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## PC-PNDT Act: A Cross-Sectional Study

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*Women for ages have been a victim of harassment, exploitation, and social exclusion. She is not safe even in the womb of her mother. People question her existence. The son preference syndrome in India is widespread and deeply rooted. Female foeticide is one of the heinous crimes in India. To avoid this social problem, the government came up with legislation, Pre – Conception and Pre – Natal diagnostics 1994 also known as PC–PNDT Act, 1994. But people have still found a way to escape the punishment of this crime. This act was introduced for the betterment of all and cur this social evil that is prevalent in society. Female foeticide is not a new concept but has been prevalent for years and now there has emerged a need to stop this social evil. The decreasing child sex ratio is alarming. Sex determination and the killing of female foeticide is the worst form of violence that could be done to a life not yet born. But this act has many loopholes and issues to be covered. This act is an example of how legislature makes laws to curb social evils but fails to regulate the proper implementation of the same. Judiciary needs to take a step forward to look into the regulation of the same.*

**Keywords:** *harassment, conception, female foeticide.*

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### INTRODUCTION

Gender discrimination is a problem that has its root all over the world, and women have been the exploited class ever since. Social stratification and exploitation among women is now a matter of discussion for various research scholars. Literature, both contemporary and ancient

goes into the depth of the discrimination prevalent against women in their respective time zones. India is one among those countries where this inequality doesn't start with the birth of a girl child, but even before that. a dagger is around her neck when she is in her mother's womb. The phenomenon of sex selection and sex-selective adoration are the major social issues that need to be addressed. Indians are a victim of "son preference syndrome"<sup>1</sup>, and modern medical technology has made it possible to determine the sex of the fetus and decide thereupon to keep or to abort the child. Female foeticide is one of the heinous crimes in India. To avoid this social problem, legislation introduced Pre - Conception, and Pre - Natal diagnostics in 1994 also known as PC - PNDT Act, 1994. But people have still found a way to escape the punishment of this crime. We have so many couples going abroad to determine the sex of the fetus and plan accordingly. There are several loopholes in the legislation of the same and needs a better regulation to fight with the problem.

### THE PROBLEM OF SEX DETERMINATION

The world together is moving towards gender neutrality and with the rise in modernity people seek equal rights for everyone. There has been a lot of debate regarding rights for animals, prisoners, the LGBTQ+ community, women, and many more, so why can't we talk rights of a fetus. The preference of a male child in India is an example where we may see gender discrimination taking its worst form. The inability of the couple to produce a male child leaves them a victim to social exploration, harassment, and isolation, only because they do not have an 'heir'. The couple is considered cursed and looked down upon throughout the rest of their lives; even the girls born to such parents never get respectable treatment from society. In the case of a barren couple, the woman becomes the stuff of ridicule.<sup>2</sup> It is because of this that many social evils are prevalent in society, like dowry, polygamy, female infanticide, and sexual discrimination being the worst of all.

Female foeticide is not a new concept but has been prevalent for years and now there has emerged a need to stop this social evil. The decreasing child sex ratio is alarming. Sex

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<sup>1</sup> Tapan Ranjan Mohanty, *Law, Liberty and life: a discursive analysis of PC - PNDT ACT* (Vol 3, Unila Salle Editora 2015)

<sup>2</sup> *Ibid*

determination and the killing of female foeticide is the worst form of violence that could be done to a life not yet born. Woman, throughout her life, is threatened by different forms of discrimination that she might face. This process of discrimination begins much before her birth, which is in her prenatal stage, and the sex selection by advanced sex selection techniques.

These problems are very much similar in developing countries, especially in the Indian sub-continent. Undoubtedly, India has lost millions of girls because of Female foeticide in the past decade. Rajasthan, Haryana, Punjab have more such districts where the *sex ratio*<sup>3</sup> is below than national average. Everything in society is also related to law. In India, mere voting rights do not make it a democratic country, but the rules and regulations and the power to abide by them is also important feature of democracy. So to remove the social evils mentioned, the government introduced the PC - PNDT Act in 1994.

## ROOTS OF THE ACT

Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 was passed by Parliament after recommendations of *WHO*<sup>4</sup> to keep a check on female foeticides and change in the sex ratio of this southeastern Asian country giving importance to particular North-western state where situations are alarming.<sup>5</sup> PC - PNDT Act, passed in 1994 but came into effect in 1996, preceded by an amendment in 2003. Consisting of eight chapters the act has regulations for the predetermination of the fetus and declares it as an offence and offer penalties. . The act provides prohibition of sex selection of couples for the administration of Pre-Natal Diagnostic Techniques for the purpose of checking abnormalities i.e. chromosomal abnormalities or congenital abnormalities, metabolic disorder, genetically sex-linked diseases that no one can misuse these facilities.

Thus act claims to ensure promotional schemes for the welfare of girls at the district level, evaluate of PC - PNDT Act, and monitor it on a regular basis. The act also claimed to appoint

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<sup>3</sup> Sex ratio is the number of live male births divided y the number of live female births, multiplied by 1000

<sup>4</sup> WHO – World Health Orangization, a specialized agency under UN responsible for public health

<sup>5</sup> *Ibid*

agencies in order to check proper implementation. Also being inclusive of *Anganwadi*<sup>6</sup> workers, it aimed towards keeping a track of pregnancies. In a landmark judgement of *Sabu Mathew George vs. UOI*<sup>7</sup>, the Supreme Court of India directed Google, Yahoo, Microsoft to not display any advertisement which shall be in violation of *section 228* of PC – PNDT Act, 1994. The court also ordered to take down all advertisements on the internet that use terms that are obvious for sex determination.<sup>9</sup>

It was in 1975 that India received sex determination technologies, after the *MTP*<sup>10</sup> Act. This act allowed abortion only when the woman is injured or suffered a physical or mental problem, or if the baby is the result of rape or failure of contraception.<sup>11</sup> These techniques evolved to give shape to social evils by the name of sex determination of foetus, leading to the abortion if the foetus is female. Despite proper direction and guidelines established by the PC – PNDT Act, some states were yet to implement it and the situation of female foeticide remained the same. To mention one state, in Orissa, hundreds of skeletons and skulls of infants were discovered which rather came like a shock.<sup>12</sup> Then, a social activist, HemantaRath filed a PIL in the High Court of Orissa under section 226. In *Hemanta Rath vs. UOI and Others*,<sup>13</sup> the high court ordered the establishment of authorities and committees to look into the matter within 6 weeks. This incident clearly showed that the executive and legislature may fail when it comes to the implementation of several laws, then the judiciary has to play an important role.<sup>14</sup>

## LOOPHOLES IN THE ACT

There are certain loopholes in this bill that are pending after its last amendment in 2003. Section 2(g) of this Act defines the ‘medical geneticist’ as a person who possesses a diploma or holds a degree in genetic science which consists of Pre-Natal and sex selection fields. Many

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<sup>6</sup> Started in 1975, Anganwadi is child care centre in rural areas

<sup>7</sup> *Sabu Mathew George v UOI* 2017 (7) SCJ 78

<sup>8</sup> Prohibition of advertisements relating to pre-natal determination of sex and punishment for contravention

<sup>9</sup> *Ibid*

<sup>10</sup> Medical Termination of Pregnancy Act 1971

<sup>11</sup> *Sabu Mathew* (n 7)

<sup>12</sup> *Ibid*

<sup>13</sup> *Hemanta Rath v UOI & Ors* AIR 2008 Ori 71

<sup>14</sup> *Ibid*

times senior secondary pass students go and apply for such diploma or degree that has zero practical knowledge in this field. There should be a requirement for minimum qualifications such as DM/MD in medical genetics certified by MCI<sup>15</sup> who should be given in - charge of carrying out the diagnosis.

Section 3(b) prohibits anyone from selling registered USG<sup>16</sup> machines, imaging machines, or scanners to anyone who is capable of detecting the sex of the fetus. But many a time people instead of selling their registered sex determination machines to a third party they opt for transferring them. Transferring the equipment is an easy task, with the reduced number of paperwork and it is also free from government policies. It's time to prohibit the transfer to a third party under the purview of this Act. Punishments in terms of fine and imprisonment should also be increased from a minimum of three years of imprisonment and ten thousand rupees as a fine to at least five years of imprisonment and fifty thousand rupees of fine.

Every state government should ensure that the act is being properly implemented in their state, for this purpose they may introduce efficient authorities for the same. During this year in April central Government has issued a set of guidelines that provided some relaxation in the PC - PNDT act till 30<sup>th</sup> June citing COVID - 19 emergency situations. Actually local government hospitals and private license holders, genetic counseling centers have to give numbers of total women getting checked up at their centers to local authorities at the end of every working day. But after these guidelines, this has been stopped by the 30<sup>th</sup> of June. This small step which didn't last for a quarter a year can possess a negative precedent in tackling such crimes.

It's been instinct to the very psyche of Indian society that considers a male child to be their heirs who will carry out their family lineage while girls to be an extra financial burden. People use many SSDs (Sex Selection Drugs) such as *shillings*, *Manjuphal*, *Rithaphal* to change the gender of the fetus. These drugs contain a high amount of testosterone and natural steroids

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<sup>15</sup> MCI - Medical Council of India, statutory body that looks after uniform laws over medical science throughout the country

<sup>16</sup> Ultrasonography machine transmits high-frequency sound waves to examine internal organs of the body

which can be potentially detrimental to the growth of the fetus. Such drugs should be made illegal under the PC - PNDT act with proper punishment related to their sales and purchase.

One more area of concern is taking its ground in urban metro societies of couples moving out of India for getting their wife fetus being checked on the name of pregnancy tourism. Couples spend lots of money in taking appointments of doctors in a foreign land especially in the Middle East petro based countries, Nepal, Thailand, etc where knowing the gender of the fetus is not illegal. After knowing the gender they move to India for either abortion or delivery. Such heinous crimes of knowing the gender of the fetus should be made illegal in this Pre-Conception and Pre-Natal Diagnostic act. The punishment for the offenders under this act is very nominal. The offense of sex determination should be counted as a serious and gross offence. By keeping this scenario in mind, the act should be amended.

There are many institutions not registered under the act but are still using technologies and machines for sex determination. If sized by an appropriate authority, they have to pay 5 times the registration fee and submit an undertaking for stopping such practices in the near future. This rule should be amended. Sex determination is not allowed in India but is allowed in other countries. We have couples migrating to other countries to determine the sex of the fetus. This is also known as 'reproductive tourism'. Overall, the act is very flexible in nature and is less rigid to the offenders. The act needs amendments to be implemented in a better way.

## **REPRODUCTIVE TOURISM**

The PC - PNDT act, does not allow, doctors, clinics, hospitals to determine the sex of the embryo but it also does not stop the couple from traveling abroad and getting the same done. Medical tourism has grown to be a market. People generally consider traveling to other nations for the sex selection procedure, like traveling to the United States, Mexico, Italy, and Thailand. In these countries, sex selection is not illegal and here people also seek sex-selective IVF<sup>17</sup> methods, because it is legal to go through PGD/PGS.

## **SUGGESTIONS**

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<sup>17</sup> In vitro fertilization (IVF), helps in fertility through medical science

There is a lot that could be done in order to make the laws more firm regarding the sex selection of the fetus. The major change that could be brought is to identify all the equipment acquired by medical professionals and submit the same to the government. The inspection team needs to be set up to check, all the clinics, and hospitals for the offence being committed. Offenders generally use mobile ultrasound vans for such activities, these vans need to be tracked and traced. Starting at the grass-root level, identification of such social evil could also reduce such evils in our society. Proper training at NGOs and Anganwadis should be provided so that people out there could help in stopping such abuse against the fetus.

## CONCLUSION

The act has given a new perspective to people to look at 'girl child' and with more progress, this idea is growing each day. Certainly, there are some flaws in this act as well. One of the major drawbacks is that people are going abroad to determine the sex of the fetus and plan things accordingly. A proper follow-up mechanism is needed in order for a better implementation. The sex ratio is going down with each passing time, and this issue needs to be discussed with the concerned authority. India still has a long way to achieve gender equality, but the required amendments in this act will create awareness for the people who are misguided. This act is clearly an example of how legislature makes laws to curb social evils but fails to regulate the proper implementation of the same. Judiciary needs to take a step forward to look into the regulation of the same.