CHAPTER-II

HOSPITAL CRIMES AND SEX DETERMINATION AS ITS KIND

II.1 INTRODUCTION:

Crime comprises of those violations of the natural order, which if unchecked would result in a catastrophe. Crime is an act of hatred. A crime may be an act of commission or omission. It may be an act of fault or default which is prejudicial to the community or the state as a whole, or to the humanity at large.

According to Blackstone: “A crime is an act committed or omitted in violation of a public law either forbidding or commanding it.”

In Kenny’s words: “Crimes are wrongs whose sanction is punitive and is in no way remissible by any private person, but it is remissible by Crown alone.”

Sutherland defines crime as, “A combination of two abstract criteria is generally regarded by legal scholars as necessary to define crime, namely legal description of an act as socially injurious and legal provision of penalty and for the act both these requirements are the product of positive law. It would be inappropriate to say that the crimes are merely ‘acts forbidden by the law under pain of punishment.’”

The Indian Penal Code, 1860 uses the term offence in place of crime. Sec. 40 of the Act defines an offence as a “thing made punishable by this Code, or under any special or local law.” This definition covers only a part of Sutherland’s definition, however, the act forbidden by law contains within it the element of social injury.

The Indian definition is limited to a thing made punishable by the Code, except in regard to certain provisions of the Code. This definition also includes all omissions and acts made punishable under special and local laws.

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3 Supra.
4 Supra note 1, p-367.
For the reason of social disapproval of crimes, these terms, crime and morality also have a co-relation. The authors believe that morality and criminality are not co-extensive. However reprehensible from a moral or ethical point of view a certain conduct may be, it may still not be an offence if it is not made punishable by law.\(^5\)

Clarifying as is there any difference between terms crime and morality we may say etymologically speaking, there is not much difference between words crime and offence but if we speak legally there does exist a difference between the two. Generally, crime is a broader concept than offence. Crime as such involves morally obnoxious tasks which are punishable by law. Whereas offences are those actions which are punishable by law. An action to be a crime has to have two characteristics it could be firstly outrageous and then punishable by law while an offence has to be made punishable by the law first and whether or not it is morally outrageous is a question to be decided afterwards.

**II.2 HOSPITAL CRIMES ARE MORE SERIOUS**

Whatever the technicalities may be in defining an offence or a crime, it is true that a crime is an act of serious nature and is considered to be a wrong against the society at large. Crimes in hospitals however are categorized as more serious in nature.

Medical service is the most humane of all the services to the humanity. It needs constant improvement, enrichment and application of mind. A doctor is meant for the physical and mental well being of the patients. Therefore, he must realize his obligations towards the patients. There is an implicit trust and confidence between a patient and a doctor based on which the doctor offers medical care to the patients. The common people surrender to the doctors and deem them next to God.

At the macro level, the professionalization of medicine has given a monopoly to those who are qualified and registered under the law. It is a specific kind of trade between the profession and the society. Society has granted a monopoly to the profession to practice

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medicine, in lieu of the profession’s regulate the conduct of its member. Therefore, the society has a right to demand that the profession strictly implements the Code of Ethics⁶.

In the ordinary circumstances hospitals cannot be the places of crime. They are like temples to the patients who treat the doctors as demi-gods. It is expected of them that they would fight tooth and nail with all the ailments to provide solace to the patients.

Till the profession continues to regulate the conduct of its members, the society does not interfere with the autonomy of the profession. But when it fails in the commitment to properly implement the Code, society steps in with separate laws which necessarily restrict the autonomy of the profession.

Apart from the World Medical Association and International Code of Medical Ethics in India, there is an Indian Medical Council and State Medical Councils which try to regulate the professional conduct of the doctors. The Medical Councils are supposed to regulate the conduct of the medical professionals by monitoring their skill and conduct and exist under the Indian Medical Council Act 1956.

At the beginning of the twenty first century, India is poised to take lead in healthcare service globally. It is becoming a destination of health tourism for the entire world. Furthermore, the majority of the Indian people, who are more educated, ignored passive, dependent are now demanding quality care, are aggressive, informed and ready to fight for justice. With the increased demand in healthcare, application of modern technology, cost escalation in healthcare, commercialization of medical education, fake doctors in every city and establishment of large number of nursing homes by many fake doctors and quick rich enterprises, there have been increasingly reported cases of professional misconduct, negligence and consumer exploitation.⁷

With advent of new science and better technology the medical professionals are in a better position to help the patients. As every coin has two sides, the medical advancement alongwith the benefits of mankind, gave an opportunity to the medical professionals to

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exploit. Avarice-driven doctors have been indulging in all sorts of unethical acts by misusing the technology and advancement. But these days one finds that there is an ample scope for the doctors to exploit his special position in the society, more so in the Indian Society which is largely rural and ignorant. The members of the society as well as the medical professional and the state must together try to uphold the respectful position of the profession.

A variety of offences are committed by the practitioners of this so called noble profession. These ‘saviours of life’ turn into ‘Satan’ and commit so many offences under the sheet of their nobility. Organ-trading, medical termination of pregnancy, sex determination tests, fake medico-legals, sexual harassment, maiming for promoting beggary or for insurance money are only to name a few. If the high class doctors indulge in such crimes, then the other hospital employees do not lag behind. They commit the offences like criminal misappropriation of property of the deceased. And sexual offences as are regularly reported in the media. Government doctors and subordinate staff also indulge in bribery.

There are many horrific practices which are being carried on by the so called protectors of humanity. It is sarcastically said the ‘Hypocritic Oath’ taken by the doctors have turned into ‘Hippocratic Oath’ and now the doctors go against the promise of serving the mankind. They rather try their level best to bilk the innocent patients who turn to them in search of solace.

It is a known fact that the girl child is not preferred in India. Infact, full attention is paid to this thing that female children are normally not born. In this kind of scenario, child swapping incidents are not uncommon. The doctors in a bid to make an extra buck have been indulging in swapping of children and even sale of newly born babies. The hospital people actually pay the doctors to swap their babies from girl children to boy children, the healthier ones in place of weaker or physically handicapped newly borns, even live babies in place of still born children. The hapless mothers are unaware that their bundles of joys have been snatched from them and whom they are nurturing are not their own blood.

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9 Newborn male baby reportedly changed at Ludhiana Hospital, The Ludhiana Tribune (3 October, 2003)
As if the doctors were not enough in fleecing and tormenting the patients, the other hospital staffs including the nurses and the ward boys have started indulging in crimes against the patients. The nurses and the ward boys have also started bilking the innocent helpless patients. They systematically connive with the people who are ready to pay a hefty amount in return of the babies whom they steal from their parents.

Another horrendous exercise which is carried on in the hospitals is the sexual harassment of the patients. The hapless patients who are physically wounded are mentally wounded too by the hospital staff i.e. the doctors, ward boys and other male members of hospital staff who indulge in harassing the patients sexually. The doctors camouflage check up of the patients. There have been instances when the doctors have extended their action to rape. Even the male staff also makes helpless patients target of their satanic desires. Many of the patients who are sexually assaulted are those who are rendered helpless and unable to speak are patients of coma or mental illness. This is just the tip of the iceberg which is revealed as only a very few cases of sexual harassment faced by the helpless patients are reported.

Commercialization of organs has become a blot on the ethical foundations of the medical profession. There is a sort of organized network involving hospitals, doctors, tents and agents doing unethical trading in human organs through the organ racket. In the whole state of Punjab many Kidney Transplant Centres are operating and they are nothing but organ selling and buying shops. A kidney Racket was busted in Amritsar in 2002\textsuperscript{10} the details of the case proved that certain Doctors of Jalandhar also had a role in it.\textsuperscript{11} Some hospitals act as ‘Frontal Outlets’ for the same. Dr. Amit Kumar nicknamed as “Dr. Kidney” was arrested in January 2008, as he was running a private hospital just outside Delhi which allegedly lured a forced hundreds of poor people into giving up their kidneys, and he made millions by selling their organs.\textsuperscript{12}

\textsuperscript{10} Kidney Racket: Two Doctors arrested, \textit{The Tribune} (2 January, 2002)
\textsuperscript{11} Kidney Racket: 5 doctors among 6 convicted, \textit{The Tribune} (3 November, 2013)
\textsuperscript{12} Kidney Kingpin Amit Kumar held in Nepal, \textit{The Times of India} (8 February, 2008.)
Rich buyers from India and abroad have been buying kidneys and other organs from poor slum dwellers and rural folks without proper information and consent of the concerned persons. The choice before the poverty stricken people is whether to sell one kidney and live or to keep both kidneys and die of starvation.13

The protectors of human life quite often are blinded by money and they indulge in such practices which as a doctor they must not do. The doctors whose reports are of immense value in certain criminal cases, they are guided by greed. They prepare fake medico legal reports. The doctors are often approached by the parties. In return of some money, they cheat the other party by making them liable for an offence they had never committed. The reports of a medical professional can declare the important question like whether the victim of rape was subject to sexual intercourse or was the accused intoxicated at the time of commission of crime or not. These are the deciding factors and are often influenced by money. The hospital authorities have indulged in another heinous practice of giving false evidence in the court of law, as and when they are called for expert opinions. An expert is a person with superior knowledge in particular area through practical experience and study in the field14. It can be seen that money exchanges hands and the law is inclined in favour of the offenders.15

London’s Sunday Times Newspaper has identified a clinic in South Delhi where the doctor-in-charge fabricated 9 medical bills worth Rs.1,80,220 before demanding his cut of around 20%. False death certificates are also issued, “It (the certificate) will be original ,not a fake one. A senior doctor will sign it with his own hands. The certificate is prepared by an officer. It will all be genuine. These are official and government approved”. One ambulance driver of a Delhi based ambulance service owner said with regard to the fake death certificates that are available for a price in India. 16UK Medical insurers estimate that India account for atleas 6 cases of medical insurance fraud every year.17

15 Preeti Mehta Vs Judge MACT, RLW 2007 (3) Raj 2611.
17 Ibid.
Section 304-A of the IPC deals generally about Causing Death by Negligence, it reads: “who so ever 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 a term which may extend to 2 years or with fine or with both.”

There have been numerous instances where the doctor’s negligent acts have been paid by the people in form of their limbs or other bodily disabilities. Doctors are in a tearing hurry today. They, in a drive to earn more have often acted as businessmen i.e. have treated their patients as customers. It is not uncommon to hear that the doctors leave their patients half attended and look towards other patients. They often try to trap the patients. At times, the doctors in a bid to earn more, work more and this overwork many times makes them work negligently. Hence, many cases where the doctor have often operated the wrong side is left eye instead of the right eye, amputation of the healthy limbs instead of the diseased ones. This endangers the personal safety of the patients.

Doctors and more often the class IV employees in the hospitals indulge in offence u/s 404. What they do is that they quite often steal the property from the dead bodies coming for post-mortem etc. They come under offence u/s 404 IPC i.e.is the dishonest misappropriation of property possessed by the deceased person at the time of death.

The offences thus committed are many and changing to the extent that IPC or other laws fall short of dealing with them.

II.3 INDIAN PENAL CODE AND OTHER ACTS ON HOSPITAL CRIMES

There exist a host of legislations for protecting the hapless people from the evil hands of the doctors and their ancillary staff. In the major criminal constitution of India i.e. the IPC, sections 312-315 deal with illegal abortions, section 304 A makes death by negligence punishable, section 376- D punishes rape by any member of the management or

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18 Sec. 304-A, IPC-1860.

19 Balram Prasad vs Kunal Saha & Ors.(2014)1SCC384, Dr.Ritu Rawat And Another vs Tej Singh And Others 154(2008)DHC 605.
staff of a hospital with any woman in that hospital, section 404 talks deal with the criminal misappropriation of property of a deceased.

The abortions may be justified but only if they are performed in order to save the life of a woman. Infact, abortion is an offence under the Indian Penal Code as well. A group of sections, i.e. 312-316 talks about the offence of abortion and issues related to abortion, miscarriage and premature labour. Thus the IPC permitted termination of pregnancy only on ground of saving the life of a woman. This created a few problems, and the Medical Termination of Pregnancy Act, 1971 was passed. After the passage of the Act, women were allowed to undergo abortion on eugenic health and humanitarian grounds keeping pace with the changing society.

To save the poor and ignorant people from the greedy doctors and to curb the growing menace of organ trade, the Transplantation of Humans Organs Act was passed by the Indian Parliament in 1995. But this Act too like many other statutes has failed to put a check on this evil.

The Indian doctors have indulged in another very cheap tactic of earning more money. They provide false certificates of death and amputation in return of a chunk of the patient’s insurance claim. It is to be noted that sections 336,337 and 338 of IPC make a doctor criminally liable. But in these sections all those persons are to be punished who endanger the life of others. There is no specific provision regarding the crime of grievous hurt which is committed by the medical professionals. They have been found to be amputating the patients and in return they take a part of their insurance claim.

The female child, we all know, is not greeted in Indian families. Therefore diagnostic centres became the centers of female foeticide. Dramatic reduction of birth rates in most of Indian states has further contributed towards intensification of son preference in existing patriarchal society. And one must also not forget the lack of ethics in pockets of the medical profession that result in furthering female foeticide. Though India has a history of skewed female sex ratio, what the country is witnessing today is the systematic extermination of

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female child with the ultra-sound machines serving as an instrument of murder.\textsuperscript{21} The State of Maharashtra became the first in the country to ban prenatal diagnostic techniques. Similar efforts at the national level resulted in the enactment of the central \textit{Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994}.

\textbf{II.4 SEX DETERMINATION- A KIND OF HOSPITAL CRIME:}

As per the UN statistics:

- Women perform two-third of world’s work.
- Women earn one-tenth of world’s income.
- Women are two-third of world’s illiterate.
- Women own less than one-hundredth of the world’s property.\textsuperscript{22}

When Indian women marry they dream of having their own homes, families and children. In India, however the question that follows pregnancy is whether the upcoming child is a male or a female. Even in the present era of freedom of women in India, their education and the hike in their economic participation has not changed the traditional hatred towards female children. Earlier because scientific techniques were not advanced and it was impossible to determine the sex of the child before its birth the killing of female child took the form of adding opium to the infant’s milk or by suffocating her people used to get rid of her. Now it is given a sophisticated aura by foeticide. The truth is disheartening but nonetheless the truth, that the technique used to diagnose the condition of foetus known as amniocentesis is now primarily used for sex determination and consequent female foeticide.\textsuperscript{23}

President K.R. Narayan, in his Republic Day address in 2002 referred specifically to female foeticide in the context of the ‘deplorable status ‘of women. He also referred to the

\textsuperscript{21} Ajeet Lal, “Abortion under the I.P.C. and the M.T.P. Act- A Comparative View”, \textit{Family Medicine-Indian Journal of Medical Ethics, July 1999.}

\textsuperscript{22} Meenu Anand, in ‘Gender Stereotyping-The Making of a Woman and Man’, Women’s Watch, April-June 2005.

\textsuperscript{23} Mamta Rao, Law relating to Women and children, \textit{Eastern Book Company,Lucknow,2005, p-130.}
increasing incidence of rape, domestic violence, sexual harassment at workplaces and trafficking of women. In the powerful words of the President,

“The crime statistics are indicative of women’s traumatized existence. No place is safe for them, not even their mother’s womb. They are put to death before they are born.”

Amartya Sen brought to focus the gender-discrimination by analyzing the male female ratio. He argued rather convincingly that the problem of missing women is clearly one of the momentous and neglected problems facing the world today.

Female foeticide has continued in India because of conglomeration of modern medical technology, increasing greed of doctors, rising demand for dowry that makes daughters financial burdens, the weakness of the relevant legislation, and the lack of any serious efforts of civil society in constraining this social evil.

William F.Ogburn finds technology a beneficial force in many respects, but one which inevitably generates social problems of lags in the institutional adjustments to the capacities of new mechanical involvement. The misuse of medical technology for sex determination and female foeticide is one such example.

In the pile of offences committed by the doctors, the most heinous is the sex selective abortions which are going on unabated in the entire country. The truth is that the legislation has failed to distract the doctors from performing these tests or the public from getting abortions done. People in their urge to have a male issue and the doctors in their desire to earn more money continue to ignore these laws. The legislation has done nothing to check illegal abortions. The truth is that the legislation has not done anything productive in constraining this evil rather it has made the entire abortion process and consequent female foeticide more expensive. The doctors charge a hefty amount from the people who wish to

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get sex determination tests and abortion done, as they conduct these tests clandestinely. The condition that the pre natal diagnostic tests may be performed on patients only if it has been referred by a genetic clinic has only nothing encouraged malpractice and corruption. Money changes hands, false ultra sound scan reports are prepared and illegal abortions go and on conveniently saying that termination of pregnancy was essential for the sake of pregnant woman’s health. The compulsory reference letter from genetic clinics is managed and the law is violated.

Amniocentesis was used as a test to detect to any abnormality in the growing foetus. But over the years it has come to the fore that it is wrongfully used to determine the sex of the foetus. It has been witnessed that this test has become extremely popular and has led to multiplication of private clinics which conduct this test all over the country. The Indian Council of Medical Sciences later put an end to this test. The Medical Termination of Pregnancy Act 1971 silenced the women groups which had raised concern about this evil. The fact was that the amniocentesis test was permitted by the Act-1971. The law provides that if any abnormality is detected between 12-18 weeks of gestation period in the foetus, an abortion can be legally carried out up to 20 weeks of pregnancy. The campaign and protests against Sex Determination Tests were carried on for a decade from 1976 to 1985. The Forum against Sex Determination and Sex Selection (FASDASP) emerged in 1985 because of constant efforts of activists from women groups, legal action groups, human rights groups and concerned individuals commenced during the end of 1985. The pressure group function played by the FASDSP brought into being on May 10 of 1988, the Maharashtra Regulation of use of Pre Natal Diagonostic Techniques Act.28

It was followed by a similar Act being introduced in Punjab in 1994 and then a central legislation on this was passed as the Pre Natal Diagonostic Techniques (Regulation and Prevention of Misuse ) Act, 1994. The PNDT Act failed to achieve a balance of sex ratio in Indian population. To combat the dipping sex ratio despite the Act’s passage the act was amended in 2002 and Pre-Conception and Pre-natal Diagnostic Techniques Act 1994 came into being.

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In today’s age of scientific advancement, female foeticide and pre conception sex selection techniques are largely responsible for the demographic imbalance leading to masculinisation of sex ratio in the last few decades. The increase in female foeticide has seen the proportionate decrease in female sex ratio which has hit an all-time low of 914:1000 males and if this decline is not checked, the very delicate equilibrium of nature can be spoilt beyond repair. Moreover, it is not only a problem of numbers. The very existence of women is in danger. If there are fewer women in society, the violence against women in all its forms would go up and consequently there will be an atmosphere of insecurity which would lead to women again being confined within the four walls of the home. In the context of declining sex ratio, it is important to examine its implications on marriage squeeze and marriage pattern, which has a significant impact on quality of life and status of women in India. This declining sex ratio has a direct and serious consequence on the marriage market. Socially speaking, the girls would not be allowed to go out to study and women would not be allowed to take up jobs. Such a situation may arise when a single woman would be married off to several men, the same is already visible in areas like Dang district of Rajasthan, where a woman is living as the wife of eight brothers.

No doubt the existing situation which only promises to worsen due to the fact that there is sluggish action, it is bound to result in unimaginable results, which themselves pose the danger of throwing the society into chaotic situations. As the problem of female foeticide continues to grow, it is not beyond imagination to expect an increase in the number and gravity of crime against women. In M. C. Mehta Vs State of Tamil Nadu and others the feeling of a child was beautifully portrayed by Hansaria J.,

“I am the child,
All the world waits for my coming.
All the earth watches with interest to see what

29 T.V. Sekhar and Neelambar Hatti, “Unwanted daughters; Gender Discrimination in India” in Tulsi Patel .(ed) Sex Selective Abortion in India:Gender Society and New Reproductive Technologies, Sage Publications, New Delhi, p-1
30 Jagbir Singh, “Female Foeticide”, Army Institute of Law Journal, 2007 (vol.1)
31 AIR 1997 SC 699.
I shall become.
Civilisation hangs in the balance.
For what I am, the world of tomorrow will be.
I am the child.
You hold in your hand my destiny.
You determine, largely whether I shall succeed or fail,
Give me, I pray you, these things that make for happiness,
Train me I beg you, that I may be a blessing to the world." 32

Ergo, not for nothing it has been said that where a child is born the fragrance of human race is felt. Let the female child cry on the surface of the mother earth. 33

II.5 DIFFERENT FEATURES OF THE P.N.D.T. CRIME-

The recent technological development in medical science combined with a vigorous pursuit of growth of the private health sector has led to the mushrooming of a variety of sex selective abortion centres. At present there are 1228 registered ultra sound centres in Punjab. 34 Gender discrimination can be in the form of infanticide, foeticide, embryocide or, before conception as ‘future sperm separation’.

Since infanticide requires at least nine months, female foeticide up to three months, female embryocide, potentially just a few weeks, and sperm separation, a few days, it is becoming easier to produce only boys. So, the earlier the stage at which sexing is done, the graver the social consequences. Sex determination is done by methods like amniocentesis, chorion villus biopsy. The discovery of cheaper Ultrasound technique has proved to be a nemesis of the female foetus in India. In recent times many new and sophisticated reproductive technologies have come up complicating the problem of female foeticide. The menu is an impressive one: Karyo- Typing , which analyses chromosomal abnormalities and incidentally reveals the sex of the foetus, a procedure that takes around 11 days and costs

32 M.C.Mehta Vs State of Tamil Nadu, AIR1997, SC699
34 www.pb.health.gov.in as on 24 April, 2014.
around Rs. 5000; **Flouroscent in situ hybridisation**, which has 95% accuracy, takes two days and costs Rs. 10000; **Comparative genomic hybridisation** requires two days; **Polymerase chain reaction**, the results of which are available in a day with a cost of Rs. 5000; and **Pre-Implantation genetic Diagonosis (PGD)** where the results take about a week.\(^{35}\) There is so much advancement in the science and technology that one can easily get the sex determination test kit at home and conduct it ourselves no expertise is needed. The test kit is readily available online you can get it on www.tellmepinkorblue.com. Thereafter, the role of doctor comes into sight where if the sex determination test kit shows as is said “NEGATIVE” results abortion from a qualified doctor is sought.

Today RU-486 or the anti progestine abortion pill provides a medical alternative to instruments or surgical intervention. With this the women seeking an abortion can avoid a Medical termination of pregnancy clinic altogether and commit an abortion herself in the privacy of her home. This medicine is effective only in the first nine weeks of pregnancy, but with the development of Chorion Villus Biopsy it has become possible to determine the sex of the foetus within eight weeks of pregnancy. Because this procedure is comparatively expensive, so it has not reached the same level of popularity as ultrasonography.\(^{36}\)

The Census data of 2011 presents a sordid picture of the fact that the preference of Indian parents for a male heir is a centuries old malady which refuses to fade away notwithstanding the stringent laws and the reformation in girl child’s status. The child sex ratio has dipped alarmingly by 13 points to settle at 914 (against 927 per 1000 boys between 0 and 6 years in 2001)- the lowest since 1961.\(^{37}\) Leave alone equal economic and social rights, women and girls have not even got a violence free existence to boast of.\(^{38}\) Girl child in India is born into a culture which still idolizes sons and mourns the birth of a daughter. It is felt that the medical practitioners are concerned about their uninterrupted business alone and in a bid to earn money, they keep the human values aside. The declining sex ratio is vivid in the population trends as per the Ministry of Women and child Welfare, the women

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\(^{37}\) “India is now 1.21 billion strong.” *The Tribune* (1 April, 2011).

\(^{38}\) “Save Girl Child, Sex Determination goes on despite laws.” *The Tribune* (12 April, 2011).
deficit is 36.5 millions\textsuperscript{39}. It shows that law is not proving to be successful in raising the sex ratio. The big question is that who is to be blamed for this decline – the technology, the medical professionals, the civil society or the law itself. This deficit can be easily put on the prenatal sex determination which are going on without having any regard to the law.

“Yatra Naranthya Pujayathe Raman the Tatra Devatha” has been our culture. In our country a girl is worshipped as Devi on one hand, and denied her existence on the other as if she has no right to live\textsuperscript{40}.

This is the same country where once it was believed that even for the severest vow all one had to do was to tear a single leaf off a pippal tree. Where if a cat were killed accidentally, it was believed that the sin couldn't be washed off until a cat made in solid gold were given in charity. Where a single act of cow-slaughter was enough to spell ruin for seven lives in a row. Where taking a single human life was treated equivalent to slaughtering a hundred cows.

This is the same country where each and every \textit{atma} was regarded as an inseparable fragment of the \textit{Parmatama}.

This is the same country where \textit{devtas} would often incarnate themselves in human form to rid the earth of the evil influence of the \textit{rakshasas}. This is the very same country where it was believed that every man born on the face of earth must, of necessity, pay off three types of debts; that of the ancestors, of the gurus and of the mother. It was also believed that while the debt towards the ancestors and the gurus could always be recompensed during a lifetime, mother's debt could, quite simply, never be paid off.

Now in this very country, whenever men and boys think of abusing each other, they end up abusing their mothers and sisters. Whenever a riot or a war breaks out, it's invariably the women who have to bear the brunt of all loot, aggression and mutilation.

\textsuperscript{39}www.wcd.nic.in as on 6 January, 2011.

\textsuperscript{40}Radhakrishnan, Andal, “Female Infanticide and Foeticide: A Legal Perspective”, Avashesh, NLSIU, Series-1, Vol-1, Centre of Child and Law, Bangalore.
Now as man's struggle assumes menacing proportions in such obvious ways as economic, religious, cultural and not-so-obvious forms as psychological, intellectual or emotional, his oppression of the woman in both visible and invisible ways has apparently multiplied manifold. Murder, rape, bride burning, prostitution, divorce and female foeticide have become work-a-day experiences.\textsuperscript{41}

The birth of male calls for cheers and rejoicing, where as the birth of a female, especially if she is second or third is a cause for mourning. In India, doomed at birth to an unloved existence, the girl child suffers denial throughout her childhood and is callously tutored to view herself as second and to expect and accept the negative stands.

Female infanticide is prevalent in several parts of the country. In parts of Gujarat, mothers have been known to drown new born baby girls in milk. In Rajasthan there are entire villages where no girl has been born for decades.

The people have gone to highest barbaric extent and have been systematically eliminating female children from their families. Stuffing the little girls mouth with sand or rubbing large quantity of black salt deep into her mouth, feeding her poppy husk or leaving her naked out in chilly weather or simply starving her to death are to name just a few callous means used by people to nip the evil in the bud. The husk method is crueler; it slits the tender gullet with its sharp sides as it slides down the tiny throat. The more “modern” families used pesticides or sleeping pills. Some times they just suffocate the infant with a pillow.

“I lay on my bed weak after child birth. My mother in law pick up the baby and started feeding her milk. I knew what she was doing. I cried and tried to stop her. But she had already given her milk laced with YERAKKAM PAAL (the poisonous juice of the oleander plant). Within minutes, the baby turned blue and died” says Karupyee\textsuperscript{42}.

In Kalyanpatti village of Tamil Nadu a woman explained, “We no longer kill the baby girl with the poisonous sap of the oleander plant as traces of the poison can be

\textsuperscript{41}The Tribune, 29 July, 2001.

\textsuperscript{42}www.legalserviceIndia.com as on 9 April, 2009.
detected. We make the death appear natural. For instance we starve the baby to death or asphyxiate it ….at times we leave the baby in front of a table fan running at full speed.43

With the advent of new technology and advancement in science female infanticide has turned into female foeticide with ultra sounds and others being weapons of this crime. President K.R. Narayan, in his Republic Day address in 2002 referred specifically to female foeticide in the context of the ‘deplorable status ‘of women. He also referred to the increasing incidence of rape, domestic violence, sexual harassment at workplaces and trafficking of women. In the powerful words of the President,

“The crime statistics are indicative of women’s’ traumatized existence. No place is safe for them, not even their mother’s womb. They are put to death before they are born.”44

Amartya Sen brought to focus the gender-discrimination by analyzing the male female ratio. He argued rather convincingly that the problem of missing women is clearly one of the momentous and neglected problems facing the world today.45

Female foeticide is perpetuating because of the society’s improper demand for sons and the modern technology and the ever increasing avarice of the medical professionals and the lack of any serious involvement of civil society in fighting this social menace.

Why the unborn daughter is made the casualty in an irrational demand for boys?

Just six kilometres from Patran( the place where a well full of female foetuses was discovered in the year 2006) is the village of Shutrana. In one part of the village an Anganwadi worker Kamla says the same thing, people prefer boys to girls. She goes door-to-door talking to people about the merits of having girls. Everyone nods but no one seems really interested. “People hide their pregnancies till they can determine the sex of the child. They go in for abortions if the child is a girl,” she admits after the round is done. What does

44 T.V. Sekhar and Neelambar Hatti “Unwanted daughters; Gender discrimination in Modern India” in Tulsi Patel, Sex selective abortion in India Gender Society and New reproductive technologies, Sage Publications, New Delhi, p-1.
she do when she finds out? “I go and speak to them but they get angry and say it is none of my business. They ask me if I will help them in getting the girl married.”

The dowry or groom price is so high, that class notwithstanding generations may have to repay the debts incurred during marriage. The moment a girl is born in the family the ‘Golden Hand Shake’ - the dowry needed to send her to another family looms large over the parents. So a girl become a potential financial drain and somewhere down the line it become a matter of prestige too, with more money and material goods being asked in dowry. It is said that the day grooms become available without the dowryt attached to them, families would stop killing the girl child in the womb. The social activists point out the nexus between dowry customs and daughter disadvantage, and irrational justification of solving one discrimination(dowry) by resorting to another (foeticide). The Dowry Prohibition Act’s failure has further accelerated the non viability of daughters.

The religion in India is the supreme authority which is running the entire society. The Hinduism i.e. the principal Indian Religion has endowed the sons with certain tasks which can only be performed by the sons. It basically is religion which has engrained the need of a son in the family, often citing the principles of Vansha and Mukti. The desire for a son is deep-rooted in both rural and urban areas. The causes of female foeticide and infanticide lie buried deep in the social structure of our society, and in seeking to eliminate the practice this must be borne in mind. The social cultural and religious culture of India is predominantly patriarchal contributing extensively to the secondary status of women. The sonship craze can be seen in every nook and corner of India, in all income groups in all age groups. the perfect example being Devinder Kaur who believes she can finally lift her head high. After four girls, she has had a son — the age difference between her eldest girl and the

boy is 18 years. The following are some of the cases illustrating the nature of such hospital crimes:

**Case 1**

Mrs. A from Jalandhar district was married in Chandigarh. Both the husband and wife are highly educated (post-graduates). The husband earns a salary of Rs.4,000 per month. At present they live in a joint family consisting of the father-in-law, mother-in-law, brother-in-law and his wife. The brother-in-law has a 13-year-old only son. All the members are highly qualified—one of the brothers-in-law and his wife are doctors and live separately. Mrs. A has one daughter. She conceived a second time after keeping a conscious spacing of three years. In the fifth month of pregnancy, she went for amniocentesis and found the foetus to be a female. She did not reveal this to her in-laws but secretly, with her husband's consent, she underwent an abortion. The researcher was able to contact her before the event, and found Mrs. A to be depressed and pale with fear and the guilt of having conceived a daughter. Sobbing, she sat that she was ashamed of having a female foetus. While her husband did not mind having a daughter again, she herself wanted to have only two children and to earn the respect of the family she presumed that it is important to have a son. What a dilemma!

**Case 2**

Mrs. N, from Ropar, went to Chandigarh to get an amniocentesis test done. Her husband is a postgraduate businessman, earning around Rs. 5,000/- per month, and she, though a postgraduate, is a non-working woman. She already has two daughters. After receiving the report confirming a male foetus, the couple was very happy. The overjoyed husband assured his wife that if need be, he would donate blood at the time of her delivery!

**Case 3**

Mrs. L is a matriculate housewife whose husband works as a law officer, earning RS. 4000-5000/- per month. The family is nuclear with two daughters. Mrs. L has a history two female foeticides. Mrs. L faced a number of health problems due to the tests and the subsequent abortions. However, to her satisfaction, the thirdtime, the revealed a male foetus. The discussion with the couple made it clear that both of them considered a son a social as well

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49 *The Tribune, 15 September 2006.*
as an economic necessity of the family in today's society. Mrs. L says, "to have a son is an essential as taking food at least once a day".

**Case 4**

Mrs. P is an Army Officer's wife, a graduate from Chandigarh. She has undergone two abortions on the basis of amniocentesis tests and feels relieved that the doctor was able to determine the sex of the foetus in the first trimester of pregnancy. The couple agrees and has accepted that they cannot rely on their children for old age security. But because they consider a family of two children as a status symbol and think "Ladke ka naa hong bura lagta hai" (it is bad to not have a son), they favour female foeticide.

**Case 5**

Mrs. R lives in a slum in Chandigarh. She has five daughters and is worried about their marriage, which is a costly affair in her community. She wants a son as an earning member and is not convinced that she and her daughters are also contributing to the family income by helping her husband in 'Moorha-making'

Mrs. R wants to take an amniocentesis test and an abortion if necessary, if she could do so. She feels ashamed of going out in her community as she is looked down upon for not having a son.  

We can oneself see how deep the principle of SONSHIP is engrained in our women. Quite often women themselves are found to be the perpetrators of the crime of female foeticide, succumbing to social pressures and demands of the family many a time they themselves opt for sex determination tests. As for female foeticide, it is so widespread that in some interior villages of Punjab and Haryana, they say the mobile scan is more easily available than water supply.

There is no easy solution especially since people come to these centres “voluntarily” says a gynaecologist in Patiala who does not wish to be named. “A woman comes to us

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pleading that she already has daughters and does not want another because there is too much family pressure on her. If we do not help her, someone else will or she will go in for a drastic option which may prove fatal for her. What do you suggest we do, turn the woman away?"^51

The pit in front where the foetuses were found buried has been covered with fresh earth. ‘Whistleblower’ Pooja Rani, is staying behind the ‘hospital’ where the second ‘foetus-dumping’ well stands. She talks of how the patients used to be called in after midnight for abortions and how midwives brought patients on a “commission” basis^52.

The doctors justify their heinous act they say however women abort the foetus by going to dais and quacks they say that:

“We know that sex selective abortions are illegal and are bound to adversely affect the health of the woman. However if we do not send people to the ‘RIGHT CLINICS’ then it becomes fatal for them. It is like choosing between the devil and the deep blue sea”^53

Quackery in practise of abortion is booming. More than 50% of the sonography tests are done by those who are not trained to do it. The people who can ill afford the proper procedure in a hospital, to get rid of female foetus end up in the hands of these nurses and untrained dais who use crude methods of aborting and put mother’s life at risk.^54

In most cases of female foeticide, the clients and doctors are on the same wavelength, in the sense that both support such tests and foeticide because of the great demand on the part of pregnant women to know the sex of unborn child and the tendency of doctors to make quick money. Sushama Rath, Under-Secretary at the PNDT Cell, Union Ministry of Health and Family Welfare in New Delhi, believes the problem of conviction arises because there are no complainants. As per the official:

^52 Ibid.
“This is due to the collusion between the parties (the woman getting an abortion or sex-determination done and the doctor doing it). Also, at the end of the day the chief medical officers in the states are to take action but they tend to take a lenient view towards their own fraternity”.

II.6 IS IT A CRIME IN REAL SENSE

The perpetrators of this illegal act often question as to whether sex determination and consequent abortion is really an offence?

The law recognizes legal personality to unborn children. The Constitution of India, the fundamental law of the country provides a protective umbrella for the right of women and children. The bracketing of women with children showed the patronizing attitude on the part of the marks of the Constitution. The Constructions guarantees the right to equality before the law and equal protection of the law. The right to life is the single most crucial right. The CSR reflects the skewed sex ratio and the cultural preference for sons.

Art. 21 (‘Protection of Life and Personal Liberty’) lays that, “no person shall be deprived of his life or personal liberty except according to the procedure established by law”.

Right to life includes right of an unborn child to be born, as unborn child is also a person having legal personality. There are provisions under the IPC for foeticide and infanticide. Sex-selective abortion, though not expressly mentioned, is covered under the terms “miscarriage” and “injuries to unborn children”.

A child in mother’s womb (en ventre sa mere) is by fiction treated as already born and regarded as person for many purposes. The Hindu Law has equated ‘person in womb’ to a ‘person in existence’ for many purposes.

Rights of an unborn person, whether proprietary or personal, are all contingent on his birth as a living human being. He, thus, has a contingent or a qualified kind of legal

55 Source of Information: PNDT Cell, Union Minister of Health and Family Welfare.

personality. His contingent rights, however, get transformed into vested rights on his birth as a living person.

Despite having a legal personality, an unborn child is generally considered in India as having no separate existence from the mother. Recognition of the status of an unborn child would go a long way in ensuring the girl child’s survival, be it by moral guilt or legal guilt.

Destruction of the foetus was considered as an Apradha (offence) in Sukraniti. In Hinduism, “Abortion or killing of foetus has always been considered to be prohibited as such. The person who causes abortion is described as Bhrunaya (foetus) and killing of foetus is described as Bruhnahtaya (foeticide).

The Constitution of India, the fundamental law of the country provides a protective umbrella for the rights of women and children. The bracketing of women with children showed the patronizing attitude on the part of the marks of the Constitution. The Constitution guarantees the right to equality before the law and equal protection of the law.

The provisions under the Code are formulated in gender-neutral terms and deal with the men and women in the same manner. In fact, they seem to be protective of women as they lay down a greater punishment if the offence is committed without the woman’s consent. 57 The gender-neutral terms of the IPC provisions, enshrined in Section 312 - 318 however, making women equally liable for abortion or injury to foetus and infants ignore that women in India are socialized in the religious and cultural environment of ‘son preference’. Biologically from the moment of conception, the life starts. It means foetus has life in it. As per the Indian Penal Code the word PERSON includes foetus or not, it includes any company or associations or body of persons, whether incorporated or not. It’s the commentary of Section 11 and not the section itself which includes foetus in the definition of person, so it is open for the judge either to consider the foetus as person or not to. Under the General Clauses Act, 1897 the word person has been defined in the same way as under Section 11 of the Indian Penal Code.

57 Secs. 312-318,IPC.
Our Legislature has not cleared out the status of the foetus, it has in fact made its position very obscure, but our judiciary has gone a step further and has given the status of personhood to the foetus. In *Jabbar Vs State*, the court observed that the term person would include an unborn child in the mother’s womb, after 7 months of pregnancy, that means it is capable of being spoken as a person if its body is developed sufficiently. Legal status of personhood is not granted to the foetus directly but some protection is available to it under certain legislations, like under *the Transfer Of Property Act, 1882* an interest in the property can be created in favour of the unborn person though subject to certain conditions. It will be a vested interest acquired by the foetus on its birth, although it may not be entitled to the enjoyment thereof immediately on its birth. Law of Partition has given a special place to unborn child. A son who is in mother’s womb at the time of partition is entitled to a share, though born after partition. According to the Hindu Succession Act, 1956 a child who was in the womb at the time of death of the intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate. Under Labour laws protection to the foetus is given indirectly. These labour laws have been enacted keeping in view the health of the mother and not the foetus. *The Maternity Benefit Act, 1961* provides that the pregnant women shall not do any work which interferes with her delivery or the normal development of the foetus or which effects her health. Under *Criminal Procedure Code* too, if a woman to whom death sentence is granted is pregnant then the High Court shall postpone the execution of the sentence and may commute the sentence to imprisonment for life. There are some provisions thus under various laws which protects the foetus indirectly through the mother.

But the people who aid in the commission of the crime cannot be left scot free, for their help these tests cannot be conducted. Under the PNDT Act, violators can be punished with imprisonment for three years and a fine of Rs 10,000. In any subsequent conviction, the

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58 *Jabbar Vs State, AIR 1966 All 590*

59 *Sec.18, The Transfer of Property Act 1882.*

60 *Sec.20, The Hindu Succession Act-1956.*

61 *Sec.4(3), The Maternity Benefits Act, 1961.*

62 *Sec.416, Criminal Procedure Code.*
imprisonment could increase to five years and the fine to Rs 50,000. Even the pregnant woman is liable to be punished if she is not able to prove that she was forced to go in for sex-determination or abortion.⁶³

Clearly the existing strategies are not working. The challenge is formidable as the crime involves not just the doctor who conducts the test but the pregnant woman, the person who carries out the abortion and in most cases the entire household of the pregnant woman who coerced her into it. According to a member of the National Support and Monitoring Cell for the PNDT Act, “Some medical professionals and institutions are exploiting the mindset of the people. What we need is more legal convictions. Since the ‘crime’ takes place behind closed doors and people do not come forward to speak against it, convictions are difficult”.⁶⁴

Graves of female foetuses which have been found is a silent proof of the law’s inefficacy. In backyard of a hospital in Ratlam in February 2008 bones of female foetuses were found. Bodies of more than 100 female foetuses found outside an abortion clinic in Patran town in Punjab in August last year these incidents point towards the failure of the law.

The PNDT Act has been in force for several years now. In fact, sex selection before conception is also recognised as a crime. All ultrasound clinics have to be registered. The Medical Council of India can suspend/cancel the registration of doctors caught doing sex selection or an abortion based on sex selection. However, despite all the thunder and fury of legal action, sex selection and elimination of the female foetus has not declined. Not a single case of permanent cancellation of licence of a doctor who is indulging in such acts has been there.⁶⁵

Jurisprudence is concerned not only with the law and its institutions as they are and with their social impact, but also improving them and changing them in line with social developments.⁶⁶ It is an accepted fact that law and morality are so closely linked that they

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⁶³ Section 23 of the PC and PNDT Act, 1994.
⁶⁴ Supra Note 2.
⁶⁵ 6 May 2011, Satyameva Jayate, DD-I.
often seems to overlap each other. It has been a bone of contention between the jurists that should the law be in conformity to morals prevailing in the society. Savigny’s VOLKGIEST says that law has no separate existence from the society. Hart opines that law is not a gunman situation writ a large.\textsuperscript{67} He is of the view that law is a set of rules different from the “rules of recognition.” Fuller believes that every law has its “inner morality” and that a man has to confirm to Morality of Duty for whose obedience no one is praised and there are certain Morality of Aspirations or ideals which a good man follows for disobedience of those no censure follows.\textsuperscript{68} So it follows that for any law to be successful has to confirm to the ethics and morals of the society. As regards the PC and PNDT Act 1994 it can be said that though it is in conformity with Morality of Duty but its disobedience brings no or very little censure. It as a matter of fact has not gone well with the needs of the people.

Howsoever stringent the law against pre-natal –sex- determination is made but the provisional census data of 2011 presents a sordid picture of the fact that the preference of Indian parents for a male heir is a centuries old malady which refuses to die The child sex ratio has dipped alarmingly by 13 points to settle at 914 (against 927 per 1000 boys between 0 and 6 years in 2001) - the lowest since 1961.\textsuperscript{69} Leave alone equal economic and social rights, women and girls have not even got a violence free existence to boast of.\textsuperscript{70}

In Patran, Patiala a grave of female fetuses was discovered in 2006, then it was said that district health authorities had sealed about 12 ultrasound centres for their alleged involvement in conducting the sex determination test of foetus and five clinics, which were involved in carrying out illegal termination of pregnancy in the current year.\textsuperscript{71} But if we see the data provided by the Department of Family Welfare, Punjab we can see that till the year 2006 only 9 cases under section-20 of P.N. D.T. Act were filed. This section says that the Appropriate Authority under the Act can ask the culprit hospitals and the imaging centres why their registration should not be cancelled. These facts are a clear cut proof that at least

\textsuperscript{69} \textit{The Tribune},I April,2011.
\textsuperscript{70} \textit{The Tribune},12 April,2011.
\textsuperscript{71} \textit{The Tribune}, 9 August 2006
three of such clinics were able to manipulate the facts of the case to their advantage or otherwise pressurise the Appropriate Authority from taking the necessary action against them. The statistics in the following table illustrate this observation of the researcher.

**Table II.1: DISTRICT WISE ENFORCEMENT OF THE PC & PNDT ACT IN PUNJAB**

<table>
<thead>
<tr>
<th>District</th>
<th>Sex-ratio 0-6 yrs</th>
<th>No. of Regd. Centers</th>
<th>Action taken for violation of the Act</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Upto year 2006</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Court cases Under sec 20</td>
</tr>
<tr>
<td><em>Amritsar</em></td>
<td>790</td>
<td>154</td>
<td>10***</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>***</td>
</tr>
<tr>
<td>Barnala</td>
<td>786</td>
<td>17</td>
<td>1</td>
</tr>
<tr>
<td>Bathinda</td>
<td>785</td>
<td>91</td>
<td>4*</td>
</tr>
<tr>
<td>Faridkot</td>
<td>812</td>
<td>31</td>
<td>5*</td>
</tr>
<tr>
<td>F.G. Sahib</td>
<td>766</td>
<td>18</td>
<td>5***</td>
</tr>
<tr>
<td>Ferozepur</td>
<td>822</td>
<td>74</td>
<td>2</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>789</td>
<td>86</td>
<td>1</td>
</tr>
<tr>
<td>Hoshiarpur</td>
<td>812</td>
<td>68</td>
<td>3</td>
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</table>
| Place       | Total | Total ultrasound centres | Female | Male | Total ultrasound centres with female | Total ultrasound centres with male | Total ultrasound centres with sex reversal anomaly | Total ultrasound centres with sex reversal anomaly
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<tr>
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<td>231</td>
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<td>55</td>
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<td>1</td>
<td>10</td>
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<tr>
<td>Kurthala</td>
<td>785</td>
<td>44</td>
<td>5</td>
<td>13*</td>
<td>-</td>
<td>1</td>
<td>5</td>
<td>14</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>817</td>
<td>230</td>
<td>8</td>
<td>13*</td>
<td>1</td>
<td>10</td>
<td>16</td>
<td>50</td>
</tr>
<tr>
<td>Mansa</td>
<td>782</td>
<td>21</td>
<td>2**</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Moga</td>
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<td>5</td>
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<td>9</td>
</tr>
<tr>
<td>Ropar</td>
<td>794</td>
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<td>3**</td>
<td>6</td>
<td>1</td>
<td>1*</td>
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<td>-</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>*T. Taran</td>
<td>34</td>
<td>34</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>State</td>
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<td>92</td>
<td>250</td>
<td>6</td>
<td>26</td>
<td>3</td>
<td>31</td>
</tr>
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</table>

**Source:** As per the data obtained through the RTI from the Department Of Family Welfare, Punjab, Chandigarh.

It is quite vivid from the data that has been obtained from the Family Welfare Department of Punjab that the sex ratio in Punjab has not improved even after the 2003’s amendment. Till August 2009, out of 1355 registered ultrasound centres, 427 centres have
been prosecuted. Only 15 doctors have been convicted so far out of these rest are pending in the courts. Out of these 15 also most of the cases are again in the courts as appeals against the lower court’s order. There is tardy implementation of the law. It is loud and clear that the medical professionals are least bothered about the law they care a fig for human values and indulge in this evil practice. Eighty per cent of the cases registered are for non-registration of the ultrasound clinics or machine. The rest are for non-maintenance of records, communicating the sex of the foetus and for advertisements that promote sex selection.

Obviously, the statistics reveal that the crux of the problem i.e. stopping conducting of sex determination tests in the scanning centres, largely remains unchecked by the enforcement agencies. It is so far the reason of casual approach not only of the enforcement agencies i.e. doctors of health department who have community feelings with the violators. It can be said safely that they are hand in glove with the violators. It however is desirable that such kind of socio-economic offences receive more objective and a strict enforcement as well as special dealing in the courts.

The effects of the revised law are not encouraging. It is a matter of great shame that in Punjab even after 7 years of the new Act’s passage the male- female sex ratio is as low as ever, it is just 798 females per1000 males as on 20 July, 2009. Also there are 1355 registered ultra sound centres in Punjab out of which 322 centres have indulged in violation of this Act.

It is shocking to know that at an all India level just 13 convictions have been reported in this year as far as this Act is concerned. The data released by the government gives a shocking insight into how the country, including rogue states of Haryana, Punjab and Delhi, continue with its lackadaisical approach in the implementation of the ‘strengthened’ Pre Conception and Pre-Natal Diagnostic Techniques Act. Just 13 cases of conviction under the PNDT Act were reported in 2010 exposing the complete failure of all state governments

\[^{72}\text{As per the data obtained through the RTI from the Department Of Family Welfare, Chandigarh.}\]
\[^{73}\text{Ibid.}\]
\[^{74}\text{Ibid.}\]
\[^{75}\text{Ibid.}\]
in effective implementation of the law to prevent the killing of unborn daughters while also bringing related schemes under the scanner.\textsuperscript{76} The details of convictions under the Act in the entire country prove that how majority of culprits of the unborn girl child continue to get away scot free.\textsuperscript{77} It would be absurd to even think that only these many cases of sex determination took place last year, meaning that the majority of culprits got away despite the PNDT Act enacted and further amended in 2003 with the objective of prohibiting sex selection before or after conception, regulation of pre-natal diagnostic techniques and prevention of their misuse for sex determination leading to female foeticide.\textsuperscript{78} The government’s move to further strengthen the Act\textsuperscript{79} will prove to be fruitful is yet to be seen. The history suggests that it will not help in raising the ever falling sex ratio.

Gender discrimination can take place in the form of infanticide, foeticide, embryocide or even before conception as ‘future sperm separation’. Since infanticide needs nine months, female foeticide requires three months, female embryocide on the other hand just a few weeks, and sperm separation, a few days, it is becoming easier to produce only boys. Despite having a separate legal personality, an unborn child is generally considered in India to be one with the mother. But the doctors fail to see the unborn foetus as non living things and indulge in extermination of the unborn girl children. So selective abortion is totally illegal, unconstitutional, and a criminal act on the part of the doctor.

All these actions cannot be done without help, one needs to take the help of a medical professionals in bringing to end the existence of girl child. They can be generally performed by expert doctors who function in hospitals. The gradual but definite shift of the control over public health from public institutions to private medical entrepreneurs has ensured that business interests take precedence over public health. Hence this is the one crime which is being carried on in hospitals with little regard to human values and the law.

\textsuperscript{76} The Tribune, 4 August, 2011.
\textsuperscript{77} Ibid.
\textsuperscript{78} Ibid.
\textsuperscript{79} The Tribune, 11 April, 2011.
The Medical Council’s Code of Ethics still does not recognize female foeticide or even sex determination tests as unethical. Though it contains ethics in respect of abortion: “I will maintain the utmost respect for human life from the time of conception”. Further, embryocide violates the basic principles of bio-medical ethics which say that to do no harm and to do good, is the duty of every medical professional.

But the doctors have no qualms in disobeying the law or going against the ethics when the question of money is there. The studies reveal that the more stringent the law becomes the more expensive the test becomes, it is not that these tests are stopped but their carrying out only becomes difficult. The doctors who want to carry them out discover ways and methods to conduct these tests. It is one organized crime against women encouraged by professionals. The gradual but definite shift of the control over public health from public institutions to private medical entrepreneurs has ensured that business interests take precedence over public health. Such an act is therefore punishable unless there exists an excuse or justification for the same i.e. only in cases of prevention of a greater harm. However as far as female foeticide is concerned, killing a foetus on grounds of its sex can hardly be a justification, as there is there that is sought to be prevented. So a secondary norm can be formulated that where the foetus is being killed only on account of the fact that it is a female foetus, we are morally outraged. It is on account of this fact that the law has criminalized the act of sex determination itself.

The doctors and quacks are doing a roaring business by conducting these tests. The avarice ridden doctor fraternity is little bothered about the truth that the declining sex ratio is playing a havoc with the nature’s law as well as the fact that the government has been working hard towards checking female foeticide. The doctors have caught the sensitive nerve of the Indians and they know that the people will go to any extent to avoid the birth of a daughter. Pre-Natal- Sex- Determination by ultrasound being a readily available device has been used as tool for fulfilling the DEMARU (daughter eliminating male aspiring rage for ultrasound) of the people.

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The hospital crimes and more so the failure of PNDT Act to check the foul deeds of doctors have caused a situation which is worrying for the entire society because of incidence of sex determination tests and resultant female abortions are beyond our imagination as well as management.