) "lunatic" has the meaning assigned to it in Sec.3 of the Indian Lunacy Act, 1912 (4 of 1912);
- (c) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority,
- (d) "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in Cl.(h) of Sec. 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynecology and obstetrics as may be prescribed by rules made under this Act.

3. When Pregnancies may be terminated by registered medical practitioners.-

- (1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

- (a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is,
- or
- (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are.

Of opinion, formed in good faith, that,-

- (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or
- (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in Cl.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.

4. Place where pregnancy may be terminated.-No termination of pregnancy shall be made in accordance with this Act at any place other than,-

- (a) a hospital established or maintained by Government, or
- (b) a place for the time being approved for the purpose of this Act by Government.

5. Sections 3 and 4 when not to apply.-

(1) The provisions of Sec.4 and so much of the provisions of sub-section (2) of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

6. Power to make rules.-4

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- (a) the experience or training, or both, which a registered medical practitioner shall have if he intends to terminate any pregnancy under this Act ; and
- (b) such other matters as are required to be or may be, provided by rules made under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and If, before the expiry of the session which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Power to make regulations.-

(1) The State Government may, by regulations,-

(a) require any such opinion as is referred to in sub-section (2) of Sec. 3 to be certified by a registered medical practitioner or practitioners concerned in such form and at such time as be specified in such regulations, and the preservation or disposal of such certificates;

(b) require any registered medical practitioner, who terminates a pregnancy to give intimation of such termination and such other information relating to the termination as maybe specified in such regulations;

(c) prohibit the disclosure, except to such persons and for such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of such regulations.

(2) The intimation given and the information furnished in pursuance of regulations made by virtue of Cl.(b) of

Sub-section(1) shall be given or furnished, as the case may be, to the Chief Medical Officer of the State..

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of any regulation made under sub-section (1) shall be liable to be punished with fine which may extend to one thousand rupees.

8. Protection of action taken in good faith.- No suit for other legal proceedings shall lie against any registered medical practitioner for any damage caused likely to be caused by anything which is in good faith done or intended to be done under this act.

APPENDIX – VI

THE INDIAN MEDICAL COUNCIL ACT, 1956

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title, extent and commencement.
2. Definition.
3. Constitution and composition of the Council.
- 3A. Power of Central Government to supersede the Council and to constitute a Board of Governors
- 3B. Certain modifications of the Act
- 3C. Power of Central Government to give directions
4. Mode of election.
5. Restrictions on nomination and membership.
6. Incorporation of the Council.
7. Term of office of President, Vice-President and members.
8. Meetings of the Council.
9. Officers, committees and servants of the Council.
10. The Executive Committee.
11. Recognition of medical qualifications granted by Universities of medical institutions of India.
12. Recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity.
13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First of Second Schedule.
14. Special provision in certain cases for recognition of medical qualifications granted medical institutions countries with which there is no scheme of reciprocity.
15. Right of persons possessing qualifications in the Schedules to be enrolled.
16. Power to require information as to courses of study and examinations.
17. Inspection of examinations.
18. Visitors at examinations.
19. Withdrawn of recognition.
20. Post-graduate Medical Education Committee for assisting council in matters relating to post-graduate medical education.
21. The Indian Medical Register.
22. Supply of copies of the State Medical Registers.
23. Registration in the Indian Medical Register.
24. Removal of names from the Indian Medical Register.
25. Provisional registration for clinical practice.
26. Registration of additional qualifications.
27. Privileges of persons who are enrolled on the Indian Medical Regis.
28. Person enrolled on the Indian Medical Register to notify change of place of residence or practice
29. Information to be furnished by the Council and publication thereof.
30. Commissions of inquiry.
31. Protection of action taken in good faith.
32. Power to make rules.
33. Power to make regulations.
34. Repeal of Act XXVII of 1933.

THE INDIAN MEDICAL COUNCIL ACT, 1956*
ACT NO.102 OF 1956

[30th December, 1956.]

An Act to provide for the reconstitution of the Medical Council of India, and the maintenance of a Medical Register for India and for matters connected therewith.

BE it enacted by Parliament, in the Seventh Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Indian Medical Council Act, 1956.

(2) It extends to the whole of India^{1***}.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

2. Definition.—In this Act, unless the context otherwise requires,—

(a) “approved institution” means a hospital, health center or other such institution recognised by a University as an institution in which a person may undergo the training, if any, required by his course of study before the award of any medical qualification to him;

(b) “Council” means the Medical Council of India constituted under this Act;

* * * * *

(d) “Indian Medical Register” means the medical register maintained by the Council;

(e) “medical institution” means any institution, within or without India, which grants degrees, diplomas or licences in medicine;

(f) “medicine” means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery;

(g) “prescribed” means prescribed by regulations;

(h) “recognised medical qualification” means any of the medical qualifications included in the Schedules;

(i) “regulation” means a regulation made under section 33;

(j) “State Medical Council” means a medical council constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine;

(k) “State Medical Register” means a register maintained under any law for the time being in force in any state regulating the registration of practitioners of medicine;

(l) “University” means any University in India established by law and having a medical faculty.

3. Constitution and composition of the Council.—(1) The Central Government shall cause to be constituted a Council consisting of the following members namely:—

(a) one member from each State other than a Union Territory, to be nominated by the Central Government in consultation with the State Government concerned;

(b) one member from each University, to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University or in case the University has no senate, by members of the Court;

1. The words “except the State of Jammu and Kashmir” omitted by Act 24 of 1964, s. 2 (w.e.f. 16-6-1964).

2. 1st November, 1958, vide notification No. S.O. 2254, dated 28th October, 1958, see Gazette of India, Part II, sec. 3(i).

3. Clause (c) omitted by Act 24 of 1964, s. 3 (w.e.f. 16-6-1964).

*Subject to verification and confirmation by the administrative ministry.

(c) one member from each State in which a State Medical Register is maintained, to be elected from amongst themselves by persons enrolled on such Register who possess the medical qualifications included in the First or the Second Schedule or in Part II of the Third Schedule;

(d) seven members to be elected from amongst themselves by persons enrolled on any of the State Medical Registers who possess the medical qualifications included in Part I of the Third Schedule;

(e) eight members to be nominated by the Central Government.

(2) The President and Vice-President of the Council shall be elected by the members of the Council from amongst themselves.

(3) No act done by the Council shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Council.

3A. Power of Central Government to supersede the Council and to constitute a Board of Governors.—(1) On and from the date of commencement of the Indian Medical Council (Amendment) Act, 2010, the Council shall stand superseded and the President, Vice-President and other members of the Council shall vacate their offices and shall have no claim for any compensation, whatsoever.

(2) The Council shall be reconstituted in accordance with the provisions of section 3 within a period of ²[three years] from the date of supersession of the Council under sub-section (1).

(3) Upon the supersession of the Council under sub-section (1) and until a new Council is constituted in accordance with section 3, the Board of Governors constituted under sub-section (4) shall exercise the powers and perform the functions of the Council under this Act.

(4) The Central Government shall, by notification in the Official Gazette, constitute the Board of Governors which shall consist of not more than seven persons as its members, who shall be persons of eminence and of unimpeachable integrity in the fields of medicine and medical education, and who may be either nominated members or members, ex officio, to be appointed by the Central Government, one of whom shall be named by the Central Government as the Chairperson of the Board of Governors.

(5) The Chairperson and the other members, other than the members, ex officio, shall be entitled to such sitting fee and travelling and other allowances as may be determined by the Central Government.

(6) The Board of Governors shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as is applicable to the Council.

(7) Two-third of the members of the Board of Governors shall constitute the quorum for its meetings.

(8) No act or proceedings of the Board of Governors shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board of Governors; or

(b) any irregularity in the procedure of the Board of Governors not affecting the merits of the case.

(9) A member having any financial or other interest in any matter coming before the Board of Governors for decision shall disclose his interest in the matter before he may, if allowed by the Board of Governors, participate in such proceedings.

(10) The Chairperson and the other members of the Board of Governors shall hold office during the pleasure of the Central Government.]

3B. Certain modifications of the Act.—¹[During the period when the Council stands superseded,—

(a) the provisions of this Act shall be construed as if for the word “Council”, the words “Board of Governors” were substituted;

(b) the Board of Governors shall—

(i) exercise the powers and discharge the functions of the Council under this Act and for this purpose, the provisions of this Act shall have effect subject to the modification that references therein to the Council shall be construed as references to the Board of Governors;

(ii) grant independently permission for establishment of new medical colleges or opening a new or higher course of study or training or increase in admission capacity in any course of study or training referred to in section 10A or giving the person or college concerned a reasonable opportunity of being heard as provided under section 10A without prior permission of the Central Government under that section, including exercise of the power to finally approve or disapprove the same; and

(iii) dispose of the matters pending with the Central Government under section 10A upon receipt of the same from it.]

3C. Power of Central Government to give directions.—[(1) Without prejudice to the provisions of this Act, the Board of Governors or the Council after its reconstitution shall, in exercise of its powers and in the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time.

(2) The decision of the Central Government whether a question is a matter of policy or not shall be final.]

4. Mode of election.—(1) An election under clause (b), clause (c) or clause (d) of sub-section (1) of section 3 shall be conducted by the Central Government in accordance with such rules as may be made by it in this behalf, and any rules so made may provide that pending the preparation of the Indian Medical Register in accordance with the provisions of this Act, the members referred to in clause (d) of sub-section (1) of section 3 may be nominated by the Central Government instead of being elected as provided therein.

(2) Where any dispute arises regarding any election to the Council, it shall be referred to the Central Government whose decision shall be final.

5. Restrictions on nomination and membership.—(1) No person shall be eligible for nomination under clause (a) of sub-section (1) of section 3 unless he possesses any of the medical qualifications included in the First and Second Schedules, resides in the State concerned, and, where a State Medical Register is maintained in that State, is enrolled on that register.

(2) No person may at the same time serve as a member in more than one capacity.

6. Incorporation of the Council.—The Council so constituted shall be a body corporate by the name of the Medical Council of India, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

7. Term of office of President, Vice-President and members.—(1) The President or Vice-President of the Council shall hold office for a term not exceeding beyond the expiry of his term as member of the Council.

(2) Subject to the provisions of this section, a member shall hold office for a term of five years from the date of his nomination or election or until his successor shall have been duly nominated or elected, whichever is longer.

(3) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council or, in the case of a member elected under clause (b) of sub-section (1) of section 3, if he ceases to be a member of the medical faculty of the University concerned, or in the case of a member elected under clause (c) or clause (d) of that sub-section, if he ceases to be a person enrolled on the State Medical Register concerned.

(4) A casual vacancy in the Council shall be filled by nomination or election, as the case may be, and the person nominated or elected to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was nominated or elected.

(5) Members of the Council shall be eligible for re-nomination or re-election.

(6) Where the said term of five years is about to expire in respect of any member, a successor may be nominated or elected at any time within three months before the said term expires but he shall not assume office until the said term has expired.

8. Meetings of the Council.—(1) The Council shall meet at least once in each year at such time and place as may be appointed by the Council.

(2) Unless otherwise provided by regulations, fifteen members of the Council shall form a quorum, and all the acts of the Council shall be decided by a majority of the members present and voting.

9. Officers, committees and servants of the Council.—(1) constitute from amongst its members an Executive Committee and such other Committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act;

(2) appoint a Registrar who shall act as Secretary and who may also, if deemed expedient, act as Treasurer;

(3) employ such other persons as the Council deems necessary to carry out the purposes of this Act;

(4) require and take from the Registrar, or from any other employee, such security for the due performance of his duties as the Council deems necessary; and

(5) with the previous sanction of the Central Government, fix the remuneration and allowances to be paid to the President, Vice-President and members of the Council and determine the conditions of service of the employees of the Council.

10. The Executive Committee.—(1) The Executive Committee, hereinafter referred to as the Committee, shall consist of the President and Vice-President, who shall be members ex officio, and not less than seven and not more than ten other members who shall be elected by the Council from amongst its members.

(2) The President and Vice-President shall be the President and Vice-President respectively of the Committee.

(3) In addition to the powers and duties conferred and imposed upon it by this Act, the Committee shall exercise and discharge such powers and duties as the Council may confer or impose upon it by any regulations which may be made in this behalf.

11. Recognition of medical qualifications granted by Universities of medical institutions of India.—(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

12. Recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity.—(1) The medical qualifications granted by medical institutions outside India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) The Council may enter into negotiations with the Authority in any State or country outside India which by the law of such State or country is entrusted with the maintenance of a register of medical practitioners, for the settling of a scheme of reciprocity for the recognition of medical qualifications, and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette amend the Second Schedule so as to include therein the medical qualification which the Council has decided should be recognised, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

(3) The Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Second Schedule by directing that an entry be made therein in respect of any medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date.

(4) Where the Council has refused to recommend any medical qualification which has been proposed for recognition by any Authority referred to in sub-section (2) and that Authority applies to the Central Government in this behalf, the Central Government, after considering such application and after obtaining from the Council a report, if any, as to the reasons for any such refusal, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein and the provisions of sub-section (2) shall apply to such notification.

13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First of Second Schedule.—(1) The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(2) The medical qualifications granted to a citizen of India—

(a) before the 15th day of August, 1947, by medical institutions in the territories now forming part of Pakistan, and

(b) before the 1st day of April, 1937, by medical institutions in the territories now forming part of Burma, which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(3) The medical qualifications granted by medical institutions outside India which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country or State granting the qualification, or if he has not undergone any practical training in that country or State, he has undergone such practical training as may be prescribed.

(4) The Central Government, after consulting the Council, may by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India which is not included in the second Schedule.

(5) Any medical institution in India which is desirous of getting a medical qualification granted by it included in Part I of the Third Schedule may apply to the Central Government to have such qualification recognised and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend Part I of the Third Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of Part I of the Third Schedule against such medical qualification declaring that it shall be a recognised medical only when granted after a specified date.

14. Special provision in certain cases for recognition of medical qualifications granted medical institutions countries with which there is no scheme of reciprocity.—(1) The Central Government after consultation with the Council may, by notification in the Official Gazette, direct that medical qualifications granted by medical institutions in any State or country outside India in respect of which a scheme of reciprocity for the recognition of medical qualifications is not in force, shall be recognised medical qualifications for the purposes of this Act or shall be so only when granted after a specified date:

Provided that medical practice by the doctors possessing such qualifications shall be limited to the institution to which they are attached for the time being for purposes of teaching, research or charitable work and shall be limited to the period specified in this behalf by the Central Government by general or special order.

(2) In respect of any such medical qualification, the Central Government, after consultation with the Council, may, by notification in the Official Gazette, direct that it shall be a recognised medical qualification only when granted before a specified date.

15. Right of persons possessing qualifications in the Schedules to be enrolled.—Subject to, the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

16. Power to require information as to courses of study and examinations.—Every University or medical institution in India which grants a recognised medical qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification.

17. Inspection of examinations.—(1) The Committee shall appoint such number of medical inspectors as it may deem requisite to attend at any or all of the examinations held by Universities or medical institutions in India for the purpose of recommending to the Central Government recognition of medical qualifications.

(2) Inspectors appointed under this section shall not interfere with the conduct of any examination but they shall report to the Committee on the sufficiency of every examination which they attend and on any other matters in regard to which the Committee may require them to report.

(3) The Committee shall forward a copy of any such report to the University or medical institution concerned, and shall also forward a copy with the remarks of the University or institution thereon, to the Central Government.

18. Visitors at examinations.—(1) The Council may appoint such number of visitors as it may deem requisite to attend at any or all of the examinations held by Universities or medical institutions in India for the purpose of granting recognised medical qualifications.

(2) Any person, whether he is a member of the Council or not, may be appointed as a visitor under this section but a person who is appointed as an inspector under section 17 for any examination shall not be appointed as a visitor for the same examination.

(3) Visitors appointed, under this section shall not interfere with the conduct of any examination but they shall report to the President of the Council on the sufficiency of every examination which they attend and on any other matters in regard to which the Council may require them to report.

(4) The report of a visitor shall be treated as confidential unless in any particular case the President of the Council otherwise directs:

Provided that if the Central Government requires a copy of the report of a visitor, the Council shall furnish the same.

19. Withdrawn of recognition.—(1) When 'upon' report by the Committee or by a visitor appointed under section 18, it appears to the Council that the courses of study and examination to be undergone in any University or medical institution in India in order to obtain a recognised medical qualification or that the standards of proficiency required from candidates at any examination held for the purpose of granting such qualification are not such as to secure to persons holding such qualification the knowledge and skill requisite for the efficient practice of medicine, the Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the State Government of the State in which the University or medical institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University or medical institution, with an intimation of the period within which the University or medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation or, where no, explanation is submitted within the period fixed, then on the expiry of that period, the State Government shall make its recommendations to the Central Government.

(4) The Central Government, after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette direct that an entry shall be made in the appropriate Schedule against the said medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date.

20. Post-graduate Medical Education Committee for assisting council in matters relating to post-graduate medical education.—(1) The Council may prescribe standards of post-graduate, medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India, and for this purpose the Central Government may constitute from among the members of the Council a Post-graduate Medical Education Committee (hereinafter referred to as the Post-graduate Committee).

(2) The Post-graduate Committee shall consist of nine members all of whom shall be persons possessing post-graduate medical qualifications and experience of teaching or examining post-graduate students of medicine.

(3) Six of the members of the Post-graduate Committee shall be nominated by the Central Government and the remaining three members shall be elected by the Council from amongst its members.

(4) For the purpose of considering post-graduate studies in a subject, the Post-graduate Committee may co-opt, as and when necessary, one or more members qualified to assist it in that subject.

(5) The views and recommendations of the Post-graduate Committee on all matters shall be placed before the Council; and if the Council does not agree with the views expressed or the recommendations made by the Post-graduate Committee on any matter, the Council shall forward them together with its observations to the Central Government for decision.

21. The Indian Medical Register.—(1) The Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications.

(2) It shall be the duty of the Registrar of the Council to keep the Indian Medical Register in accordance with the provisions of this Act and of any orders made by the Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (1 of 1872), and may be proved by a copy published, in the Gazette of India.

22. Supply of copies of the State Medical Registers.—Each State Medical Council shall supply to the Council three printed copies of the State Medical Register as soon as may be after the commencement of this Act and subsequently after the first day of April of each year, and each Registrar of a State Medical Council shall inform the Council without delay of all additions to and other amendments in the State Medical Register made from time to time.

23. Registration in the Indian Medical Register.—The Registrar of the Council may, on receipt of the report of registration of a person in a State Medical Register or on application made in the prescribed manner by any such person, enter his name in the Indian Medical Register:

Provided that the Registrar is satisfied that the person concerned possesses a recognised medical qualification.

24. Removal of names from the Indian Medical Register.—(1) If the name of any person enrolled on a State Medical Register is removed therefrom in pursuance of any power conferred by or under any law relating to registration of medical practitioners for the time being in force in any State, the Council shall direct the removal of the name of such person from the Indian Medical Register.

(2) Where the name of any person has been removed from a State Medical Register on any ground other than that he is not possessed of the requisite medical qualifications or where any application made by the said person for restoration of his name to the State Medical Register has been rejected, he may appeal in the prescribed manner and subject to such conditions including conditions as to the payment of a fee as may be laid down in rules made by the Central Government in this behalf, to the Central Government, whose decision, which shall be given after consulting the Council, shall be binding on the State Government and on the authorities concerned with the preparation of the State Medical Register.

25. Provisional registration for clinical practice.—If the courses of study to be undergone for obtaining a recognised medical qualification include a period of training after a person has passed the qualifying examination and before such qualification is conferred on him, any such person shall, on application made by him in this behalf, be granted provisional registration in a State Medical Register by the State Medical Council concerned in order to enable him to practise medicine in an approved institution for the period aforesaid.

26. Registration of additional qualifications.—(1) If a person whose name is entered in the Indian Medical Register obtains any title, diploma or other qualification for proficiency in sanitary science, public health or medicine, which is a recognised medical qualification, he shall on application made in this behalf in the prescribed manner, be entitled to have an entry, stating such other title, diploma, or other qualification made against his name in the Indian Medical Register either in substitution for or in addition to any entry previously made.

(2) The entries in respect of any such person in a State Medical Register shall be altered in accordance with the alterations made in the Indian Medical Register.

27. Privileges of persons who are enrolled on the Indian Medical Register.—Subject to the conditions and restrictions laid down in this Act regarding medical practice by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practise as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled.

28. Person enrolled on the Indian Medical Register to notify change of place of residence or practice.—Every person registered in the Indian Medical Register shall notify any transfer of the place of his residence or practice to the Council and to the State Medical Council concerned, within thirty days of such transfer, failing which his right to participate in the election of members to the Council or a State Medical Council shall be liable to be forfeited by order of the Central Government either permanently, or for such period as may be specified therein.

29. Information to be furnished by the Council and publication thereof.—(1) The Council shall furnish such reports, copies of its minutes, abstracts of its accounts, and other information to the Central Government as that Government may require.

(2) The Central Government may publish in such manner as it may think fit, any report, copy, abstract or other information furnished to it under this section or under sections 17 and 18.

30. Commissions of inquiry.—(1) Whenever it is made to appear to the Central Government that the Council is not complying with any of the provisions of this Act, the Central Government may refer the particulars of the complaint to a Commission of Inquiry consisting of three persons, two of whom shall be appointed by the Central Government, one being a Judge of a High Court, and one by the Council, and such Commission shall proceed to inquire in a summary manner and to report to the Central Government as to the truth of the matters charged in the complaint, and in case of any charge of default or of improper action being found by the Commission to have been established, the Commission shall recommend the remedies, if any, which are in its opinion necessary.

(2) The Central Government may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, it may think fit, and if the Council fails to comply with any such requirement, the Central Government may amend the regulations of the Council,

or make such provision or order or take such other steps as may seem necessary to give effect to the recommendations of the Commission.

(3) A Commission of enquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents, and shall have all such other necessary powers for the purpose of any inquiry conducted by it as are exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

31. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Government, the Council or a State Medical Council or any Committee thereof, or any officer or servant of the Government or Councils aforesaid for anything which is in good faith done or intended to be done under this Act.

32. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

33. Power to make regulations.—The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for—

- (a) the management of the property of the Council and the maintenance and audit of its accounts;
- (b) the summoning and holding of meetings of the Council, the times and places where such meetings are to be held, the conduct of business there at and the number of members necessary to constitute a quorum;
- (c) the resignation of members of the Council;
- (d) the powers and duties of the President and Vice-President;
- (e) the mode of appointment of the Executive Committee and other Committees, the summoning and holding of meetings, and the conduct of business of such Committees;
- (f) the tenure of office, and the powers and duties of the Registrar and other officers and servants of the Council;
- ¹[(fa) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of section 10A;
- (fb) any other factors under clause (g) of sub-section (7) of section 10A;
- (fc) the criteria for identifying a student who has been granted a medical qualification referred to in the *Explanation* to sub-section (3) of section 10B.]
- (g) the particulars to be stated, and the proof of qualifications to be given in applications for registration under this Act;
- (h) the fees to be paid on applications and appeals under this Act;
- (i) the appointment, powers, duties and procedure of medical inspectors and visitors;^{2***}
- ³[(j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;

1. Ins. by Act 31 of 1993, s. 3 (w.e.f. 27-8-1992).

2. The word "and" omitted by Act 24 of 1964, s. 16 (w.e.f. 16-6-1964).

3. Ins. by s. 16, *ibid.* (w.e.f. 16-6-1964).

(k) the standards of staff, equipment, accommodation, training and other facilities for medical education;

(l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(m) the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners; and]

¹[(ma) the modalities for conducting screening tests under sub-section (4A), and under the proviso to sub-section (4B), and for issuing eligibility certificate under sub-section (4B), of section 13;]

²[(mb) the designated authority, other languages and the manner of conducting of uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level;]

³[(n)] the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;

34. Repeal of Act XXVII of 1933.—As soon as the new Act [that is, the Indian Medical Council Act, 1956 is brought into force, the existing Council will cease to function as there is no provision for continuing the existing Council, and some time will necessary have to elapse before a new Council can be constituted under the 1956 Act. As it is desirable that there should be continuity in the existence of the Medical Council, it is proposed to provide for the continuance of the existing Council after the commencement of the new Act until the new Council is constituted." This section gives effect to this object.

1. Ins. by Act 34 of 2001, s. 3 (w.e.f. 3-9-2001).

2. Ins. by Act 39 of 2016, s. 3 (w.e.f. 24-5-2016).

3. Clause (j) re-lettered as Clause (n) by Act 24 of 1964, s. 16 (w.e.f. 16-6-1964).

APPENDIX – VII

THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Prohibition of advertisements containing indecent representation of women.
4. Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women.
5. Powers to enter and search.
6. Penalty.
7. Offences by companies
8. Offences to be cognizable and bailable.
9. Protection of action taken in good faith.
10. Power to make rules.

THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

ACT NO. 60 OF 1986

[23rd December, 1986.]

An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Indecent Representation of Women (Prohibition) Act, 1986.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “advertisement” includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas;

(b) “distribution” includes distribution by way of samples whether free or otherwise;

(c) “indecent representation of women” means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals;

(d) “label” means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;

(e) “package” includes a box, carton, tin or other container;

(f) “prescribed” means prescribed by rules made under this Act.

3. Prohibition of advertisements containing indecent representation of women.—No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

4. Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women.—No person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form:

Provided that nothing in this section shall apply to—

(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is in the interest of science, literature, art, or learning or other objects of general concern; or

(ii) which is kept or used *bona fide* for religious purposes;

1. 2nd October, 1987, vide notification No G.S.R. 821(E), dated 25th September, 1987, see Gazette of India, Extraordinary, Part II, sec. 3(i).

(b) any representation sculptured, engraved, painted or otherwise represented on or in—

(i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958); or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose;

(c) any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.

5. Powers to enter and search.—(1) Subject to such rules as may be prescribed, any Gazetted Officer authorised by the State Government may, within the local limits of the area for which he is so authorised,—

(a) enter and search at all reasonable times, with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed;

(b) seize any advertisement or any book, pamphlet, paper, slide film, writing, drawing, painting, photograph, representation or figure which he has reason to believe contravenes any of the provisions of this Act;

(c) examine any record, register, document or any other material object found in any place mentioned in clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act:

Provided that no entry under this sub-section shall be made into a private dwelling house without a warrant:

Provided further that the power of seizure under this sub-section may be exercised in respect of any document, article or thing which contains any such advertisement, including the contents, if any, of such document, article or thing, if the advertisement cannot be separated by reason of its being embossed or otherwise from such document, article or thing without affecting the integrity, utility or saleable value thereof.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(3) Where any person seizes anything under clause (b) or clause (c) of sub-section (1), he shall, as soon as may be, inform the nearest Magistrate and take his orders as to the custody thereof.

6. Penalty.—Any person who contravenes the provisions of section 3 or section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

7. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other

officer of the company, such director, manager, secretary or other officer shall be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

8. Offences to be cognizable and bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be bailable.

(2) An offence punishable under this Act shall be cognizable.

9. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act.

10. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which the seizure of advertisements or other articles shall be made, and the manner in which the seizure list shall be prepared and delivered to the person from whose custody any advertisement or other article has been seized;

(b) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

APPENDIX – VIII
CONFERENCE/ SEMINAR PRESENTATION CERTIFICATES



RNB Global City, Ganganagar Road, Bikaner - 334601 (Rajasthan)

CERTIFICATE OF PARTICIPATION

This is to Certify that **Ms./Mr. Jesmin Banu Khan**, Research Scholar - (Law), Lovely professional University has participated & Presented his/her Paper on **Topic - “Killing of Female Foetus in womb”** in an Online National Conference on Women & the Law organised by **RNBGU School of Law**, held at RNB Global University, Bikaner on 04th & 5th March, 2022. We wish success in his/her life.

Issued on 05.03.2022

Dipali

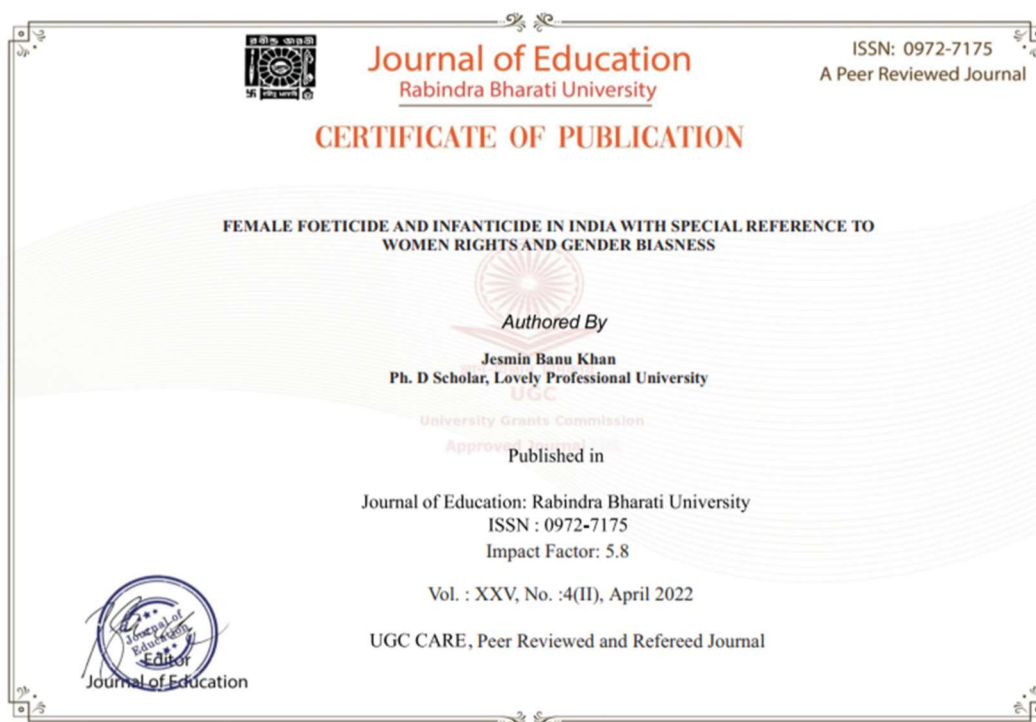
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APPENDIX – IX

CERTIFICATE OF PUBLICATION



APPENDIX – X

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