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## **PRECONCEPTION AND PRENATAL DIAGNOSTIC TECHNIQUES ACT 1994 AND ITS MAIN ROLE TO CURB SEX DETERMINATION AND SEX SELECTION**

**Adv. Vaishali V. Waghmare \*<sup>1</sup>, Dr. (Mrs) Hema Menon <sup>2</sup>**

<sup>\*1</sup> PhD Student, RTM Nagpur, University Nagpur, INDIA

<sup>2</sup> Assistant Professor (B.A (ENG.LITT), M.A (PUB.ADM), LL.M, PH.D (LAW), NET),  
Dr. Ambedkar College Deekshabhomi, Nagpur, INDIA

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### **ABSTRACT**

*India has a male dominated culture where women are treated like a commodity and slave. Our Indian society gives preference only to the Son not to female because of which girls' child is not heartily welcomed and discrimination against girl child still prevails. Sex selective abortion is one of major issue in recent era in relation to violence against women under which the Ultrasonography machine plays an important role of sex detection. Main cause for sex selection are Patriarchal system, Dowry system, only son who can performs the last rites, lineage and inheritance runs through the male line, the Small family norms , PARAYADHAN, easy access to the Medical facilities and Technology for Sex Selective Abortion. Low literacy rate, low socio-economic condition of women etc. Sex selection and sex determination causes violence, impact on equilibrium of nature, Polyandry, Imbalance between Male-Female populations etc*

*Maharashtra was first State to enact Maharashtra regulation of use of PNDT Act in 1987. The PNDT Act was passed in 1994 Hon. Supreme Court passed an Interim judgment in 2001 for more strict implementation of Act based on PIL filed by CEHAT, MASUM and Adv Sabu George PNDT Act amended in 2003 to Pre conception and Pre-natal Diagnostic Technique Act (PC-PNDT) Applicable to all Govt/NGO/Private/corporate establishments . Main purpose of Act is to ban the use of sex selection techniques before and after conception and prevent the misuse of prenatal diagnostic techniques for sex selective abortion. Every offence under this Act is cognizable, non-bailable and non-compoundable (Sec 27). Act has made it mandatory to maintain records of every scan done. (Section 29 and Rule 9) Section 5 and Rule 10 (1A). Implementing Authority under the Act is Appropriate Authority (Section 17) has power to search, seize and seal clinics (Section 30). The Act prohibited communication of sex of the foetus by words, signs or in any other manner (Section 5) , advertising sex determination test in any form are liable for punishment (Section 22) .Offence under this Act punishable with imprisonment of years which extend to 5 years and fine up to 10,000 which extend up to 50,000.*

**Keywords:**

*Sex Determination, Sex Selection, Prenatal Diagnostic Techniques, PNDT.*

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## 1. INTRODUCTION

Yatra, Naryastu Poojyatye, Ramyantye tantra Devata<sup>1</sup> means Gods reside at the place where women are respected. But in our Indian society, from the past couple of decades women are treated like a commodity and slave. Women have no right whatever may be i.e. personal, human, economical, social or even proprietary. India has a male dominated culture and because of which society gives preference only to the Son as a Karta in family. Even in modern era married couple want to give birth to male child in their small family structure and because of this want they deny the natural right of girl child who is about to take birth by doing sex selective abortion or other heinous activities.

From the past decades, Women have always been subjected to violence, cruelty, atrocity torture and sexual assault by her relatives, parents, husband, and husband's relatives and even by strangers. Sex selection and sex determination is one of the types of violence which is perpetrated on the women from when she enters as a embryo or fetus in to her mother's womb.

Indian Parliament has made number of Laws in relation to the women's upliftment, empowerment, protection, welfare. It is the rule that as law is made for particular class of person that particular class should be in existence otherwise it has no meaning and enters into dormant condition. When we talk about the equal reservation given to the women in all fields then there should be equal proportion of women existing in society whereas today we see that girls are missing.

In the past sex selection was done in the form of infanticide or deliberate poisoning, deprivation of food, nutrition, educational opportunities and other entitlements and duty of killing of girl child was on the mother of that girl child who give birth to her. But in recent technological era it seems easier to kill the girl child in the mother's womb itself by doing sex selective abortion through ultrasound facilities ie sonography machines and amniocentesis. These types of acts are nothing but the discrimination against girls even before they have a chance to be born<sup>2</sup>.

According to the 2001 to 2011 census, In India against 1000 male we have 940 female, In Maharashtra the female population has further diminished to 925. In rural areas it is 948 whereas among the urban masses supposed to be known as the most educated and socially enlightened, it is still shocking just 899. In the age group of 0 to 6 we have 883 girls against 1000 boys. The proportion is astonishing in rural and urban area<sup>3</sup>.

From census of 2001 to 2011, we noticed, that there is a huge or widened gap between male and female population which is only because of dislike for the girl child. The maintenance of natural

balance between male- female populations is very necessary and essential element for healthy and civilized society .It is admitted fact that in our Indian society girls' child is not heartily welcomed and discrimination against girl child still prevails in our Indian society.

## **2. MAIN CAUSES FOR THE SEX SELECTION OR SEX DETERMINATION**

- 1) India is having a patriarchal structure of society where women get secondary status as compared to the male.
- 2) According to patriarchal system, Men are a precious commodity that needs to be protected and given a special status.
- 3) Patriarchal structure based on the marriage system where women were given subordinate status having no say in running of their life or any control over their body and bodily integrity.
- 4) Marriage is also considered as an important process whereby the burden of the father is passed on to the husband for very high price.
- 5) Dowry system is still in existence in our Indian culture even if it is prohibited by Dowry Prohibition Act and Indian Penal Code 1860. The dowry or Groom price is so staggeringly high irrespective of the class structure that generations may have to toil to repay the debts incurred during marriage.
- 6) There is myth amongst people that, only son who can perform the last rites, lineage and inheritance runs through the male line. Son will look after parents in old age and he is the bread winner etc.
- 7) In modern era, as per Government Rule married population follows the Small family norms but not at the cost of not having male child. There should be male child in their small family.
- 8) Tag of PARAYADHAN reinforces the perception of daughter as liability.
- 9) There are various customs, traditions, taboos, misbeliefs, superstitions, myth which gives birth to gender discrimination against women.
- 10) Any person has easy access to the Medical facilities and Technology for Sex Selective Abortion.
- 11) The want of male child, create the ability to pay doctor and abortionist for the sex determination test and sex selective abortions.
- 12) The Female population have low literacy rate, low socio-economic condition, no right to take decision about her pregnancy.
- 13) Medical technology is a boon for human being but is used for sex determination and sex selection by professional doctors which results in to female foeticide means sex selective abortion.
- 14) According to Indian crime report, every day there is Violence against women in the form of Rape, sexual assault, kidnapping or abduction and trafficking for doing prostitution business, sexual harassment, voyeurism, stalking, etc .and after considering other viewpoints of Indian situation in relation to female which shows that the women in society is not secure.
- 15) There is good network of road to cut down the cost and time of travel.

## **3. CONSEQUENCES OF SEX SELECTION AND SEX DETERMINATION**

Sex selection and sex determination causes following consequences

- There will be Imbalance between Male-Female population which harms the healthy and civilized society.
- There will be violence against women.
- There will be alarming rates of rape or sexual assault against women.
- Women will be abducted, kidnapped, trafficked for running the business of prostitution and satisfying the sexual lust.
- There will be a resurgence of practices such as Polyandry i.e. more than one man marrying one woman. Example Dang district of Rajasthan where women is living as the wife of eight brothers.
- There will be impact on equilibrium of nature which destroys the moral and social fabric community.
- There will be less number of women of marriageable age due to which significant proportion of men will have to delay their marriage or forced to unmarried, causes class based tension, potential violence and further abuse of the minority groups.

#### **4. PCPNDT ACT AND ITS AMENDMENTS**

Therefore the issue of female foeticide is one of the most alarming issues that need to be addressed urgently. While it is a social problem requiring the changing of the mindset of people which takes long time, yet all possible efforts need to be made at every level. As the changing of the mindset of people at large will take more period of time, hence there will be need to improve the law. While taking in to consideration all issues, the Maharashtra was the first state who enacts law against sex determination which is known as PNDT Act 1988. This law reduces the number of malpractices in Mumbai. This achievement only because of FSSDSP (Forum against Sex Determination and sex selection) and Awareness campaigns taken by media but its role is limited to Maharashtra State. Therefore Hon'ble Supreme Court of India has taken a major step by passing the Prenatal Diagnostic Techniques (regulation and prevention of misuse) Act 1994 which become operational from 1<sup>st</sup> JANUARY 1996. Still this Act is not effectively implemented and was a failure owing to continuation of rampant malpractices in most of the areas hence against this a is PIL filed by NGO, CEHAT (Centre for enquiry in to health and allied themes Mumbai and MASUM (Mahila Sarvangeen Utkarsh Mandal) Pune in 2000 bore fruits in 2003 when the honorable supreme court gave the strict order for implementation of PCPNDT Act.

In 2003 this Act was amended and is known as PCPNDT Act .The Act prohibits Sex selection before and after conception and regulates the use of diagnostic techniques to determine the sex of unborn child and impose a fine of Rs.10, 000 extend to Rs.50,000 and imprisonment of 3years which extend to 5years on doctors, relatives of pregnant women, indulge in these malpractices .

#### **5. PCPNDT ACT ITS IMPORTANT PROVISIONS**

##### ***DEFINITION***

“An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-

linked disorders and for the prevention of their misuse for sex determination leading to female foeticide; and for many matters connected therewith or incidental thereto”.

### **Important features of the PNDT Act, 1994<sup>10</sup>**

#### **Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics**

On and from the commencement of this Act:

- 1) No genetic counselling centre, genetic laboratory or genetic clinic unless registered under this Act shall conduct or associate with or help in conducting activities relating to prenatal diagnostic techniques.
- 2) No genetic counselling centre, genetic laboratory or genetic clinic shall employ or cause to be employed any person who does not possess the prescribed qualification.
- 3) No medical geneticist, gynaecologist, paediatrician or any other person shall conduct or aid in conducting by himself or through any other person, any prenatal diagnostic techniques at a place other than a place registered under the Act.
- 4) No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of the foetus to any genetic counselling centre, genetic laboratory or genetic clinic or any other person not registered under the Act.<sup>4</sup>

#### ***REGULATION OF PRENATAL DIAGNOSTIC TECHNIQUES***

- 1) No prenatal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:
  - Chromosomal abnormalities
  - Genetic metabolic diseases
  - Haemoglobinopathies
  - Sex-linked genetic diseases
  - Congenital anomalies
  - Any other abnormalities or diseases as may be specified by the Central Supervisory Board
- 2) No prenatal diagnostic technique shall be used or conducted unless the person qualified to do so is satisfied that any of the following conditions are fulfilled, namely:
  - Age of the pregnant woman is above 35 years
  - The pregnant woman has undergone two or more spontaneous abortions or foetal losses.
  - The pregnant woman has been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals.
  - The pregnant woman or her spouse has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease.
  - Any other condition as may be specified by the Central Supervisory Board
- 3) No person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any prenatal diagnostic test on her except for the purpose mentioned in the indications.
- 4) No person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any sex-selection technique on her or him or both.<sup>4</sup>

### ***WRITTEN CONSENT OF PREGNANT WOMAN AND PROHIBITION OF COMMUNICATING THE SEX OF THE FOETUS***

No person shall conduct the prenatal diagnostic procedures unless-  
He has explained all known side and after effects of such procedure to the pregnant woman concerned.

- He has obtained in the prescribed form her written consent to undergo such procedure in the language, which she understands.
- A copy of her written consent obtained given back to the pregnant woman.
- No person conducting prenatal diagnostic procedure shall communicate to the pregnant woman concerned or her relative the sex of the foetus by words, signs or in any other manner.

### ***DETERMINATION OF SEX PROHIBITED***

- 1) Prenatal diagnostic techniques including ultrasonography should not be performed for sex determination.
- 2) No person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.

### ***CENTRAL SUPERVISORY BOARD***

For effective implementation of the Act, Central Supervisory Board is constituted which consists of minister in charge of the Family Welfare as Chairman, Secretary of Government of India for Family Welfare as Vice-Chairman, two members from Law and Judiciary Department and Women and Child Department and other eminent medical geneticist, gynecologists, pediatricians, social scientist and representatives of women welfare organization.<sup>4</sup>

Main functions of the board are as follows:

- To advise the Central Government on policy matters relating to use of prenatal diagnostic techniques, sex-selection techniques and against their misuse.
- To review implementation of the Act and the rules made thereunder and recommend changes in the said Act and Rules to the Central Government
- To create public awareness against the practice of prenatal determination of sex of the foetus leading to female foeticide.
- To lay down code of conduct to be observed by persons working at genetic counselling centre, genetic laboratory or genetic clinic.

To enforce the law in individual State, appropriate authority is constituted whose main functions are:

- Grant, suspend or cancel registration of the genetic centre, clinic or laboratory
- To enforce prescribed standards
- To investigate complaints of breach of provision of Act



- Summoning of any person who is in possession of any information leading to violation of the provisions of this Act or rules
- Issuing search warrant for any place suspected to be indulging in sex selection techniques or prenatal sex determination.<sup>4</sup>

## **6. OFFENCES AND PENALTIES**

- 1) Prohibition of advertisement relating to prenatal determination of sex and punishment for contravention. Advertisement in any manner including internet, regarding facilities of prenatal determination of sex available at any genetic centre, clinic or laboratory, shall be punishable with imprisonment for a term, which may extend up to three years, and fine which may extend up to Rs.10,000/-. “Advertisement” includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes any visible representation made by means of hoarding, wall-painting, signal, light, sound, smoke or gas.
- 2) Any geneticist, gynaecologist, paediatrician or any other person contravenes any of the provisions of this Act or rules made there under shall be punishable with imprisonment for a term which may extend to three years and fine of Rs.10,000/-. On any subsequent conviction, imprisonment may extend to five years and fine may extend to Rs.50,000/-.
- 3) Presumption in the case of conduct of prenatal diagnostic techniques: Notwithstanding anything contained in the Indian Evidence Act, 1872, the court shall presume unless the contrary is proved that her husband or any other relative compelled the pregnant woman, to undergo prenatal diagnostic technique. Such a person shall be liable for abatement of offence with imprisonment upto 3 years and fine of Rs.10,000/-.
- 4) All offences under this act are cognizable, nonbailable and noncompoundable.<sup>4</sup>

## **7. MISCELLANEOUS**

### ***MAINTENANCE OF RECORDS***

- All records, charts, reports, consent letters and all other documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed.
- If any criminal or other proceedings are instituted, the records and all other documents shall be preserved till the final disposal of such proceedings.
- Every genetic counselling centre, genetic laboratory, genetic clinic, ultrasound clinic or imaging centre should send a complete report in respect of all pre-conception or pregnancy related procedures/techniques/tests conducted by them in each month by 5th day of the following month to the concerned Appropriate Authority.

### **Registration of Genetic counselling Centre, Genetic Laboratory and Genetic Clinic**

- It is done by States Appropriate Authority after application and paying fees of Rs.25,000/- for genetic counselling centre, genetic laboratory, genetic clinic, ultrasound clinic or imaging centre and Rs.35,000/- for an institute, hospital, nursing home.

- The appropriate authority in duplicate grants certificate of registration. One copy of the registration certificate has to be displayed by the genetic counselling centre, genetic laboratory or genetic clinic at a conspicuous place at its place of business.
- Grant of certificate of registration or rejection of application is done within 90 days from the date of receipt of application.
- In the event of change of ownership or change of management of the centre a fresh application for registration certificate is mandatory.
- Certificate of registration is valid for a period of five years from the date of its issue.
- Renewal of registration has to be done 30 days before the date of expiry of the certificate of registration. The fees payable for renewal are one half of the original fees. In A form.<sup>4</sup>

## **8. LIMITATION OF PCPNDT ACT**

PCPNDT Act is welfare Legislation. PCPNDT Act is not gender biased. It will apply in limitation. This limitation is nothing but the limitation given under Medical Termination of Pregnancy Act 1971 that protects the constitutional right of women to terminate the fetus on mentioned grounds

- 1) Danger to mother's life
- 2) Foetal abnormality
- 3) Rape
- 4) Contraceptive failure

PCPNDT Act does not take away the fundamental right of women to abort her foetus on reasonable ground mentioned in the medical termination of pregnancy Act 1971. But PCPNDT Act strictly prohibits the sex selective abortion which can be caught red handed by doing decoy or sting operation.

## **9. LACUNAS IN PCPNDT ACT**

PCPNDT Act is very good Act for curbing the derogatory and heinous practices against the women .It plays an important role in implementing and increasing the Sex ratio of female of 0 to 6 age group. But this Act has some lacunas and has also missed some important provisions which need to be inserted in the said Act itself. They are as follows:

In PCPNDT ACT

- 1) There should be punishment of deterrent nature.
- 2) There should be provision of burden of proving innocence on wrongdoer.
- 3) There should be provision of casting duty and liability on implementing authorities.
- 4) There should be specific provision for casting punishment on implementing Authorities if they do not follow the duty under PCPNDT Act and
- 5) There should also be a provision to empower them to do the needful to stop wrongdoers in their malpractices.



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