

Female foeticide in India and femicide in Brazil as a violation of human rights: challenges and policy framework

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Abstract

Female foeticide and femicide are the manifestations of violation of the basic human right that is the 'right to live'. In general, human rights are the basic rights and freedoms to which all human beings irrespective of gender are entitled to. Gender inequality is a painful and a grave reality in the contemporary world and India and Brazil are no exception. Ingrained in its deep rooted patriarchal society, this issue is further aggravated by poverty, regional disparity, religion, race and skewed male/female sex ratio. Both the countries are making some important strides in this direction to foster gender equality which is supported by women's movements and the civil society who have put a spotlight on the necessity to create new policies to mitigate gender discrimination and inequality.

The paper makes an attempt to address the pressing issues and challenges faced by both the countries related to woman in general and girl child in particular. It will also take an account of the legal framework that acts as a deterrent in curbing the menace of foeticide and femicide. Liuz Inácio Lula da Silva under his first presidency in 2003 created a federal governmental body for the sole purpose of addressing gender equality issues. This attempt had translated in the creation of National Plan for Women's Policies (NPWP) in 2004 which reaffirmed the commitment of the Brazilian Federal government and other governmental bodies to incorporate a gender perspective into policy making. Recently, President Dilma Rousseff signed the femicide law hailed as a landmark in its fight against injustice and violence against women. It was part of the government's zero-tolerance policy towards violence and atrocities against women in a country where 15 women are killed every day. In India, the ethical use of New Reproductive Technologies like ultrasound is under scrutiny as it is used to illegally terminate female foetus.

Education of girls is a prerequisite and one of the best practices to sustainable development on the grounds that an educated girl is more likely to become a competent mother, an efficient family planner, a more productive and better-paid worker, an informed citizen, a skilful decision maker and a self-confident individual. The state intervention in spreading the message educating the girls under the current governments of President Dilma Rousseff and Prime Minister Narendra Modi will be one of the crucial elements of the paper.

Keywords: human rights, foeticide, femicide, legal framework

Introduction: Definition

Human rights are generally the basic rights and freedoms to which all humans are entitled to. The Charter of the United Nations has been signed by virtually all sovereign states recognising the existence of human rights and it has been argued that the doctrine of human rights has become the dominant doctrine worldwide for regulating and evaluating the moral status of the contemporary geo-political order^[1].

Female foeticide and Femicides are the most heinous crimes prevalent in our society. They are the violation of the basic human right that is the 'right to live'. The concepts of femicide and feminicide are both used interchangeably in the literature of gender-based violence.

Female foeticide, a form of femicide is the termination of female-identified foetuses during pregnancy, is closely

associated with a societal desire for male children and consequent unfavourable sex ratios towards females in contemporary India (Patel 2010)

According to the Census (2011) data, there is a significant decline in the Child Sex Ratio (CSR), calculated as number of girls for every 1000 boys between age group of 0-6 years, with an all time low of 918 in 2011 from 976 in 1961.

Recent demographic and ethnographic studies show that discrimination against the girl child remains a feature of most societies in Asia and particularly in India and it is not restricted to only their poorer and less developed rural regions characterised by high fertility and competition for scarce resources. Girls across the continent, whether in rural, urban, rich or poor sectors remain particularly vulnerable at two separate stages of their lifecycle. First, before birth, in infancy and in early childhood, young girls in India experience discrimination at different levels which are reflected in unfavourable sex ratios at birth, high rates of female infant and child mortality and lesser access to educational and health facilities. In the adolescent stage, girls disadvantaged and discriminated in education, nutrition, health, the labour market

¹ Article 2 of the Universal Declaration of Human Rights states that 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. Available at: <http://www.un.org/en/universal-declaration-human-rights/>.

and in family and community participation (Croll 2006)^[4].

Femicide or Feminicide is the violent and intentional killing of women by the mere condition of being a woman. Femicide is the most extreme form of violence based on gender inequality (Wilson 2014)^[12]. It is often attributed to the historically unequal power and social relations between men and women.

Over the last decade, it has cost thousands of lives in Latin America. Women in Latin America have been the most vulnerable class signifying the deep rooted patriarchal culture of machismo. Violence against women in various forms is used as a form of intimidation to keep women in their place. In a society where there are still strong remnants of the patriarchy, the woman is placed in a lower position and is, therefore, subordinated to man as his property.

Women in Latin America have been subjected to various types of gendered violence, among them torture and rape during civil war or under military dictatorships, femicide, and domestic abuse linked to machismo. Machismo is the belief that women should be subordinate to the needs and desires of their male partners, taking care of them, providing them pleasure (either as wives or partners or as approached in predatory fashion by men who would not consider marrying them), and bearing their children, and it is not limited to Latin American societies.

Recognising that femicide is the killing of women and girls because of their gender, which can take the form of, *inter alia*: 1) the murder of women as a result of domestic violence/intimate partner violence; 2) the torture and misogynist slaying of women 3) killing of women and girls in the name of “honour”; 4) targeted killing of women and girls in the context of armed conflict; 5) dowry-related killings of women and girls; 6) killing of women and girls because of their sexual orientation and gender identity; 7) the killing of aboriginal and indigenous women and girls because of their gender; 8) female infanticide and gender-based sex selection foeticide; 9) genital mutilation related femicide; 10) accusations of witchcraft and 11) other femicides connected with gangs, organised crime, drug dealers, human trafficking, and the proliferation of small arms.

The voice against gender violence in Brazil began in the late 1970s. The early initiatives to get violence against women on the public and political agenda developed within a favourable political context. As the opposition against the authoritarian regime increased and gained electoral strength in the mid-1970s, feminists started to engage more with institutional politics (Alvarez 1994). The 1975 International Women’s Year Conference in Mexico City and the UN Decade of Women that followed (1976–1985) gave an important impetus to feminist organizing at both the national and regional level (Roggeband 2016)^[8]. Gender-based violence in the form of femicide is recognised by the international community as violation of human rights.

Liuz Inácio Lula da Silva under his first presidency in 2003 created a federal governmental body for the sole purpose of addressing gender equality issues. This attempt had translated in the creation of National Plan for Women’s Policies (NPWP) in 2004 which reaffirmed the commitment of the Brazilian Federal government and other governmental bodies to incorporate a gender perspective into policy making.

The indisputable male dominance in government offices

worldwide signals that the nature of government and politics is gendered and biased against women. Political institutions are gendered in the sense that the processes, practices, ideologies, and distributions of power are directly related to the relationship (negotiation) between men, women and their gendered identities.

When a woman is elected for the first time to the country’s most powerful position like Dilma Rouseff, her own gender identity is likely to influence discourse and policy making^[2].

President Dilma Rouseff signed the femicide law hailed as a landmark in its fight against injustice and violence against women.

The new legislation amends Brazil’s Penal Code to redefine “femicide” as any crime that involves domestic violence, discrimination or contempt for women, which results in their death. Imposing harder sentences of between 12 to 30 years’ imprisonment, the bill also includes longer jail terms for crimes committed against pregnant women, girls under 14, women over 60 and women and girls with disabilities^[3].

Causes and Concern

India

- In India, the male child preference results in female foeticide and infanticide. The misuse of sonography for prenatal sex determination is a common practice in India.
- The status of women owing to traditional bias is another reason for skewed sex ratio.
- Gender discrimination that is the bias against females is grounded in cultural, economic and religious roots. The patriarchal nature of society is also responsible for this bias against females.
- The prevalent of dowry system in many parts of India makes the girl child an economic liability and hence female foeticide and infanticide^[4]. The DOWRY PROHIBITION ACT 1961 bans the request and payment of dowry of any form as a precondition for a marriage.

Latin America and particularly in Brazil, the male is the predominant authority figures in the family group, particularly in partner relationships. The prevalence of ‘machismo’ culture keeps the women at an inferior position. Greater dependency on families and male partners and husband, difficult access to health services and education, combined with limited freedom of movement and limited chances to decide their own way of life are other important factors that amplify discrimination and reduce the quality of their personal lives. This situation is even worse in all those countries where women and girls are already discriminated due to a lack of legal provisions promoting gender equality.

Femicides are generally perpetrated by the women’s male partners (about 40 to 50 percent), it is vital to recognise that femicides are also perpetrated by strangers, acquaintances,

² Rouseff, 62, who was elected with 56% of the vote, became the eighth elected female president in Latin America and the Caribbean.

³ Brazil is the 16th Latin American nation to include a Femicide Act in its national legal framework.

⁴ Dowry is a cultural tradition in which the family of the bride gives cash and presents to the family of the groom. It was originally meant to support new couples beginning their married life. Now dowry system has turned into a commercial transaction that is underpinned by socio-economic standing and reinforces the financial dependency of women on their husbands.

friends, colleagues, and other family members.

Policy framework

India

Beti Bachao, Beti Padhao (save girl child, educate girl child) was launched in October 2014 under the government of Narendra Modi to address the declining child sex ratio (CSR) and to generate awareness and improve the efficiency of welfare schemes for girl child.

Launched with an initial corpus of 100 crores, the goal of the Beti Bachao, Beti Padhao (BBBP) Scheme is to celebrate and provide education to the girl child w.

The main objectives of the Scheme are as follows:

- Prevent gender biased sex selective elimination.
- Ensure survival and protection of the girl child
- Ensure education of the girl child.

The Beti Bachao Beti Padhao (BBBP) initiative has two major components. i) Mass Communication Campaign and ii) Multi-sectoral action in 100 selected districts (as a pilot) with adverse child sex ratio (CSR), covering all States and union territories.

1. Mass Communication Campaign on Beti Bachao Beti Padhao

The campaign aims at ensuring girls are born, nurtured and educated without any discrimination. The Campaign interlinks National, State and District level interventions with community level action in 100 districts, bringing together different stakeholders for accelerated impact. (b) Multi-Sectoral interventions in 100 Gender Critical Districts covering all States/UTs. The District Collectors/Deputy Commissioners (DCs) lead and coordinate actions of all departments for implementation of BBBP at the District level.

2. Multi-Sectoral interventions includes:

- i) Ministry of WCD: Promote registration of pregnancies in first trimester in Anganwadi Centres (AWCs); Undertake training of stakeholders; Community mobilization & sensitization; Involvement of gender champions; Reward & recognition of institutions & frontline workers.
- ii) Ministry of Health & Family Welfare: Monitor implementation of Pre-Conception and Pre-Natal Diagnostic Techniques (PCP&DT) Act, 1994; Increased institutional deliveries; Registration of births; Strengthening PNDT Cells; Setting up Monitoring Committees
- iii) Ministry of Human Resource Development: Universal enrolment of girls; Decreased drop-out rate; Girl Child friendly standards in schools; Strict implementation of Right to Education (RTE); Construction of Functional Toilets for girls^[5].

Sukanya Samriddhi Account is another important scheme targeted at the parents of the girl child. The scheme was launched by Prime Minister Narendra Modi on 22 January 2015 as a part of the Beti Bachao Beti Padhao campaign to encourage parents to build a fund for education and marriage expenses of their girl child.

The government of India had enacted the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (pndt Act) in 1994. The main purpose of enacting the act is to ban the use of sex selection techniques after conception and prevent the misuse of prenatal diagnostic technique for sex selective abortion.

In case of Brazil, the new legislation amends Brazil’s Penal Code to redefine "femicide" as any crime that involves domestic violence, discrimination or contempt for women, which results in their death. Imposing harder sentences of between 12 to 30 years’ imprisonment, the bill also includes longer jail terms for crimes committed against pregnant women, girls under 14, women over 60 and women and girls with disabilities. Brazil is the 16th Latin American nation to include a Femicide Act in its national legal framework.

Table 1: Legislation on violence against women in Brazil.

Private sphere	Community sphere	State Sphere
1995 Special Courts Law instituted special criminal courts for cases of "minor offensive potential," the umbrella under which domestic violence was often considered. <ul style="list-style-type: none"> ▪ law encouraged reconciliation between offender and victim; ▪ negotiations for lowered penalties facilitated by the prosecutor ▪ suspension of the criminal case under certain conditions; ▪ Erosion of the special Women's police units. 	2001 Law 10.224/01 on Sexual Harassment added sexual harassment to the Brazilian penal code (article 216-A) <ul style="list-style-type: none"> ▪ Sexual harassment is defined under the heading crimes against sexual liberty. ▪ Only includes sexual harassment by superiors; maximum 2-year penalty 	
2006 Law 11.340 "Maria da Penha". <ul style="list-style-type: none"> ▪ The law includes an unprecedented and liberalizing definition of family as a "community formed by individuals who are or consider themselves to be related"; formal acknowledgement of same-sex relationships. ▪ Extends OAS definition of domestic violence to include moral and material violence. ▪ Comprehensive package of measures designed to protect abused women 	2015 Femicide <ul style="list-style-type: none"> ▪ The legislation gives a legal definition for femicide under Brazil's criminal code that involves domestic violence, contempt or discrimination against women. Penalizes femicide with 12-30 years imprisonment; longer for crimes committed against pregnant women, girls under 14, women over 60, and people with disabilities.	

Known as the "Maria da Penha" law, as it is named after Maria da Penha Maia, a woman whose ex-husband beat her for 14 years and attempted to murder her twice, leaves her paraplegic. The "Maria da Penha" law stated that aggressors were no longer to be punished with alternative sentences. It increased the maximum sentence from one to three years. Luiz Inácio Lula da Silva under his first presidency in 2003 created a federal governmental body for the sole purpose of

⁵ Available at: http://wcd.nic.in/BBBPScheme/About_BBBP_Scheme.pdf. Accessed 22 March 2017

addressing gender equality issues. This attempt had translated in the creation of National Plan for Women's Policies (NPWP) in 2004 which reaffirmed the commitment of the Brazilian Federal government and other governmental bodies to incorporate a gender perspective into policy making.

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Conclusion

The socio-political and economic disempowerment has manifested in various gender-based violence, femicide being the heinous and the systematic disregard for equal enjoyment of human rights by women.

One of the main reasons for the failure of many countries in Latin America and the Caribbean region to tackle the menace of gender violence in different forms in an integrated manner is the lack of coherence between the legislative initiatives and the culture and practices of the judicial system. Institutionalising norms to end violence against women in Latin America has been a long and ongoing process with progress and setbacks.

In India also, tackling femicide in the form of female foeticide is extremely difficult as gender discrimination and violence against women is so embedded within India's social, cultural and economic structures. Responses in this regard must be comprehensive and at different levels that involves the development and implementation of strong legislation, gender sensitive law enforcement policies and protocols, awareness raising at the grassroots level, support for individuals and families experiencing violence, and the realisation of women's social, economic and political rights.

Investments in 'Girls' education is the single best things that can be made in the developing countries like India. UNICEF too has designated girls' education as the prerequisite to sustainable development on the grounds that an educated girl is more likely to become a competent mother, a knowledgeable family planner, a more productive and better-paid worker, an informed citizen, a skilful decision maker and a self-confident individual. Hence girls' education became the main objective of almost all UNICEF girl child campaigns.

Femicide in the form of female foeticide cannot be fully addressed without tackling the patriarchy and misogyny that permeates much of Indian society. Efforts should be made to engage with local communities, to build connections and engage with community leaders and to develop education programmes on women's rights. These programmes will inform women of their rights and the services that are available to them in the case of violence.

The development of legislation and legal frameworks for addressing femicide in any form is utmost important tackling violence against women and there is a need for strong legislation in holding perpetrators of violence to account.

Another main issues associated with the implementation of violence against women is the response of law enforcement personnel to crimes against women. In many cases the lack of training amongst law enforcement agencies means that police have little understanding of violence against women legislation, are mostly unaware of their duties in responding to cases of violence and are influenced by social structures of

gender bias and discrimination when responding to crimes. The failure of police to respond immediately to reports of violence including their refusal to register First Information Reports (FIR) in cases of domestic violence, sexual abuse and dowry harassment or dowry death is common and is often compounded by widespread harassment of women by police officers when reporting a crime. The perpetrators of violence against women are not held to account for their actions.

Therefore, Efforts must be made to sensitise police policies and processes related to the handling of violence cases

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