

**THE UNHEARD CRY OF GENDERCIDE: FEMALE FOETICIDE AND  
SOCIETAL ATTITUDE VIS-A-VIS CRITICAL ANALYSIS OF PCPNDT ACT  
IN INDIA**

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**ABSTRACT**

*Socio-Economic Justice after 70 years of India's Independence: Domestic and Global Challenges Controlled constitution not framed by the Indian Parliament, that is, Preamble might have given us socio-economic justice six decades ago, but the fruits of the hard work demonstrated by constitution-makers were negated by the parallel technological advancement. Here, in India, people blindfolded by a wish for an heir have managed to travel so far with a white-cane technological process called 'Pre-natal sex determination'. Every scientific achievement gives birth to new cultural realities. A significant number of people acknowledge the need to safeguard and empower the girl child and agree to pursue, by every possible means, a paradigm shift to eliminate discrimination against women. Even then we have failed to change the basic mindset which favours 'producers' over 'consumers'. Our individual reason, spirit and desire must give way to collective good then only the essence of justice can be seen to be done in the society.*

*This paper delves into the socio-economic implications of skewed sex ratio in our country while underlying the results attained by the PC & PNDT Act, 1994. The researchers aim to produce a constructive study on non-linear, tangled, multi-vocal and disordered legal set up to fight against this menace.*

**Introduction**

“It is no exaggeration to call this gendercide. Women are missing in their millions—aborted, killed neglected to death.”

~ *The Economist*, Leaders, Gendercide, March 6th, 2010

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As 20<sup>th</sup> Century came to end, India recorded three million fewer women as compared to men. However, a figure of more than 35 million was recorded in census of 2011 and the most affected age group is 0-6 years. Child Sex Ratio (CSR) in 2001 was 868 which was compared to CSR at 866 in 2011, this was another negative aspect which was recorded.

The unfettered usage of sex selective abortion steered in to skewed sex ratio in India. Consequently, outcry to regulate the ever increasing this demon grew louder and eventually, it was termed illegal in many parts of the world, India being no exception. In 1994, India enacted Pre-Conception Diagnostic Techniques Act (PNDT) and it was amended into Pre –Conception and Pre- Natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act in 2004. The Act was enacted to fill in the vacuum of legal framework to “provide for the prohibition of sex selection, before or after conception” and “for the prevention of their misuse for sex determination leading to female foeticide”.<sup>2</sup> Without a shred of doubt it could be inferred that strong religious and socio-economic bias in tune with preference for a male child in many groups has evolved societal mentalities for the son.<sup>3</sup> Every scientific achievement paves way for new cultural realities.<sup>4</sup> The recent development of ultrasound mechanism and sex selective abortion has added new facets to the omnipotent ‘killing machine’.<sup>5</sup> As the women grow up, preference for a male child constitutes a major factor for violence and aggression against them. Many experts have raised their concern against the demographic crisis. Crisis would give birth to female trafficking, polyandry, child marriages, sexual violence and abuse against women.<sup>6</sup>

In many parts of our country, a girl child is perceived as a liability, given, families need to put up the pomp show at the time of their marriage. On the contrary, a male child is considered as an investment. From contraceptive pills/kits to conceiving to

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<sup>2</sup> THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) AMENDMENT ACT, 2002

<sup>3</sup> Centre for Youth and Development Activities, “Reflections against the campaign under sex selection and exploring ways forward, 2007”

<sup>4</sup> Ashis Nandy, *Defiance and Conformity in Science: The Identity of Jagdis Chandra Bose*, 2 Social Studies of Science 31-85 (1972).

<sup>5</sup> Palash Ghosh, “A Deadly Preference for Male Offspring: The Killing of Baby Girls in India and Pakistan”, *International Business Times*, 13<sup>th</sup> September 2016

<sup>6</sup> Alka Gupta, “Female Foeticide in India”, available at <http://unicef.in/PressReleases/227/Female-foeticide-in-India> (viewed on 31-12-2016)

pregnancy test, to occasional vasectomy, to the delivery, every stage of pregnancy has seen steady medicalisation in India. The monumental example can be seen in the form of pre-natal sex determination techniques and clinics that mushroomed in the country. Ashis Nandy in well researched essay, *Modern Science and Authoritarianism: From Objectivity to Objectification*<sup>7</sup> aggressively demonstrates that how contemporary medicine and political 'non-productivity' are inter-related, as both are psychoanalytically 'isolationist'- Freud's term- they are based on division of perception and impact. The effects of isolation could be easily recorded in the act of fascism which "merely took to logical conclusions what was central to modernity, namely the ability to partition away human cognition and pursue this cognition unbridled by emotional or moral constraints". Similarly, in Nandy's view, is "structured isolation". "The values of objectivity, rationality, value neutrality and inter-subjectivity were definitional values of the modern scientific view. And these values heavily drew on the human capacity to isolate", said Nandy.

"The sometimes harmless distance between the scientist and his subject becomes, in politics, the chasm between a self-declared elite - the 'revolutionary vanguard' in some theories of progress - and their increasingly voiceless objects of manipulation: the reportedly immature masses, underdeveloped, primitive, and carrying the heavy baggage of false consciousness. Seen thus, the culture of modern science is part of a more general theory of imposed secular salvation, the other special case of which is modern authoritarianism."<sup>8</sup>

Many believe that human race has not benefitted much from modern science but rather it "legitimizes a vivisectional posture towards all living beings and nonliving nature". This can be supported with underlining the nonchalant attitude with which grounds of termination of pregnancy within the first twenty weeks are given, with visible signs that child if born, "would suffer from such physical or mental abnormalities to be seriously handicapped"<sup>9</sup>, in Medical Termination of Pregnancy Act. The thought is in line with modern welfare state's perception of specially able

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<sup>7</sup> A. Nandy, *Modern Science and Authoritarianism: From Objectivity To Objectification*, 17 Bulletin of Science, Technology & Society 8-12 (1997)

<sup>8</sup> Ibid

<sup>9</sup> Section 3, The Medical Termination of Pregnancy Act, 1971.

individuals as craven population. However, Nivedita Menon puts forth that, “it is not inscribed in the nature of things that a physically or mentally retarded individual should have a poor quality of life. It is the great value placed on individual autonomy and on competition that makes it seem like a self-evident act.”<sup>10</sup>

Steering force behind the skewed sex ratio in India can be associated with low status of women in our country. Education, health and her autonomous power in decision making are the factors which need to be considered while determining the status of a woman. Polygamy remains one of the starking example of female subjugation is in Islam. Traits of a ‘perfect woman’ could be found in *Ramayana* and *Manusmriti*, as a devoted, subdued and someone who is in continuous need of a male; starting from father, to spouse, to a son.<sup>11</sup>

### Contemporary Issues

*One of the biggest challenges in combating this problem has been the implementation of the Act from the time of its inception in 1994. Even though the Supreme Court directive in 2002 activated state governments, there is still scope for its proper implementation.*

*~ Activity Report of the National Support and Monitoring Cell, 2006, Government of India*

In the past three decades, a peculiar trend in Indian population, where a constant decline in child sex ratio favorable to males is recorded. Declining sex ratio never recorded positive growth since 1980, when first decline was recorded.<sup>12</sup>

Both India and China have seen declining child sex ratio with negligible substantial improvement. The census of 2011 in India recorded new stoop low child sex ratio at 919 from 927 in 2011<sup>13</sup>. Also, states like Jammu and Kashmir, Maharashtra, Rajasthan, Andhra Pradesh recorded continuous negative growth in child sex ratio (0-6 years) with, Daman (district in Daman and Diu) recording lowest sex ratio at 534.<sup>14</sup>

<sup>10</sup> Nivedita Menon, *Rights, Bodies and the Law: Rethinking Feminist Politics of Justice, in Gender and Politics in India* 262-297 (ed. 1999)

<sup>11</sup> George Buhler, “*The Laws of Manu*”, *Sacred Books of the East, Volume 25*, Chapter IX

<sup>12</sup> UNFPA, *Characteristics of Sex-Ratio Imbalance in India, and Future Scenarios*, UNFPA, Hyderabad, October 2007.

<sup>13</sup> Ministry of Health and Family Welfare, *Decline in Child Sex Ratio (Press Release)*, 11<sup>th</sup> February 2014.

<sup>14</sup> “Population Census 2011”, available at <http://www.census2011.co.in/district.php> (viewed on 04-01-2017)

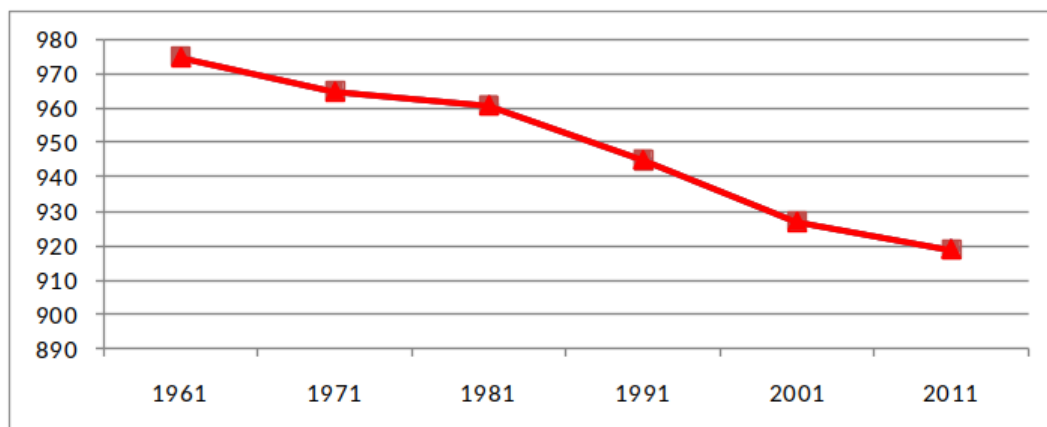
Easy accessibility and presence of sex selective abortion techniques were widely recognized and reported in the decade of 90s. To keep a check on the menace of sex selective abortion, Government of India enacted this Act. Viable usage of law and technology be that as it may, has been a litmus test for human race.

Starting from 1961, Census of India reported steady decline in number of females for every 1000 male (Figure 1). Across the globe, sex ratio at birth is recoded on number of boys per 1000 girls. However, in India, higher denominator is taken into consideration, i.e. number of girls born on per 1000 boys.

Multiple reasons could be attributed for such practices. Ghulam Nabi Azad, Union Minister for Health and Family Welfare, during a Question-Hour said-

“Some of the reasons for neglect of girl child and low child sex ratio are son preference and the belief that it is only the son who can perform the last rites, that lineage and inheritance runs through the male line, sons will look after parents in old age, men are the bread winners etc. Exorbitant dowry demand is another reason for female foeticide/infanticide. Small family norm coupled with easy availability of sex determination tests may be a catalyst in the declining child sex ratio, further facilitated by easy availability of Pre-conception sex selection facilities”.<sup>15</sup>

Figure 1: India's Declining Sex Ratio over the Decades<sup>16</sup>



<sup>15</sup> Ministry of Health and Family Welfare, *Decline in Child Sex Ratio (Press Release)*, 11<sup>th</sup> February 2014

<sup>16</sup> Census of India 1961, 1971, 1981, 1991, 2002, 2011.

Allahbadia in his article in *Journal of Assisted Reproduction and Genetics* stated that almost fifty million females are ‘missing’ from the population in India.<sup>17</sup> For many years, three major reasons have been attributed for this ‘missing’ population, “female infanticide, better food and health care for boys and maternal death at childbirth.” However, little doubt prevails over the role of sex selective abortion techniques and pre-natal sex determination in growing imbalance in sex ratio. Latest trend of nuclear family size in line with belief in patrilineal inheritance, dependence on male child for providing economic support, old age support and to perform last rites form a part of vicious circle of social dogmas and mores which put their weight after males than females. Many evidences have been reported and recorded over the years, in connection with skewed sex ratio and technological advancing pre-natal sex determination and pre-origination sex selection techniques.<sup>18</sup> Dr. A.P.J. Abdul Kalam wisely pointed out, “application of technology should be in consonance with the laws of nature.” Though meant for judicial usage for medical advancement and, for enriching health and constitutional rights<sup>19</sup> of women, many technologies have been used to undermine its objective.

A joint-study conducted by UNFPA and International Centre for Research on Women in 2015, in the state of Haryana and Punjab, an overwhelming majority of 85% of women felt the pressing need to have a son against 81% of men who expressed their wish for the same.<sup>20</sup> A characteristic pattern of similarity was seen amongst both sides for such desire came forth by this survey, “the need to carry on the family name and for providing support in their old age”. Another reason that closely followed the other two was, “their (sons) role in the performance of funeral rites”. On the contrary to popular belief, it was found that “younger men have a higher preference for sons, as two-fifths of the men displayed a high preference while the proportions were lower among the elder men.” Also, it was seen that “there is a (dire) need for community-

<sup>17</sup> Allahbadia GN, “The 50 million missing women”, *Journal of Assisted Reproduction and Genetics*, Vol. 19, No. 9, September 2002; 411-416.

<sup>18</sup> Christopher Z Z Guilmo, LPED/IRD and Isabelle Attane, INED, “The geography of deteriorating Child Sex Ratio in China and India”, available at <http://isites.harvard.edu/fs/docs/icb.topic533932.files/Guilmoto%203.pdf> (viewed on 05-01-2017)

<sup>19</sup> Article 21, Constitution of India, “No person shall be deprived of his life or personal liberty except according a procedure established by law.

<sup>20</sup> UNFPA and ICRW, *Masculinity, Intimate Partner violence and son preference in India – findings from Punjab & Haryana, 2015*, available at <http://india.unfpa.org/sites/asiapacific/files/pub-pdf/PUNJAB-F-lowres.pdf> (viewed on 03-01-2017).

based programs to help elderly men and women and other key community members lead a change in how sons and daughters are valued.” Nick Eberstadt, a demographer at the American Enterprise Institute said, this recent mushrooming of pre-natal sex determination across the globe is “fateful collision between overweening son preference, the use of rapidly spreading prenatal sex determination technology and declining fertility”

Positive links can be traced between financially sound and educated strata of the society and skewed sex ratio. The surfacing of this trend out rightly negates the speculation doing around about the presence of this practice amongst the uneducated and ‘have-nots’ of our society. These practices- in couple with medical advancement act as a structure of gender discriminatory institution- and have kept women powerless.

#### **Advanced Technology With Rudimentary Approach**

Medical advancement cannot solely be blamed for this man-made disaster. The increasing misuse of the reproductive techniques even widened the already existing skewed child sex ratio. Supreme Court underlined that, scientific and medical advancement are becoming more and more sophisticated and efficient. Their easy availability has made it easier to abort the girl child.<sup>21</sup> The ignorant attitude to get rid of the foetus, in many cases, can be corroborated with son’s preference, considering the easy accessibility of technology.<sup>22</sup>

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 has prohibited sex selection for all purposes.<sup>23</sup> Arguably, the Act has failed to justify its objective. Often, a doctor would only “wink or wince” to reveal the gender of the foetus, if the doctor is aware of the fact that parents would favor a male child.<sup>24</sup> The ‘businesses’ of sex selection kept on flourishing even after the implementation of the Act in 1996. Supreme Court in the year 2001 and 2003 issued directives and observed

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<sup>21</sup> *CEHAT & Ors v. Union of India* (2001) 5 SCC 577.

<sup>22</sup> Editorial, “Saving the Girl Child”, *Economic and Political Weekly*, Vol. 43, Issue No. 07, 16 Feb, 2008

<sup>23</sup> Krishan S. Nehra, “Sex Selection & Abortion: India”, available at <http://www.loc.gov/law/help/sex-selection/india.php>. (viewed on 05-01-2017)

<sup>24</sup> Ambika Pandit, *Nothing sound about Delhi’s ultrasound shops*, Times of India (23<sup>rd</sup> March 2013)

that the act of sex selective abortion must be denounced and called for more stringent implementation of the Act.<sup>25</sup>

The preference for a son driven by sex-selective abortion has become even more easier to practice nowadays than ever before. The Economist reported:

“Until the 1980s, people in poor countries could do little about this preference: before birth, nature took its course. But in that decade, ultrasound scanning and other methods of detecting the sex of a child before birth began to make their appearance. These technologies changed everything. Doctors in India started advertising ultrasound scans with the slogan “Pay 5,000 rupees today and save 50,000 rupees tomorrow” (the saving was on the cost of a daughter’s dowry). Parents who wanted a son, but balked at killing baby daughters, chose abortion in their millions.”<sup>26</sup>

Easy accessibility of the technology has turned sex selection into a common practice being undertaken at all the nook and corner with every next door clinic. With the help of “Ultrasound, Amniocentesis, Chorionic Villus Sampling, Noninvasive Prenatal Diagnosis, Pre-implantation Genetic Diagnosis, MicroSort”<sup>27</sup>, people can promptly go to any gynecologist and affirm the sex of the foetus as opposed to depending on quacks.<sup>28</sup>

#### CHILD SEX RATIO OVER THE YEARS<sup>29</sup>

S. No.	State/UTs	1971	1981	1991	2001	2011(Prov.)
	<b>India</b>	<b>964</b>	<b>962</b>	<b>945</b>	<b>927</b>	<b>914</b>
1	Jammu & Kashmir	959	964	NA	941	859
2	Himachal Pradesh	981	971	951	896	906

<sup>25</sup> *CEHAT v. Union of India*, A.I.R. 2003 S.C. 3309; *CEHAT v. Union of India*, (2001) 3 S.C.R. 534).

<sup>26</sup> The Economist, “Gendercide: The worldwide war on baby girls”, 4<sup>th</sup> March 2010

<sup>27</sup> Seema Mohapatra, “Global Legal Responses To Prenatal Gender Identification And Sex Selection”, Nevada Law Journal, Vol 13, 690-721

<sup>28</sup> Ruchika M. Khanna, “Punjab, Haryana continue to love sons — not daughters”, The Tribune India, 5<sup>th</sup> August 2003

<sup>29</sup> PIB, Government of India, *Pre-Conception & Pre-Natal Diagnostics Techniques Act, 1994*, (20-04-2011)



3	Punjab	899	908	875	798	846
4	Chandigarh	892	907	899	845	867
5	Uttaranchal	NA	NA	949	908	886
6	Haryana	899	902	879	819	830
7	Delhi	909	926	915	868	866
8	Rajasthan	932	954	916	909	883
9	Uttar Pradesh	923	935	927	916	899
10	Bihar	964	981	953	942	933
11	Sikkim	1087	978	965	963	944
12	Arunachal Pradesh	968	997	982	964	943
13	Nagaland	991	988	993	964	944
14	Manipur	986	986	974	957	934
15	Mizoram	NA	986	969	964	971
16	Tripura	977	972	967	966	953
17	Meghalaya	992	991	986	973	970
18	Assam	1002	NA	975	965	957
19	West Bengal	1010	981	967	960	950
20	Jharkhand	NA	NA	979	965	943
21	Orissa	1020	995	967	953	934
22	Chattisgarh	NA	NA	984	975	964
23	Madhya Pradesh	976	977	941	932	912
24	Gujarat	946	950	928	883	886
25	Daman & Diu	NA	NA	958	926	909

26	Dadra & Nagar Haveli	1021	995	1013	979	924
27	Maharashtra	972	956	946	913	883
28	Andhra Pradesh	990	992	975	961	943
29	Karnataka	976	974	960	946	943
30	Goa	964	965	964	938	920
31	Lakshadweep	929	964	941	959	908
32	Kerala	978	970	958	960	958
33	Tamil Nadu	974	967	948	942	946
34	Pondicherry	978	975	963	967	965
35	Andaman & Nicobar	978	978	973	957	966

### Human Rights Consideration

The concept of human rights aims to underline the imperative fundamental needs for a “universal” minimal standard of equality, human dignity and tolerance. These needs can be categorized as common standards owed by and to the people by the mere virtue of their humankind. Precipitation of violence against the women can be seen across the globe. However, recent development has marked the acknowledgment of elimination of gender based violence. Article 2 of the Universal Declaration of Human Rights, emphatically records and declare equality and freedom for every individual irrespective of its sex, race, religion, caste and creed, from birth till death.<sup>30</sup> “No cause is more worthy than the cause of human rights. Human rights are more than legal concepts: they are the essence of man. They are what make man human. That is why they are called human rights: deny them and you deny man’s

<sup>30</sup> “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

humanity...”, said Jose W. Diokno, Philippine jurist of eminence. Literacy rate, class, belief or religion are no indicators to reveal the strict adherence to human rights, as many cases have been reported where educated and economically sound people have opted for sex-selective abortion.<sup>31</sup>

Independence and empowerment of women can only be assured through their advancement in social, political, economic and health status. Throughout the world women are confronted with ‘existential threat’ as a consequential effect of being overburdened with work inadequate decision making power and influence. Fulfilling change requires approach and policy programs that will enhance women’s possibility to secure livelihoods and financial resources, facilitate their remarkable obligations regarding housework, oust legitimate impediments to their support out in the open life, and raise social care through effective activities of instruction and, mass communication. Moreover, upgrading the status of women also enhances their essential initiative breaking point by any methods in all circles of life, especially in the zone of sexuality and reproduction.<sup>32</sup>

United Nations Population Fund (UNFPA) called gender equality (female foeticide) as “first and foremost, a human right.” The complex structure of human rights, culture and gender is exemplified by mores and social dogmas, for instance, honor killing, female foeticide, female genital mutilation, female foeticide among others- each practice is being guarded under the garb of religio-social legitimacy.<sup>33</sup> Philosopher K.A. Appiah stated that in a steadily expanding globalized world where the strain among gender and culture takes different structures; our basic concern should not to be the protecting of standard methods of culture, yet rather the success of individuals. Platform for Action in Beijing, 1995, termed female foeticide or sex selective abortion as ‘violence against women’. Female foeticide certainly “became the prototype of a practice justified by custom and culture and redefined as an act of violence and a breach of women’s human rights”, said Sally Engel Merry, Director of Law and

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<sup>31</sup> 'Female foeticide is also violation of human rights', Times of India, 11<sup>th</sup> December 2013

<sup>32</sup> UNFPA, *Programme of Action of the International Conference on Population Development*, 2014, available at [http://www.unfpa.org/sites/default/files/pub-pdf/programme\\_of\\_action\\_Web%20ENGLISH.pdf](http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf) (viewed on 02-01-2017)

<sup>33</sup> *Amrita Kumar-Ratta*, “Culturally Relative Rights? Female Foeticide as a Violation of Gender Equality”, available at <http://www.genderacrossborders.com/2012/01/11/culturally-relative-rights-female-foeticide-as-a-violation-of-gender-equality/>, (viewed on 02-01-2017)

Societal Program, New York University. Preference for a son has often been justified for a variety of socio-cultural and religious reasons. Underling the similar thoughts Muhammad Ali, former the USA boxing champion, once replying to journalists at a press conference told that he had fathered “one boy and seven mistakes.”<sup>34</sup>

As per a report titled Human Rights and Gender Equality by UNFPA, sex selective abortion in India has led to the loss of 5.7 lac girls annually from the period 2001-2008. The combined figure reaches to 45 lac girls in the short period of 8 years, ‘missing’ from our populace.<sup>35</sup>

A substantial number of the laws accompany diverse institutional set up, partnership between various stakeholders and important element of NGOs. These associations must be in presence all together for the law to be objectively implemented. In like manner the policies and programs made at the top sets aside a long chance to encourage to the base and there is a desperate need of sharing data and resources. James Madison rightfully pointed out that-

“Human rights are not established by writing words on paper or moving with one’s lips. Human rights are established by building specific types of institutions of quite exact design. Human rights are established further, when such institutions begin to live through organized, articulate, free, law-abiding interests-through free association of every sort among a free people.”

An interagency report by WHO concluded that, “sex selection in favor of boys (as) a symptom of pervasive social, cultural, political and economic injustices against women, and a manifest violation of women’s human rights.”<sup>36</sup> These practices must be treated to be against humanity and “injustices must be addressed and resolved without exposing women and children to the risk of death or serious injury through denying them access to needed services – and thus further violating their rights.” Study on Masculinity, Intimate Partner Violence and Son Preference in India revealed

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<sup>34</sup> Digumarti Bhaskara Rao, *Status and Advancement of Women*, A.P.H Publishing Corporation, New Delhi, 2000, pg.136.

<sup>35</sup> United Nations Population Fund, *Human Rights and Gender Equality*, available at <http://india.unfpa.org/topics/human-rights-gender-equality-1> (viewed on 02-01-2017).

<sup>36</sup> World Health Organisation, *Preventing Gender-Biased Sex Selection*, 2011, available at [http://apps.who.int/iris/bitstream/10665/44577/1/9789241501460\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/44577/1/9789241501460_eng.pdf)

that, more than 50% of the people surveyed are unaware of the law prohibiting pre-natal sex determination or sex selective abortion [PCPNDT (Act) 2003].<sup>37</sup>

Whether an individual exercises his right or not, the state is duty bound to protect and safeguard the rights accruing by the virtue of constitutional provisions. As M.P. Singh's word sound sublime, "such an understanding of human rights may not be consistent with theories of rights in the west, but it is fully consistent with the Indian tradition that the state is subject to its dharma and it must observe it. If it does not, it has no justification to exist and must be replaced."<sup>38</sup>

### Legal Initiative

Three decades after India's independence in 1978, as pre-natal diagnostic techniques mushroomed resulting in to female foeticide and skewed child sex ratio, the Government of India banned the misuse of amniocentesis in hospitals and laboratories.<sup>39</sup> The first enactment in this field was the result of relentless efforts of social activists in the state of Maharashtra in the form of Maharashtra Regulation of Pre-Natal Diagnostic Techniques Act, 1988.

Parliament enacted the central legislation, Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act on September 20, 1994, giving in to constant pressure of the civic society and activists. The Act provides for "the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital mal-formations or sex linked disorders; and the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female feticide."<sup>40</sup>

The effective implementation of the Act could be inferred from the number of cases being filed under the provisions of the Act. By the end of 2007, only 66 cases were reported and filed against the doctors<sup>41</sup> out of which more than half of them are

<sup>37</sup> UNFPA and ICRW, *Study on Masculinity, Intimate Partner Violence and Son Preference in India*, 1<sup>st</sup> January 2014, available at <http://asiapacific.unfpa.org/sites/asiapacific/files/pub-pdf/Study%20on%20Masculinity%20Intimate%20Partner%20Violence%20and%20Son%20Preference%20in%20India.pdf> (viewed on 02-01-2017).

<sup>38</sup> M.P.Singh, *Constitutionalism, Human Rights, and Social Empowerment In Human Rights, Justice, & Constitutional Empowerment*, pg 26-46 (C. Raj Kumar & K. Chockalingam ed. 2007).

<sup>39</sup> Press Information Bureau, "Pre-Conception & Pre-Natal Diagnostics Techniques Act, 1994"

<sup>40</sup> Ministry of Health and Family Welfare, chapter 1, *PNDT Annual Report 2006*,

<sup>41</sup> [Anuradha Mascarenhas](#), 66 cases so far, *PNDT Act still stuck in womb*, The Indian Express 28<sup>th</sup> January 2008

pending with lower courts at 'pre-charge evidence' stage for years. Rate of convictions are majorly hit by dearth of evidence and hostile witnesses. Many a time cases are disposed of either because of absence of witnesses and/or lack of substantial evidence. Often hostile witnesses poses grave setback which demeans the case of the concerned authority. Also, inadequate case preparation by Appropriate Authorities also leads to ineffective implementation of the Act. In the case of *Dr. Pawandeep Singh Kohl<sup>42</sup>*, court noted that even after twenty one months, District Appropriate Authorities failed miserably to produce evidence (CDs, list of witnesses etc.). Determination and communication of Sex of the foetus is often being done through 'word' or 'sign' by the doctors. This makes it highly challenging job for the authorities to collect any physical evidence in support of the court complaint. Often it has been noticed that evidence being produced by the authorities fail to establish crime beyond reasonable doubt. In spite of offences committed under this Act being non-compoundable in nature, many times DAA has withdrawn the cases post filing them, contrary to the provisions of Section 27.<sup>43</sup>

Witnesses and whistleblowers turning hostile in absence of any state protection is no new scenario in Indian legal system and the provisions of this Act are no exception to it. As put forth by the survey conducted by UNFPA, more than fifty percent of the women are unaware of the prohibition of pre-natal sex determination or sex selective abortion and the presence of any authority which needs to be approached, if forced to undergo any such sex determination test. There are no special courts or tribunals set up to deal with these cases turning it into a time consuming and cumbersome process. Adding to the suffering of common masses, maximum punishment for causing 'death before birth' is three years of imprisonment and a fine amount which cannot exceed ten thousand rupees. Most authorities working under the PCPNDT Act were of the opinion that the nature of crime was exponentially higher than the prescribed punishment. Hence this Act failed to act as a deterrent force.

### **Conclusion And Recommendations**

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<sup>42</sup> *Dr. (Mrs. Shashi Mehta) CDMO and Appropriate Authority under the Act v. Dr. Pawandeep Singh Kohli* .

<sup>43</sup> Section 27- Offence to be cognizable, non-bailable and non-compoundable.-Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Skewed sex ratio is a silently growing monstrous practice in India, particularly as they indicate towards persistent and fundamental gender discrimination against young girls and women. The easy accessibility of the technology, for instance, amniocentesis and ultrasonography has 'energized' a surge of cases relating to sex determination. Regardless, this in itself is not the primary driver of the issue. In spite of the way that lawmaking bodies and other concerned authorities have tried to restrict or ban the usage of such technology, past records shows that with limited success the restriction imposed by Governmental Authorities has severely impacted the health and well being of women, in interior parts of the country. Medicinal and other health related technologies should rather be put to guarantee, on how to ensure that they are used by qualified individuals as a part of full understanding with the confirmation based rules laid down expert specialists.

The counteractive action of gender specific sex selection will require significant responsibility, maintained and coordinated endeavors by governments, civil society, international organizations/agencies and all others concerned parties working towards the objective of gender equality. A well planned and deliberate approach including all stakeholders at every level is expected to set up steady legitimate and strategy measures for young girls and women. This must be joined with the utilization of non-judgmental and non-coercive means of mass communication and other social measures to revamp the much needed conduct change. Imbalanced sex ratio is an unsuitable sign of gender discrimination against young girls and women and an infringement of their human rights.

In India, men's sense of masculinity strongly determines their preference of sons over daughters as well as their tendency to exert violence against an intimate partner. As the findings of the study conducted by UNFPA and ICRW suggests, only 50% of the men and women knew that females were qualified for a share of the family legacy. Half the general population in the sample (45% of the men and 47% of the ladies) did not know about the law averting sex determination (PCPNDT Act). Also, a high extent of the men and women who were aware of this law (55% of the men and 52% of the women) felt the law was imperative to guarantee there were adequate women for men to marry. Around 33% of the aggregate specimen for both men and women

believed the law ought to permit sex selection for couples without any children. Both men's and women's states of mind around this essential law propose that there is uncertainty about enacting sex determination for 33% of the people. It additionally recommends that the predominant mentality is that the law is vital to guarantee that there are sufficient women for men to marry. Men and women's states of mind towards laws, additionally propose that there is support for complementary legislations, for example, social security for families with only daughters. This likewise underscores the requirement for the PCPNDT Act to work couple with different laws and policies that bolster women's status in our country.

Hereby, major recommendations are brought forth. It is proposed that a wide, national plan of action be created by every single concerned partner under the aegis of the Government of India, with particular activities mounted at the local and state-level. Firstly, there is a sincere need to review the present structures and systems including HR and advisory groups. Serious faults in constitution of committees ought to be especially addressed and clear guidelines to ensure their proactive support are required. The Central Supervisory Board ought to be resuscitated and engaged to ensure capable execution of the Act. The upkeep of records (facility records, minutes of meetings and court case archives) should be fortified. Secondly, complex responsibilities of Appropriate Authorities must be justified, sorted out and reduced. Their responsibilities should be addressed to and decided. There is a need to advance a segment to ensure that regular meetings of the authorities are held and each and every critical issue is pondered upon. The association of the civil society should be strengthened. More NGO representatives should be invited in the advisory groups, so that these bodies are really illustrative of the civil society and can go about as watch dogs for the Act. Also NGO representatives must be justified and very well qualified. Thirdly, there is a necessity for committed work force at the state, district and sub-district levels to screen the execution of the Act. Such work drive must be familiar with the law and should have the ability to help the AAs in executing the capacities endorsed in the Act.

Fourthly, the consistent utilization of rules and user's manuals that can incorporate specific information as respects the data availability and usage of funds could be asked to assemble capability and decrease brief practices.



Fifthly, the awareness of the protection and the education of the girl child through 'Beti Bachao, Beti Padhao' campaign started by our respectable Prime Minister Mr. Narendra Modi should be increased at a mass level as it already has shown a great effect in the child sex ratio in Haryana. It has helped in improving the ratio of the girl in this region by changing the patriarchal structure of the society in preferring a male child.

Lastly, there is a sincere need to conduct more workshops to sensitize the judiciary and PPs on the way of the wrongdoings under the Act since their level of awareness is low. In similar manner, drafting is a genuine roadblock in getting convictions. Complaints are frequently documented without legitimately highlighting the certainties of the case or the way of the wrongdoings. The prosecutors must be given appropriate training in this regard.

It is very important for us to recognize that it is our social and moral responsibility to put an end to this menace of female feoticide in our society by believing that women are equally capable of raising to the standards once only men could reach as we have already seen the outstanding performances by today's female in various professional platforms along managing their homes wonderfully. Long gone are he days where a girl was considered to be a burden and we all should make it a duty to establish the same fact.