



ILE MULTIDISCIPLINARY
JOURNAL

VOLUME 3 AND ISSUE 1 OF 2024

INSTITUTE OF LEGAL EDUCATION



ILE MULTIDISCIPLINARY
JOURNAL

WHILE THERE'S RESEARCH THERE'S HOPE

ILE MULTIDISCIPLINARY JOURNAL

APIS – 3920 – 0007 | ISSN – 2583-7230

(OPEN ACCESS JOURNAL)

Journal's Home Page – <https://mj.ilededu.in/>

Journal's Editorial Page – <https://mj.ilededu.in/editorial-board/>

Volume 3 and Issue 1 (Access Full Issue on – <https://mj.ilededu.in/category/volume-3-and-issue-1-of-2024/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@ilededu.in / Chairman@ilededu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://mj.ilededu.in/terms-and-condition/>



SEX-SELECTIVE ABORTIONS IN INDIA: A CRITICAL REVIEW OF THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994

AUTHOR – PALAK BANSAL, STUDENT AT DELHI METROPOLITAN EDUCATION

BEST CITATION – PALAK BANSAL, SEX-SELECTIVE ABORTIONS IN INDIA: A CRITICAL REVIEW OF THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994, ILE MULTIDISCIPLINARY JOURNAL, 3 (1) OF 2024, PG. 262-268, APIS – 3920-0007 | ISSN – 2583-7230.

ABSTRACT

This paper critically reviews the evidence supporting (and opposing) government legislation called "Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994" – or PCPNDT Act for short—from an ethical perspective in terms of a public health policy that deals with sex-selective abortions at their source by addressing contributing factors like entrenched cultural preferences which drive investment behaviours into prenatal testing. Except, of course that the Act does in fact ban diagnostic techniques to determine sex and includes onerously strong measures criminalising pre-natal eliminates for gender discrimination. Even though the law significant legal framework, it is fraught with some challenges like poor implementation of submissions and responses to complaints received from any part of the country including obvious under reporting societal preference for male children among others.

Even though it has succeeded in getting India global recognition for addressing the issue, and somewhat raised awareness internationally on efforts undertaken to combat the problem, enforcement of this law continues to remain patchy at best and its overall effect aggregatedly negligible or minimal with respect to curtailing sex-based abortion practices. This review highlights substantive enforcement gaps, motivating factors for sex selection practices as well as strategies adopted by violators to evade the law. It also makes recommendations to strengthen the Act through better surveillance, public involvement in enforcement technology enhanced deterrence stricter penalties and judicial process. Thus, the Act will succeed in combating sex-selective practices and achieving gender equality to a much larger extent if these challenges are taken into account.

I. INTRODUCTION

Sex-selective abortions have long been a problem in Indian society and have led to an incredible imbalanced sex ratio resulting mostly in males. In addition to India's widespread preference for male children, deeply entrenched cultural norms concerning dowry, inheritance and lineage have pushed families into using methods believed to guarantee the birth of sons. These methods are commonly facilitated by new reproductive technologies that permit persons to determine and select the sex of one's child in various manners both prior-to once a lady slips pregnant.

The Indian government responded to this developing issue by enacting the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act), which aimed to prevent sex-selective abortions and limit the abuse of diagnostic technologies for sex determination. In 2003, the Act was revised to strengthen its requirements and increase the severity of the penalties for infractions.

Particularly, the PCPNDT Act seeks to control diagnostic methods like ultrasounds and other operations that can be abused to ascertain a fetus's sex. The law imposes stringent regulatory



controls on clinics and medical professionals in addition to outlawing such practices. It requires that comprehensive records be kept, that diagnostic centres be registered, and that those who violate it face sanctions.

The PCPNDT Act's implementation has encountered several obstacles in spite of the stringent legislative framework. Regional differences in enforcement and social influences continue to cause many people to break the law. Gender disparities have persisted as a result, particularly in some regions of the nation. This essay critically analyses the PCPNDT Act's contents, enforcement strategies, and efficacy, examining its advantages and disadvantages as well as the larger cultural background that still influences the desire for male offspring.

This review's objectives are to assess the law's effects over time and provide suggestions for strengthening its implementation, raising public awareness, and eventually putting an end to sex-selective behaviour in order to advance gender equality in India.

II. HYPOTHESIS

The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) has a strict legal framework, but its lack of consistent enforcement and ingrained cultural preferences for male children have made it less effective in reducing sex-selective abortions in India. The Act must increase public knowledge, strengthen enforcement procedures, and address societal norms that favour male offspring in order to drastically reduce sex selection practices and restore gender balance.

III. OBJECTIVE OF STUDY

Evaluate how well the PCPNDT Act has worked to cut down on sex-selective abortions. Determine the difficulties in enforcing and adhering to the Act. Examine the legal implications of the cultural preference for male offspring. Analyse the medical and legal flaws that are compromising the Act.

Make suggestions for ways to advance gender equality and bolster enforcement.

IV. LITERATURE REVIEW

Due to cultural beliefs that favour male offspring, sex-selective abortions and the ensuing gender imbalance have been major problems in India for many years. The causes, effects, and legal frameworks addressing these challenges have been investigated in a number of studies, legal analyses, and sociocultural assessments. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act), the legislative actions taken, and the difficulties in implementing it are all covered in this review of the literature.

Historical context

The Background of Sex-Selective Abortions in History

India has a long history of favouring male offspring due to socioeconomic, religious, and cultural norms. Several academics, such as Das Gupta³⁸⁶ and Miller³⁸⁷, have linked patriarchal systems—where men are viewed as the breadwinners and heirs to the family name—as the source of this inclination. Furthermore, the practice of insuring male offspring through sex-selective methods is further encouraged by the dowry system, which perpetuates the idea that daughters are a financial burden.

Infanticide was a common method used to eradicate female children prior to the development of contemporary medical technology. The historical transition from female infanticide to sex-selective abortions with the introduction of ultrasound technologies in the 1980s is thoroughly examined by George and Dahiya³⁸⁸. Their research demonstrates how technical innovations have been abused to support gender bias even if they were created with medical purposes in mind.

³⁸⁶ Das Gupta, M. (1987). "Selective Discrimination against Female Children in India." *Population and Development Review*, 13(1), 77-100.

³⁸⁷ Miller, B. (1981). "The Endangered Sex: Neglect of Female Children in Rural North India." *Journal of Family Welfare*, 27(3), 16-27.

³⁸⁸ George, A., & Dahiya, R. (1998). "Sex-Selective Abortions: Changing Dynamics." *Indian Journal of Gender Studies*, 5(2), 213-229.



The Legislative Evolution of the PCPNDT Act

In 1994, the PCPNDT Act was passed in response to worries over India's dropping child sex ratio. The Act has been amended to enhance its provisions and broaden its scope, especially in 2003. Rai⁴ offers a thorough examination of the Act's legal provisions, including its objectives to control the improper use of diagnostic technologies, limit unlicensed medical professionals, and punish infractions severely.

Gupte et al.³⁸⁹ examine the Act's changes, paying special attention to how the 2003 revisions broadened the scope to encompass pre-conception methods in addition to pre-natal diagnostic techniques. They talk on the problems in defining "medical necessity" for diagnostic procedures and in interpreting the Act's requirements, which leads to legal uncertainties and obstacles to enforcement.

V. METHODOLOGY

This study examines how well the PCPNDT Act has worked to reduce sex-selective abortions in India using a mixed-methods methodology.

Research Design In order to evaluate trends across time, quantitative analysis uses statistical analysis of demographic data on sex ratios from government sources (such as the NFHS and the Census of India).

Qualitative Analysis: Interviews and case studies to collect opinions from activists, medical professionals, lawyers, and impacted families.

Data Gathering: Analyse statistical data from official reports on the occurrence of sex-selective abortions and child sex ratios. Purposive sampling should be used to conduct semi-structured interviews with important stakeholders. Examine certain court cases and news articles pertaining to

the Act's enforcement as case studies.

VI. ANALYSIS OF PCPNDT ACT

In order to address the serious problem of sex-selective abortions and advance gender equality in India, the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) was passed. This analysis looks at the Act's main clauses, how it is implemented, and the difficulties in enforcing it.

Important Aspects of the PCPNDT Act

The PCPNDT Act creates a legislative framework to control the use of prenatal diagnostic and preconception procedures for sex selection. Important clauses consist of:

Prohibition of Sex Selection: The Act expressly forbids using any prenatal diagnostic method to determine a foetus' sex. This covers techniques that can determine the fetus's sex prior to delivery, such as amniocentesis and ultrasonography.

Clinic Registration: Under the Act, every facility providing diagnostic services needs to be registered. This regulation seeks to guarantee that only approved clinics do out these operations and are held responsible³⁹⁰.

Records Maintenance: Diagnostic facilities are required to keep thorough records of every procedure they carry out. This comprises details about the patients, the type of tests performed, and the outcomes. Such documentation is essential for tracking adherence and spotting possible infractions.

Penalties for Violations: Practitioners who engage in sex determination or disregard registration and record-keeping requirements may face imprisonment and fines under the Act's severe penalties for violations³⁹¹. These sanctions are meant to improve accountability and discourage unlawful activity.

Structure of Implementation

Several authorities are involved in the hierarchical framework that organises the

³⁸⁹ Gupte, M., Bhattacharya, R., & Gupta, A. (2009). "Regulating Sex Selection: Challenges of the PCPNDT Act." *Health and Family Welfare*, 5(1), 38-47.

³⁹⁰ Ibid.

³⁹¹ PCPNDT Act, Section 6.



PCPNDT Act's implementation: **Central Supervisory Board:** Created to supervise the Act's national implementation, this board is in charge of creating regulations and keeping an eye on state compliance³⁹². **State Supervisory Boards:** In order to implement the Act at the regional level, each state must set up its own board. These boards are in charge of investigating complaints, making sure clinics are registered, and carrying out inspections³⁹³.

Enforcement Mechanisms: The Act gives specified authorities the authority to carry out inspections and prosecute infringers. States have differed in how effective these enforcement methods have been, nevertheless.

Enforcement Difficulties

The PCPNDT Act offers a strong structure, however a number of obstacles prevent it from being implemented effectively:

Unreliable Enforcement: States' approaches to enforcing the Act varied greatly from one another. A lack of uniformity in compliance results from the slack enforcement in some locations and the tighter enforcement in others.

Corruption and Evasion: According to reports, the Act is frequently undermined by corruption among regulatory authorities and medical professionals. Many clinics use evasion strategies, like conducting unlawful sex determination with coded language.

Lack of Knowledge: The continued practice of sex-selective abortions is facilitated by the general public's and even certain medical professionals' lack of knowledge of the Act's requirements. For implementation to be successful, outreach and education initiatives are crucial³⁹⁴.

Cultural Resistance: The Act's effectiveness is nevertheless seriously hampered by ingrained cultural standards that favour male offspring.

Advocacy and extensive community engagement are necessary to change these cultural attitudes.

PENALATIES

Strict penalties are incorporated into the Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) to ensure adherence to its rules and discourage infractions. Both the abuse of prenatal diagnostic methods for sex selection and noncompliance with regulations are intended to be addressed by these sanctions.

1. Penalties for Medical Professionals: Detention Medical professionals who conduct or assist in determining the fetus's sex risk incarceration. The first sentence may be three years³⁹⁵, and for repeat offenders, it may be extended to five years. Offenders may potentially face fines in addition to incarceration. According to the Act, first-time offenders may be fined up to ₹10,000, while repeat offenders may be fined more.

2. Clinic and Diagnostic Centre Penalties

Clinic Closure: Clinics that breach the Act's terms or do not register under it may be closed. Such clinics may have their registration removed, which would effectively stop them from operating³⁹⁶. **Equipment Seizure:** Authorities have the authority to confiscate diagnostic equipment used in unlawful activities in the event of major infractions.

3. Fines and Legal Action for Non-Compliance:

Clinics that fail to keep accurate records of prenatal diagnostic procedures as required by the Act may be subject to fines and legal action against the responsible practitioners, among other consequences.

4. Parental Liability

Accountability of Parents: If parents are proven to have participated in the request for sex determination testing, they are also held liable under the Act. Similar punishments may be imposed on them, further reiterating the

³⁹² Ibid., Section 3.

³⁹³ Gupte, M., Bhattacharya, R., & Gupta, A. (2009). "Regulating Sex Selection: Challenges of the PCPNDT Act." *Health and Family Welfare*, 5(1), 38-47.

³⁹⁴ Sharma, R., et al. (2012). "Cultural Influences on Gender Preference: Implications for Policy." *International Journal of Social Economics*, 39(7), 482-495.

³⁹⁵ PCPNDT Act, Section 5(3)

³⁹⁶ Ibid., Section 4(2)



prohibition on attempting to determine the fetus's sex³⁹⁷.

VII. CHALLENGES IN ENFORCEMENT

The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) provided a strong legal foundation, however effective enforcement is hampered by a number of issues. These difficulties are caused by social perceptions, systemic problems, and real-world obstacles to compliance monitoring. The following are some of the main obstacles to the Act's enforcement:

1. Corruption and Collusion in Malpractice Among Health Care Professionals: Enforcement actions may be hampered by corruption among regulatory authorities and healthcare providers. Some practitioners participate in unethical activities, such as offering bribes in exchange for illegal sex determination tests³⁹⁸. This permits illegal operations to continue and damages the legitimacy of regulatory agencies.

Unregistered Clinics: Since many unregistered clinics are run without supervision, it might be difficult for law enforcement to keep an eye on and regulate illicit activity. By shifting sites or employing covert techniques to perform sex determination, these clinics frequently avoid detection.

2. Limited Education and Lack of Awareness Public Knowledge: The general public generally does not know much about the provisions of the PCPNDT Act. Many people, such as pregnant parents and medical professionals, might not be completely aware of the legal ramifications of sex determination and the related penalties.

Insufficient Training for Practitioners: It's possible that medical personnel don't get enough instruction about the Act's requirements and how crucial compliance is. This lack of understanding may result in inadvertent infractions or disrespect for the law.

3. Deeply Rooted Gender Bias and Cultural Resistance: Many Indian communities have long-standing cultural preferences for male offspring, which fuels the need for sex-selective policies. Attempts to alter societal perceptions of gender frequently encounter opposition, making it challenging to attain enduring effects just through legal actions.

Stigmatisation of Daughters: Sex-selective abortions are encouraged by cultural narratives that portray daughters as burdens. It takes a lot of community involvement and educational programs to change these narratives³⁹⁹.

4. Inadequate Infrastructure and Resources Lack of Regulatory Capacity: In order to properly enforce the Act, regulatory organisations frequently lack the capital, manpower, and infrastructure they need. There are insufficient inspectors or officers in many areas to properly oversee clinics⁴⁰⁰.

Overworked Legal System: The backlog in the court system might cause insufficient deterrent by delaying legal action against violators. The impact of sanctions may be lessened if cases take years to resolve.

VIII. CULTURAL AND SOCIETAL FACTORS

A complex interaction of social and cultural factors greatly influences the occurrence of sex-selective abortions in India. Gender views, reproductive choices, and the application of regulations like the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) are all influenced by these variables. Developing successful initiatives to advance gender equality requires an understanding of these variables.

Patriarchal norms: The overwhelming preference for male children in Indian society is a result of deeply ingrained patriarchal norms. Due to dowry expectations, daughters are frequently perceived as financial burdens, whereas sons are typically recognised as

³⁹⁷ Ibid., Section 5(3).

³⁹⁸ Puri, M., et al. (2010). "Implementation of the PCPNDT Act: A Study of Enforcement Challenges." *Indian Journal of Community Medicine*, 35(4), 586-590.

³⁹⁹ Arnold, F., et al. (2002). "Sex Selection in India: A Study of Demographic Trends." *Demography*, 39(4), 637-654.



providers and the heirs to the family name⁴⁰⁰. Sex-selective behaviours result from this cultural bias, which feeds the desire for male children.

Social Status and Family Honour: Having a son is linked to higher social status and family honour in many communities. Families are strongly motivated to prioritise male offspring as a result of this societal pressure, which increases the demand for sex determination.

Dowry System: The idea that daughters are a liability is strengthened by the dowry system, in which the families of the brides are required to provide the groom's family significant cash presents. Sex-selective abortions may be used by families to escape the financial strain of parenting daughters⁴⁰¹.

Support in Old Age: Having male children is viewed as a guarantee of security in old age in a society where the elderly frequently depend on their sons for support. The process of sex selection is influenced by this idea, which causes families to favour boys over daughters.

Religious and Cultural Narratives: Gender bias is reinforced by a variety of cultural and religious narratives. The necessity for male children is further emphasised by the fact that in many societies, religious beliefs require sons to execute death rites. Families prioritise sons over women due to the cultural compulsion created by such beliefs.

Socialisation and Gender Roles: Social conventions that dictate how boys and girls should act are shaped by gender roles. While girls may be taught to be subservient and nurturing, boys are frequently socialised to be forceful and dominant. The assumption that men are more important and ought to be preferred is reinforced by this socialization.

Restricted Access to Healthcare and Education: In many places, particularly rural ones, a lack of educational opportunities reinforces conventional gender norms and

beliefs. Sex-selective behaviours may be more common in families with lower educational attainment because they are more likely to adhere to patriarchal ideals.

Healthcare Access: The occurrence of sex-selective abortions may be influenced by limited access to high-quality healthcare services. Families may occasionally look for unlicensed clinics that provide sex determination procedures without proper regulation or supervision.

Promotion of Gender Stereotypes: Conventional gender norms and stereotypes are frequently reinforced by media portrayals. Public views and perceptions may be influenced by advertisements, films, and television programs that reinforce the notion that male children are more attractive.

Technology Availability: Families now find it simpler to identify a fetus's sex because of the extensive availability of prenatal diagnostic tools like ultrasound. The societal predilection for male infants is reflected in the misuse of modern technologies for sex determination, despite their legitimate medical applications.

IX. RECOMMENDATIONS

Boost Enforcement Systems: Boost regulatory monitoring and funding for diagnostic clinic inspections.

Provide mechanisms for anonymous reporting of alleged PCPNDT Act infractions.

Campaigns for Public Awareness: Put in place educational programs to increase knowledge of the importance of female offspring and the legal ramifications of sex-selective behaviour.

Make use of media outlets to dispel myths and advance uplifting stories about daughters.

Advocacy and Community Involvement: Engage local leaders to question cultural conventions and promote gender equality. Encourage women's empowerment initiatives that offer financial independence and career training.

Take Economic Aspects into Account: Enforce legislation prohibiting the dowry system in order to lessen the financial strain placed on

⁴⁰⁰ Das Gupta, M. (1987). "Selective Discrimination against Female Children in India." *Population and Development Review*, 13(1), 77-100.

⁴⁰¹ Miller, B. "The Endangered Sex: Neglect of Female Children in Rural North India." 1981. *Family Welfare Journal*, 27(3), 16-27



daughters.

Implement social security programs that give families with daughters financial assistance.

Education for Medical Professionals:

Regularly train healthcare workers on gender sensitivity and the ethical ramifications of the PCPNDT Act. To assess the impact of the PCPNDT Act and the efficacy of interventions, conduct longitudinal research. Establish a reliable data collection system to track sex ratio trends and legal compliance.

X. CONCLUSION

The problem of sex-selective abortions in India has its roots in economic, social, and cultural elements that support gender inequality. To stop this practice and advance gender equality, the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) is an essential piece of legislation. However, issues including corruption, cultural prejudices, and insufficient enforcement have made the Act less effective. In order to make significant success, a diversified strategy is necessary. To break the strongly ingrained preference for male children, it is essential to strengthen enforcement mechanisms, increase public awareness, engage communities, address economic factors, and train healthcare practitioners. Furthermore, persistent efforts to empower women, uphold the importance of daughters, and question damaging cultural practices are necessary to change societal attitudes.

