August 12, 2012

ERADICATING FEMALE INFANTICIDE IN INDIA BY ENFORCEMENT OF WOMEN'S PROPERTY RIGHTS

RuthAnne B Bergt

Available at: https://works.bepress.com/ruthanne_bergt/1/
Eradicating Female Infanticide in India by Enforcement of Women’s Property Rights

RuthAnne Bergt

“Agle Janam Mohe Bitiya Na Dije, Narak Diye Chahe Dar”
Next birth don’t give me a daughter, give me Hell instead.¹

I. INTRODUCTION

India has preferred male children for centuries.² This is evidenced by the continuation of India’s staggering annual decline in its “child sex ratio” (i.e. the number of young girls versus the number of young boys). India was recently ranked as the fourth worst country in the world for the safety and wellbeing of women, citing the high rates of child marriage, trafficking, slavery, female feticide, and female infanticide as contributing factors.³ India is the second most populous country in the world and by 2040 it will likely be the most populous country.⁴ The 2011 Census showed that India’s population currently exceeds 1.2 billion people.⁵ Comparing the declining “child sex ratio” with the steady increase in overall population, some studies estimate that there are

¹ Vineet Chander, “It’s Still a Boy...”; Making the Pre-Natal Diagnostic Techniques Act an Effective Weapon in India’s Struggle to Stamp Out Female Feticide, 36 GEO. WASH. INT’L REV. 453, 453 (2004) (quoting a folk song from Uttar Pradesh, a northern state in India).
⁴ See Nick Bryant, Girls at Risk Amid India’s Prosperity, BBC NEWS (August 17, 2007), available at http://news.bbc.co.uk/2/hi/south_asia/6934540.stm
nearly 160 million “missing” Indian girls under the age of twenty. It is clear that for Indian women “discrimination begins at birth” or even earlier.

This article will address the high rate of female infanticide and feticide in India. The purpose of this article is to show that an increase in societal acceptance and governmental enforcement of property rights for women in India could reverse the trend of the declining female population. The article is organized in four parts. Part II will discuss the history of India’s male preference, the history of property rights for Indian women, the practice of dowry, and the practices of female infanticide and feticide; Part III will discuss the various national and international laws that are applicable to women’s rights in India; Part IV will explore the long-term ramifications of gender selection through female infanticide and feticide, the consequences of failing to protect women’s property rights, and the relationship of these two phenomena.

II. A HISTORICAL PERSPECTIVE OF THE ISSUES

A. The Development India’s Male Preference

Traditionally, there was no distinction in India between “religion, law, and morality.” The terms were collectively referred to as dharma. Dharma has been closely associated with the concept of an individual’s duty to contribute and adhere to the “greater good of society.” Dharmashastra literature covered a wide range of topics including social obligations and duties of the various castes, rules of governance, official

---

8 See FLAVIA AGNES, LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN’S RIGHTS IN INDIA 12 (1999) [hereinafter AGNES].
9 Id.
codes of behavior between husbands and wives, life milestone rituals, and property
devolution.\textsuperscript{11} Permeating many of these laws was a deep commitment to strict gender roles.

The ancient Hindu laws of Manu\textsuperscript{12} decreed that a woman must never be independent; a female is subject to her father in childhood, to her husband in her youth, and to her sons as a widow.\textsuperscript{13} “[A] wife, a son, and a slave” were declared to have no property; the wealth that they earned was acquired for “him to whom they belong.”\textsuperscript{14} Indian religious tradition held that only a son could assist in “soul salvation” by lighting the funeral pyres of his late parents.\textsuperscript{15} Under this custom, by failing to produce male offspring a woman was essentially denying herself and her husband entry into the afterlife.

India’s second major religious community is Islam.\textsuperscript{16} Islamic traders first began to settle in India in the twelfth century A.D.\textsuperscript{17} In 1772, the Warren Hastings Plan provided that “Hindus and Muslims in the Indian subcontinent” were to be “governed by their own laws in disputes relating to inheritance, marriage, caste and other religious usages and institutions.”\textsuperscript{18} At the time of the Warren Hastings Plan, women’s rights under Muslim law were superior to both Hindu and Christian laws.\textsuperscript{19} Prior to Independence, it was common for females to plead the “cover of the Mohammedan law”

\begin{thebibliography}{99}
\bibitem{11} AGNES, \textit{supra} note 8, at 12.
\bibitem{12} MANU: Laws of Manu (Manu Dharma Shastra) written between 200 B.C.E. and 200 C.E. [hereinafter MANU].
\bibitem{13} \textit{Id.} at ar. 148.
\bibitem{14} \textit{See} Id. at law 416.
\bibitem{15} \textit{See} Fred Arnold \textit{et al.}, \textit{Son Preference, the Family-Building Process and Child Mortality in India}, 52 \textit{POPULATION STUDIES} 301, 301 (1998).
\bibitem{16} \textit{see generally} Siobhan Mullally, \textit{Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case}, 24 \textit{OXFORD J. LEGAL STUD.} 671 (2004).
\bibitem{17} AGNES, \textit{supra} note 8, at 31.
\bibitem{18} \textit{See} Mullally, \textit{supra} note 16, at 675.
\bibitem{19} AGNES, \textit{supra} note 8, at 35-36.
\end{thebibliography}
in litigation over the less protective Hindu laws.  Muslim women’s rights in India have deteriorated throughout the years due to “socio-cultural” pressures. The practice of dowry has slowly seeped into the Muslim communities making women more dependent on male relatives and subverting their rights to familial property.

India became subject to British rule in 1858 and remained so until Independence in 1947. During this time there were two competing groups struggling for legal and political legitimacy within the country: the traditional Indian patriarchy and the British colonial authorities. Colonial governors generally deferred to the local religious leaders’ authority on matters of family and only intervened when they felt it became “necessary.” As British rule gained acceptance and stability, the “initial policy of non-interference in ‘personal’ matters” gave way and British ideals infiltrated local customs. Victorian notions of womanhood (including innocence, self-effacement, chastity and passiveness) ultimately permeated many Indian laws.

In an attempt to curb the rapidly increasing population, the Indian government has implemented various population-control campaigns over the past fifty years. Slogans such as “Hum Do, Humare Do” (We are Two, and We will have Two) perpetuate the unintended consequence of an intense male child preference. Families want “at least

---

20 See AGNES, supra note 8, at 32-33.
21 See AGNES, supra note 8, at 35-36.
22 AGNES, supra note 8, at 36.
24 See AGNES, supra note 8, at 63-65 (examining the remolding of Indian family law within a British model).
25 See AGNES, supra note 8, at 59 (British administrators were restrained from interfering with the personal beliefs and practices of native Indians).
26 AGNES, supra note 8, at 46.
27 See Chitnis, supra note 23, at 1319.
29 Id.
one child, if not two” consequently; female infanticide and feticide continue to prevail in India. The historically inferior position of women in the Indian family has now been “duplicated in [Indian] society as a whole.”

B. The History of Property Rights for Women in India

Indian women historically had access to and control over her stridhan. Stridhan is “movable property voluntarily presented to the bride from her family and friends” consisting mainly of “jewelry, clothing, and jewelry.” The practice of stridhan has morphed over the years into the dowry requirement. Dowry is “moveable or immoveable property that the bride’s father or guardian gives to the bridegroom, his parents, or his relatives as a condition of the marriage, and often under duress, coercion or pressure.” While stridhan and dowry are both essentially bridal “gifts” given by the bride’s family in contemplation of her marriage, they are very different in terms of women’s rights to those gifts. Under traditional stridhan practice the bride controlled the gift property, while under dowry practice the gift property is controlled exclusively by the groom and his family.

Women in India have also historically been denied property rights after the death of their husbands. In 1856, India introduced the Hindu Widows’ Remarriage Act. This law required that upon remarriage, any property in a widow’s possession had to be

30 Sarkaria, supra note 28, at 913.
33 Dr. Gita Gopal, Gender an Economic Inequality in India: The Legal Connection, 13 B.C. THIRD WORLD L.J. 63, 69 (1993).
34 Gopal, supra note 33, at 69.
forfeited to her deceased husband’s family unless he had expressly given her permission to remarry after his death.\textsuperscript{37} The Hindu Widows’ Remarriage Act effectively codified what was already a cultural custom in Indian society: denying women the right of independent property ownership.

British property law was implemented shortly after colonization. This system of laws gave Indian women the right to a life-estate in her husband’s property in the case of his death; however, upon remarriage of the widow, the property still reverted to the deceased husband’s kin.\textsuperscript{38} Indian women continued to inherit property only in the form of a life estate until the Hindu Succession Act of 1956\textsuperscript{39} converted that right into absolute ownership.\textsuperscript{40} This Act gives women and men equal rights to real property; however, it does not govern agricultural land, which “comprises the bulk of real property” in India.\textsuperscript{41} Even more than 50 years after its ratification, few women in India today own or control any property.\textsuperscript{42} The national rate of female real property ownership in India is only 34 percent, while in rural areas the rate is as low as 25 percent.\textsuperscript{43} Women are often “coaxed” into relinquishing any meager property they may own in favor of their male relatives.\textsuperscript{44} In

\textsuperscript{37} Id.  
\textsuperscript{38} See Chitnis, supra note 23, at 1315.  
\textsuperscript{39} See generally The Hindu Succession Act, No. 30 of 1956, INDIA CODE (1956).  
\textsuperscript{40} Pandey, Shruti, Property Rights of Indian Women, 3 (2005), available at http://www.scribd.com/doc/40748951/Property-Rights-of-Indian-Women-Pandey (Shruti Pandey is a lawyer practicing in New Dehli, in the Supreme Court on India, on human rights issues. She is also the National Director of the Women’s Justice Initiative of Human Rights Law Network, India.) [hereinafter Pandey].  
\textsuperscript{41} Gopal, supra note 33, at 84.  
\textsuperscript{42} See generally Pradeep Panda and Bina Agarwal, Marital Violence, Human Development and Women’s Property Status in India, WORLD DEVELOPMENT VOL. 33, NO. 5, 823-850, (2005), available at https://www.amherst.edu/media/view/92318/original/Marial%2BViolence%252C%2BHuman%2BDevelopment%2Band%2BWomen%2527s%2BProperty%2BStatus.pdf [hereinafter Panda].  
\textsuperscript{43} See Panda, supra note 42, at 828.  
Indian society it is “uncommon and frowned upon” for a woman to inherit family property.\textsuperscript{45} The complex system of property rights, determined concurrently by religious practices, marital status, and geographical region within the country, create a situation where confusion and lack of enforcement dominate the legal landscape.\textsuperscript{46} Consequentially, attempts in property ownership are largely unsuccessful for Indian women and the existing support structures wholly inadequate.\textsuperscript{47} “Jointly-owned matrimonial property remains a foreign concept in India.”\textsuperscript{48}

\textbf{C. Dowry Practice}

Dowry is an almost universal requirement in Indian society. The practice of dowry in India began between 2500 B.C. and 1500 B.C., in the late Vedic period.\textsuperscript{49} Originally, dowry was practiced only by the upper castes in order to benefit the bride who was unable to inherit land under the existing laws.\textsuperscript{50} Eventually, the lower castes began to practice dowry as well, in an attempt to imitate the upper castes.\textsuperscript{51} Dowry is now seen as a way for a family of a male to quickly increase their wealth and socioeconomic status.\textsuperscript{52} In a patriarchal culture like India, a dowry is often the main method by which wealth is transferred.\textsuperscript{53}

\textsuperscript{45} Sarkaria, supra note 28, at 912.
\textsuperscript{46} See Pandey, supra note 40.
\textsuperscript{47} Panda, supra note 42, at 846.
\textsuperscript{48} Gopal, supra note 33, at 71.
\textsuperscript{50} Id.
\textsuperscript{51} Elisabeth Bumiller, May You Be the Mother of a Hundred Sons: A Journey Among the Women of India 48 (1990).
\textsuperscript{52} Rivikant, supra note 49, at 460.
The dowry system is based on the pervasive Indian belief that women are the property of their husbands and therefore must be “compensated” for their care. The amount of the dowry required is determined by the groom’s caste, earning potential, and needs of his family. The average dowry in India is $35,000 USD, while the average Indian citizen earns an annual salary of about $3,500 USD. Dowries are technically illegal; however, the practice is still very much in use.

When a dowry is promised but payment is not made, the bride is sometimes set on fire and burned to death by the groom’s family, this is called “bride burning.” Bride burning is the “preferred” method of dowry death because it is inexpensive, leaves behind little or no evidence of the crime, and has a very low survival rate. These murders typically take place at home, where there are no witnesses, and are often explained away as “kitchen accidents” or suicides. In India, there are approximately seventeen (17) women killed everyday due to dowry related violence. Between 2008 and 2009, dowry related deaths increased by 2.6 percent despite the nearly fifty year old law banning the

---

55 See Nehaluddin Ahmad, Female Feticide in India, 26 ISSUES L. & MED. Issues 13, 16 (2010).
58 See Kelkar, supra note 31, at 117.
60 Id.
61 Avnita Lakhani, Bride-Burning: “The Elephant in the Room” is Out of Control, 5 PEPP. DISP. RESOL. L.J. 249, 257 (2005) (these are the official government statistics and are thought to be extremely conservative).
practice. Families are reluctant to report bride-burnings or other dowry-related violence because the likely outcome is imprisonment of the “primary breadwinners.”

The dowry practice is justified in Indian society as the “last expense a girl’s parents must bear – after her marriage the girl becomes the responsibility of her husband’s family.” In reality, a dowry is not a “last expense,” because the groom and his family often continue to extort money from the bride’s family even after the wedding. A committee on petitions formed in 2011 under the chairmanship of Member of Parliament (“MP”) Bhagat Singh confirmed that “[t]he evil of dowry is one of the vital causes leading to low status of girl child[ren] in the society.”

D. Systematic Eradication of the Indian Female

Today girls in India are thought of as financial, emotional and spiritual liabilities and are often referred to as “paraya dhan” (someone else’s wealth). Once married, a bride becomes part of her husband’s family, and any money that has been invested in her, as well as the cost of her dowry, are considered to be “sunk cost[s].” In comparison, sons are seen as insurance for the family against starvation and poverty, due to their ability to earn income and do most of the income-producing work.

---

64 Sarkaria, supra note 28, at 910.
65 Ravikant, supra note 59, at 459.
66 See Sinha, supra note 62.
68 Ravikant, supra note 59, at 459.
69 See Mohanty, supra note 67.
70 Gardner, supra note 56, at 19.
blessing “Ashta Putra Saubhagyavati Bhava” (Be a Mother of eight sons) highlights the deep entrenchment of the male-child preference and these discriminatory ideals.\textsuperscript{71}

As a result of this discrimination, many women feel that to kill their daughters as infants, as opposed to creating an orphan with “no caste and [therefore] no identity” in Indian society, is an act of mercy.\textsuperscript{72} Indian women have justified these murders with such statements as: “I killed my child to save it from the lifelong ignominy of being the daughter of a poor family that cannot afford to pay a decent dowry,” and “…it was better to let our child suffer an hour or two and die than suffer throughout life.”\textsuperscript{73}

Various horrific methods are used to murder these baby girls. They can be buried alive, have their mouths stuffed with wet cloths or grain in order to induce asphyxiation, be thrown against walls, or fed poisonous sap from local plants.\textsuperscript{74} Female infanticide is the term used for this practice of murdering female children at or shortly following birth.\textsuperscript{75} Infanticide in India has been difficult to prevent because the majority of Indian births are attended by midwives and not done in a hospital or clinic.\textsuperscript{76} The birth attendants often execute these murders, charging the equivalent of about $1.00 USD for the delivery and an extra $2.00 USD to dispose of the child should it be female.\textsuperscript{77} In some Indian communities there is a pervasive belief that “if you kill your daughter, your

\textsuperscript{71}Ahmad, \textit{supra} note 55, at 14.
\textsuperscript{73}See Venkatramani, \textit{supra} note 7, at 127.
\textsuperscript{74}See de Lamo, \textit{supra} note 72.
\textsuperscript{75}Gardner, \textit{supra} note 56, at 19.
next child will be a son” and that it is the “duty” of a mother to kill her unwanted daughter as “compensation for having failed to give her husband a son.” Female infanticide is a widespread practice, occurring in 80 percent of Indian states.

The traditional practice of infanticide by poisoning, suffocation or abandonment is now being supplemented by the misuse of modern medical technology to terminate the life of baby girls before birth. Female feticide is “a practice that involves the detection and abortion of female [fetuses] due to the preference for male babies and from the low value associated with the birth of females.” In many villages “ultrasound is synonymous with feticide, and there is a general conspiracy of silence around pregnancies.” Activists estimate that eight million Indian fetuses may have been aborted within the past decade, solely for being female. In 1986, a report of Mumbai clinics alone indicate that of the 8,000 abortions performed following amniocentesis, 7,999 were of female fetuses.

Women who give birth to baby girls in hospitals or clinics usually leave immediately after the birth. Most return for medical treatment a few weeks later with complications from childbirth and inform the hospital that their baby girl has died.

---

78 Venkatramani, supra note 7, at 129.
79 Venkatramani, supra note 7, at 131.
82 Ahmad, supra note 55, at 16.
83 Sarkaria, supra note 28, at 932.
85 Lemoine, supra note 57, at 211.
86 Venkatramani, supra note 7, at 128.
87 Id. at 129.
“Hospital sources estimate that nearly 80 percent” of the baby girls taken from the hospital shortly after birth “become victims of infanticide.”\textsuperscript{88}

The United Nations asserts that there should be an average of 105 females for every 100 males in a typical country’s population.\textsuperscript{89} This is not the case in India now, nor has it been for more than two hundred years. When the British first collected demographic statistics in the early 1800s, some Indian villages were found to have no baby girls at all.\textsuperscript{90} In 1991, the international spotlight was first shone on the problem when the Indian Census results showed a “child sex ratio” (“CSR”) of 945 girls for every 1,000 boys.\textsuperscript{91} India subsequently passed the Pre-natal Diagnostic Techniques Act\textsuperscript{92} (“PNDT Act”) in 1996 in an attempt to decrease gender selective abortions.

The PNDT Act did not produce the desired result, as the 2001 Census shows, reporting a decreased CSR figure of 927 girls per 1,000 boys.\textsuperscript{93} This was followed by the most recent and an even more abysmal 2011 figure of 914 girls per 1,000 boys.\textsuperscript{94} In some districts, the current ratio is less than 800 girls per 1,000 boys.\textsuperscript{95} Census figures show a decline in the CSR for females per 1,000 males (age six years old and younger) in

\textsuperscript{88} Id. at 128.
\textsuperscript{90} See Ahmad, supra note 55, at 16.
\textsuperscript{91} See Rukmini Shrinivasan, No Country For Daughters, Only 914 per 1000 Boys, TIMES INDIA (January 28, 2012), available at http://timesofindia.indiatimes.com/india/No-country-for-daughters-only-914-per-1000-boys/articleshow/11658221.cms.
\textsuperscript{93} See Shrinivasan, supra note 91.
\textsuperscript{94} See Id.
\textsuperscript{95} See Ahmad, supra note 55, at 21.
431 out of 580 districts. Furthermore, a recent study by Prabhat Jha at the University of Toronto shows that when a family’s first-born is a daughter, the average CSR drops to 836 for any subsequent daughters.

Even when a female child manages to survive past the first year of her life, she often suffers “systematic neglect, inferior medical care, poor nutrition, and substandard education” compared to her male counterparts. Girl babies are “breast-fed less frequently” and for a “shorter duration” than baby boys, and receive little to no medical care. 71 percent of young females experience severe malnutrition, as opposed to 28 percent of males in the same age group. India is now ranked 134 out of 135 countries for the worst health and survival rate of its female citizens.

III. RULES OF LAW

A. Laws Protecting Women’s Rights in India

The Constitution of India, established in 1950, proscribes equal rights for men and women. It was drafted at approximately the same time as the Universal Declaration of Human Rights and as a result is greatly influenced by it. Article 14 of the Constitution declares that the “State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Article 15(1) provides

---

97 See Mohanty, supra note 67.
98 Ravikant, supra note 59, at 458.
99 See Venkatramani, supra note 7, at 125-126.
100 Venkatramani, supra note 7, at 126.
101 See Hausmann, et al., supra note 76, at 199.
104 See CEDAW Initial Report, supra note 44.
105 INDIA CONST., supra note 102, art. 14.
that the “State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”

Articles 14 and 15 theoretically protect Indian women from the inequalities inherent in the practice of dowry, female infanticide and feticide, and guarantee nondiscriminatory property rights. In 1992, the Indian government enacted the National Commission for Women Act creating oversight of the constitutional and legal safeguards for women. This committee was designed to “take up individual cases of violation” and to review laws to ensure that they did not discriminate against women in any way.

1. Dowry Laws in India

The Dowry Prohibition Act, 1961, defines “dowry” as “any property or valuable security given or agreed either directly or indirectly (a) by one party to a marriage to the other party to the marriage or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties....” Under this Act, any giver or receiver of a dowry is subject to imprisonment of no less than five years and a fine of no less than fifteen thousand rupees. Moreover, any demand (direct or indirect) made for a dowry to be paid is punishable by up to six months in prison and a fine of up to ten thousand rupees.

106 **INDIA CONST, supra** note 102, at art. 15.


108 See **CEDAW** initial report, supra note 44, at 6.

109 Id.

110 The Dowry Prohibition Act, No. 28 of 1961, **INDIA CODE** (1961).

111 Id.

112 Id. art. 3.

113 Id. at art. 4.
The Dowry Prohibition Act has been difficult to enforce because it is “ambiguous as to what constitutes dowry” and it places an “extensive evidentiary burden” on the prosecution.\textsuperscript{114} Investigations into dowry practices and dowry related crimes are hindered by the pervasive belief amongst local Indian police authorities that these are “private affairs” that should not be meddled with.\textsuperscript{115} Another inherent conflict is that the Act punishes both the giver and receiver of dowry, making the bride’s family “co-conspirators” and therefore, less likely to report the crime.\textsuperscript{116}

In 2005, the Protection of Women from Domestic Violence Act (“PWDV Act”) was enacted in India.\textsuperscript{117} This was the first time “domestic violence” was legally recognized in India as more than a “private matter not worthy of legal discourse.”\textsuperscript{118} The PWDV Act allows for punishment of physical, economic, verbal, emotional, and sexual abuse.\textsuperscript{119} This Act could be used in India to punish dowry related violence and abuse.

2. Indian Laws Prohibiting Infanticide and Feticide

The Female Infanticide Prevention Act of 1870\textsuperscript{120} (“FIP Act”) made murder of baby girls a crime punishable by prison time and a sizeable fine.\textsuperscript{121} The FIP Act made little if any difference in the level of infanticides because most babies were born at home.

\textsuperscript{114} Lakhani, \textit{supra} note 61, at 260-261.
\textsuperscript{115} Ravikant, \textit{supra} note 59, at 476.
\textsuperscript{116} Shah, \textit{supra} note 63, at 215.
\textsuperscript{119} \textit{Id.} at 112.
\textsuperscript{120} See generally Female Infanticide Prevention Act, No. 14 of 1897, \textit{INDIA CODE} (1897), available at http://www.sja.gos.pk/Statutes/Criminal%20minor%20acts/Female%20Infanticide%20Prevention%20Act%201870.html.
\textsuperscript{121} \textit{Id.}
and not in public hospitals which made enforcement nearly impossible. In India, “abortion is not a constitutional right, but is legalized by statute.”122

The Medical Termination of Pregnancy Act of 1971123 (“MTP Act”) empowered women to take control over their bodies and futures by allowing a pregnancy to be terminated until the twentieth week.124 The Indian government originally encouraged sex selective abortions as a way to control the rapidly expanding population.125 The MTP Act was seen as a great step forward for Indian women’s rights. In 1974, the prestigious All India Institute of Medical Sciences in Delhi released a study calling sex determinations a “boon” for Indian women.126 An unintended consequence of the MTP Act was a drastic increase in abortions of female fetuses.

The Pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act (“PNDT”),127 introduced in 1994 and amended in 1996, sought to curb gender selective abortions by prohibiting sex-selection, before and after conception, and regulating pre-natal diagnostic techniques (ultrasound, amniocentesis, or chorionic villus sampling). The PNDT, which is still in effect, imposes fines of up to $320 USD or three years in prison for offenders.128 Unfortunately, doctors have found ways around this law by using subtle cues to indicate the gender of the baby such as using a blue or pink pen to write the prescription, smiling brightly if it is a baby boy, or letting their secretary walk out of the clinic with the parents to disclose the gender outside on the street.129 Critics of the law

122 Sarkaria, supra note 28, at 918.
124 Id.
125 See Lemoine, supra note 57, at 221.
126 See India’s unwanted girls, supra note 84.
127 See PNDT, supra note 92.
128 See Ahmad, supra note 55, at 25.
129 See Lemoine, supra note 57, at 212.
point out that there is a “loophole in the Act, which leaves open the legality of newly developing sex-determination technologies” such as pre-conception sex-selection.130

The Supreme Court of India recently pointed out that despite the enactment of the PNDT Act, neither the State Governments nor the Central Government has “taken appropriate actions for its implementation.”131 India’s Health Minister, Ambumoni Ramadoss, stated in a parliamentary hearing in 2007 that there had only been 23 prosecutions under the Act in the eleven years since its enactment132 exemplifying the lackadaisical manner with which it has been enforced. In 2010, authorities estimated that only about half of the country’s ultrasound machines had been registered as required under the PNDT Act.133

There is fear that the further imposition of criminal liability for sex-selective abortions will push the practice “underground and away from licensed health care providers and sanitary facilities,” endangering the lives of the women involved.134 Some doctors believe that the PNDT Act has caused some women to avoid pre-natal care altogether and deliver their children at home where they may “take it upon themselves to eliminate the baby if she is a girl.”135

In November 2007, the government of India introduced the “Kanya Suraksha Yojana” (Girl Protection Scheme).136 Under this plan the government invests 2,000 rupees (about $40 USD) in a fund in the name of a girl whose parents are living below

130 See Chander, supra note 1, at 454.
131 See Center for Enquiry into Health and Allied Themes v. Union of India, supra note 81.
132 See Ahmad, supra note 55, at 26.
133 Id. at 26.
134 Sarkaria, supra note 28, at 926.
135 Sarkaria, supra note 28, at 927.
136 See India’s Unwanted Girls, supra note 84.
the poverty line.\textsuperscript{137} The money grows throughout her lifetime and at the age of 18, she can use the money to pay for her wedding or college tuition.\textsuperscript{138} This is an attempt by the government to encourage families to keep and protect their daughters. So far, the success of the program has been marginal; however, it does illustrate the intent of the Indian government to alleviate this crisis of female infanticide and feticide with creative problem solving techniques.

\textbf{B. International Laws Protecting Women in India}

As one of the original members of the United Nations, India signed the U.N. Charter in 1942.\textsuperscript{139} India also took an active part in drafting The Universal Declaration of Human Rights (“UDHR”)\textsuperscript{140}, which was adopted in December of 1948. Article 2 of the UDHR bans discrimination against women.\textsuperscript{141} In regards to property rights, Article 17 declares that “everyone has the right to own property” and that “no one shall be arbitrarily deprived of his property.”\textsuperscript{142} While the UDHR is not legally binding on the States, its principles and ideas have been codified in various subsequent binding treaties\textsuperscript{143} and it is “arguably binding on all states by customary international law because it has been in existence for the past 50 years.”\textsuperscript{144} Customary international law “results from a general and consistent practice of states which is followed by them out of a sense of legal obligation.”\textsuperscript{145}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{137} \textit{India’s Unwanted Girls}, supra note 84.
\item \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\end{enumerate}
\end{footnotesize}
India signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1979. Article 3 decrees that men and women should have an equal right of “enjoyment of all economic, social and cultural rights.” Article 11 requires the recognition of the right of everyone to “an adequate standard of living” including housing.

In the International Covenant on Civil and Political Rights (ICCPR), which India signed in 1979, Article 26 states that persons are entitled to “equal protection of the law” and “effective protection against discrimination on any ground” including gender. This provision prohibits discriminatory gender practices such as dowry and infanticide. While this provision does not specifically address property rights, it has been used by the Human Rights Committee to “fight discrimination in property restitution.” Article 6 of the ICCPR provides that every human being has a right to life that should be protected by law.

Principle 15.8 of The Pinheiro Principles, developed by the United Nations and the Centre on Housing Rights and Evictions in 2005, declares that “States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or

---

147 Id. at art. 3.
148 Id. at art. 11.
151 ICCPR, supra note 149.
indirectly, or which was carried out contrary to international human rights standards.”153 Principle 3 explicitly prohibits gender discrimination.154 These principles were specifically created to address housing restitution after displacement by war and conflict, such as the separatist movement in Jammu and Kashmir155; however, the Principles should also apply to women displaced due to gender discrimination by their families and communities. The policy behind the principles is the same regardless of from whom the displacement occurs.

The Committee on the Elimination of Discrimination Against Women discussed dowry as a “widespread discriminatory practice” that hinders women’s rights and freedoms.156 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)157 was signed and ratified by India on July 30, 1980 with several declarations and a reservation. Article 16(1)(h) of CEDAW requires States to “take all appropriate measures to eliminate discrimination against women” and to ensure that a husband and wife have equal rights in terms of “ownership, acquisition, management, administration, enjoyment and disposition of property.”158 India’s declarations and reservations to many of the key provisions, including Article 16(1), were made to ensure “conformity with its policy of non-interference in the personal affairs” of its citizens.159

153 Id.
154 Id.
158 Id. art. 16.
159 See Declarations and Reservations by India Made Upon Ratification, Accession, or Succession of the CEDAW, NETHERLANDS INSTITUTE OF HUMAN RIGHTS (SIM), UTRECHT SCHOOL OF LAW, http://sim.law.uu.nl/SIM/Library/RATIF.nsf/be2ce697381d495be41256bfb003493b1/3879720615d692a4c12568b900451c40?OpenDocument, (“With regard to articles 5(a) and 16(1) of the Convention on the
These declarations and reservations diminish the power of CEDAW to protect women’s rights in India.

The Convention on the Rights of the Child (“CRC”)\textsuperscript{160} was signed and ratified by India on November 12, 1992. Article 6 of the CRC requires that “States Parties recognize that every child has the inherent right to life” and that States must “ensure to the maximum extent possible the survival and development of the child”.\textsuperscript{161} The provisions of this treaty are in stark contrast with the Indian reality of female infanticide.

International treaties and covenants are binding on India through their codification in India’s Constitution and through the country’s Supreme Court rulings. In 1987, the Indian Supreme Court held that “India is under an obligation to give domestic effect to international treaties and conventions.”\textsuperscript{162} Article 141 of the Constitution of India declares that Supreme Court decisions are to be considered “the law of the land and thus binding on all.”\textsuperscript{163} Although largely unenforced and unaccepted by Indian Society, international and Indian laws plainly endow women with property rights equal to their male counterparts, and forbid the practices of dowry, infanticide, and female feticide.

A barrier to the effectiveness of international treaties is the non-intervention policy of the United Nations owing to concerns over state sovereignty.\textsuperscript{164} Furthermore, treaties have “no practical binding effect and no enforcement value” until codification in

---


\textsuperscript{161} Id.


\textsuperscript{163} See Rajesh, supra note 118, at 134.

\textsuperscript{164} see generally Pardee, supra note 54.
the participating states’ domestic laws. There is also concern over protecting and respecting the heritage and cultural practices of individual countries.

1. Cultural Relativism

Cultural Relativism “assumes that culture determines rights, social practices, values, and moral rules” and that people should be able to “exercise” those rights without any sort of “official intervention.” The Universal Declaration of Human Rights states that “[e]veryone...is entitled to realization...of the economic, social and cultural rights...” Article 27 of the ICCPR states that people have a right to “enjoy their own culture...” India could argue that dowry, inequality in property ownership, and even the country’s male preference are part of their cultural identity and therefore the world community should not interfere. Undercutting that argument are the numerous Indian laws that have been passed to curb gender discrimination domestically.

IV. DISCUSSION

A. The Consequences of Female Infanticide and Feticide

Prime Minister Manmohan Singh termed the practice of female feticide and infanticide in India a “national shame.” The current estimate is that almost one million female children are eradicated every year by these practices. Contrary to expectation, sex selection is being performed mostly among India’s wealthy, urban population and

---

165 Lakhani, supra note 61, at 267.
166 Ravikant, supra note 59, at 493.
167 UDHR, supra note 103.
168 ICCPR, supra note 149, at law 179.
169 Ravikant, supra note 59, at 494.
171 See Ahmad, supra note 55, at 20.
usually at odd hours in order to avoid detection. Indian law often “perpetuates the economic subordination of women through the lack of an equitable framework.” Women in rural communities are “less likely to be aware of their legal rights” or to know how to enforce them.

The Government has conducted “awareness camps” in an attempt to educate rural Indians about female infanticide, however thus far they have proven unsuccessful. The International Charity Plan, a nonprofit organization, together with the Indian Government created a soap opera, called Atmajaa (Born From the Soul), to bring the horrors of female infanticide and feticide to mainstream attention. The Untied Nations Children’s Fund (UNICEF) and the United Nations Population Fund (UNFPA) have supported various rallies and marches condemning sex-selective abortion. The effectiveness of these attempts has been “debatable.”

Sex-selective abortions are “big business” in India with an estimated worth of over $100 million. Advertisements reading “Pay Rs. [Rupees] 500 now rather than Rs. 500,000 later” are posted on billboards, flyers and bumper stickers referring to the cost of an abortion versus the cost of the average dowry. The Pre-Natal Diagnostic Techniques Act does not regulate portable ultrasound machines and, as a result, there has

---

173 Gopal, supra note 33, at 86.
174 Shah, supra note 63, at 221.
177 Sarkaria, supra note 28, at 930.
178 Id. at 931.
179 See Lemoine, supra note 57, at 211.
180 See Lemoine, supra note 57, at 212.
been a large increase in black market ultrasound clinics. Entrepreneurs have created portable, unlicensed “van clinics” powered by generators that travel between towns performing illegal gender testing for a price of $5.00 USD up to $1,000 USD depending on the area and affluence of the client.

Over the next fifteen years, there will be an estimated excess of twelve to fifteen percent of young men in India due to female infanticide and feticide. Countries with low sex ratios of women to men typically experience higher instances of kidnapping and trafficking of women, higher female suicide rates, and higher levels of prostitution. Rural villages are haunted by stories of “wife-sharing” amongst brothers as the population of women declines. Women from poor families in rural India report being sold by their families into marriage with a stranger in their early teens for as little as 15,000 rupees ($300 USD). These human rights issues are only going to increase as an ever-shrinking population of women reaches marriageable age.

B. The Reality of Allowing Women’s Property Rights to Remain Unprotected

Making the decision of whether or not to give birth to a child based solely on the gender of that child makes “the very existence of human life contingent on a valuation of

---

181 See Krugman, supra note 77, at 222.
182 Id.
186 See Id.
female life versus male life.”\(^{187}\) In examining the economic status, or relative “value” of women in India, property rights must be considered as a vital component.\(^{188}\)

Today, laws for women in India are “either protectionist or patriarchal, or else modern Indian women are not in a position to exercise their legal rights in meaningful ways.”\(^{189}\) Divorce is socially unacceptable and usually not a “realistic option” for Indian women.\(^{190}\) Indian women are ordered to leave their homes after attempting to lay claim to family property contributing to the increase in female homelessness in the larger Indian cities.\(^{191}\) Homeless women in India are more vulnerable and less acknowledged than their male counterparts.\(^{192}\) They are exploited physically, emotionally and mentally with drug addiction, prostitution and bartering sex for protection being particularly common.\(^{193}\)

Real property is a “visible signal” to others of the strength of a woman’s “fall-back position and her tangible exit option” deterring marital and familial violence.\(^{194}\) Property ownership for women is linked to a 42\% lower risk of marital violence\(^{195}\) and a lower rate of HIV/AIDS.\(^{196}\) Denying women equal property and inheritance rights “hampers their social and economic security and puts their human rights at risk.”\(^{197}\)

\(^{187}\) See Krugman, supra note 77, at 222.
\(^{188}\) See Panda, supra note 42, at 824.
\(^{189}\) See Chitnis, supra note 23, at 1319.
\(^{190}\) Gopal, supra note 33, at 75.
\(^{192}\) See Id.
\(^{193}\) See Id.
\(^{194}\) See Panda, supra note 42, at 824.
\(^{195}\) See Mother Poisons Three Daughters, Self, supra note 175.
\(^{197}\) See Women’s Inheritance and Property Rights Are Essential to Effective AIDS Response, United Nations Development Programme Newsroom, (August 12, 2009), available at
Indian women have less control over resources than men due to their low status in society. Consequently, mothers are often unable to ensure that their children’s most basic needs are met. 42 percent of Indian children under the age of five are malnourished. Meager food rations and waning resources are funneled first to a family’s sons before the “leftovers” are passed on to their less “valuable” daughters.

C. The Connection Between Property Rights of Women and Infanticide

Social scientists believe that female infanticide is “largely correlated with social status.” In India, “property ownership is one major factor that helps determine and assign status.” Last year the Prime Minister of India, Manmohan Singh, declared that improving the child sex ratio “is not merely a question of stricter compliance with existing laws”, it is about changing how “we view and value the girl child in our society.” Indian families desire sons mainly for economic reasons. When women are unable to procure property for themselves, their economic value in society is consequently lower.

Women in India were granted legal equality with men right from the “dawn of independence” through the country’s Constitution. In fact, women participated on a

199 See Id.
200 Id.
202 See PM to Babus, supra note 170.
204 See CEDAW initial report, supra note 44.
large scale in India’s freedom movement under Mahatma Gandhi. However, contrary to expectation, the increase in female literacy, education, and empowerment has led to more feticide and infanticide of baby girls, not less. This is due in part to cultural and societal norms and in part to fundamentalist religious beliefs.

Laws governing “certain family-related matters” such as marriage, divorce, and inheritance in India are “civil laws specific to different religious communities.” Similar to the radical religious extremism on the rise in some Muslim communities, within India there is a “movement for Hindu awakening,” or Hindutva. Religious fundamentalism can rationalize the subjugation of women, and also “mobilize them in the support of their own oppression.” In the 1980s when the Indian government was attempting to outlaw the religious practice of sati (the burning of a widow on the funeral pyre of her deceased husband), women were among the most vocal proponents of continuation of the practice.

Strengthening property rights is one of the most direct ways to empower women. Research has shown that stronger property rights secures access to services, increases agricultural productivity, provides incentives and the ability to invest, raises women’s status within the community and improves bargaining power within families. As long as a woman’s property rights are dependent on her marital status and tied to her

---

206 Id.
207 See Douthat, supra note 6.
211 Id.
213 See Id.
husband and his family, she has the potential to become trapped in an abusive relationship and a dangerous situation because her only other option is homelessness.\textsuperscript{214} 

Property ownership has also been shown to serve as protection against dowry-related violence and harassment.\textsuperscript{215} Nearly 30 percent of Indian women report facing “dowry-related beatings” by their groom and/or his family.\textsuperscript{216} Within this disturbing statistic there is a vast difference depending on the property ownership status of the women; only three percent of the propertied women faced these beatings as opposed to 44 percent of the property-less women.\textsuperscript{217} The safety and empowerment of women is closely tied to their economic worth in society.

\textbf{V. CONCLUSION}

The issues of female infanticide and feticide in India are not easy to solve. Most attempts at curbing the practice have, thus far, been unsuccessful. There is a difficult balance to be found between the right to life of baby girls and a woman’s right to control her body. An Indian woman’s “choice” when it comes to whether or not to terminate a pregnancy is not a real “choice” as we know it in Western cultures. Indian women generally have “low decision-making capacity in their families and therefore, have little autonomy over their bodies.”\textsuperscript{218} Only when a baby girl is seen as equal to a baby boy in

\begin{thebibliography}{99}
\bibitem{214} See Mohan, supra note 143, at 465.
\bibitem{215} See generally Panda, supra note 42.
\bibitem{216} See Panda, supra note 42, at 838.
\bibitem{217} Id.
\bibitem{218} Sarkaria, supra note 28, at 938.
\end{thebibliography}
Indian society can a woman truly “choose” whether or not to have an abortion.\textsuperscript{219} “The right to ‘choose’ means very little when women are powerless.”\textsuperscript{220}

The culture of India itself presents barriers to increasing women’s rights as the “precise application of the home/world, spiritual/material, and feminine/masculine dichotomies”\textsuperscript{221} is in constant controversy and flux. Indian women do not “constitute a homogenous social group.”\textsuperscript{222} Regional, class, education, cultural, and religious variations result in “differential levels and experiences of violence, exploitation and abuse.”\textsuperscript{223} “Laws alone or judicial activism cannot bring about enduring changes in as ancient a social fabric as India’s. The socialization process is too deep and too entrenched to be tackled through legislation alone.”\textsuperscript{224} Cultural change must occur, but it takes time and legislative persuasion to revolutionize a society.

The Indian government has recognized the problem of gender selection within the country for decades. To the government’s credit, numerous bills and policies have been implemented to curb the practice. However, in Indian society daughters are still considered to be liabilities for a family, and sons are assets. Until that underlying cultural attitude is changed, India will continue to face an uphill battle in its fight against the declining child sex ratio.

The most effective way to curb female infanticide and feticide is to improve the perceived value of women in Indian society. This can best be accomplished through increasing societal acceptance and governmental enforcement of property rights for

\textsuperscript{219} Id. at 937.
\textsuperscript{221} See Partha Chatterjee, Colonialism, Nationalism, and Colonialized Women: The Contest in India, American Ethnologist, Nov. 1989, at 622, 627.
\textsuperscript{222} See Rajesh, supra note 118, at 112.
\textsuperscript{223} Id.
\textsuperscript{224} See CEDAW initial report, supra note 44, art. 5.
women. As more women become property owners through either inheritance, gift or purchase, the need for a dowry system will diminish. Indian women will contribute to the social status of their families and have more “value” in the community. When a woman has more intrinsic economic worth, her family will no longer need to “compensate” her prospective husband and his family for her care through a dowry. As the dowry practice is lessened, families will feel less financially burdened by having daughters, and consequently will allow more baby girls to survive. The practices of female infanticide and feticide in India can be eradicated by increasing a woman’s worth through enforcement of property rights.