CHAPTER 4

4.1 INFANTICIDE

India has by and large not had a favourable ratio as far as the sex ratio is concerned. Even before the advent of technology, the ratio has been poor. One of the causes for the poor ratio was infanticide practiced in some areas. While not on widely prevalent as sex selection today using technology nevertheless infanticide coupled with son preference led to a low sex ratio.

India has not been alone in its record on infanticide. The example usually held out by the world is China. China, like India had in certain places a history of female infanticide. This custom had largely fallen into disuse, but resurfaced after the introduction of the one child policy. The authorities have tried to prevent it but have largely been unsuccessful.

In India, infanticide as a social problem was realized by British officers in the districts where it was practiced. The Census when introduced too pointed this out. There were different strategies used to tackle this problem. However, intriguingly some of the policies of the British itself served to exacerbate the problem. Parallels can be drawn with the approach of the law today. Different strategies have been used to tackle sex selection, with as disappointing a success as the British had. Similarly, various policies we have in place might in fact encourage infanticide.

The law on infanticide we have today in the Indian Penal Code is the law given to us by the British. In implementation, we have had as little a degree of success. Again, looking at the law from a feminist perspective, we see that in fact the infanticide law has been nothing but a step at further victimizing the victim.

What will be the probable impact on infanticide if sex selections were to be banned? Would the two child norm impact infanticide in any way? These are questions demographers and social scientists have risen.

Abandonment is often seen as a way out in infanticide. The procalamity of this and whether it should be punished is also seen. The credit baby scheme recently reintroduced by the Tamil Nadu government tries to deal with infanticide/abandonment, but is it a good enough solution?
The research questions sought to be partially answered in this Chapter are –

5- How do the various laws and policies dealing with reproductive right, technology and crime impact –

a. Sex selection trends

b. The implementation of law relating to sex selection

6- Assuming law to be one way of tackling this social problem, what can be done in order to ameliorate the current situation?

4.2 The Colonial Experience:

In separate articles, two writers, Yogesh Snehi and L.S.Vishwanath, have separately analysed the colonial experience of infanticide. The perception of the colonizers and the colonized in this context were completely different. For the colonizers, it was an unthinkable, inhuman crime; for the colonized, it was a practical step, justified in the social context of dowries, marriage expenses, and the need for a son. Of course, there were exceptions. Not all dowry-giving communities practiced infanticide. The converse was also true. Jats and Muslims who did not give dowry. Hindu lower castes and Sikhs who received bride price were all found guilty of committing female infanticide. The response of the British was twofold-criminalization as well as social exhortation. Both failed miserably, and infanticide was still carried on. The failure of the colonial state shows the resilience of institutionalised norms to which female infanticide was related and about which little still remains known.

The British fight against infanticide was a long one. In December 1789, Jonathar Duncan, the British resident at Benares first found instances of female infanticide while on tour. Hypergamy and dowries were touted as the main reasons. Over time, a number of castes have been identified in Punjab, Rajasthan, etc., which

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1 See also Yogesh Snehi, “Female Infanticide and Gender in Punjab. Imperial Claims and Contemporary Discourse,” 38 Economic and Political Weekly 4302 at 4303
2 Yogesh Snehi, “Female Infanticide and Gender in Punjab. Imperial Claims and Contemporary Discourse,” 38 Economic and Political Weekly 4302 at 4303
3 A Gandimathi, “Memorandum to SCW to relieve the victims of female infanticide who are accused guilty under Sec. 302, Paper, Public Hearing by State Commission for Women, Chennai, 10 July 2002 at 7
carried out female infanticide. The 1921 census report classifies cases into two categories, namely, castes having ‘a tradition’ of female infanticide and castes without such a tradition. Interestingly, the same castes continue to have a poor sex ratio as far as girl children are concerned even in the 19th century.

There was also the problem of cross-caste influence. The higher castes, which practiced infanticide, influenced the lower castes, and thus infanticide as a phenomenon spread.

For example, E G Jenkinson, the officiating magistrate of Saharanpur district found on investigation in mid-1830s, that the certain clans of Rajputs in the district practiced female infanticide. He also found that two other castes, the Tuggas and Kolis, who had a ‘fair proportion’ of girls all over the district, practiced female infanticide only in one tehsil. “They have probably” says Jenkinson “adopted the practice of female infanticide from the Rajputs in the midst of whom they have been living for so many years.”

Contemporary scholarly discourse has, however, countered these imperial claims and has shown how, on the one hand, colonial policies were primarily responsible for the failure in checking and, on the other hand, perpetusing this menace. The British never found it worthwhile to examine the social effects of their own methods of governance and development that produced the milieu in which sons became even more preferred and dowry gradually acquired the very characteristic that the British purported to reform.

The masculinisation of the economy was way strengthened by the British in Punjab. This made the male child even more desirable. The colonial policy of an agrarian commercialization led to the establishment in law of private, attainable property. Alienation of ancient rights of women in family property resulted Land was hence struck off from the list of ‘stridhan’. Accordingly, only men could own family

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4 L S Vishwanth, “Female Infanticide: the Colonial Experience,” *Economic and Political Weekly*, May 29, 2004 at 1
7 Yogesh Snehi, “Female Infanticide and Gender in Punjab. Imperial Claims and Contemporary Discourse,” 38 *Economic and Political Weekly* 4302 at 4303
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property. Further, the stress on timely payment of revenue forced the peasants to take loans and, in the event of failure of crops, sink into indebtedness. The British generated new job opportunities for ‘martial races’ towards defence and development. All this, and the effects of recruiting in British Indian Army from the ranks of Punjabi peasants, particularly the land tilling jats, generated a demand for strong young men for cash wages and led to a preference for a ‘gender-targeted family’ and those days it could only be done through selective female infanticide.

The government attempted to suppress infanticide through ban and regulation. The most distinguishing feature of the Punjab system was the holding of large-scale meetings and throwing the entire influence of the government in striking at the roots.

Coercion yielded temporary results. Starting from Dancan’s efforts in 1789 to the passing of the female Infanticide Act in March 1870. British efforts to stop female infanticide covered a period of nearly a hundred years. The continuing law female to male sex ratios among castes known to practice female infanticide, as revealed by the Census from 1891 onwards, is proof enough that the British efforts at eradicating female infanticide did not make a dent in the problem.

To stop female infanticide, the British tried persuading the castes that practiced it to reduce dowry and Wedding expenses. In the 1840s and 1850s, meeting were organised in the North Western Provinces and Punjab to obtain agreements from the castes that they will resort to ‘self-regulation’ by cutting down on, wedding expenditure. The agreements did not lead to any concrete result. Later, British officials admitted that the agreements were a non-starter because the ‘problem’ of hypergamy, which mainly contributed to expensive weddings of girls, had not been addressed. Perhaps taking a cue from this experience, the British tried to each hypergamy and encouraged reciprocal marriages to stop female infanticide.

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9 Yogesh Snehi, “Female Infanticide and Gender in Punjab. Imperial Claims and Contemporary Discourse,” 38 Economic and Political Weekly 4302 at 4303
11 Ibid at 6
Several laws on preventing infanticide were passed. All failed miserably. We continue some of those laws today. The Indian Penal Code provisions, which were also used to combat infanticide by the British, are still in use today. And unsurprisingly, the success or rather the lack of success remains the same.

4.3 The Chinese experience

The Chinese experience is important in the Indian context for several reasons –

One, infanticide in China was far more prevalent than it was in India. Two, certain policy moves on population exacerbated the problem of infanticide. Three, the culture of son preference is as prevalent in China as in India. Four, with dwindling infanticide due to stringent laws and their enforcement, the focus moved to newer methods of eliminating females. Five, research in China has shown that the impact of sex selection technology is visible in China; however, the sex ratio is even now not as high as it is in India.

In 1930s and 1940s, infanticide may have been stimulated in part by troubled times, including civil war and the Japanese invasion. A tradition of infanticide and abandonment, especially of females, existed in China before the foundation of the People’s Republic in 1949. The decline of excess female mortality after the establishment of People’s Republic was assisted by the action of a strong government, which tried to modify these customs as well as so other traditional practices that it viewed as harmful. Soon after, however, the consistency of the estimates over 37 years in China (1953 to 1990) and sex ratios show that much of the excess female mortality occurred soon after birth. The reason for this excess female mortality was sex-selective infanticide, a traditional practice in China.

The 1970s were quieter, but then it saw resurgence after 1980 because of the one-child policy introduced in 1979; this policy was administered at the local level to induce couples to avoid having a second or higher order birth. The Chinese press

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13 A missionary (and naturalist) observer in the late nineteenth century interviewed 40 women over age 50 who reported having borne 183 sons and 175 daughters, of whom 126 sons but only 52 daughters survived to age 10; by their account, the women had destroyed 78 of their daughter (Wolf and Huang 1980: 230) c.f. Ansley J Coale and Judith Banister, “Five Decades of Missing Females in China,” *Demography*, Vol. 31, No. 3 (Aug 1994), 459-479 at 472.
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Carried many stories and editorials reporting and condemning this practice. On April 9, 1983, for example, the China Daily published an article titled “Female Infanticide Evokes Danger of Sexes Imbalance”\(^\text{14}\).

The Chinese official campaigns to combat rural female infanticide in the 1980s focused on the slogan of fighting against the resurgence of feudal patriarchal concepts and the Confucianist traditional of son preference. This is similar to the campaigns used by the Indian government today. In China, the blame lay more on the population policy rather than the age-old feudal cultural tradition of son preference which led to the re-emergence of female infanticide.\(^\text{15}\)

Zeng Yi however points out that today infanticide is no longer happening on the lines that it used to. To support his argument he lays down six observed phenomena\(^\text{16}\). Several parallels with India can be drawn from his analysis of the Chinese situation.

1. **Concealment of infanticide is not easy.** The close bond among neighbours in China makes it difficult to conceal a serious crime such a infanticide. That is true of India too. Infanticide is a crime, and once a female child is born, although it is possible to eliminate her, the risks are considerably high. Women’s organizations have carried out timely rescues of children and untimely exhumations of bodies in several cases\(^\text{17}\).

2. **Infanticide is not a cost-effective method of sex selection.** The psychological and moral costs are so high that people are unlikely to take such a step except under extreme circumstances. The argument that the death of a child at the very beginning would prevent a life of misery may not always be acceptable to a vast majority.

3. **Abortion is seen as moral and legal.** As sex identification of the foetus become increasingly available at moderate cost, couples who wish to have a


\(^{15}\) Patrick T.C. Hui “Birth in China; Cultural, Gender, Socio-economic and Legislative Perspectives in Light of CED A W Standards;” 32 **HKLJ** 187 pp 193-194


boy avail themselves of this technology rather than commit female infanticide, with its very high risk of criminal penalty and psychological/moral cost. With abortion laws becoming liberalized in both India and China, abortion is seen as legal as well. Where technology is not outside the affordability of couples. This is a good way of ensuring that a female child is not born. There were also the acts of a legal medical procedure surrounding sex selective abortions.

(4) Abandonment is an easy way out. Some parents may abandon a female infant but usually in a place where she can be easily found by others. Anyone who finds as abandoned baby can send her (or him) to the local department of civil affairs, which by government regulation is responsible for the infant’s care. Even in times when infanticide was in its heyday, abandonment was more popular as it was an easy way out. The fact that the mortality rate in state run orphanages was extremely high was no deterrent.

(5) Literacy seems to have heightened rather than reduced the discrimination. The hypothesis of prevalence of female infanticide cannot explain why the sex ratio of births to literate, urban mothers is higher than illiterate, rural mothers. The only explanation is that literacy brought awareness of sex selection technology and being in an urban centre gave such mothers access to such technology. Since rural women lacked both, the sex ratio is lower. This is true in the Indian context. Sex ratios in tribal areas and among Scheduled Castes and Scheduled Tribes are far better than of higher castes. Similarly, urban centres which saw the first sex determination centres emerging show dismal ratios.

Even small numbers of cases of female infanticide, abandonment, and neglect are a serious violation of the fundamental human right of women and children. Such events do not conform to the principle of sexual equality in modern civilization and should be taken seriously by the government and society at large\footnote{Zeng Yi; et al. “Causes and Implications of the Recent Increase in the Reported Sex Ratio at Birth in China,” \textit{Population and Development Review}, Vol. 19, No.2 (June 1993), 283-302 at 295}
4.4 Female Infanticide and Abandonment:

In India too, talks with adoption agencies and children’s homes have shown that a large number of girl babies are abandoned. Abandonment in lieu of infanticide has probably been best studied in Tamil Nadu. The revival of the Cradle Baby Scheme in Tamil Nadu seeks to provide an option for those who would otherwise have murdered their female children. The State offers itself as the ultimate guardian of the child when all else fails. However, the Cradle Baby Scheme itself has come under fire as legitimizing abandonment of the girl child. Many a time, it is not being an option. Instead of encouraging abandonment of the child, parents must be encouraged to keep the female child.

In addition, activists has pointed out that many guidelines laid down for the Cradle Baby Scheme are not followed\textsuperscript{19}. On enquiry, many parents said that they had surrendered their female babies either at the cradle points or at adoption agencies without signing a relinquishment deed or surrender document. The reception centre in Salem was the only exception\textsuperscript{20}. This goes against the Juvenile Justice Act and also against principles of which the Cradle Baby Scheme is based. Counseling, which should have been the first tactic, is not used. The reason given for not counseling the biological parents was, often, that the parents would be intimidated and leave without relinquishing the infant who would later be killed.

\textsuperscript{19} P Phavalam “Critical Analysis of Tamil Nadu Government Cradle Baby Scheme”, Paper, Public Hearing by State Commission for Women, Chennai, 10 July 2002 at 3
\textsuperscript{20} P Phavalam “Critical Analysis of Tamil Nadu Government Cradle Baby Scheme”, Paper, Public Hearing by State Commission for Women, Chennai, 10 July 2002 at 5

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One problem with such an approach is that parents feel that once they leave the child there, the deed is done. In the absence of execution of relinquishment deed, parents have no knowledge that they have rights to claim back the child within 60 days. Also, the lack of a deed means that these cases are treated as those of abandonment by unknown parents rather than relinquishment. Tracing the child also becomes difficult as records are not properly maintained, and there have been instances of children disappearing\(^{21}\).

Studies show that the birth order of the girl child seems to have a considerable bearing on female infanticide. Thus, most of the victims are daughter who have a birth order greater than one and a surviving older sister. The third child in most cases is eliminated\(^{22}\).

Criminalisation has not been a solution in the case of infanticide. Take the example of Karuppayee who represents the first conviction in Tamil Nadu\(^{23}\). A case was filed against her and her husband in 1994. Her first-born male child and third-born female child met with natural deaths. She strangled her fifth girl-child the day the baby was born. The Indian Council of Child Welfare lodged a complaint. The police moved with great alacrity. By 1996, she was convicted, but her husband was let off because he was not present at the scene of the crime. Karuppayee made big news because she was the first woman in Tamil Nadu to be convicted of female infanticide. She was interviewed umpteen times and attained the status of a ‘notorious celebrity’. Her case is pending before the high court, and she is out on bail. The impact of all this on her life has been terrible. She no longer wishes to meet the media and has become a recluse. She prefers not to interact at all. Many women convicted of infanticide have been badly scarred by their experiences.

\(^{21}\) An infant handed over at a reception centre set up in Dharmpuri, as part of the cradle baby scheme in the Dharmpuri Government Hospital was missing. See P Phavalam “Critical Analysis of Tamil Nadu Government Cradle Baby Scheme”, Paper, Public Hearing by State Commission for Women, Chennai, 10 July 2002 at 5

\(^{22}\) M Jeeva, “A Perspective Paper on understanding Female Infanticide and Foeticide.” Public hearing by state commission for women, Chennai, 10 July 2002 at 3

\(^{23}\) Lalitha Sridhar, “Treating infanticide as homicide is inhuman,” info Change News & Features, August 2004 at 1
Was criminalization of infanticide the right thing to do? Treating infanticide, which is a social problem, as culpable homicide and charging the mother especially under the Indian Penal Code is not a solution which will succeed. It is based upon the presumption that the woman is acting independently and of her own accord. That the decision is hers alone. How can such a presumption stand in the patriarchal social structure and value system we have? She is more a victim than a criminal. Her very survival depends upon her action\(^{24}\).

Also, the impact of judicial action has been devastating. Families have been displaced, broken up, older children have dropped out of school, convicted women have shown suicidal tendencies, the event has caused financial indebtedness and, when both parents are jailed, and older children have become destitute. When families are placed in remand, the social ostracism itself becomes a punishment more severe than anything the courts can give, beside, women in custody do not receive post-natal care\(^{25}\).

Historically, thus, there has been a close link between infanticide and sex selection. In communities with a high degree on infanticide, high sex ratios were also common. These same communities have easily gravitated to sex selection and their sex ratio continues to be even higher. At the same time, infanticide has never completely disappeared. There are infanticides belts even today in Tamil Nadu and perhaps in other places, though not so well documented. A ban on sex selection may thus have repercussions which the law does not foresee – it may revive infanticide or abandonment of female children, yes. But, it may also serve the purpose of introducing infanticide or abandonment as an option in communities where it has not existed before, communities which have got used to the idea of sex selection, but who are now barred from accessing such technology by law.

\(^{24}\) See also Lalitha Sridhar, “Treating infanticide as homicide is inhuman,” Info Change News & Features, August 2004 at 1

\(^{25}\) Ibid at 2
This is a fearful scenario, and law must take lead and be prepared for solutions for the same.