

Role of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 in Arresting the Declining Sex Ratio in the Country

Abstract

Forcible sex determination to have a son is but one kind of discrimination against women. Female foeticide has its roots in the social thinking which is primarily based on certain erroneous notions, ego-centric traditions, and pervert perception of societal norms driven by individualistic wishes which are surrounded by only selfish interests. The reason behind adverse sex ratio is the pitiable status of women in our society. The PC and PNDT Act was passed to ban the practice of sex determination, which leads to the elimination of female foetus leading to a steady drop in the Child Sex Ratio (CSR) with every passing year. It was 983 in 1951 which plunged down to an abysmal 914 in 2011. The large scale use of ultrasound machines for female foeticide is the reason for this understandably marked difference.

Keywords: Female Foeticide, Sex Selection, Sex Determination, Genetic Clinics, Genetic Counseling Centres, Genetic Laboratory.

Introduction

Female foeticide is a grave social evil practiced in our society. Though India has a history of low female sex ratio, what the country is witnessing today is the systematic extermination of the female child with the ultrasound machines serving as an instrument of annihilation. In India we face the problem of adverse male-female sex ratio which is unhealthy to any society. But the reckless practice of female foeticide continues without realizing its ill effects on the society. As per 1951 Census Report, the female-male sex-ratio was 946 to 1000 while in 2011 it decreased to 940 to 1000.

Objective of the Study

The main objective of the paper is to analyse as to how far the PC and PNDT Act has been able to check the abominable practice of female foeticide leading to a precarious imbalance in male-female sex ratio in view of the son centric mind set of our society.

Review of Literature

The Position of Women in Hindu Civilization, by A.S. Atlekar analyses the relationships between Hindu women and society. This book deals with the position of Hindu women in particular periods of Indian History. An attempt has made in the book to describe the position of women in Hindu civilization from prehistoric times to the present day. The book not only surveys the position of Hindu women during the last thousand years but also indicates the general times on which the present day problems confronting them should be solved. It also gives reasons for the decline in women in India.

Women and Human Rights, by Lina Gonsalves is written in an effort to describe the lack of attention to the human rights of women and indicates a range of issues where equal rights for women are still denied. The gender gap between the recognition and enjoyment of human rights and fundamental freedom is the main theme of the book. One specific purpose of this book is to provide women with information about those areas of law which are most likely to affect their lives.

Female Foeticide: A Socio-Legal Changes, by Binayak Patnaik, by Binayak Patnaik, in this article the author has emphasised on the social, cultural and religious fibre of India which is predominantly patriarchal contributing extensively to the secondary status of women. Combination of factors namely the urge to have son, which are deep buried



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in our society are the main causes of female foeticide.

Justice for Women, Concerns and Expression, by Munisha Gandhi deals with women's issues as human rights issues. Many path breaking judgements to further the cause of gender justice have been compiled in the book. First part of the book deals with the speeches which concern over the trampling of the women folk, an evil, which the nation has continued to live for centuries with. Second part deals with landmark judgements concerning women issues.

Legal Aspects of Pregnancy, Delivery and Abortion, by J.V.N. Jaiswal, the author has discussed various aspects of pregnancy, delivery and abortion. The law relating to abortion has been discussed in the Indian context and the current change in the law.

Female Foeticide: A Dangerous Potent in Gender Balance, by M.D.Singh and Gurpreet Pannu, have emphasised that because of continuing practice of female foeticide there is a gender imbalance. There are various legislations to combat the problem of female Foeticide but because of the improper implementation of law the situation of women is deteriorating.

Reasons for the Continuance of Female Foeticide

Combination of various factors, namely, the urge to have a son; switch over to a small family norm; easy access to pre-natal sex determination tests and abortion has worsened the situation for the girl child. The existing socio-economic and cultural situation including the impact of modernization has aggravated the situation. Further, in a situation where social insecurity is very high and where income level is very low, it is herculean task to convince the parents that girls are assets and will look after them in their old age. Therefore, sons are a lifetime protection against insecurity. There are many reasons for the non-acceptance of the law against female foeticide but all these causes tend to inter-mingle with each other so much that no one reason can be particularly held responsible for the continued practice of this evil. The declining sex ratio is also the result of poor status of women who are socially considered a least valuable and often projected as burden on the family, whereas the sons are considered to be a prized possession.

Legal Premise

Medical practitioners make quick money by determining pre-natal sex and by aborting the female foetus at the request of parents. The unscrupulous murder of female foetus has no grounds for its justification. The worsening situation of declining female sex ratio pressurized the government to enact the Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994 (Hereinafter called as PNDT Act, 1994). With the advancement of science and technology, certain techniques have been developed by which the sex of child can be selected even before its conception. Therefore, certain amendments were made in the PNDT Act, 1994 in 2002 and the amended law is now called the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Hereinafter called as PC and PNDT Act, 1994). It prohibits sex

selection completely either before or after conception. It regulates the use of pre-natal diagnostic techniques for legal or medical purposes and prevents the misuse of those techniques for illegal purposes.

The PC and PNDT Act, 1994 is a prohibitory and regulatory statute which seeks to put in place a mechanism for the ban on sex selection and prevention of the misuse or over-use of the pre-natal diagnostic techniques. At the same time, the Act permits and regulates the use of such techniques for the purpose of detection of specific genetic abnormalities or disorders and for the larger benefit of mankind. The Act further permits the use of such techniques only under certain specific conditions by the registered bodies.

Prohibitory provisions of the Act are contained in four Sections. First of all there is an express prohibition on the Genetic Clinics and Counseling Centres etc., not to employ any person who does not possess the qualifications prescribed for the same under the Act.¹ The Act prohibits the use of prenatal diagnostic techniques by Specialist in the field of fertility to conduct sex selection on a woman or a man, or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.² Section 3B prohibits sale of ultrasound machines, scanners or imaging machines to any Genetic Counselling Centre, Genetic Laboratory, or Genetic Clinic which is not registered under the Act. The Act also puts restriction on any kind of advertisement regarding facilities of pre-natal determination of sex before conception by any person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and prescribes punishment with 3 years' imprisonment and fine upto Rs. 10,000.³

The preventive provisions of the Act seek to deter hostile actions of the medical professionals as well as of the society. No genetic Counselling Centre, Genetic Laboratory or Genetic Clinic can conduct any sex determination test, or disclose the sex or help the people in sex selection in any manner.⁴ The private clinics are avarice ridden, and the government has become stringent so the tests have become very expensive. To avoid public glare, these tests have become secretive, but the flouters have their own methods of violating the law. It does not really matter that the law has forbidden the doctors from disclosing their patients anything more than the health status of unborn child, but they do it anyway. It is done in a manner where they cannot be booked or taken to the court.

A person cannot open a Genetic Clinic, Genetic Counseling Centre or Genetic Laboratory until it is duly registered under this Act.⁵ A person desiring to open the same has to apply in Form A as per the 1996 Rules.⁶ A person is also prevented from opening an imaging Centre before registration.⁷ In case a Registered Medical Practitioner (RMP) or geneticist is convicted under this Act, the State Medical Council may remove that RMP's name from its register till the final disposal of the case. For first conviction, such RMP's name may be removed from the State Medical Council's Register for a period of 5 years and for second conviction his name may be

permanently removed from the said Register. If any person seeks the help of any Genetic Clinic or Imaging Centre for the purpose of sex selection, then he may be punished with an imprisonment of 3 years and fine up to Rs. 50,000 for the first such act and the same may increase to 5 years' imprisonment and fine up to Rs.1 lakh for the repetition of such act.⁸

It is open to the court to legitimately believe that the pregnant woman was forced to undergo this test.⁹ In case any such offence is committed for which no specific penalty is prescribed under the Act, then for first such act, the imprisonment is 3 months and fine is Rs.1000 and an additional fine of Rs.5000 may be imposed for every contravening day.¹⁰ If the offence under the Act is the one which is committed by a company, in that case the in-charge of that company shall be punished, but he would not be held liable if he is able to prove that the said offence had taken place without his knowledge.¹¹

As far as the regulatory provisions of the PC and PNDT Act are concerned, Section 4 of the Act states that ultra sound tests may be conducted only for specified purposes, viz., (i) chromosomal abnormalities, (ii) genetic metabolic diseases, (iii) haemoglobinopathies, (iv) sex-linked genetic diseases, (v) congenital anomalies, (vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board. A complete record of the ultra sound tests has to be kept by the hospital concerned otherwise it would be assumed that sex determination tests were carried out.¹²

Form G has to be filled by the woman undergoing ultrasound test wherein she has to declare that she is undergoing the test.¹³ The Central Government and the state governments are authorized to appoint Appropriate Authorities for the Union Territories and States to investigate the breaches under this Act. They are the ones which provide the registration certificates to the Genetic Counselling Centre, Genetic Clinic and Genetic Laboratory (GCC, GC, GL), etc.¹⁴ With regard to the registration of GCC, GC, GL, an application has to be made to the Appropriate Authority in duplicate in Form A. The Appropriate Authority authorized in this behalf, acknowledges immediately the receipt of application on the slip provided at the bottom of the Form, if delivered at the office of the Appropriate Authority or not later than the next working day if received by post.¹⁵ The offences under this Act are cognizable, non-compoundable and non-bailable.¹⁶ A court can take cognizance of a crime under this Act if the complaint is made by the Appropriate Authority. But if an individual or a social organization intends to initiate an action under the Act, they have to give a notice of minimum 15 days to the Appropriate Authority.¹⁷ Further, if the Appropriate Authority opines that an offence under this Act has been committed in any Genetic Laboratory, Centre or Clinic then it can enter, search and seize any material objects at reasonable hours.¹⁸ Section 31A added in the Act in 2002 mentions that if there is a difficulty in implementing the Act, the Central Government may be asked to remove such impediment for the smooth functioning of the Act. The Central Government may frame Rules, set

out procedure for the Genetic Centers to follow and same are to be presented in both the Houses of the Parliament.¹⁹

The PC and PNDT Act is not free from loopholes and inadequacies because of which it seems to be a toothless law having a mere symbolic worth.²⁰ Besides the weaknesses noted in the functioning of the Act highlighting inadequacies in its implementation, some other flaws observed in the PC and PNDT Act are:

1. With regard to the qualifications and certificates to be possessed by medical professionals in registered units (GCC, GC or GL), the law is silent as to who is to provide such certificates. Hence, the registering authorities, who are medical professionals themselves, have the discretion to decide whether such training/experience is valid and adequate.
2. The police have no role in the implementation of this Act. The Appropriate Authorities formed under the Act are given the power of inspection of units and also of search and seizure of offending objects. On occasions, the Appropriate Authority on its part expresses unwillingness to do so as it involves potential danger to life especially when the units have political backing.
3. The penal provisions in the Act are not strong enough to act as a proper deterrent. There has been no permanent cancellation of license of a medical professional in terms of Section 23 of the Act by the Medical Council of India ever since the Act was passed.
4. Section 17 of the Act provides for the creation of an Appropriate Authority for whole or part of the State to act as a focal point around which the entire Act revolves. The Appropriate Authority is given the responsibility to grant, suspend or cancel registration, to enforce standards prescribed, to investigate complaints of breach, to seek and consider advice, to take appropriate legal action, to create awareness, to supervise the implementation of law, to recommend modifications in the Act and the Rules, and to take action as deemed necessary for the implementation of the Act. Thus, where the responsibility of Appropriate Authority has been so well laid down in the Act, it is desirable that a system of accountability and fixing of responsibility of the District and the State Appropriate Authorities should also be worked out clearly.
5. A major obstacle in the implementation of the Act is that it does not clearly lay down proper duties of any of the Authorities created under the Act to prohibit sex-determination and regulation of PNDT techniques. There is no penalty attached for non-performance of duties, or acts of commission or omission. In fact, so far the Central Supervisory Board has never functioned regularly in accordance with the provisions of the Act.

The Act has failed to meet the desired results at an all India level. A mere 13 convictions were reported in the year 2010 as far as this Act is

concerned. The data released by the government gives a shocking insight into how the country, including many States, continues with its lackadaisical approach in the implementation of the 'strengthened' PC and PNDT Act.²¹ The details of conviction under the Act in the entire country prove that how majority of culprits of the unborn girl child continue to get away scot free. As admitted by the Parliament officials it would be absurd to even think that only these many cases of sex determination took place in the year 2010, thereby meaning that the majority of culprits got away despite the PNDT Act enacted and further amended in 2003 with the objective of prohibiting sex selection before or after conception, regulation of pre-natal diagnostic techniques and prevention of their misuse for sex determination leading to female foeticide. How fruitful the government efforts would prove after strengthening of the Act is yet to be seen. It is doubtful if PC and PNDT Act alone will help in raising the ever falling sex ratio especially when its implementation so weak and tardy. It need not be made stricter but what is already there should be properly implemented. For the law alone cannot fight this evil, the problem of sonship is engrained in minds of people and people alone can change it. Awakening of the collective consciousness is the need of the day.

Change of heart and attitude is what is needed today.²²

Analysis of Data

The Union Territory and State-wise data relating to the increase or decrease in female population, child sex ratio at national and regional level, district-wise female sex ratio in Jammu and Kashmir, etc., present a dismal picture of steady deterioration of the status of women in our country:

State-Wise Female Population Increase or Decrease During 2001-2011

It can be noted from the Tables - IA and IB that the sex ratio during the decade 2001-2011 had though improved in certain states yet the increase was only marginal. Some of the States and Union Territories showed decline in sex ratio in 2011 in comparison to 2001 Census, namely, Bihar, Jammu and Kashmir, Daman and Diu and in most of the States, namely, Punjab, Kerala, West Bengal, etc., sex ratio had increased. The sex ratio was highest in Kerala, i.e., 1084 females for 1000 males followed by Union Territory of Pondicherry where it was 1038 females per 1000 males. The sex ratio in Jammu and Kashmir had declined from 892 in 2001 to 883 in 2011.

Table-I A
State-Wise Increase or Decrease in Female Population During 2001-2011

S No.	Name of the State	Census 2001	Census 2011	Increase or Decrease in Percentage
1	Andhra Pradesh	978	992	1.43%
2	Arunachal Pradesh	893	920	3.02%
3	Assam	935	954	2.30%
4	Bihar	919	916	-0.33%
5	Chhattisgarh	989	991	0.20%
6	Goa	961	968	0.73%
7	Gujarat	920	918	-0.22%
8	Haryana	861	877	1.86%
9	Himachal Pradesh	968	974	0.62%
10	Jammu & Kashmir	892	883	-1.01%
11	Jharkhand	941	947	0.64%
12	Karnataka	965	968	0.31%
13	Kerala	1058	1084	2.46%
14	Madhya Pradesh	919	930	1.20%
15	Maharashtra	922	925	0.33%
16	Manipur	974	987	1.33%
17	Meghalaya	972	986	1.44%
18	Mizoram	935	975	4.28%
19	Nagaland	900	931	3.44%
20	Orissa	972	978	0.62%
21	Punjab	876	893	1.94%
22	Rajasthan	921	926	0.54%
23	Sikkim	875	889	1.60%
24	Tamil Nadu	987	995	0.81%
25	Tripura	948	961	1.37%
26	Uttar Pradesh	898	908	1.11%
27	Uttarakhand	962	963	0.10%
28	West Bengal	934	947	1.39%

Source: Census of India, Ministry of Home Affairs, Government of India.

Table-I B
Union Territory-Wise Female Population Increase or Decrease between 2001-2011

S. No	Name of Union Territory	Census 2001	Census 2011	Increase or Decrease in Percentage
1	Andaman & Nicobar	846	878	3.78%
2	Chandigarh	777	818	5.28%
3	Dadra & Nagar Haveli	812	775	-4.56%
4	Daman & Diu	710	618	-12.96%
5	Lakshadweep	948	946	-0.21%
6	NCT of Delhi	821	866	5.58%
7	Puducherry	1001	1038	3.70%

Source: Census of India, Ministry of Home Affairs, Government of India.

Child sex ratio in India

Child sex ratio in the country among children aged 0 to 6 years had shown a declining trend since 1991 Census (Table II). Child sex ratio was 945 in 1991, 927 in 2001 which had further declined to 914 in 2011. Child sex ratio at country level has declined by 13 points and in Jammu and Kashmir by 20 points during the decade of 2001-2011.

Table-II
Child Sex Ratio in India

S. No	State/Union Territory	Child Sex Ratio
1	Mizoram	971
2	Meghalaya	970
3	Andaman & Nicobar	966
4	Puducherry	965
5	Chattisgarh	964

Source: Census of India 2011, Ministry of Home Affairs, Government of India.

Table-III A

Child Sex Ratio in Top 5 States/Union Territories

S. No	Year	Child Sex Ratio
1	1991	945
2	2001	927
3	2011	914

Source: Census of India 2011, Ministry of Home Affairs, Government of India.

Table-III B

Child Sex Ratio in Bottom 5 States/Union Territories

S. No	State/Union Territory	Child Sex Ratio
1	Haravana	830
2	Punjab	846
3	Jammu & Kashmir	859
4	NCT of Delhi	866
5	Chandigarh	867

Source: Census of India 2011, Ministry of Home Affairs, Government of India.

District-Wise Female Sex Ratio in Jammu and Kashmir

The sex ratio in Jammu and Kashmir declined from 892 in the year 2001 to 888 in 2011. Some of the districts of Jammu and Kashmir had shown an increase in sex ratio in 2011, like, Srinagar, Anantnag, Jammu, Udhampur, etc., while in districts of Kupwara, Baramulla, Leh, Kargil, etc., the sex ratio had shown a downward trend. The District of Kulgam had the highest sex ratio of 951 in 2011 while as the District of Leh showed the lowest sex ratio with 690 females per 1000 males.

Table-IVA

District-Wise Female Sex Ratio in Jammu And Kashmir in 2001

S. No.	District	Census 2001
1	Kupwara	906
2	Baramulla	903
3	Srinagar	851
4	Badgam	930
5	Pulwama	945
6	Anantnag	922
7	Leh	823
8	Kargil	837
9	Doda	903
10	Udhampur	860
11	Punch	919
12	Rajauri	878
13	Jammu	868
14	Kathua	901

Source: Census of India 2001, Ministry of Home Affairs, Government of India.

Table IV-B

District-Wise Female Sex Ratio in Jammu and Kashmir In 2011

S. No	District	Census 2011
1	Kupwara	835
2	Badgam	894
3	Leh	690
4	Kargil	810
5	Punch	893
6	Rajauri	860
7	Kathua	890
8	Baramulla	885
9	Bandipore	889
10	Srinagar	900
11	Gandarbal	874
12	Pulawala	912
13	Shupivan	950
14	Anantnag	927
15	Kulgam	951
16	Doda	919
17	Ramban	902
18	Kishtwar	920
19	Udhampur	870
20	Reasi	890
21	Jammu	880
22	Samba	886

Source: Census of India 2011, Ministry of Home Affairs, Government of India.

Conclusion

India has a unique demographic situation pertaining to the impact of son's preference on the ultimate sex structure of its population. With rapid developments in science and technology, new methods have become available

which are extremely useful in choosing the sex of the child at the time of its conception. Now, preference for son may be expressed pre-natally through sex selective abortions. The advent of sex-selective abortions has added a new and definitive means for acting on prejudice against girls. Decline in female population in the country is primarily due to abortion of female child at pre-natal stage. The important consequence of the use of techniques for sex selection is an imbalance in female-male sex ratio especially in the societies where a preference for male child exists. India has an already low and almost steadily decreasing female-male sex ratio in contrast to most developed countries. Practices, such as, female infanticide, pre-conception sex selection and sex selective abortion of female foetuses are likely to have serious demographic repercussions, in terms of tilting the sex ratio further against females. Regional variations in sex ratio are further evidence of the bias against girls, particularly in States where female literacy is low.

The social consequences for girls and women of this unfavourable sex ratio are bound to be serious. Although there are those who argue that the market forces of demand and supply will result in woman acquiring higher status once they are in short supply, research studies on societies with adverse female sex ratio have indicated coming to the fore of customs, like, polyandry, abduction and purchase of women. Furthermore, the adverse sex ratio is also bound to increase the incidence of evils of rape, prostitution and violence against women.

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