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RESEARCH ARTICLE

DENIAL OF RIGHT TO BIRTH TO GIRL CHILD.

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Abstract

No one has a right to take the life of anyone who has not the capacity to give life. Only the creator, the almighty, the regulator of the world can do so. But due to several socio-cultural factors the human beings kill the girl child either before birth or after birth. The silent murder of the girl child is after the development of technology but from the antiquated period the murder of the innocent girl child was committed in the society. When the society was equipped with the modern technology for better treatment to combat with mortality rate of mother and foetus, instead of adopting the positive aspects of the medical equipment there was a shift of female infanticide to foeticide. For the survival of the future generation the imbalance of sex ratio is to be maintained with effective international and national legal measures and governmental schemes.

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Introduction:-

The golden words of swami vivekananda state the importance of women in the world-“just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind”

For the survival of human being throughout the evolution gender parity has a pivotal role. From early days of civilization to the present social formations the positioning of males and females has endangered their life chances. It is not that this disparity is only with the female infants. This crime with the infant either male or female is according to the virtuous position in the society of the gender. No doubt the gender disparity permeates globally with different targets within the social processes. The son preference over daughter has been rooted in patrilineal societies. Among major nations, india and china is the main contributor in declining the child sex ratio. In 1990, the nobel laureate and economist amartyasen labeled the female deficient numbers as the ‘missing women’ as he argued in the new york review of books the “more than 100 million women are missing”¹

It is undoubtedly admitted that, after having number of legal framework in developed, undeveloped and under developing countries still the disparities on the basis of gender exist. Female infanticide and foeticide is a crime against a person who cannot raise their voice for such volition. This horrendous crime is committed not against the deaf or dumb person but against one who has or hasn't taken birth in this world. When the human rights definition was framed to provide protection and promotion, this serious issue of right to birth/born failed to attract the architect of human rights to have the proper place in the universal declaration of human rights and other covenants till today. This discriminatory practice is carried on from years back days on the name of traditions of the patriarchal society in name of female infanticide. But as in the technically developed environment the foetus is finally deprived to have

¹See Robert Brooks's Asia Missing Women as a Problem in applied Evolutionary Psychology?

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right to life after the detection of being a girl. In the early days the girl child was brought to the world but being unwanted in the family or society was murdered or killed but now it has become much easier to commit this crime with the pre-natal genetic test that has added to this menace. Incidence of female infanticide in different part of the world

Anthropologist laila williamson observed that the infanticide was practiced from the days of ancient period across the worldwide cultures of the people at every level of cultural complexities, from hunters and gatherers to high civilization, including our own ancestor². According to barbara miller the practice of infanticide was in almost in whole region of the universe and the commonplace were the women were not given the equal status as men in agricultural employment and dowry system was as a stigma. Various studies revealed that this practice was among arabian tribes, yanomani in brazil and in ancient rome.³ infanticide is the murder of the child which was shaped in the form of child sacrifice to supernatural figures or forces, as allegedly practiced in ancient carthage. Many societies regarded child sacrifices as morally repugnant not having any religious or spiritual act. Infanticide has pervaded in almost every society from the golden age of greece to the splendor of the persian empire. The practice decreased in the greco-roman world as christianity flourished. A sociologist rodney stark argues in his study entitled “the rise of christianity”⁴ that the christianity opposed the abortion and infanticide and granted the right to live to women. As stark explains, “exposure of unwanted female infants and deformed male infants was legal, morally accepted, and widely practiced by all social classes in the greco-roman world.” Both plato and aristotle recommended infanticide as legitimate state policy. Like the jews, the christianity considered the infanticide and abortion as a great evil. Flavius josephus was the first –century jewish historian and apologist wrote:- “the law orders all the offspring to be brought up, and forbids women either to cause abortion or to make away with the fetus.”⁵ In christianity infanticide was abhorred and in apostle it was written “you shall not kill that which is born”⁶

In the pre-islamic era, named as the age of jahiliya i.e. The age of barbarism, darkness and ignorance of god’s guidance, the new born was buried alive. It was said proverbially, “the dispatch of daughters is a kindness” and “the burial of daughter is a noble deed.”⁷ this customary practice was in fear of poverty, security of future of in sufferance of disgrace due to the birth of girl child. It was practiced in pre-islamic arabia as a form of “post-partum birth control” on the ground of destitution or as a sacrifice to god. The holy scripture quran, collection of the version of mohammed, outlined the wrongfulness of infanticide “and do not kill your children for fear of want: we shall provide sustenance for them as well as for you. Verily the killing is a great sin”⁸

Islam not prohibits female infanticide but all types of infanticide whether male or female as it is mentioned in surah al-anam chapter 6, verse 151 (6:151)-“kill not your children on a plea of want. We provide sustenance for you and for them. Come not near shameful deeds, whether open or secret. Take not life which allah has made sacred.”

Infanticide in the name of “mabiki” which means to pull plants from an overcrowded garden is still practiced in japan. The newborn was deprived of life by smothering through wet paper on the baby’s mouth and nose.⁹

In china son-preference is deeply rooted in the tradition of the confucian values which is explicitly stated in these versions of confucian:-“with one son you have descendant, with 10 daughters you have nothing”¹⁰

²Dr Larry S Milner, A Brief History of Infanticide, published on www.softt.net/article/125410

³Female Infanticide and fetal murder- Encyclopedia of Genocide and Crimes Against Humanity

⁴Published by Princeton University Press visited on www.liveactionnews dated 7-05-2017

⁵Dietrich, Thomas. The Origin of Culture and Civilization. Austin, TX: turnkey Press , 2005 pp166 visited on WWWnewworldencyclopedia.org dated 30-04-2017

⁶www.wikigender

⁷Nicholson A.R., A literary History of the Arabs, Cambridge University Press , visited on www.mwllusa.org/topics/history

⁸Surah Al-Isra Chapter 17, Verse 31 (17:31)

⁹www.wikipedi.org

¹⁰ Seen in Female infanticide Worldwide: The case foe action by the UN Human Rights Council, published by Asian Centre for Human Rights June 2016, UNFPA Viet Nam, :When girls do not count as much as boys”, 21 June 2010, <https://vietnam.unfpa.org/public/pid/6392>

The patrilineal tradition was very strong in Chinese society that valued the Confucian sermons. The legalist philosopher Han Fei noted in the writing of the third century B.C.:-

Moreover, parents' attitude to children is such that when they bear a son they congratulate each other, but when they bear a daughter they kill her. Both come from the parents' love, but they congratulate each other when it is a boy and kill it if a girl because they are considering their later convenience and calculating their long-term interests.¹¹

The Chinese literature in their story revealed the incidence of female infanticide and called "cleaning the infants" where unwanted newborns were drowned in a dish of water shortly after birth¹². In the late sixteenth century the arrival of the Christian missionaries witnessed the newborns thrown into the rivers or onto rubbish piles and it was continued in the seventeenth century on the reason of poverty. The Qing dynasty (1644-1911) allowed to kill the children and the Qing code evidenced the practice of the drowning the girl child, suffocation and starvation, leaving the child isolated in the basket as the other methods of committing such heinous crime. In 1844 missionary David Abeel reported that between one-third and one-fourth of all female children were killed at birth or soon after.¹³ "ever since ancient times, there has been a saying that the three most delightful moments in one's life come with success in the imperial examination, marriage and the birth of a son."¹⁴

The one-child policy a part of a family planning law was drafted in 1979 and slated to be presented to the fifth national people's congress in 1980. The government had introduced this policy to control population growth as imperative for the economic stability. The historical preference of sons and "one-child policy" coupled to increase the female infanticide, the concealment of female births, sex-selective abortion and the abandonment of infant girls.

Since the antiquated time women are considered as revile for their families and society. In India and China with their reasons, they practiced this infanticide on the name of sex selective infanticide. Indian society, a symbol of rich cultures and family values are surrounded with traditional value system i.e. Sex segregation, poverty and dowry system that lower the status of female in comparison to male. During the Vedic era women enjoyed the equal status with that of men but later on the position of women was deteriorated and they were considered as devalued in their life. The son-preference ethically and morally left no space in the heart of the parent for the girl child who was considered as burden. The girl child was put to death brutally, being throttled, poisoned or drowned after the birth. The religious and economic futility made her a liability to the family that resulted to be murdered just after the birth or at the time of birth. There are number of religious scriptures theologically condemned infanticide. The customary killing of the daughters was done without any intervention of the state or the government in the pre-colonial period.

India an extremely conservative and patriarchal society, gave importance to a son in their life. The reason behind the crudest form of gender based violence was: "son preference and the belief that it is only the son who can perform the last rites, that lineage and inheritance runs through the male line, sons will look after parents in old age, men are the bread winners, exorbitant dowry demand is another reason for female foeticide /infanticide."¹⁵

There are many factors for the causes of sex selection abortion but the overarching societal reason is the patriarchal structure of Indian society.¹⁶ Son preference is ingrained in the society that discriminate the female foetus in enjoyment of the right to birth. If the girl is brought in the world they are considered as a burden in comparison to the boy child. Not only the societal structure is factor of the incidence of the female infanticide or foeticide but the

¹¹Seen in Julie Jimmerson's Female Infanticide In China: An Examination Of Cultural And Legal Norms published in UCLA Pacific Basin Law Journal and visited <http://scholarship.org> on 23rd May 2017

¹²ibid

¹³www.wikipedia.org

¹⁴Xinhua, Gender Imbalance in Birth rate; 12 July 2006

¹⁵Statement of Shri Ghulam Nabi Azad, Union Minister for Health and Family Welfare in Rajya Sabha on 11 February 2014, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=103437>

¹⁶See Kristi Lemoine and John Tanagho's Gender Discrimination Fuels Sex Selective Abortion: The Implementation And Enforcement of The PNDT Act published in Uni. of Miami INT'L and COMP. Law Review 203(2007)

religion is also the key factor in the prevalence of the sex selection abortion. There is a religious belief that *moksha* (transcending reincarnation through the performance of good deeds) can be through son.¹⁷

The medical advancement has given the major difference in the definition of this heinous crime. Prior to the development it was coming under the list of the crime i.e. Murder of the new born child, the infanticide but nowadays being a crime the legal measure does'nt give fetus the status of person . As the science and technology is developed the techniques for the detection of the sex while in the mother's womb has given the different route to the murder of the girl child. Nowadays on the ground of treatment, the fetus which does'nt comes under the purview of the human rights definition is murdered before having first step in the world. The world where the discrimination prevail on the name of son preference for social security and pride provider on the ground of culture and traditions. The development in the technology has shifted the female infanticide to foeticide i.e. The girl child in the early days was deprived the right to live and at present the right to birth is snatched.

Historical and anthropological evidence proves that where the infanticide is condoned or tolerated it is often against female infants' more than male infants. This female infanticide is genocide which is committed on the ground of son preference in the patrilineal societies such as inheritance passing on to male offspring, male offspring providing economic support and security in old age and performing death rites.¹⁸ the practice of female infanticide existed in certain pockets of the country and in particular communities but female foeticide which is the silent killing of female fetuses in womb is wide across regional boundaries and castes.

International perspective

Currently there are no binding international legislations that criminalise and ban the gender-specific abortions. But sex selection is the most overt form of gender discrimination and it directly contradicts the universal declaration of human rights, convention on the rights of the child and convention to elimination of all form of discrimination against women (cedaw). All these international mechanisms call upon the state parties to eliminate this gender disparity.

After the introduction of the technology in the field the skewed the sex ratio and it became the matter of concern for unfpa. So in 1994 programme of action of the international conference on population and development (icpd) and unfpa's strategic plan's 2008-2013 started on the three pillars of action – population for development, sexual and reproductive health and gender equality- situate this issue as an area of concern for the fund and give due recognition to the deeply –rooted cultural nature of the issue.¹⁹ unfpa with sister agencies such as who, unicef, ohchr and unifem is working in the effected region especially china and india and also in other countries also. The sex selection abortion result a growth of numerous problem globally and nobuko horibe, the director of the united nations population fund's asia and pacific regional office addressed the seriousness of the elimination of girls before birth in 2011:“we must join to ensure that sex selection is understood as discrimination against women and girls and should end,” ms.horibe said in her speech to experts from 11 asian, eastern european and caucasian nations. “we must accelerate our efforts and give priority to developing programmes and policies that foster norms and an attitude of ‘zero tolerance’ for discrimination, harmful attitudes and unethical practices, such as prenatal sex selection. Gender equality is at the very heart of each country's successful development.”²⁰

The world health organisation (who) highlighted the ethical issues and gender discrimination to have the right to birth which is the great hurdle to gender equality. Sex selection for non-medical reasons raises moral, legal and social issues. The principal concerns are that the practice of sex selection will

1. Distort the natural sex ratio leading to a gender imbalance and
2. Reinforce discriminatory and sexist stereotype towards women by devaluing females.

In some countries, such as india and china, it is commonly known that the practice of sex selection abortion has resulted in distortions of the natural sex ratio, in favour of males. In addition, there is concern that sex selection

¹⁷Id

¹⁸Female infanticide Worldwide: The case foe action by the UN Human Rights Council, published by Asian Centre for Human Rights June 2016

¹⁹UNFPA Guidance Note on Prenatal Sex Selection visited on <http://www.unfpa.org/site/default>

²⁰See Anna Higgins, J. D. Sex-Selection Abortion: The Real War On Women published in American Reports Series in issue 11 April 2016, available at <https://lozierinstitute.org/sex-selection-abortion-the-real-war-on-women>

involves inappropriate control over nonessential characteristics of children and may place a potential psychological burden on and hence cause harm to, sex selected offspring,²¹

In order to combat against the immoral practice of female infanticide the united nation has time to time raised the slogan to save the girl child and simultaneously recognised their rights. The various international measures had highlighted the disparity in the survival of girl child on the grounds of discrimination they are charter of the united nation; universal declaration of human rights, 1948; convention on the political rights of women 1952; international covenant of economic, social and cultural rights, 1966; convention on the elimination of all forms of discrimination against women (cedaw), 1979; the fourth world conference on women action for equality, development and peace (beijing); convention on the rights of the child, 1989 and its option protocol (2000); in 1998, in the occasion of the 50th anniversary of the declaration of human rights the united nation campaign the gender based violence. The united nation has stated that the discrimination on the right to life is a social evil and human rights violation which is to be stopped. Millennium development goals (mdgs) was declared by the united nations where the gender justice is defined implicitly but the sex ratio which is the most important factor for the women empowerment and gender equality has been forgotten.

The worst condition of the sex ratio is mainly in the south east asian countries as india and china. The development of the modern technologies was with the aim to give better treatment but this had been misused by the applying it for the sex determination and have good earning by aborting the child. The lack of awareness among the women of their rights or say lack of women empowerment and indifferent attitudes of the government and medical profession have skewed the sex ratio. The national legislation of the countries needs strict implementation for the prevention of the sex determination.

The un agencies experts had recommended to the state parties to resolve the problem of female foeticide "states should develop and promote...policies in areas such as inheritance laws, dowries and financial and other social protection in old age...that reflect a commitment to human rights and gender equality, states should support advocacy and awareness-raising activities that stimulate discussion and debate...around the concept of the equal value of boys and girls."²²

The republic of korea is one country where with the combination of strategies, legal measures and policies to end gender discrimination, advocacy, media campaigns and economic growth had overcome with the problem of son preference. National legal initiatives to curb female foeticide

To check against the female infanticide the traditional chinese law underwent a gradual process of "confucianization" i.e. The customary morality from the era of han dynasty (206 b.c. – a.d. 220) up through the tang (608-906).²³ during the qin dynasty (221-207 b.c.) The infanticide committed by parents was viewed as homicide and was punished by tattooing and submitting the guilty parent(s) to hard labour. During the han dynasty (202 b.c.-220 a.d.) Punishment for infanticide was same as for homicide or death penalty.²⁴ by the yuan dynasty (1279-1368) the guilty parent's one-half of property was confiscated but the qing (1644-1911) dynasty had no specific penalty for infanticide. The statutes of qing code allowed the parents to kill children for immoral behaviour.²⁵ in recent years the legal mechanism in china has restricted the sex identification of the foetus and sex selective abortions. Article 32 of the law of the people's republic of china on maternal and infant health care (1994) states,

²¹ World Health Organisation Genomics Resource Centre, Gender and Genetics. Sex Selection and Discrimination Ethical Issues Raised by Sex Selection available on <http://www.who.int/genomics/gender/en>; see Anna Higgins, J.D. Sex Selection Abortion: The Real War on Women published in American Reports Series in Issues 11 April 2016

²² UNICEF joint press release on "Son preference" perpetuates discrimination and violations of women's visited on site http://www.unicef.org/media_58924.html on 4th July 2017

²³ Julie Jimmerson's Female Infanticide in China: An Examination of Cultural and Legal Norms published in UCLA Pacific Basin Law Journal, 8(1) dated 1990

²⁴ Id.

²⁵ Id Pg.-59

“sex identification of the foetus by technical means shall be strictly forbidden, except that it is positively necessitated on medical grounds”.²⁶

Article 15 of regulations on administration of technical services for family planning (2001) states-“no institution or individual shall conduct fetal sex identification for non-medical reasons or artificial termination of pregnancy for sex selection.”²⁷

The girl child is the first and foremost need of humanity because her survival is essential for the continuation of the species and to kill her means to kill coming generations. Denial of her right to live means denial of right to life of future generations. To honour her with right to birth and live, amounts to honouring to right to life of future generations. But unfortunately, even this right is not provided to girl child. All the studies in this connection have revealed that this right of girl child is infringed by selective abortions and infanticide.

In the pre-colonial period in india there was no established rule of law against killing of girl-child and the state had the policy of non-intervention in the customary affairs of its religious matter. With the growth of the values of equality and liberty in the english educated melieu manifested the various social and political movements to eradicate the tradition and custom that discriminate in the enjoyment of rights to girl child. In the late 18th and early 19th century the british colonial administration intervened to suppress the female infanticide. The practice was first discovered in 1789 by jonathan duncan, the resident commissioner at banaras who was later on appointed as governor of bombay. The agreement between duncan and rajkumarrajputs renounced the female infanticide as “a great crime as mentioned in the bretenobywrutpooran”(brahma vaivartapuram)

On the basis of reports on infanticide from colonial officials of different provinces the affirmative steps were taken by the christian missionaries to combat with this heinous crime, william carey witnessed the horror of infanticide in calcutta and submitted a report to wellesley after the survey of different areas in 1857 john cave- brown documented for the first time the practice of female infanticide in the punjab province jats originated from “malthusian motives”.in order to ban the crime of infanticide the government of bombay first legislated a regulation no. Xxi. Two regulations were issued in 1802 and 1804 that declared infanticide as a crime and also defined the punishment for the offender.²⁸the british colonial authorities passed the female infanticide prevention act, 1870 under the pressure of christian missionaries and social reformers to combat with the incidence of female infanticide in south asia of which two chief causes were “pride and purse”. Purse referred to the dowry and pride for upper castes and tribes that would rather murder female infants than give them to a rival group even in marriage.

Female infanticide was prohibited through legislation in pre-independence era by the provisions of indian penal code 1860 under section 312 to 316 that categorised the miscarriage and unjustified abortion as an offence. In the post-independence period when the constitution was adopted with the concept of french revolution slogans of “liberate, egalite and fraternite” for all the citizens and promised to give the world without discrimination. But in the 21st century the word discrimination is not erased from the social system as this female foeticide give the crystal clear image of the discrimination on the birth right. There are number of provision to give equal status to women in the society but that are only the golden words to embellish the social document. Under the medical council act 1956, the code of medical ethics legally binds every doctor to report the medical malpractice but as this crime is continued there is no combination of law and moral.

In 1971 as measure of population control the liberalised and beneficial abortion law was enacted in the name of medical termination of pregnancy act. This law was given the weapon to the women to enjoy the right to decide to have a child or not. But apart from this intention it was misused by forcing to abort the female child. To fight with this lacunae the government enacted another law the pre-natal diagnostic technique(regulation and prevention of misuse) act in 1994 and later on the nomenclature of the act was amended as pre-natal diagnostic technique (prohibition and sex selection)act 1994. The purpose of the legal measure was to improve the sex ratio which was deteriorated from 972 in 1901 to 927 in 1991. Before the enactment of this law, the state of maharashtra became the first in the country to ban pre-natal sex determination through enacting the maharashtra regulation of pre-natal

²⁶See Female foeticideworldwide:The Case for Action by the UN Human Rights Council published by Asian Centre for Human Rights(ACHR), June 2016

²⁷Id

²⁸Transformation in Indian History edited by PratimaAsthana, SaiyidZaheer Husain

diagnostic techniques act in 1988. The enactment of this act was the further step to save the girl child and building a consensus towards the status of women in the society.

Code of medical ethics was constituted by the indian parliament, in the medical council act, 1956 and amendment acts 1964, 1993 and 2001 (medical council of india, 2002) in support for the implementation of the pcndt act, 1994. The code of medical ethics underscore that "on no account shall sex-determination tests be undertaken with the intent to terminate the life of a female foetus developing in her mother's womb, unless there are other absolute indications for termination of pregnancy as specified in the medical termination of pregnancy act, 1971." The medical council of india, 2002 indicated that any such practice will be considered as "professional misconduct on the part of the physician leading to penal erasure besides rendering him liable to criminal proceedings as per the provisions of this act" (clause 7.6) and that "the penalty for unindicated sex determination and female foeticide is striking off the name from the register apart from criminal action."²⁹

In order to combat with gender disparity and empowerment of women in the society there are number of national laws and policies. The empowerment in the term of education, income, decision making, and health will uplift the status of the women in the society. It will be panacea for discrimination against girl child. Only the dependence of the legal weapon will not bring revolution in the society as law and moral are complement to one another. The prenatal diagnosis of sex and female foeticide is the most important ethical issue, not only at present but of the future also. It involves directly to the status of women in society. The eradication of this evil practice is not possible with the amounts of legislation but only with the modification in the attitude and behaviour of the people towards the women. Sex selection for non-medical reason is the serious moral, legal and social issues that distort the natural proportion of the sex ratio, in favour of males.

Consequences of denial of right to birth

As per newton's third law of motion "for every action, there is an equal and opposite reaction." The practice of discrimination between boys and girls in the family is not only the violation of human rights but it will bring future instabilities in the countries. The consequence of the deficit of female will destroy the social structure as for the survival presence of both the genders is important. The demographic balance in the society will be upset after certain time as the number of the females will decrease in comparison to the male. The marriage structure of the society will have a drastic change and the institution of polyandry will resurface. Due to disproportion of the ratio the major problem will arise for the marriage, it will difficult in looking for their spouses. On account of repeated pregnancies, morbidity and mortality of women will increase which will further reduce the number of women in the society. There will be loss of moral values. The skewed sex ratio will lead to increase in crime against women like rape, kidnapping, trafficking that will upset the sense of safety in public. The continued female foeticide give the bad impact on the ethics of medical profession. The doctors who are considered to be next to god, who save life will give the image of murderer. Son preference and aversion of daughter are the two sides of the same coin.

Conclusion:-

As per patriarchal consideration son is the epitome of power, prestige and privilege who is considered to bring physical, economic, social, cultural, religious and emotional security for the parents.³⁰ India and China the severely affected region with regard to gender imbalances but both are not the only nations. Azerbaijan, Armenia, Georgia, Montenegro, Albania, Vietnam and Pakistan are also having the unbalance sex ratio. We should follow the strategies of the South Korea who became the first country to fight with the distortion of the sex ratio. Industrialization, urbanisation and education in Korea are the catalyst to bring changes in the social structure. The elevation of the women's social and economic value will bring the revolution in the sex selection abortion, and this only possible with participation of women in the economic sector, as the earning will give the strength to take decision against the abuse of the societal norm of son preference for various factors. In order to combat with the silent murder of the girl child the government schemes should be implemented on the floor not only on the paper. And the sharpest weapon is the morality of the society that should be with the legislative measures.

²⁹Gender- Biased sex Selection in India: A Review of the Situation and Interventions to Counter the Practice by Shireen J Jejeebhoy, Sharmistha Basu, Rajib Acharya and AJ Francis Xavier

³⁰Mehar Singh Gill's Foeticide in India published in Volume LIII, Nos. 3&4, Spring/Summer 2013