

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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FAMILY LAW AS A STRUCTURAL DRIVER OF FEMALE FOETICIDE: DOWRY, INHERITANCE, AND PATRIARCHY IN INDIA

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ABSTRACT

Female foeticide in India is widely examined through the lens of medical regulation and criminal law. However, this paper argues that such an approach captures only the symptom and not the disease. The persistent preference for male children is not a product of technological misuse alone; it is rooted in the structural architecture of Indian family law — specifically, in the unequal inheritance regime under the Hindu Succession Act, the socio-economic burden imposed by the dowry system, and patriarchal norms that govern familial roles and reproductive decisions. Drawing on a doctrinal and analytical methodology, this paper critically examines how these legal and social frameworks interact to generate the conditions in which the elimination of female foetuses is perceived as a rational economic choice. It argues that while the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) represents a necessary legislative response, its effectiveness is fundamentally limited by its failure to address these structural causes. The paper concludes that achieving substantive gender justice requires a shift from criminalization to structural transformation — through family law reform, economic empowerment, and cultural change.

I. INTRODUCTION

India's child sex ratio — the number of girls per 1,000 boys in the 0–6 age group — has been declining for decades. The 2011 Census recorded it at 919, a historic low that prompted legislative and judicial action across the country. Despite the enactment of the PCPNDT Act and the efforts of a proactive judiciary, the problem persists. This persistence compels a deeper question: why does the elimination of female foetuses continue even where the law is clear and the penalties are severe?

The answer, this paper argues, lies not in the inadequacies of criminal enforcement but in the structural incentives created by Indian family law. The preference for a male child is, in large

part, a rational economic response to a legal and social environment that systematically devalues women — denying them equal inheritance, burdening their families with dowry, and assigning them subordinate roles within the household.

Legal scholarship on female foeticide has tended to focus on the PCPNDT Act: its provisions, its enforcement gaps, and its constitutional implications. Far less attention has been paid to the family law framework that generates the demand for sex selection in the first place. This paper seeks to address that gap. It argues that as long as daughters are legal and economic liabilities under Indian family law, no amount of criminal regulation will eliminate the incentive to avoid having them.

Part II situates female foeticide within the broader socio-historical context of patriarchal family structures. Part III analyses the inheritance regime under the Hindu Succession Act and its reform. Part IV examines the dowry system and its legal treatment. Part V explores how patriarchal norms within family law shape reproductive decision-making. Part VI evaluates the limitations of the PCPNDT Act when viewed against these structural drivers. Part VII proposes a framework for integrated legal and social reform.

II. THE STRUCTURAL ROOTS OF FEMALE FOETICIDE: A SOCIO-LEGAL FRAMEWORK

2.1 From Female Infanticide to Female Foeticide

The killing of female children is not a modern phenomenon. Female infanticide has been documented in India since at least the early nineteenth century, when colonial administrators first attempted to regulate it through legislation. The historical record reveals a consistent pattern: female life was sacrificed to preserve family resources, social standing, and patrilineal continuity.

The transition from infanticide to foeticide represents not a transformation of values but a technological adaptation of them. The introduction of ultrasonography and amniocentesis into clinical practice in the 1970s and 1980s made it possible to determine foetal sex with considerable accuracy. Families who previously faced the social and moral burden of killing a living infant could now achieve the same objective before birth, under the cover of medical legitimacy. The act became easier to conceal, harder to prosecute, and arguably more normalized.

This transformation illustrates a fundamental sociological insight: patriarchal norms do not disappear in the face of legal prohibition; they adapt. The legal question is therefore not simply

how to prohibit a practice but how to dismantle the structural conditions that make it rational.

2.2 The Economic Logic of Son Preference

Son preference in India is not merely cultural sentiment; it has a clear economic logic. Sons are perceived as assets: they inherit family property, continue the family name, provide financial support to aging parents, and perform religious rites that are believed to confer spiritual benefits. Daughters, by contrast, are perceived as costs: they require dowry at marriage, they leave the natal family upon marriage, and under traditional inheritance rules, they do not inherit parental property.

This asymmetry is not merely a matter of cultural perception. It is, to a significant degree, legally produced. The laws governing inheritance, marriage, and property in India have historically encoded this asymmetry, and despite formal reforms, their social effects persist. As Amartya Sen famously observed, the phenomenon of 'missing women' in Asia — including India — reflects not a natural biological fact but a social and economic one, produced by systematic discrimination.

III. THE HINDU SUCCESSION ACT AND THE INHERITANCE DEFICIT

3.1 The Pre-Amendment Regime (1956–2005)

The Hindu Succession Act, 1956, was the first codified legislation governing inheritance among Hindus in independent India. While it extended certain inheritance rights to women — including the right to inherit in the same manner as male heirs from certain relatives — it preserved a critical distinction that effectively excluded daughters from the most economically significant form of Hindu property: coparcenary or ancestral property.

Under the Mitakshara school of Hindu law, which governed inheritance in most of India, coparcenary property was the collective property of a joint Hindu family, transmitted by birth through male descendants. Daughters, upon birth, did not acquire a share in coparcenary property; sons did. This meant that the most substantial family assets — agricultural land, commercial enterprises, ancestral homes — passed exclusively through the male line. Daughters received a share only in the case of a partition, and only from certain relatives, not from the coparcenary itself.

This legal framework had a direct and measurable effect on the economic status of daughters. It made daughters structurally peripheral to the family's economic future. The perception that a daughter would not contribute to family wealth but would require an investment (in the form

of dowry) at marriage was, therefore, not irrational within the legal framework that existed. It was legally correct.

3.2 The Hindu Succession (Amendment) Act, 2005

The Hindu Succession (Amendment) Act, 2005 represented a landmark reform. It amended Section 6 of the principal Act to grant daughters the same right as sons in coparcenary property. Daughters born into a Hindu joint family would now, by birth, acquire a share in ancestral property equal to that of a son. This was a fundamental departure from centuries of Mitakshara law.

However, the reform's impact has been significantly limited in practice. A persistent problem has been the retrospective application of the amendment. Initially, courts held that the amendment applied only to daughters born after 1956, but the Supreme Court in *Vineeta Sharma v. Rakesh Sharma* (2020) finally clarified that the right of daughters as coparceners does not depend on whether the father was alive at the time of the amendment. This clarification was crucial, but it came fifteen years after the amendment itself.

More fundamentally, formal legal equality has not translated into substantive equality in practice. Studies consistently show that daughters routinely relinquish their inheritance rights to brothers, either through social pressure, threats to matrimonial support, or fear of family conflict. The National Family Health Survey data reflects that women's ownership of land and property remains far below their legal entitlement. The law promises equality; social practice withholds it.

This gap between formal rights and lived reality has direct consequences for female foeticide. If daughters do not in practice inherit property, their economic contribution to the natal family remains negative: the costs of raising them, marrying them off, and paying dowry are not offset by any inheritance benefit. The economic case for son preference is thereby maintained even after legislative reform.

3.3 Inheritance Law as a Structural Cause

The connection between inheritance law and sex-selective practices is not merely theoretical. Research in development economics and legal sociology has consistently found that regions with stronger women's property rights have lower rates of female foeticide and more balanced sex ratios. Conversely, communities that adhere most rigidly to patrilineal inheritance norms show the most severe sex ratio imbalances.

This suggests that inheritance law is not merely a background condition but an active driver of sex preference. If daughters are legally — and socially — excluded from family wealth, the incentive to avoid their birth is directly legally produced. No amount of criminal regulation of medical technology can address a preference that is built into the property law of the land.

IV. THE DOWRY SYSTEM: LEGAL PROHIBITION AND STRUCTURAL PERSISTENCE

4.1 The Economic Burden of Daughters

Dowry — the transfer of property or assets from the bride's family to the groom's family at the time of marriage — is legally prohibited in India by the Dowry Prohibition Act, 1961. Yet it persists, and by most accounts has intensified rather than diminished in the post-liberalization era. The National Crime Records Bureau consistently records several thousand dowry deaths annually, and the actual figure is widely believed to be far higher due to underreporting.

The economic logic of dowry is inseparable from the logic of son preference. In a society where inheritance passes through male lines and where daughters leave the natal family upon marriage, dowry functions as an advance on the daughter's inheritance — a payment made to the groom's family to secure a match. As marital markets have become more competitive with rising aspirations, dowry demands have escalated, making the birth of a daughter increasingly associated with a potentially ruinous financial obligation.

This is the most direct economic link between family law and female foeticide. Families that cannot afford dowry — or that fear being unable to do so — have a direct financial incentive to avoid the birth of daughters. The practice of sex-selective abortion is, in part, a response to the anticipated cost of dowry.

4.2 The Failure of the Dowry Prohibition Act

The Dowry Prohibition Act, 1961 makes the giving, taking, and demanding of dowry a punishable offence. The Criminal Law (Second Amendment) Act, 1983 inserted Section 498A into the Indian Penal Code, criminalizing cruelty by husbands and in-laws in connection with dowry demands. Section 304B IPC creates a specific offence of dowry death. These are significant statutory interventions.

Yet the empirical evidence of their impact is dismal. Conviction rates under Section 498A and Section 304B remain extremely low. Dowry continues to be demanded and paid across caste, class, and religious lines, albeit in different forms — gifts, jewellery, household goods, cash —

that resist easy categorization under the statute. The law has failed to disrupt the social norm. The failure of the Dowry Prohibition Act reflects a general limitation of prohibitory criminal law when deployed against deeply embedded social practices. Prohibiting the symptom without transforming the underlying economic and social conditions merely pushes the practice underground. As long as women lack independent economic standing and secure property rights, the transfer of family wealth at marriage will continue in some form.

4.3 Dowry and Female Foeticide: The Direct Link

The relationship between dowry and sex-selective abortion has been the subject of empirical research. Studies conducted in states such as Punjab, Haryana, and Rajasthan — where dowry demands are particularly high and sex ratios particularly skewed — suggest a strong correlation between the intensity of dowry practice and the frequency of sex-selective abortion. The NFHS data similarly supports this correlation.

Legal scholars have argued that dowry functions as the primary mechanism by which female foeticide is economically rationalized. Without the anticipated burden of dowry, many families might not resort to sex selection. In this sense, the failure to effectively prohibit dowry is not merely a separate legal problem; it is a direct contributing cause of female foeticide.

V. PATRIARCHAL NORMS, FAMILY STRUCTURE, AND REPRODUCTIVE AUTONOMY

5.1 The Patriarchal Family as a Legal Institution

Beyond inheritance and dowry, the broader structure of Indian family law encodes patriarchal assumptions in ways that bear directly on sex preference. Personal laws governing marriage, guardianship, maintenance, and adoption have historically assigned women a subordinate position within the family unit. While significant reforms have been enacted — particularly the Hindu Adoption and Maintenance Act, 1956, the Hindu Marriage Act, 1955, and the Protection of Women from Domestic Violence Act, 2005 — the formal equality promised by these statutes remains incompletely realized in practice.

The institution of the patrilineal joint family, which continues to be the dominant family form in many parts of India, vests decision-making authority in the senior male members of the family. Reproductive decisions, including the decision to terminate a pregnancy following sex determination, are frequently not made by the pregnant woman alone but are shaped by family pressure and patriarchal authority.

Research in reproductive health consistently shows that women who undergo sex-selective abortion often do so under pressure from husbands or in-laws. In such cases, the language of 'choice' in reproductive rights discourse obscures the coercive social context in which decisions are made. The Supreme Court has recognized reproductive autonomy as an aspect of the right to life under Article 21 in cases such as *Suchita Srivastava v. Chandigarh Administration* (2009). But reproductive autonomy that is exercised under patriarchal coercion is not genuine autonomy.

5.2 Religious Norms and Legal Reinforcement

The preference for male heirs is also deeply embedded in religious practice, particularly in the Hindu tradition. Sons are considered essential for the performance of last rites, specifically the *shraddha* ceremony and the lighting of the funeral pyre, which are believed to ensure the spiritual welfare of deceased parents. This religious imperative provides a powerful non-economic motivation for son preference that operates independently of the inheritance and dowry calculus.

Indian personal law — which continues to be structured along religious lines — has historically allowed and in some cases reinforced these norms. The continued application of separate personal laws for different religious communities, rather than a Uniform Civil Code, means that patriarchal family norms embedded in religious practice retain legal legitimacy. Reform has been piecemeal and contested, and in some communities, virtually absent.

5.3 The Demand Side of Sex Selection

The PCPNDT Act, as the primary legal instrument against sex-selective practices, operates exclusively on the supply side: it regulates medical practitioners, diagnostic centres, and the communication of foetal sex. It does nothing about the demand side — the family-level decision to seek sex determination and to abort a female foetus. That demand is generated by the structural conditions described in this paper: inheritance disadvantage, dowry burden, and patriarchal family norms.

Supply-side regulation without demand-side transformation is inherently limited. Where the demand for a service is strong enough, prohibition drives the service underground rather than eliminating it. There is considerable evidence that sex-selective practices have continued through informal channels — unlicensed clinics, illegal sex determination services, cross-border procedures — precisely because the underlying demand has not been addressed.

VI. THE PCPNDT ACT: NECESSARY BUT INSUFFICIENT

6.1 The Statutory Framework

The PCPNDT Act, as amended in 2003, establishes a comprehensive regulatory regime for prenatal and pre-conception diagnostic techniques. It mandates the registration of all genetic counselling centres, clinics, and laboratories; requires strict record-keeping through Form F documentation; prohibits the communication of foetal sex; and creates a multi-tiered institutional structure comprising Central and State Supervisory Boards, Appropriate Authorities, and Advisory Committees.

The judiciary has been instrumental in animating this framework. In *Voluntary Health Association of Punjab v. Union of India* (2014), the Supreme Court expressed deep concern at the declining sex ratio and directed states to take concrete steps for implementation. In *Sabu Mathew George v. Union of India* (2015), the Court issued directions to search engines to take down advertisements for sex determination services. These interventions demonstrate the Court's recognition that female foeticide is a matter of constitutional importance.

6.2 Implementation Failures

Despite this normative framework, implementation has been consistently inadequate. Appropriate Authorities in many states are under-resourced, inadequately trained, and overburdened. Prosecution rates remain low and conviction rates lower still. The documentation requirements under the Act, particularly Form F, have been enforced against medical practitioners in ways that focus on technical compliance rather than substantive violations, creating perverse incentives and damaging the relationship between the regulatory regime and the medical community.

The Act also creates a tension with the Medical Termination of Pregnancy Act, 1971, which permits abortion on broad grounds including contraceptive failure and socio-economic factors. The line between a lawful abortion and a sex-selective one is difficult to establish in the absence of evidence of sex determination, making prosecution challenging.

6.3 The Structural Gap

Most fundamentally, the PCPNDT Act is designed as a supply-side regulatory instrument. Its drafters conceived the problem as one of medical misuse: if diagnostic technology is properly regulated, sex determination will be prevented, and sex-selective abortion will cease. This conception is legally elegant but empirically naive.

The evidence suggests that the persistence of sex-selective practices is not primarily a product of the availability of diagnostic technology. It is a product of the demand for sex selection, which is generated by the structural conditions this paper has analyzed. As long as daughters are economic liabilities under the inheritance regime, as long as dowry represents a potentially catastrophic financial burden, and as long as patriarchal family norms assign inferior value to female life, families will seek sex determination by whatever means are available.

This is not an argument against the PCPNDT Act. Regulatory supply-side intervention is necessary. But it is insufficient unless it is accompanied by structural reform that addresses the demand side.

VII. TOWARDS STRUCTURAL TRANSFORMATION: A REFORM FRAMEWORK

7.1 Family Law Reform as the Primary Intervention

If the structural argument advanced in this paper is correct, the primary intervention against female foeticide must be in family law rather than in medical law. This requires a multi-pronged approach that goes beyond formal legal equality to achieve substantive equality in practice.

First, the inheritance reforms introduced by the 2005 amendment must be effectively implemented. Legal aid, awareness campaigns, and community-based advocacy are needed to ensure that women actually exercise the inheritance rights they are formally entitled to. States should establish dedicated family property tribunals with simplified procedures that make it accessible for women to enforce inheritance claims without prolonged and costly litigation.

Second, the enforcement of the Dowry Prohibition Act must be fundamentally reconceived. The current approach of treating dowry as a criminal offence to be prosecuted after the fact has manifestly failed. A more promising approach would combine stricter enforcement with economic interventions — conditional cash transfer programmes, women's economic empowerment initiatives, and social security schemes — that reduce the economic vulnerability that makes dowry a rational transaction for both parties.

Third, the broader project of a Uniform Civil Code, which has constitutional backing under Article 44 as a Directive Principle, should be pursued — not in a manner that imposes a particular cultural vision, but in a manner that ensures women across all religious communities enjoy substantively equal rights in marriage, inheritance, and family decision-making.

7.2 Strengthening Reproductive Autonomy

The legal protection of reproductive autonomy must be strengthened in ways that actually empower women rather than abstractly acknowledging their rights. This requires attention to the coercive social context in which reproductive decisions are made. Counselling requirements under the MTP Act should be designed to detect and address pressure from family members. Medical practitioners should be trained to identify coercion and to provide referrals to support services.

The courts have an important role to play here. The Supreme Court's jurisprudence on reproductive autonomy, anchored in Article 21, has recognized the woman's right to make independent reproductive choices. This jurisprudence should be extended to recognize that reproductive autonomy exercised under coercion is not genuine autonomy, and that the state has an affirmative obligation to create conditions — legal, social, and economic — in which genuine choice is possible.

7.3 The Role of Education and Social Policy

Legal reform alone cannot dismantle patriarchal norms. Education — both formal schooling and community awareness — is essential to changing the cultural attitudes that sustain son preference. Government schemes such as Beti Bachao Beti Padhao represent an acknowledgment of this dimension, but their impact has been limited and their implementation uneven.

A more ambitious social policy agenda would include: targeted interventions in high-risk districts; women's economic empowerment programmes that give women independent income and reduced dependence on family support; social security systems that protect elderly parents regardless of whether they have sons; and community-based programmes that challenge and transform gender norms at the local level.

VIII. CONCLUSION

Female foeticide in India is not a problem of medical regulation. It is a problem of structural inequality, produced and sustained by the architecture of Indian family law. The persistence of sex-selective practices despite the PCPNDT Act, despite judicial activism, and despite policy initiatives reflects the depth of this structural problem.

This paper has argued that the unequal inheritance regime under the Hindu Succession Act, the economic burden of dowry, and the patriarchal norms embedded in Indian family law

collectively generate the conditions in which the elimination of female foetuses is perceived as a rational — even necessary — choice. As long as these structural conditions persist, supply-side regulation of medical technology will remain an inadequate response.

The path forward requires a shift in the locus of intervention: from medical law to family law, from criminal prohibition to structural transformation, from formal equality to substantive justice. This means enforcing and extending inheritance reforms, effectively addressing the dowry system, protecting genuine reproductive autonomy, and investing in the education and economic empowerment of women.

Such a transformation is not merely a legal project. It requires sustained political will, institutional commitment, and cultural change. But the legal framework — including the reform of family law — is an indispensable foundation. Without it, the constitutional guarantees of equality and dignity enshrined in Articles 14, 15, and 21 will remain, for the girl child yet to be born, promises that the law makes but society withholds.

FOOTNOTES

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