Chapter-IV

Law and Female Foeticide
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Social change is a natural phenomenon not only in India but also in societies of the world. In modern period legislation is one of the most important instruments of change. When society changes from traditional society to modern society, enactment of modern law plays a major role in shaping the change in a desired manner. Thus, in spite of unwillingness, people have to mould their behaviour according to laws due to fear of punishment. When in India, various social reforms movements of 19th century, could not achieve expected success regarding enhancement of women's status the enactment of social legislation became essential. Saraswati Mishra (2002)\(^1\).

Every child comes into the world with the message that God is not yet disappointed with man said the great noble laureate Rabindranath Tagore. But alas the girl child she is hated even before her birth. Girls and women face inequality in every society but in India their condition is more worse very offer. They do not even get a chance to lead healthy and productive lives. Instead, they are devalued as human beings from the day they are born and even before they are born. Our patriarchal as society welcomes sons alone and daughter are considered a burden and liability. Sex ratio is a composite indicators of women's status. Indian sex ratio throughout the 20\(^{th}\) and 21st century reflects a masculine bias. Gurpeet K. Pannu (2004)\(^2\)

Female infanticide is not uncommon in Indian society, and is still prevalent in certain parts of the country with the advancement of modern technology its practice, however, had taken a different shape. Now it is possible to detect the sex of the baby when it is still in the womb of the mother.
This had made it possible to abort the female, if it is unwanted. The most commonly used sex determination test is amniocentesis. Discovered primarily for the detection of foetal malformations, it had over the years, been used to determine the sex of the foetus. In India, since 1978, the test is used as a pre-selection sex determination. Since then, the test had become extremely popular and had led to a mushrooming of private clinics, which perform the test, all over the country. The seriousness and social implications of this practice were realized only in 1998. The issue of abortion was complex and was influenced by socio-political and sexual politics and moral considerations. Recently the issue had been further compounded by sex selective abortion in India. As abortion before 20 weeks of pregnancy were legal, female foeticide could not be banned per se. The requirement of a new law was therefore felt to prevent the misuse of the MTP Act for sex selective abortions. It was followed by several years demand for the regulation of the growing misuse of medical technology for sex determination and sex selective abortion that a Bill to regulate the technology was tabled in the Parliament. The draft Bill was initially around the technology most used, was amniocentesis and therefore most of the contents of the Bill were around definitions of genetic centres, genetic clinics and the qualification of the geneticist and the norms for the genetic centres, their structure and functioning. It was to regulate genetic centres and also lay down qualifications and requirements of personal working in the genetic clinics and genetic labs.

Legislation

A life time systematic gender bias for Indian girl child began in the mothers womb itself. Sex linked abortions have become rampant. Many techniques are used to determine the sex of foetus. If this foetus happens to be female than it is aborted. Some of the legislations passed in our society are described below:
The Medical Termination of Pregnancy Act, 1971

This Act provides the termination of certain pregnancies by Registered Medical Practitioners under certain circumstances. MTP Act can be divided into 3 parts.

1. The conditions under which pregnancy can be terminated.

2. The person or persons who can perform such terminations.

3) The place where sub-termination can be performed.

(1) Conditions under which pregnancy can be terminated:

(a) Medical: Where continuation of the pregnancy might endanger the mother's life and cause of grave injury to her physical or mental health.

(b) Eugenic: Where there is a subject being born with serious handicap due to physical or mental abnormalities.

(c) Humanitarian: Where pregnancy is a result of rape.

(d) Failure of contraception.

2. Person or persons who can perform such termination:

(a) The Act provides safeguards to the mother by authorizing only MBBS doctors having experience in gynaecology and obstetrics to perform abortion where the length of pregnancy does not exceed 12 weeks.

(b) Where the pregnancy exceeds 12 weeks but is less than 20 weeks, the opinion of two registered medical practitioners is necessary to terminate the pregnancy.

2. The place where such terminations can be performed

Section 4 of the Act provides that pregnancy shall not be terminated at any place other than hospital established or maintained by Government or a
place approved for this purpose by the government or a district level committee constituted by the government with Chief Medical Officer or District Health Officer as Chairperson of such committees.

**Important Points of the Act, 2002**

Earlier in MTP Act 1971, no punishment was prescribed. Section 5 of Act provided that abortion shall be an offence punishable under Indian Panel Code. Section 312 to 316 IPC deals with punishment for illegal abortion. Section 5 has been substituted by Act 64 of 2002 and sub section 2, 3 and 4 provides punishment as follows:

1. Termination of pregnancy by a person, who is not registered medical practitioner shall be an offence punishable with rigorous imprisonment for term which shall not be less than two years which may extend to seven years.

2. Whoever terminates any pregnancy in a place other than mentioned in Section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to 7 years.

3. Any person being owner of a place which is not approved under clause (b) of Section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than 2 years but which may extend to 7 years (MTP Act, 2002).

**The Pre-Conception and Pre-Natal Diagnostic Techniques (prohibition on Sex Selection) Act, 1994.**

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was announced on September 20, 1994. It was brought into operation from January 1, 1996 and the rules were framed under the Act. Unfortunately the PNDT Act remained unimplemented like many other Acts which attempt gender justice e.g. dowry, rape, age of marriage, equal wage for
equal work etc. Under it, individual practitioners, clinics or centers cannot conduct tests to determine the sex of the foetus or inform the couples about it. It is a cognizable, non-bailable and non-compoundable offence to have recourse to prenatal diagnostic techniques under the pretext chromosomal abnormalities (Journal of Indian Law Institute, 1991).4

It is also an offence on the part of the pregnant woman who undergoes the test. The state of Maharashtra which took the lead in 1988 by enacting the Regulation of Pre-natal Diagnostic Techniques Act, faced a lot of opposition to such a law from certain quarters. The Act got diluted as a result of this opposition. The 1991 Bill seeks to achieve the following objectives:

1. Prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide.

2. Prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex.

3. Permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders.

4. permitting the use of such techniques only under certain conditions by the registered institutions.

5. Punishment for violation of the provisions of the proposed legislation.

The PNDT Act, 1994 (as amended by 2002 Amendment) provide for the Prohibition of sex selection, before or after conception, and for regulation of Pre-natal diagnostic techniques for the purpose 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 (PNDT act, 2002).5
The Act has three aspects viz. prohibitory, regulatory and preventive. 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 misuse for illegal purposes. In order to look into various policy and implementation matters, the Act provides for the setting up of various bodies along with their composition, powers and functions. Under the Act, registration is mandatory for every genetic clinic. The PNDT Act was amended as PNDT Amendment Act, 2002 No. 14 of 2003 was published on January 20, 2003 as Gazette Notification.

In Section 1 of the Principal Act, Pre-Natal Diagnostic Techniques Regulation and Prevention of Misuse Act, the (Pre-natal Diagnostic Technique, Prohibition of Sex Selection) Act. Thus incorporating sex pre-selection in its name itself.

The PNDT Act encompasses of the following provisions.

(i) Advertisement of sex determination tests in any form is illegal.

(ii) Conduct of sex determination tests by doctors and others is illegal.

(iii) It made seeking sex determination testing and pressurizing the pregnant women to do so illegal.

(iv) PNDT Act was enacted to

- Regulate the use of pre-natal diagnostic techniques.
- Techniques like ultrasound could only be used for the detection of genetic and metabolic and chromosomal abnormalities or certain congenital malformations or sex linked disorders.
- For prevention of the misuse of such techniques for the purpose of pre-natal sex determination, female foeticide. (Handbook on PNDT Act, 1994)\textsuperscript{6}. 

Determination of sex prohibited on and from the commencement of this Act.

(a) No genetic counseling center or genetic laboratory or genetic clinic shall conduct or cause to be conducted in its center, laboratory or clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus.

(b) No person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

The Act also laid down the directions for setting up of Central Supervisory Board (CSB) and the constituents of the CSB.

Constitution of Central Supervisory Board:

(1) The Central Government shall constitute a Board to be known as the Central Supervisory Board to exercise the powers and perform the functions conferred on the Board under this Act. The Board shall consist of the minister-in-charge of the Ministry of Department of Family Welfare as Chairman ex-officio member.

(2) The Secretary to the Government of India – in-charge of Department of Family Welfare, Vice-Chairman, ex-officio member.

(3) Two members appointed by the Central Government and representing the Ministry of Central Government – in-Charge of Women and Child Development and law and Justice Ex-officio member.

(4) Director General Health Services of the Central Government ex-officio.

(5) Ten members appointed by the Central Government two each from amongst eminent, medical genetics, eminent gynaecologists and
obstetricians, eminent paediatricians, eminent social scientists, representatives of women welfare organisation.

(6) Three women members of parliament and effected from Lok Sabha and 1 from Rajya Sabha.

(7) Four members appointed by the Central Government on the recommendations of the respective state government or the Union territory by rotation to represent the States and Union territories.

(8) An officer not below the rank of Joint Secretary or equivalent of the Central government, in-charge of Family Welfare who is member secretary ex-officio member.

**Term of office of Members:**

(1) The term of office of a member other than an ex-officio member, shall be

(a) In case of appointment under clause (e) or clause (j) of sub-section (2) of Section 7, three years, and

(b) in case of appointment under clause (government) of the sub-section, one year.

The CSB was directed to meet at lest one in every 6 months. The Board shall meet at such time and place, and shall observe such rules of procedure in regard to the transaction of business at its meeting (including the quorum at such meetings) as may be provided by regulations:

**Functions of Central Supervisory Board**

The Act lays down as follows:

(1) To advice the government on policy matters relating to pre-natal diagnostic techniques.
To review implementation of the Act and the rules and recommended changes.

To create public awareness against pre-natal sex determination and female foeticide.

To lay down code of conduct for persons working at genetic counseling centers, genetic laboratories and genetic clinics.

Any other functions as may be specified under the Act.

Role of Appropriate Authority and Advisory Committee

1. The central government shall appoint, by notification in the official gazetted one or more Appropriate Authorities for each of the union territories for the purposes of this Act.

2. The State government shall appoint, by notification in official gazette one or more Appropriate Authorities for the whole or part of the state for the purpose of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.

3. The officers appointed as appropriate Authorities under-sub Section 9(1) or sub-section (2) shall be.

(a) When appointed for the whole of the state or the union territory, of or above the rank of the Joint Director of Health and Family Welfare; and

(b) When appointed for any part of the state or the union territory, of such other rank as the state government or the central government, as the case may be, may deem fit.

4. The appropriate authority shall have the following functions, namely:

(a) to grant, suspend or cancel registration of a genetic counseling center, genetic laboratory or genetic clinic;
(b) to enforce standards prescribed for the genetic counseling center, genetic laboratory and genetic clinic;

(c) to investigate complaints of breach of provisions of this Act or the rules made there under and take immediate action, and

(d) to seek and consider the advise of the Advisory Committee, constituted under sub-section 5, on application for registration and on complaints for suspension or cancellation of registration.

5. The central government or the state government, as the case may be, shall constitute Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the advisory committee to be its chairman.

6. The Advisory Committee shall consist of

(a) Three medical experts from amongst gynaecologists, obstetricians, pediatricians and medical geneticists;

(b) One legal expert;

(c) One officer to represent the department dealing with information and publicity of the State government or the Union Territory, as the case may be;

(d) Three eminent social workers of whom not less than one shall be from amongst representatives of women’s organizations.

(7) No person who, in the opinion of the Central government or the State government, as the case may be, has been associated with the use or promotion of pre-natal diagnostic techniques for determination of sex shall be appointed as a member of the advisory committee.
(8) The Advisory committee may meet as and when it thinks fit or on the request of the appropriate authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon. Provided that the period intervening between any two meetings shall not exceed the prescribed period.

(9) The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such committee in the discharge of its functions shall be such as may be prescribed.

On failure of any action taken by Appropriate Authority, a complaint can be made to the magistrate by 3rd party i.e., person or social organisation amended PNDT Act, 2003.

**Penalties**

Any violation of the prohibition of sex determination and the advertisement etc., under PNDT is liable to imprisonment, which may extend to 3 years and fine Rs 50,000 (Rs. 10000/- earlier).

In case of registered medical practitioner who had been convicted by the Court, his name can be removed from the register of the medical Council. For a period of 5 years (2 years earlier) for the 1st offence.

Suspension of Registration if charged are famed by the Court till case is disposed of:

- Permanently for the second offence (Section 23(2) Addendum to the PNDT Amendment).
Husband and Relatives of pregnant women will be presumed to have compelled the woman to undergo pre-natal diagnostic techniques unless contrary is proved (Section 24).

If the contrary is proved pregnant women undergoing sex determination can be also punished.

If any person contravenes any provision of the Act or the Rules made there under for which no penalty has been specified will be liable to be punished for imprisonment which may extend to 3 months with a fine which may extend to Rs. 1000 or with both (Section 25).

Registration of genetic counselling centers, genetic laboratories and genetic clinics

No person shall open any genetic counseling center, laboratory or genetic clinics after the commencement of this Act unless such center, laboratory or clinic is duly registered separately or jointly under the Act.

Every application for registration under sub-section (1), shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.

Every genetic counselling center, laboratory or genetic clinic engaged, either partly or exclusively, in counseling or conducting pre-natal diagnostic techniques for any of the purposes mentioned in section, immediately before the commencement of this Act, shall apply for registration within sixty days from the data of such commencement.

Subject to the provisions of section 6, every genetic counseling center, genetic laboratory or genetic clinic engaged in counselling or conducting pre-natal diagnostic techniques shall cease to conduct any such counseling or techniques on the expiry of six months from the data of commencement of this Act unless such center, laboratory or clinic has
applied for registration and is so registration separately on jointly or till such application is disposed of, whichever earlier.

Certificate of Registration:

- Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.

- The certificate of registration shall be displayed by the registered genetic counselling center, genetic laboratory or genetic clinics in a conspicuous place at its place of business.

- The appropriate authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirement of this Act and the rules made there under and having regard to the advice of the Advisory Committee on behalf grant a certificate of registration in the prescribed form jointly or separately to the genetic counselling center, genetic laboratory or genetic clinics as the case may be.

Minimum Requirements for Registration

Minimum requirement for the process of certification and registration have also been draw up. The certificate of registration shall be non-transferable (Para 6(6) of PNDT Rule).

"All centers, laboratories, clinics registered under the PNDT Act shall give an Affidavit Affirming that they will not indulge in pre-natal determination test as mandated by Supreme Court: The Registration Certificate must also mention the number of ultrasound machines in the said center."
Who can make a complaint?

- Appropriate Authority fails to take action on the complaint made by a person on the lapse of 30 days that person can directly approach to the court. [Section 28(1) (a) of the Act]

- Every public-spirited person can activate the PNDT law for the violation of the same. He/she can seek the assistance of a lawyer or NGO and even a group of persons and can file a complaint together. Once the complaint is made in the court the public prosecutor will take on from there and the complainant need not to be present at every date of hearing.

- A person who has given notice of at least 30 days to the Appropriate Authority of the alleged offence and of his intention to make complaint in the court i.e. if:

  - Any officer authorized on his behalf by Central government or state government or appropriate authority,

  - A person includes a social organisation (Explanation) Section 28 of the Act) (Handbook on PNDT Act, 1994, p. 22).  

The Act prohibits employment of any person who does not possess prescribed qualifications. The Amendment adds or take services of any of the person whether on an honourary basis or on payment.

Implementation of the PNDT Act

The PNDT Act come into force on 1st January, 1996. From the declining sex ratio, it is apparent that to a large extent the Act is not effective in checking the female foeticide. The situation of foeticide continues to increase despite the introduction of the PNDT act. Though, non-implementation of the Act could
not said to be the root cause of the problem, the growing misuse of reproductive technology have widened the gap in the already showed sex ratio.

It highlighted several lacunae in the implementation of the PNDT Act. In most of the states, appropriate authorities are not actively functioning and in fact there are over 200 applications for registration of genetic clinics pending with the appropriate authority in state of Tamil Nadu alone. The net result is that the genetic clinics are functioning in full swing without authorization and this delay in the process of applications has given a chance for many such clinics to operate without brohthing even to apply for registration. In almost all the states even, appropriate authorities have not been set up at district levels and in some states at the state level. The state of Tamil Nadu later stated in its affidavit that there were 1,541 clinics in the state, of which 1,489 had been registered under the Act.

The problem today is the interpretation of this Act by the ultrasonoclogists, the abortionists, the doctors and most importantly the government”, the petition say, “the petitioner contend that the narrow – interpretation of the Act presupposes the exclusion of pre-natal sex selection from its purview.

The petitioners further contends that by ultrasonography and amniocentesis, the sex of the foetus is determined during the pregnancy of the woman and the foetus is aborted if found to be a female (Bajpai, 2003).7

The Supreme Court issued a series of directions to appropriate government during 4th May, 2001 to 10th September 2003 (CEHAT, 2001).8 The apex court observed that advancement in diagnostic technology in medical sciences is increasingly used for removal of foetus (may or may not be seen as causing death of a person) but it certainly creates imbalance in the sex ratios. The unfortunate state of affairs of the crime is that it is more prevalent in economically better off and developed state, with in the country.
The Direction issued by the Apex Court were:

❖ Central government is directed to implement with all vigour and zeal the PNDT Act and the rules framed in 1996.

❖ The intervening period between two meetings of the advisory committees to advise the appropriate authority shall not exceed 60 days.

❖ Meeting of the CSB will be held at least once in six months. The members (medical practitioners, social scientists, etc.) constituting the CSB are to be appointed by the Central Government. It is hoped that this power will be exercised so as to include those persons who can genuinely spare time for the implementation of the Act.

❖ The CSB shall review and monitor the implementation of the Act.

❖ The CSB, being an expert body, shall examine the necessity to amend the Act keeping in mind emerging technologies and difficulties encountered in implementation of the Act and to make recommendations to the central government.

❖ The CSB shall lay down a code of conduct under Sec. 16(iv) of the Act to be observed by person working in bodies specified therein and to ensure its publication so that public at large can know about it.

❖ On 19th September, 2001, the court took notice of the fact that even though certain genetic counselling center, genetic laboratory or genetic clinics were not registered, no action has been taken as per the provisions of the Act, except issuing instructions on 6th November, 2001, the central government assured the Supreme Court, with concrete steps in the direction of implementation, and suggested that it is setting up a National Inspection and Monitoring Committee for the implementation of the Act.
On 31st March, 2003, it was brought to the judicial notice that in conformity with the various directions issued by the Apex Court, the PNDT Act has been amended inter-alia and settled as “The preconception and pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act”. The amended PNDT Act, 2002 provides for:

- Ban on sex determination tests to include pre-conception sex selection techniques.
- A compulsory registration for clinics having sex determination selection techniques.
- Maintenance by doctors of written records of procedure carried out.
- Ban on advertisements promoting sex determination selection.
- Vehicles (mobile labs.) with ultrasound machines should also be surveyed and reported.
- State’s monitoring authorities will have to include non-government entities like women activists and doctors.
- Follow up of reports on violations and misconduct.
- Increase in punishment for violation of the law.
- State authorities be directed to create public awareness about the issue.
- Publication of report by supervisory bodies regarding implementation and working of the Act.
- Public information and access to records maintained by various bodies under the Act code of conduct for medical professionals, owners and employees of medical unit.
However, the fact that Supreme Court directive was necessitated brought to the fore the lack of political will, indeed reluctance, to correct the prevailing gender imbalances and biases (Frontline, 2002).

The State Board shall consist of:

(a) The minister in charge of the department of Health and Family Welfare in the state, Chairman ex-officio.

(b) Secretary in-charge of Department of Health and Family Welfare who shall be, the Vice-Chairperson ex-officio.

(c) Secretaries or Commissioners in-charge of Department, of Women and Child Development, Social Welfare, law and Indian System of Medicines and Homeopathy ex-officio or their representatives.

(d) Director of Health and Family Welfare or Indian System of medicines and Homeopathy of the state government, ex-officio.

(e) Three women members of Legislative Assembly or Legislative Council.

In the Amendment 16 A (2), out of the 10 members to be appointed as State Supervisory Board by the State government 2 each shall be from the following categories:

I. Eminent social scientists and legal expert.

II. Eminent women activists from non-governmental organisation or otherwise.

III. Eminent gynaecologists and obstetricians or experts or stri-roga or prasuti-tantra.

IV. Eminent paediatricians or medical geneticists.

V. Eminent radiologists or sonologists
(f) An officer not below the rank of Joint Director in Charge of Family Welfare shall be the Member Secretary, ex-officio Section 16 A (2).

**Flows in the PNDT Act**

Besides the ground realities noted in the functioning of Act (highlighting inadequacies in the laws and its implementation), some other flaws observed in the PNDT Act are:

1. The 2002 Amendment in the PNDT rules, 1996, inserted two new categories of units — the “ultrasound clinics” and the “imaging centers”. The rules, however, provide no clear directions on what the requisites are for the registration of such units.

2. The Central Supervisory Board has no statutory representation from radiologist or sonologist.

3. Neither the Act nor the rules, provide for a situation where the advice of the advisory committee is practitioner variance with the opinion of the appropriate authority. There appears to be escape for conflict as the Advisory Committee rules prescribe that the advice tendered by the Advisory Committee “shall be adopted”.

4. The penal provisions in the Act are not strong enough to act as a proper deterrent. There had been no convictions under the PNDT Act so far. Since the foetus is done away with in secrecy, there is no one left to complain about this breach. There are no witnesses on whose statement a case can be registered.

**Medical Ethnics**

Sex-selective abortion is totally illegal, unconstitutional, and a criminal act on the part of the doctor. It is one organized crime against women encouraged by professionals. The gradual but definite shift to the control over
public health from public institutions to private medical entrepreneurs has ensured that business interest take precedence over public health.

According to a senior cardiologist, some of the reasons for the presence of so many ultrasound clinics in a particular city were the following: (a) Having an ultrasound machine was considered as a status symbol by doctors; (b) it was an easy way to earn more money in less time; (c) local manufactures of ultrasound machines had reduced the basic cost (Bose, 2001).\(^\text{10}\)

A study on women in Maharashtra showed that while regular abortion cost between 100 to 1200 depending upon the client and whether it was a public or private facility, the cost went up to Rs. 5000 for a sex-selective abortion (Gupe and Duggal, 2003).\(^\text{11}\)

Despite so many legislations and efforts made by government evil practice of foeticide (this include sex selection of embryos, selective abortion and female infanticide and all other methods of averting the natural formation of female foetus) is still prevailing in our society. It is an irony that society in our country has been tolerating the murder of females in the form of infanticide, foeticide etc and this heinous crime has failed to shake the conscience of society. It shows that state is inclined to collude with these very forces, and silently permit both increase commercial exploitation and expansion of technological control in the name of choice by either refusing to intervene or resorting to symbolic law making and policy action. It is left to the concerned groups in society to put pressure on state for extracting supportive laws and policies as well as to challenge the promoters of technology myth by exposing how it serves their own economic or political objective. Arguments which contend that restricting the possibilities of using such technologies to make reproductive choice amounts to denying women control over their decision, need to be critically evaluated and to take into
account either the dynamics which led to such decisions or their implication for a particular woman but also women in general has to be carefully understand.

The positive impact of PNDT Act has been seen in vanishing of numerous hoarding and advertisements urging people to go in for testing of boy or girl. It is also with the enactment of the PNDT Act and Supreme Court order, that ultrasound machines, clinics and centers have been registered besides the genetic centers and clinics, general public is better aware about the existence of the PNDT Act making sex determination tests illegal besides their being unethical. In fact some doctors concerned about their reputation, as a precautionary measure have decided not to do any ultrasound tests instead refer the pregnant women to maternity homes. However, there are many others indulging in sex determination, female foeticide, so much so that census figures have also shown a dramatic decline in female-male sex ratio. Even though there has been a decline in the sex ratio throughout the century, the most dramatic drop and that too in the 0-6 years age group has been in the last decade.

The only major difference during the last decade has been:

(a) Increasing medicalization and privatization of health care;
(b) Proliferation of nursing homes maternity clinics and ultrasound clinics i.e., easy access and affordability of technology used for sex determination;
(c) increased dowry demands.
(d) Greater pressure for a child norm
(e) Economic globalization, new economic policy, increased materialism, consumerism, decrease in human values, devaluation of women, poor, disabled and elderly;
It is also clear that even though gender discrimination has been there for long, it has been due to easy availability of medical technology, mainly ultrasonography that has exacerbated the practice of sex determination and female foeticide. Doctors are generally aware of PNDT Act. They know that it is illegal to conduct such tests and subsequent abortions. The question that arises is: in a situation where the clients are not aware of the legal status of these tests are being conducted, the people cannot blamed and the fault lies squarely with the doctors. There were cases in Punjab when the police arrested some women for undergoing sex determination tests while the doctors went scot-free. This lead to an agitation by several health activists and ultimately the women were set free” (Bose, 2001)12.

Regulating this misuse was obviously an important objective of the PNDT Act. Unfortunately there are some major problems related to implementation of the Act. The most important has been the difficulty in building evidence and proving violation of the Act. Only the doctor conducting ultrasonography, and the client desirous of the sex determination for female foeticide are involved in the transaction and aware of transpires i.e. whether or not sex of the unborn baby is communicated or not by the doctor, to be or not to be followed by the abortion of the ‘unwanted sex child’. This biased attitude is also referred in the relaxed implementation of the Act by the appropriate authority, who themselves have an acceptance to the widespread son preference phenomena and therefore quite understanding of sex determination female foeticide (SDFF).

The serious societal ramifications of this demographic imbalance are not realized. Even if realized it is a matter of little choice. Thus, revealing the most probable reason for the failure in the implementation of the Act in its true letter and spirit as the demand of SDFF is high and so is the supply.
In the confrontation between doctors and lawyers, doctors will get away because lawyers are unlikely to succeed in producing evidence in the court that some doctors had misused ultrasound. In view of the PNDT ACT, no doctor indulging in sex determination tests will record anything on paper, and what a doctor tells or indicates by sign language or a coded message to his/her patient is impossible for the authorities to know (Bose, 2001).

A study conducted in 2003-04 by the National Sample Survey Organisation and released in September 2005 points to the failure of the health authorities to check female foeticide. 38% of all biaths in Delhi took place in unregistered clinics that have come up all over the place authorities suspect female foeticide is rampant here. However, according to official “we can not take action as these places are not registered. Many of them close shop on receiving a notice and shift to some other locality” (Chauhan, 2005).

In a study conducted on doctors by the Voluntary Health Association of India (2001) the following results were noted:

(1) Although all (100%) doctors were of the opinion that parental sex determination tests were illegal and unethical practices, 95% accepted that ultrasound machine were being misused for sex determination. When the respondents were asked if ultrasound machines should be banned, a majority of doctors (90%) said that it should not be banned.

(2) Doctor’s view were sought on the impact of the Family Planning Programme with its 2 child norm on female foeticide. The responses indicate that over 50% of the doctors thought it did lead to female foeticide.

(3) According to 50% of the doctors, pregnant women opting for sex-selective abortion should be punished for the act. This reflects the narrow understanding on the part of some doctors in our patriarchal culture. The IMA (Indian Medical Association) feels helpless in the absence of legal powers the
punish doctors. However, the liability of medical fraternity could not be negated by the honesty of few doctors. Medical professionals violating the Act should be held most responsible as they have the choice of not doing the test. On the decline in sex ratio, the Census Commissioner also observes that the alarming down slide could be attributed to the recent medical support in terms of sex determination test' and the social and cultural bias against the girl child (Contractor, 2002)\textsuperscript{15}

It is also very clear that legal instruments exit in a social milieu. In presence of increasing discrimination and violence against women, increasing dowry demands, increasing materialism, consumerism women are further devalued and seen as a liability, except for a small privileged percentage. Conscious selective blindness to their contribution continues. Educated men continue to desert wives for their failure to produce a son. The two child norms has further increased the pressure on women to produce 'sons only' or (sons mainly and also comply with the two child norm. Disincentives as a population control measure, especially in panchayati raj system has made the conflict and pressure on women much more.

Most of the PNDT violations registered so far are related to procedural concerns e.g., non registration, not keeping consent forms not putting up the Board of the right size claiming the sex determination is not done in this clinic. The first and the most dramatic case of violation of the PNDT where doctors in a nursing home conducting sex determination were caught red handed conducting sex determination tests in Faridabad was filed by Appropriate Authority Ranbir Dahiya. it was only possible with back up of police protection, presence of spy camera. A pregnant lady acting as a decoy with police protection. It was possible because of deep involvement and concern expressed by the Health Secretary Mr. A.R. Nanda who intervened to provide police protection to Dr. Dahiya who was threatened by the local IMA members
for taking action against one of their members and member of the medical fraternity. The problem of female foeticide becomes more pronounced by the fact that the enforcing authorities are also headed by the doctors and by and large it is noted that the doctors will try and protect some one from their own fraternity which is why prosecution is very slow and investigations take forever (The Hindu, 2004).16

Karnataka is only state that has authorized non-medical officers such as officials in the State Women’s Commission to take action for non-registration of diagnostic machines and maintenance of records of all medically terminated pregnancies (The Times of India, 2005).17

There is another category of medical fraternity who are resenting the PNDT Act. These are medical doctors who do not indulge in sex determination, female foeticide. They feel that PNDT Act gives a tool in the hands of the authority for harassment of all owners of ultrasound machines whether or not they are using it for pregnant mothers or not. Those using it for old cancer patients in cancer hospital are also harassed, with their machines having been confiscated and not released for prolonged periods, preventing them from discharging their duties towards their patients many of whom-needed early accurate diagnosis’s for relational management of their health problems. Some of the medical fraternity using ultrasound feel that taking written consent for ultrasound makes little sense, as it is a non-invasive procedure. Taking informed consent had a purpose when conducting invasive procedures like chronic villi biopsy amniocentesis, foetoscopy, foetal skin or organ biopsy cordocentesis but for a non-invasive procedure like ultrasound it had little value. This has fortunately been amended.

The Indian Council of Medical Research has now issued guidelines on regulation of genetic and assisted reproductive facilities. Since such facilities are not used across the board for sex selection, it remains to be seen if this has
an appreciable impact on the sex ratio. The preferred method will obviously remain the cheaper and more dangerous ones such as ultrasound and amniocentesis in the second trimester of pregnancy.

The current mode of functioning of PNDT Act has better worked to drive the abortion services underground, thereby criminalizing them and increasing costs and reducing the power of those in need of service. The publicity around the PNDT Act in recent years has in fact translated to awareness about the illegality of sex detection. Unfortunately however, most women and men have assumed (wrongly) that law is actually about a ban on abortions and that the government has now banned all abortions, whether sex-selective or not – a dangerous trend that will likely to have a backslash on accessing safe services for any woman in need of abortion services (Ganatra, 2003).

Efforts have been made to educate and orient the state and national level authorities. Guideline to understand and implement the PNDT Act has been brought out by the PNDT Cell. Documentaries have also been shown on Doordarshan and others channels about the illegality of sex determination. Central Supervisor Board constituted two technical committees, one to look at the amendments in the PNDT Act 1994 and second to look at the implementation after the amendments. The Technical Committees have met several times and discussed and debated controversial issues parliamentary hearings have been held under the chairmanship of Ms. Margaret Alva of the Parliamentary Committee on Empowerment of women. Representation by doctors, radiological associations and representatives from ultrasonography clinics to detect abnormalities, assess viability of her foetus etc. The PNDT amended Act clearly gives a list of conditions during which ultrasound can be done during pregnancy. The Act has been passed and the credit goes to some of the said activists, some sensitive and committed bureaucrats, organizations and
some sensitive media personnel who have doggedly pursued the issue. It is hoped that some of these efforts will be well documented and efforts made over the years will be available at either the PNDT Cell or some other resource center. Many nations are taking their medical technology seriously. Canada, European Union and the British Columbia have specific bodies for the sole purpose of assessing the various social and ethical implications of new and upcoming health technologies. These bodies are not mere watchdogs, they are active contributors to decision making at both general health care and patient care (Anonymous, 2005).19

Recently, the Chinese government criminalized abortions and ultrasounds obtained for sex selection purposes, in the hope that criminalization of abortions will prove more successful in curbing these practices. New Chinese law calls for prison terms of up to three years and fines for doctors and other health workers who arrest in telling the gender of unborn babies, leading to abortions (Anonymous, 2005).20

The court had earlier ordered compulsory registration of all diagnostic centres across the country and empowered the state appointed committees to seize the ultrasound machines of them were misused. It was admitted fact the girls were being discriminated in India and dowry was still prevalent. Impressing concern over the growing imbalance in sex ratio because of female infanticide and foeticide and noted that “with no change in mindset about females, the sex determination tests add to the adverse situation:. Subsequent to the court’s earlier directions, appropriate authorities with powers of civil court had been appointed in most of the states and the union territories. They were empowered to prosecute clinics and doctors if they use ultrasound techniques for sex determination (Hindu, 2005).21

According to Sabu George, who had been spearheading the campaign against female foeticide, statistics had shown that in the last few years, over 1.5
million abortions have taken place in India. The problem of female foeticide emerged more as a social one, rather than one that only law can handle (Features, 2002). Certainly, a very stringent legal framework against it can act as deterrent but the real initiative has to come from the social front. At the same time, the law has to be made more stringent, with greater teeth and should be implemented with vigour at all levels. As per the Supreme Court directive, the government has set up a technical panel to make recommendations on how to plug loopholes in the present law.

**Government Schemes to Battle Female Foeticide**

The SAARC nations declared 1990 as the Year of the Girl Child, and the next decade as the SAARC decade of the girl child. Thus, the government of India developed a national plan of action for the girl child for 1991-2000 to enforce the rights of the girl child. The plan primarily aims towards:

- Preventing female foeticide by banning the practice of amniocentesis for sex determination.
- Ending gender disparity in infant mortality rate;
- Eliminating gender disparities in feeding practices, expanding nutritional interventions to reduce severe malnutrition, by half, and provide supplementary nutrition to adolescent girls;
- Providing relief for girls who are economically and socially deprived and belong to special groups;

Educating and sensitizing of male members of the family to the special needs of the girl child, i.e. equal treatment, dignity and respect for the girl child in the family and community as well as support in their day to day work, so that they get time to avail of the opportunities for self-development.
To conclude we can say that the laws passed by the governments are merely on papers and have little effects on the prevention of female foeticide. Still there is great deal of involvement of doctor in female foeticide to earn quick money. Clients are under social pressure to have at least one son. The declining sex ratio shows the mind set of the traditional patriarchal society. The change which we have witnessed in our study is very small and that too among the highly educated and economically well off families. Unless the change in attitude towards girl child comes from society laws will have little impact in curbing this social evil of female foeticide.
REFERENCES


3. The Preamble to the PNDT Act, 1994 (as amended by 2002 Amendment)


13. Ibid.


