Chapter-VI
PNDT Act: A Critical Analysis
CHAPTER VI

PNDT ACT: A CRITICAL ANALYSIS

Sex Selective Abortion

Sex selective abortion is a fairly recent phenomenon, however, its roots can be traced back to the age-old practice of female infanticide. One British official, James Thomason, while speaking to a group of landowners in Uttar Pradesh in 1835 referred to one of them as a son-in-law of another. His remark “raised a sarcastic laugh among them and a bystander briefly explained that he could not be a son-in-law since there were no daughters in the village. Thomas was told that the birth of a daughter was considered a most serious calamity and she was seldom allowed to live.”¹ Realization of the occurrence of this practice prompted the British to pass the Infanticide Act in 1870, making female infanticide illegal. It was not until 1871, however, in the setting of India’s first Census Survey, that the scope of the problem of infanticide became evident. At that time it was noted that there was a significantly abnormal sex ratio of 940 women to 1000 men. Since this ratio was inverse of what had been observed in England and other countries where women outnumber men, the paucity of women in India invited much speculation. The abnormal sex ratio was also to the fact that Indian women had a higher

mortality rate then men from both natural causes such as childbirth, as well as unnatural causes e.g. infanticide and Sati (the practice of a widow throwing herself on husbands funeral pyre). There was also belief that there is a purposeful under reporting of women from families who distrusted the British motives. But subsequent census reports showed no improvement in the abnormal sex ratio despite attempts to ensure that all women were reported.

The Infanticide Act was difficult to enforce in a country where most birth took place in the home and where vital registration was not commonly done. Autopsies were not performed on corpses except in the unusual circumstance in which the police were notified. Given the high infant mortality rate due to natural causes in India, a female infant could easily be suffocated, poisoned or starved without arousing the suspicions of others. Moreover, because of the seemingly widespread acceptance of the practice, it is not clear whether anyone would feel morally compelled to report a suspicious incident. Aware of the limitation of legislation, the British made other attempts to curtail the incidence of infanticide. They established a government dowry fund to aid destitute families who felt that they could not afford another daughter. They held conferences with the princely families. They threatened with imprisonment and fines. Their efforts might have curtailed the incidence of outright infanticide, but many felt that it was supplanted by more subtle neglect. Even
if there is no deliberate design of hastening a girl’s death, there is no doubt that, as a rule, she received less attention than would be bestowed upon a son. The other effect of British policies was that the act of female infanticide became secretive for fear of legal action. As a result, much of the evidence as to the prevalence of female infanticide had to be extrapolated from the census data rather than direct surveys. The low sex ratio is largely responsible for the overall preponderance of males over females in the world.

According to the Census of India, 2001, the sex ratio stands at 933 for the country as a whole. This is a welcome improvement from the 1991 census, which had recorded 927 females for every 1000 males. Statement 01 and Figure 01 present the trend in sex ratio in India since 1901.

Statement-1

Sex ratio- India: 1901-2001

<table>
<thead>
<tr>
<th>Census Year</th>
<th>Sex ratio (females per 1,000 males)</th>
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</thead>
<tbody>
<tr>
<td>1901</td>
<td>972</td>
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<tr>
<td>1911</td>
<td>964</td>
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<tr>
<td>1921</td>
<td>955</td>
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<tr>
<td>1981</td>
<td>934</td>
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<tr>
<td>1991</td>
<td>927</td>
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<tr>
<td>2001</td>
<td>933</td>
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2 1901, Census of India as quoted in Miller, 1981.
The sex ratio in the country had always remained unfavorable to females. Moreover, barring some hiccups, it has shown a long term declining trend. The sex ratio at the beginning of the twentieth century was 972 and thereafter showed continuous decline until 1941. In 1951 there was a marginal increase of one point, but thereafter it again dropped for two consecutive decades to reach 930 in 1971. In fact, between 1961-71, the country saw the sharpest decline of 11 points in the sex ratio. Thereafter, it has fluctuated marginally around 930 in successive censuses.

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Census of India 2001, p-87
A. Sex Selective Abortion Methods

The decline in sex ratio, according to many groups, is at least partially attributable to the introduction of methods of prenatal sex determination of India in the 1970's. Sex selective abortion depends on the ability of a physician or technician to determine the sex of the foetus before birth, something that could not be done reliably before the advent of ultrasound and amniocentesis. The long standing tradition of son preference, coupled with medical technology now gives the status conscious Indian families the 'choice' between payment of large dowry for their daughters or elimination of daughters. The son preference is also directly tied to the existence of a patriarchal society in which:

"A daughter is usually only a temporary member of her family of origin, since she will leave it as soon as she is old enough to marry. Her children, like her labour, will belong to her husband's family, not that of her father or mother. Even if her husband is required to pay a bride price to her parents, this is not usually to cover the cost of her upbringing. If on the other hand, her parents are required to provide a dowry, the cost of raising daughters is apt to be perceived as far greater than any resulting benefits."

The traditional method of getting rid of the unwanted girl child was female infanticide where the female baby was done away with after birth in various ways by either poisoning the baby or

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letting her choke on husk or simply by crushing her skull under a charpoy. With the advancement of medical technology, sophisticated techniques can now be used or rather misused, to get rid of her before birth. Through ultrasound scans, amniocentesis and chorionic villi sampling, the sex of the foetus can be determined during the pregnancy of the woman and the foetus is aborted if found to be female. The practice of sex determination through ultrasound and amniocentesis largely started dominating the scene since the late 1970s and early 80s, especially in Punjab and Haryana. Slogan like “Boy or a Girl”, spend 500 now, save 5 lakhs then” flooded the entire Punjab, Haryana, Western Uttar Pradesh and Rajasthan belt during the eighties. Dramatic reduction of birth rates since the eighties coupled with reliable and cheaper ultrasound machines in the nineties, enabling accessibility of foetal sex testing to a much larger population across the country contributed to the intensification of son preference in our patriarchal society, whose immediate concern is to have sons who can help out in the fields, take care of them in their old age and who will continue the family line. According to the 2001 census, Punjab and Haryana, two of the most affluent states in India, have the lowest sex ratios of 793/1000 and 820/1000 respectively for the 0-6 years section.

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It is clear that the sex ratio in the age group 0-6 has decreased at a much faster pace than the overall sex ratio of the country after 1981. It is a clear manifest of sex selective abortion. The decreasing sex ratio in this child population perhaps has a cascading effect on population over a period of time leading to diminishing sex ratio in the country. One thing is clear - the imbalance that has set in at this early age group is difficult to be removed and would remain to haunt the population for a long time to come. To say the least, demographically the sex ratio of 927 of the population in the age group 0-6 does not appear to augur well for the future of the country.

Thus amongst other factors responsible for the above noted imbalance of sex ration in 0-6 age group, specially the decrease at a much faster pace after 1981, is due to the misuse of...
The technology of pre-natal testing had evolved chiefly to inform parents about the existence of genetic disorders, some of which are linked with the sex of the child, most of which were not, so the prospective parents could make a decision whether or not to terminate the pregnancy. In India, the testing was used for another purpose: to allow sex determination of the foetus so that the prospective parents could selectively abort female fetuses regardless of their genetic health. This female foeticide is a two-step process. The first step involves determination of the sex of the foetus in one of three ways: amniocentesis, chorionic villus sampling, or ultrasound. The second step consists of the therapeutic abortion, which was legalized in 1971 under the Medical Termination of Pregnancy Act, and is readily available and free of charge in government hospitals and clinic throughout the country.*

Legal Abortion

The Indian law on abortion, the Medical Termination of Pregnancy Act, 1971 (MTPA) came into force on April 1, 1972. The proposal for reforming the restrictive law on abortion was made in 1964 by the Central Family Planning Board of the Central Government and the various stages of the legislative process ended

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in August 1971 with the enactment of liberal Medical Termination of Pregnancy Act.

The Act liberalized the provisions of the Indian Penal Code 1860 relating to abortions by legalizing the same previously considered illegal under the Penal Code, under specified and limited conditions.\(^9\) The MTPA permits the termination of pregnancy by a registered medical practitioner where the length of pregnancy does not exceed twelve weeks, or by two registered medical practitioners forming opinion together, where the length of pregnancy exceeds twelve weeks but does not exceed twenty weeks, provided that the medical practitioner or medical practitioners are of the opinion that:

(i) the continuance of pregnancy would involve a risk to the life of the pregnant woman, or an injury to her physical or mental health, or

(ii) there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. The medical opinion must of course, be given in good faith\(^10\)

The Medical Termination of Pregnancy Act, also provides guidance for the doctors in the form of two explanations. These provide two instances where continued pregnancy is assumed to constitute a grave injury to the mental health of the pregnant woman, namely:

\(^9\) Sections 312-316, Indian Penal Code 1860
\(^10\) Section 3 Medical Termination of Pregnancy Act, 1971.
(a) where pregnancy is alleged by a pregnant woman to have been caused by rape and;
(b) where the pregnancy occurs as a result of failure of any device by a married woman or her husband for the purpose of limiting the number of children.\(^\text{11}\)

Thus the Medical Termination of Pregnancy Act, 1971 legalized termination of pregnancy on various socio-medical grounds, which permits termination of pregnancy when-

a) the continuance of pregnancy would involve a risk to the life of the pregnant woman,

b) there is substantial risk if the child were born it would suffer from physical or mental abnormalities,

c) where the pregnancy is the result of a rape,

d) where the pregnancy occurs as a result of failure of any device by a married woman on her husband for the purpose of limiting the number of children.

Furthermore, in determining whether the continuance of a pregnancy would constitute a risk to the physical or mental health of the pregnant woman, the Indian law permits the consideration of the woman's actual or reasonably foreseeable environment.\(^\text{12}\)

This provision modeled on the British Abortion Act of 1967 has made the Indian law quite liberal.

However, exceptions are made for emergencies. A single doctor may terminate a pregnancy if it is immediately necessary to

\(^{11}\) The MTP Act, 1971, Sec. 3 Exp p. 1 & 2
\(^{12}\) Section 3 subsection (iii) of MTP Act, 1971
save the life of the mother. In such situations, the requisites relating to the length of the pregnancy, the need for two medical opinions and the venue of operation do not apply. However, it needs to be pointed out that one aspect of this emergency clause tends to restrict rather than liberalize the old law. Section 312 of the Indian Penal Code permitted abortions by anyone with the object of saving the life of the mother, but under the MTPA only a doctor can terminate pregnancies.

Thus the following justifications in favour of permissive abortions are found in the Indian Law.

(i) **Therapeutics:** The old restrictive Indian abortion law had permitted abortion to save the life of the mother. In addition, the reformed law, as seen above, allows abortion when the mother's life is not threatened, but when continued pregnancy will cause damage to her physical and mental health.

(ii) **Eugenics:** The basis of eugenic abortion is that there is a justification for abortion when it is known before birth that the child will be born mentally or physically deformed. The unborn child should be relieved of the life of misery.

(iii) **Pregnancy caused by rape:** The problem of a pregnancy caused by rape may affect the mental health of the

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13 Section 5 MTPA
14 Jacob Mrs. Alice: World Congress on Law and Medicine Discussion Session III (a) (1985) p-2, New Delhi
mother. It is assumed that the victim mother does not want the child and does not want to bear the continuing results of a crime for which she was not culpable

(iv) Social and Economic Consideration: A popular argument in favour of abortion is based on the absolute right of the woman to control the use of her body. She has a right to an abortion on demand to terminate any pregnancy, which she decides she does not want. Admittedly, the right to control the use of one's body is founded on ideas of liberty, and restriction thereon may amount to an invasion of privacy.

The economic status of the family or the parent's inability to provide for a child is also given as a valid reason for adoption. Under this category falls the use of adoption as a means of population control. It is beneficial to the society in helping to reduce the burden of overpopulation. Though the Indian government's formal view is that liberalized abortion law used for birth control, yet the demographic needs of the country loom large as one of the underlying objectives of the legislation.  

The Medical Termination of Pregnancy Act grants wide discretion to the doctors in implementing its provisions. With an increase of abortion on demand, the prospects of commercialization of abortions by the member of the medical profession cannot be ruled out. With the accelerated pace of

\[15\] Ibid

236
modernization of medical technology, like advent of amniocentesis test, chorionic villus sampling and ultrasound scans, the chances of abuse of the liberal abortion law by members of the medical profession are increasing in the form of determining the sex of the foetus and terminating the same if was a female one.

**Amniocentesis and Abortion**

Amniocentesis was introduced in 1952\(^1\) as an antenatal test for hemolytic disease and has been routinely offered since the mid 1970's\(^2\). Initially used for karyotyping amniocentesis is now used for the molecular and biochemical diagnosis of those foetal disorders where analysis of animosities or amniotic fluid is informative. Amniocentesis is also a very sensitive test for neural tube defects. Amniocentesis is normally carried out between the 15\(^{th}\) and 18\(^{th}\) week of pregnancy, this timing being determined by the need of the test to be done late enough to provide a consistently successful outcome. This means that once the results are available (usually 2-3 weeks are needed for the cells to be grown) decisions have to be made quickly especially if a termination is indicated. The test is performed by inserting a needle trans abdominally into the amniotic cavity (guided by ultrasound) to withdraw 20ml of amniotic fluid. The risk associated with this procedure includes a 0.5-1 percent loss rate

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above the normal for foetal loss and a very rare chance of either sepsis in the mother or needle puncture in the foetus.\textsuperscript{18} Amniocentesis should not be used where there is an active vaginal infection, uterine abnormalities or fibroids.

Recently an early amniocentesis test has been developed. This test is done at about the 11\textsuperscript{th} week of pregnancy. Due to the small number of foetal cells obtained in this test it has only become possible because of advancements in the technology and methodology involved in the polymerase chain reaction (PCR). If this test is used it is important to subject the mother to other tests in order to detect neural tube defects. The advantage of doing this test at about eleven weeks is that the result is available at an early stage enabling an earlier termination and counseling to be performed. The test is done in exactly the same way as mid term amniocentesis but as yet the risks have not been fully analyzed. Provided it proves to be an accurate and safe test it may well become a standard test.\textsuperscript{19}

The amniocentesis is a medical technology, which was developed to detect genetic abnormalities in the foetus. Moreover, this technology, incidentally could also reveal the sex of foetus, apart from detecting the serious mental and physical defects in an unborn baby sufficiently early in pregnancy so that, if required the foetus can be aborted. Thus the amniocentesis, a pre natal diagnostic test, became popular as a sex determination test. By

\textsuperscript{18} Id. p.713
\textsuperscript{19} Id p-711
1982, the commercial use of amniocentesis had spread tremendously, netting enormous profits for doctors and clinics.

Soon an even more advanced test Chorionic Villus Sampling (CVS) started-gaining popularity.

**Chorionic Villus Sampling and Abortion**

Chorionic villus sampling allows for the karyotyping of the foetus during the first trimester of pregnancy. The test is performed at 10-13 weeks by taking a small sample of the chorion using a needle directed by ultrasound, this can be done either by a Tran cervical or trans abdominal approach. This test allows for an earlier diagnosis of abnormality than mid term amniocentesis.²⁰

The chorion or the outermost embryonic membrane that encloses the foetus develops finger like projection or villi. In this test, samples of chorionic villi are obtained through the cervix and examined for gender. It has the advantage of predicting a child’s sex at around 10 weeks of pregnancy, thus eliminating the need for a difficult, second trimester abortion. Thus the CVS is carried out when the foetus is 10-12 weeks old and the placenta is growing rapidly. The suction canola is introduced into the uterus under the sonographic guidance and a little placenta tissue suctioned out. This tissue is examined under electronic microscope. Cells of female embryos contain Barr Bodies, which can be identified. These embryos are then aborted from the uterus.

²⁰ Ibid
Ultrasonography and Abortion (USG)

Ultrasonography of the gravid uterus is usually done to diagnose any foetal or placenta anomaly. Currently however, ultrasound imaging is the most commonly used technology for sex determination. Not invasive as amniocentesis and chorion villus sampling (CVS), ultrasound imaging uses inaudible sound waves to project a visual image of the foetus on a screen. It can also reveal gender as early as 12-14 weeks of pregnancy, when the external male genitalia begin to form. Medical Termination of Pregnancy is carried out if the foetus is female. According to a report by World Health Organisation and the Indian Medical Association, USG helps in killing 2,000,000, female embryos in India every year.

It is unfortunate that these advancements in medicine which aimed for a very noble cause for detecting the genetic abnormalities in unborn child, being misused for the selective elimination of the female child. The Female foeticide-killing of female foetus in the womb itself is the ultimate cruel step in the tragic drama of female life. It all started around the mid 1970s when amniocentesis was first introduced in India for its remarkable diagnostic value. A revolutionary medical breakthrough, which is primarily intended to help those couples who face the risk of producing a genetically defective child, could also reveals the sex of the child. Female foeticide is also perhaps

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one of the worst forms of violence against women where a woman is denied her most basic and fundamental right, her right to life. The phenomenon of female foeticide where female embryos or foetuses are selectively eliminated after prenatal sex determination, thus eliminating girl child before they are born. Several sociologists consider female foeticide to be continuations of female infanticide. Scientific developments have only transferred the elimination of the girl child from the born to unborn stage. Female foeticide has crept into Indian society like never before, with the advancements in medical science helping to quicken the pace of the foeticide, thousands of the girls are denied the right to be born.\(^\text{22}\) The long standing tradition of son preference\(^\text{23}\), (preference of sons is much guided by the religious sanction and cultural norms issued by society. There is a traditional blessing. “May you be the mother of hundred son’s)\(^\text{24}\) coupled with medical technology and policy of liberalizing abortion now gives the status conscious Indian families the choice between payment of large dowry for their daughters or elimination of daughters. The general bias against girl children is best reflected in the census reports of the sex ratio in India. This decline is linked to the killing of unwanted female foetus of the newborn girl child. With the help of modern technology, the

\(^{22}\) Supra note 13 p.43
\(^{23}\) The Hindustan Times, October 12, 2000 p-2 New Delhi
\(^{24}\) In Kautilya’s Arthashastra It is said, the sole purpose of a wife is to bring forth a son ‘Putra hi striyah’ (Chatterjee: 1990) In one of the sutras it is said that the aim of existence of woman is to be the mothers of sons, daughters are not desired; a wife who bears only daughters should be abandoned.
corruption and moral degradation in the law enforcers, society and medical profession, this sex ratio is becoming more skewed day by day.

Through amniocentesis test the sex of the foetus is determined and after knowing the sex of the foetus the parents do not tell the gynecologist that they do not want the child because it is a female child. The doctor, who ultimately performs abortion under the permitted provisions of Medical Termination of Pregnancy Act, may not even be aware that he or she is doing it on the ground that the female child was not needed by the parents. The parent may say to the doctor that they do not just want the child at this particular moment, which as per the MTP Act, they have right to do so.\textsuperscript{25}

**B. Legal Measures for Prohibition of Sex Selection**

During the year 1980-90, widespread use of pre-natal diagnostic techniques for the purpose of sex determination and abortion of female foetus became a cause of concern for social and women organization. The nation-wide campaigning by women activists, health activists, doctors, press and public meetings caused pressure on the government, which resulted in tabling of an official bill, "The Pre-natal Diagnostic Technique Regulation and Prevention of Misuse) Bill, 1991" and enacting a legislation in 1994.

\textsuperscript{25} The Hindustan Times August 9, 1994 p-18 New Delhi
a. The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PNDT) Act, 1994:

Meaning of “Sex Selection” In its generic sense, “Sex Selection” means the procedure, which helps in knowing the probability whether or not an embryo will be of male or female sex. For this purpose the Act (PNDT) specifically defines the term ‘Sex Selection’ in Section 2(0) thereof.26

Sex selective abortion is differentiated from an abortion undertaken for reasons that are independent of the sex of the foetus is that the individual or families who chooses sex selective abortion, would not be terminating the pregnancy if the foetus was not a member of the unwanted sex i.e. son/male child.

This practice of female selective abortion leads to an angry protests and agitation by the women’s organizations and activists, and surveys were conducted which revealed that sex determination tests have become a lucrative business in several parts of the country. There are many clinics in Bombay and in smaller towns of Maharasstra. There are clinics with sex determination services in various other states also. It is believed that in some states there are courier services to carry samples of the amniotic fluid of pregnant women from rural health centers to big town and cities. In Haryana there are mobile vans which conduct sonography as the sex determinations techniques in villages. A determined campaign

26 “Sex Selection, includes any procedure, technique, test or administration or prescription or procedure of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex.”
against the misuse of amniocentesis and other such tests was launched by a group of activist.

In view of the strong agitation and protests, the Government of India decided to enact a law against this practice. Surprisingly, there was a lot of opposition to such a law from certain quarters. Among others it was argued that the government's policy of family planning would be adversely affected.

The Cairo Conference, on Population and Development 1994, proposed to solve the problem of population explosion *inter alia* through abortion in the sense that the abortion should be accessible to all "individuals" (i.e., Married or Unmarried) of all ages (i.e., adults or minor), including adolescent females.27

It was also argued that the government's policy of family planning would be adversely affected. So if the sex determination is discouraged then a couple wishing to have a son would end up with many daughters and with many females, there would be growth in population, consequently desired objective to control population can not be achieved. On the other hand reduction in the number of girls would further decrease the growth in population. These people looked at women as "child producing machine".

Another argument which was given by the opponents of the Act was that the Medical Termination of Pregnancy Act, 1971, legalizes abortion and the same is being resorted to as family

planning measure. Since abortion is legal, sex selective abortion (female foeticide) is legal too according to them.\textsuperscript{28}

The law was also opposed on the ground that those who want to go in for the test would in any case find a way out and go ahead. The legal ban would only give a boost to private clinics that would raise their charges for the service. The result will be that the poor will suffer. Either they will spend a lot of money for the test which they can ill afford or have a large family in the hope of getting a son, which again, they are not in a position to bring up.

The fundamental right argument was also advanced. It was argued that it was a woman's right to choose her offspring and so a ban on the test would be a violation of her fundamental right.

**Maharashtra Regulation of Pre-natal Diagnostic Techniques Act-1988**

Despite all oppositions, however, there was a tremendous pressure on the Government of Maharashtra to pass the law. Consequently the Maharashtra Regulation of Pre-natal Diagnostic Techniques Act 1988 was passed. Though the law has been passed it has not helped in solving the problem. This is because of the government's lack of determination and political will. The anti-law lobby also succeeded in getting its provisions diluted. For example, the initial proposal was that private clinics and

laboratories should not be given licenses for any pre-natal tests as it would be difficult to exercise control over them but this was opposed and under the Act now, even private clinics and laboratories can get a license. Besides, the very nature of the test is such that the control is not very easy. The test is simple and does not require sophisticated equipment etc. All that it requires is a qualified doctor to remove the amniotic fluid, which can be tested by a geneticist in any pathological laboratory.

Besides, the Act is applicable only to the state of Maharashtra so anyone who wants to have the test done can go to another nearby state and get the test as well as abortion performed, in case of need, without any legal problem.²⁹

The net result was that the tests continued, clinics flourished and female foetuses aborted thereby bringing down the female population. The need for a central legislation with stringent provisions was strongly felt. Because of the various pressures on the union government, an expert committee was set up to look into the matter and submit a report. After a lot of deliberations, the committee submitted its report and the present Act “The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 is an outcome of that report.

The PNDT, Act, 1994 has two aspects, viz., regulatory and preventive.

²⁹ Ibid
It seeks to regulate the use of pre-natal diagnostic techniques for legal and medical purposes and prevent misuse of illegal purposes. Thus, the Act aimed at the regulation and prevention of misuse of pre-natal diagnostic techniques for the purposes of sex determination.

Prohibitive Aspect

Under the PNDT Act, pre-natal diagnostic techniques for the purposes of sex determination are prohibited. The PNDT Act also prohibits the person conducting these techniques from revealing the sex of the foetus to the pregnant woman concerned or her relatives by words, sign or in any other manner. The Act also prohibits any Genetic Counseling Centre, Genetic Laboratory and Genetic Clinic to conduct activities relating to pre-natal diagnostic technique unless it is registered under the said Act or to employ any person who does not possess the prescribed qualifications. The medical practitioners are prohibited to conduct such techniques at any place, which is not registered under this Act.

Regulatory Aspect

The Act provides for the regulation of pre-natal diagnostic techniques. The conducting of pre-natal diagnostic techniques is

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30 The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, Cls. III and IV
31 Id Cl. V
32 Section 3(1), PNDT Act 1994
33 Section 3(2), PNDT Act 1994
34 Section 3(3), PNDT Act 1994
strictly prohibited except for the purposes of detection of certain abnormalities in the foetus. These are:\textsuperscript{35}

(i) Chromosomal abnormalities;
(ii) Genetic metabolic diseases;
(iii) Haemoglobinopathies;
(iv) Sex linked genetic diseases;
(v) Congenital abnormalities;
(vi) The Central Supervisory Board may specify any other abnormalities or diseases as.

The conditions, any one of which must be fulfilled before the medical practitioner can conduct such tests even for the above-mentioned specified purposes, are:\textsuperscript{36}

(i) If age of the pregnant woman is above thirty-five years;
(ii) If the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
(iii) If the pregnant woman has been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
(iv) If the pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease; in the family of the pregnant woman;
(v) If any other condition as may be specified by the Central Supervisory Board.

\textsuperscript{35} Section 4(2), PNDT Act 1994
\textsuperscript{36} Section 4(3) of PNDT Act 1994
Further, it is also essential that such diagnostic techniques can not be conducted unless the medical practitioner has explained all the known side and after effects of such techniques to the pregnant woman concerned and has also obtained her written consent in the language she understand. The Act seeks to prevent the practice of female foeticide by putting a total ban on sex determination tests by any Genetic Counseling Centre or Genetic Laboratory or Genetic Clinic, including ultrasonography. Even advertisement in any form of facilities for pre-natal determination of sex is prohibited. The Act prohibits the issuance of advertisements relating to pre-natal sex determination by any person, organization or institution and provides that any contravention of the provision shall be punishable with a maximum imprisonment of 3 years and a maximum fine up to Rs.10,000/- The Act further provides for an imprisonment for a maximum period of 3 years and a maximum fine of Rs.10,000/- to any person who renders his professional or technical services to or at such a center, laboratory or clinic whether on any honorary basis or otherwise in determining the sex of the foetus and a punishment of maximum 5 years imprisonment and a maximum fine of Rs.50,000/- upon second conviction.

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37 Section 5 of PNDT Act, 1994
38 Section 6 of PNDT Act, 1994
39 Section 22, PNDT Act, 1994
40 Sections 23 of PNDT Act, 1994

249
Central Supervisory Board

The PNDT Act also provides for the constitution of a Central Supervisory Board\(^1\) (CSB) which shall meet at least twice a year and have, among other functions, the function of reviewing the implementation of the Act and the rules made there under and recommend changes required in the said Act and the rules to the Central Government. The Board also has the function of creating public awareness against the practice of pre-natal determination of sex and foeticide.\(^2\) Under the PNDT Act, appropriate authorities are appointed in the states, the Union territories and regions.\(^3\) The authorities have to perform, among other functions, the function of:

(i) granting, suspending or canceling the registration of a genetic counseling, genetic laboratory and genetic clinic;
(ii) investigation complaints of breach of the provisions of PNDT Act or the rules made there under and take immediate action

The Medical Council can also take action against a registered medical practitioner on receiving a report from the appropriate authority.

For the first offence his name can be removed from the register for two years. If the offence is repeated, his name may be

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\(^1\) Sections 07 of PNDT Act, 1994
\(^2\) Section 16 of PNDT Act, 1994
\(^3\) Section 17(1) of PNDT Act, 1994
\(^4\) Section 17(4) of PNDT Act, 1994
It is important to note that even a woman, who undergoes the test for finding out the sex of the child, is liable to punishment. There is however, a presumption that she had gone in for the test under pressure or compulsion by her husband or relations. This presumption is rebuttable.\(^4^6\)

The PNDT Act, however, for all intents and purposes has proved to be a toothless piece of legislation. The problem with the Act is of two fold:

(i) Interpretation of the Act, and
(ii) Implementation of the Act.

Despite the intent and purpose of the Act being wide and all encompassing, it has been interpreted by the ultrasonologists, the abortionists the doctors and more shockingly the government alike, to exclude pre-conceptual sex selection. This has conveniently allowed medical practitioners, using modern technology such as the Ericsson's technique and the pre-implantation Genetic Diagnosis to escape the legislative net. Using these new techniques sex selection of the foetus can now take place pre-natally even before conception.\(^4^7\)

b. Pre-Conceptual Sex Selection

There are mainly two methods for pre-conceptual sex selection, which are now becoming quite popular are the

\(^{45}\) Section 23(2) of PNDT Act, 1994
\(^{46}\) Id Section 23(3) and 24.
\(^{47}\) Mehta, Swati and Kothari, Janya. "Pre-natal sex selection and the Law" From the Lawyers Collective (November) 2001, p.6
PNDT Act: A Critical Analysis

 Ericsson's Method

A sperm carries either an X or Y-chromosomes while an egg (ovum) carries X chromosomes. Fertilization of the egg by an X carrying sperm causes the birth of a girl and fertilization by a Y-carrying sperm makes a boy. In Erickson's method, first a semen sample is diluted by a proper media and then centrifuged. X and Y-bearing sperm are separated when placed in a chemical solution. The faster moving Y sperms penetrate the solution's denser bottom layers, which are collected in a special chemical solution and centrifuged. The process is repeated and the Y concentrate is collected for artificial insemination. This method is said to have a success rate of about 70 per cent.48

Pre-implantation Genetic Diagnosis (PGD)

The pre-implantation Genetic Diagnosis is a much more complicated technique involving firstly a "pick-up" where unfertilized eggs are collected from the ovaries. They are then fertilized in a petri dish with active sperm. The growing embryos are carefully nurtured in an incubator until they are about three days old. After 72 hours, each eight-cell embryo about the size of a pinpoint is skillfully biopsied with the help of a micromanipulator, a powerful microscope with slender glass

48 Ibid
pipettes. One of these pipettes firmly holds the embryo in place, while the second delicately extricates a single cell from the little clump. The extricated cell is taken to a tiny FISH (fluorescent in situ hybridization) laboratory, and transferred to a slide under a stereo zoom microscope, specially designed for a single cell analysis. This is done in order to study the genetic blueprint to determine whether the embryo is male or female. The cell for the above purpose is doused with two fluorescent probes: chemical stains that single out the X and Y chromosomes from the intricate genetic master plan. It is then “bathed” in a stainless steel water bath to wash away unwanted cellular debris that could interfere with the analysis. Freshly scrubbed X (female) shows up as a pink dot under a special fluorescent microscope, while Y (male) reveals itself as a bright green speck. The embryos that turn out to be male, which are always fewer in number are then implanted in the woman’s uterus and the remaining female embryos are simply discarded. This procedure finally results in sex selection of embryos, which for the doctors and government alike falls out of the purview of the PNDT Act, as it is pre-conceptual and not “pre-natal.”

There are no dearth of doctors who are ready to use these techniques and they even go to the extent of justifying these techniques. They claim that “if we allow people when to have babies, how many to have, and even to terminate pregnancies if

Ibid
they inadvertently get pregnant, then why not allow them to select the sex of their child, if it is possible?

The Under Secretary, Government of India, Ministry of Health and Family Welfare communicated the views of the Ethical Committee, Indian Council of Medical Research (ICMR) on the X-Y Chromosomal Separation of Sperms for a pre-determination of sex to the Director of Health Services, Punjab on February 9th 1999. Unfortunately, these views were that “The PNDT Act relates to testing in a pregnant woman... The question of pre-conceptual sex planning is not covered under this Act.” The ICMR, despite advocating against pre-natal sex selection as early as in 1988, has changed its views and endorsed an act of violence. Such a mechanical reading of the PNDT Act, which totally excludes pre-conceptual sex determination only because it is not technically defined as “pre-natal” has only given further licence to all doctors to use these techniques without any fear of the law. Significantly, these modern techniques have also been condemned by the Beijing Convention as violation of human rights and ethical medical practices and India is a signatory to the same as early as in 1995.

C. PNDT, Act and Supreme Court

Concerned and alarmed with the sex selective abortion (female foeticide), consequent by the constant decrease in the sex ratio despite the PNDT Act being in force, in February 2000 a public interest litigation was filed in the Supreme Court under
Article 32 of the constitution against the Central Government and all the States and Union Territories. This public interest litigation was filed by the Lawyers Collective, Women's Rights Initiative (WRI) on behalf of the petitioners who were Centre for Enquiry into Health and Allied Themes (CEHAT) which is a research center of Anusandhan Trust based in Pune and Mumbai, Mahila Sarvangeen Utkarsh Mandal (MASUM), a women's rights organization in Pune, Maharashtra and Dr. Sabu George, an activist in the area of public health specifically female foeticide. The petitioners, among other things sought the help of the Supreme Court to:

(i) Review the PNDT Act and reinterpret it so as to declare that the newer medical technology such as PGD (Pre-implantation Genetic Diagnosis) also contravene the provisions of the PNDT Act;

(ii) Direct the Central Government to ensure that the CSB (Central Supervisory Board) under the Act meet every six months and review the said Act as stipulated under the Act;

(iii) Direct the respective state Governments and the Central Government to implement the provisions of PNDT Act by appointing appropriate authorities (State and district

50 Centre for Enquiry into Health & Allied Themes (CEHAT) and others v. Union of India and others (2001) 5 SCC 577
51 The PNDT Act 1994, Section 9
52 The PNDT Act 1994, Section 16
These directions were sought at the preliminary stage of the litigation because the PNDT Act was not being implemented at all. The CSB, which is required to meet every six months, had met only four times in the last seven years and as a result, it has not reviewed the implementation of law which leaves much to be desired. Further in most of the states, appropriate authorities were not functioning properly.  

After filing of this petition, the court issued notices to the parties concerned that is, the Central and the State Governments on May 9th 2000. It took nearly one year for the various states to file their affidavits in reply/written submissions, claiming to have taken appropriate steps to implement the Act.

A glance at the data, which has been taken from the various affidavits in reply/written submission filed by the States, will show the failure of the appropriate authorities in implementing the PNDT Act.

In Punjab, merely fifteen ultrasound centers applied for registration of the Act. None of them was registered, as they did not fulfill the criteria laid down in the Act. The Special Secretary to Government of Punjab, Department of Social Security and women and child Development ‘solemnly affirmed’ that since “there is no established clinic for conducting pre-natal diagnostic

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53 The PNDT Act 1994 Section 17
54 Mehta Swati, Supra note 47 p.7
55 Supra note 50 p.378
tests in the state, so a visit by officers is not needed. However concerned officers are visiting hospitals." But even after the said visit, no complaints had been filed. One wonders whether the Secretary really believed that there is not even one clinic carrying on pre-natal diagnostic tests, when the fact is that every maternity hospital and gynecologist will invariably have at least an ultrasound machine which can be used for the purposes of carrying on the said tests and therefore must apply for registration.56

It was not just Punjab but almost all the States and Union Territories (UTs), which had the same story to tell. All claimed to have taken steps to implement the Act by simply having established the appropriate authorities under the Act. Many states and Union Territories had not even appointed the required Appropriate Authorities and their Advisory Committees of them stated in their respective affidavit that there was no established clinic for the carrying on of the said tests simply on the basis of the fact that there have been no application for registration and refuse to see this as the glaring example of their failure in implementing the PNDT Act properly.

In almost all the states, appropriate authorities have not been set up at the District levels and in some states at the state level.

All these facts submitted in the several badly drafted affidavits were compiled by the Petitioners and hand over to the

56 Swati Mehta supra note 47 p-7
court, which revealed the complete absence of any kind of implementation of the PNDT Act.\(^{57}\)

It was under these circumstances that on May 4\(^{th}\) 2001, the Supreme Court held that "prima facie it appears that despite the PNDT Act being enacted by the Parliament five years back, neither the State Governments nor the Central Government has taken appropriate action of its implementation." Hence, after considering the respective submissions made at the time of hearing of this matter, as suggested by the learned attorney-General for India, the Supreme Court issued appropriate interim directions to the Central Government, Central Supervisory Board, State Governments/Union Territories Administrations, and Appropriate Authorities on the basis of various provisions for the proper implementation of the PNDT Act:

**a. Directions to the Central Government**

1. To create public awareness against the practice of pre-natal determination of sex and female foeticide\(^ {58}\) through appropriate releases/programmes in the electronic media.

2. To implement with all vigour and zeal the PNDT Act and the Rules framed in 1996. The Rule provides that the intervening period between two meetings of the Advisory committee constituted under the PNDT Act to

\(^{57}\) Id p-8  
\(^{58}\) The PNDT Act 1994, Section 16(iii)
advise the appropriate authority shall not exceed sixty days. It would be seen that this Rule is strictly adhered to.

b. Directions to the Central Supervisory Board (CSB)

1. Meetings of the CSB will be held at least once in six months as provided by the Act.

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

3. The CSB shall issue directions to all State/UT appropriate authorities to furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about:

   (i) survey of bodies specified in Section 3 of the Act;
   (ii) registration of bodies specified in Section 3 of the Act;

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59 The PNDT Act 1994, Section 17(5), Rule 15
60 The PNDT Act 1994, Section 9(iii)
61 The PNDT Act 1994, Section 16(ii)
62 Regulation of Genetic counseling Centers, Genetic Laboratories and Genetic Clinics.—On and from the commencement of this Act,

(1) no Genetic Counseling Centres, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with or help in, conducting activities relating to pre-natal diagnostic techniques;

(2) no Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic shall employ or cause to be employed any person who does not possess the prescribed qualifications;

(3) no medical genetist, gynaecologist pediatrician registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.
(iii) action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records;
(iv) complaints received by appropriate authorities under the Act and action taken pursuant thereto;
(v) number and nature of awareness campaigns conducted and results flowing there from.

4. The CSB shall examine the necessity to amend the Act keeping in mind emerging technologies and difficulties encountered in the implementation of the Act and to make recommendations to the Central Government.\textsuperscript{63}

5. The CSB shall lay down a code of conduct of the Act to be observed by persons working in bodies specified therein and to ensure its publication so that the public at large can know about it.\textsuperscript{64}

6. CSB will require medical professional bodies/associations to create awareness against the practice of pre-natal determination of sex and female foeticide and to ensure implementation of the Act.

c. Directions to the State Governments/UT Administrations

(1) To appoint by notification, fully empowered appropriate authorities at district and sub-district levels and also Advisory Committees to aid and advise

\textsuperscript{63} The PNDT Act, Section 16
\textsuperscript{64} The PNDT Act, Section 16(iv)
the appropriate authority in discharge of their functions as provided by the Act.65

(2) To create public awareness against the practice of pre-natal determination of sex and female foeticide by appropriate means

(3) To ensure that all State/UT appropriate authorities furnish quarterly returns to the CSB giving a report on the implementation and working of the Act.

d. Directions to the Appropriate Authorities

(1) To take prompt action against any person or body who issues or causes to be issued any advertisement (regarding facilities of pre-natal determination of sex) in violation of the provision of the PNDT Act.66

(2) To take prompt action against all bodies specified in the Act67 as also against persons who are operating without a valid certificate of registration under the Act

(3) To furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These return should inter alia contain specific information about:

- Survey of bodies specified in Section 3 of the Act,68

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65 The PNDT Act. 1994, Section 17(5)
66 The PNDT Act. 1994, Section 22
67 The PNDT Act 1994, Section 3
68 Section 3 of the PNDT Act, 1994, (Supra note 62)
• Registration of bodies specified in Section 3 of the Act including bodies using ultrasound machines,

• Action taken against non registered bodies operating in violation of S-3 of the Act, inclusive of search and seizure of records,

• Complaint received by the Appropriate Authorities under the Act and action taken pursuant thereto,

• Number and nature of awareness campaign conducted and results flowing therefrom.

Thus the Supreme Court order provides a ray of hope in getting the situation under control. Because, the census of 2001 reveals an alarming sharp decline in the sex ratio among the children in the zero to six age group as against an increase in the sex ratio of total population. In 1961 the sex ratio in the zero to six age group was 976 (girls as compare to boys), it declined to 964 in 1971, 962 in 1981 and 945 in 1991. But the sharpest decline has been during 1991-2001, which is 927, a decrease of 18 points. The Supreme Court’s direction also laid the foundation of the amendment of the Pre-natal Diagnostic Techniques Regulation and Prevention of Misuse) Act 1994.

D. The Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of sex selection) Act, 2002

One of the modern scientific and technological developments in the field of medicine is the use of pre-conception and pre-natal diagnostic techniques. These techniques are used not only for the diagnosis and treatment of certain physical problem connected with pregnancies, but also for knowing in advance whether or not the embryo or the foetus is that of a male or female. It has become a usual practice among some fraction of the society to get rid of the growing pregnancy if it is found that the sex of the embryo or foetus living in the womb is of a female character for a variety of reasons.

The PNDT Act, 1994 deals with the ‘pre-natal’ so prohibits pre-natal sex selection and abortion of the same if the foetus in the womb of the woman is found to be of a female character. Taking advantage of such a mechanical reading of the PNDT Act, which though does not expressly, prohibits the pre-conceptual sex determination because it is not technically defined in the Act, as “pre-natal.” The doctors with the help of modern technologies like Ericsson’s method and Pre-implantation Genetic Diagnosis (PGD) destroy the female chromosomes and allow only male chromosomes to fertilize, without any fear of law as they insist that their act is pre-conceptual and not pre-natal hence, claim that they do not violate the provision of the PNDT Act 1994.
Concerned and alarmed with the shortcomings along with the other issues which hinder the proper implementation of PNDT Act, and consequent failure to achieve the desired objectives, the Supreme Court of India, in its judgment dated May 4th, 200170 on the Public Interest Litigation (PIL) filed by the various NGO's,71 directed the concerned authorities and bodies, which aims at ensuring the implementation of the Act, plugging the various loopholes and launching a wide media campaign on the issue.

The Supreme Court further noticed and showed its concern on the constant decrease in the sex ratio of 0-6 years, which fell from 945 females per 1000 males in 1991 to 927 per 1000 males in 2001. The new figure gives India one of the world's lowest ratios for women to men.

The above-mentioned Supreme Court order largely concerns only the implementation of the Act and putting the required infrastructure in place. However, the order entrusts the responsibility of examining the necessity to amend the Act to the Central Supervisory Boards, keeping in mind emerging technologies and the difficulties encountered in the implementation of the Act and to make recommendation to the Central Government.

In response to the Supreme Court order and Central Supervisory Board recommendation, the Parliament on 20th

70 Supreme Court of India, Civil Original Jurisdiction Writ Petition (Civil) No. 301 of 2002.
71 Centre for Enquiry and Allied Themes (CEHAT), Mahila Sarvangeen Utkarsh Mandal (MASUM), and Dr. Sabu M. George
December 2002, passed the (Pre-conception and Pre-natal Diagnostic Techniques Prohibition of sex selection) Act, 2002. The objectives of the Act are as follows:

1. To ban the pre conception sex selection techniques.
2. To prohibit the misuse of pre-natal diagnostic techniques for sex-selective abortion.
3. To regulate the pre-natal diagnostic techniques for the appropriate scientific use (i.e., for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformation or sex linked disorder etc.) for which they are intended.
4. To ensure the effective implementation of the Act at all levels.

a. Important features of the PC & PNDT Act, 2002

One of the important features of the Act is that it has included within its ambit the recently developed techniques of sex selection before conception and at the time of conception like Ericsson method and Pre-implantation Genetic Diagnosis (PGD), as An Act to provide for the prohibition of sex selection, before or after conception,”

The amended Act provides that the manufacturer of ultrasound equipment would now be required to sell their products
only to those clinics that are registered. The amended Act further prohibits any persons in conducting or aiding directly or indirectly for sex selection on a woman or man or on both or on any tissue or embryo, conceptus fluid derived from either or both of them.

The Act expressly provides for the prohibition of communicating the sex of the foetus. It states that no person can communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner. The Act also provides that only qualified persons can use pre-natal diagnostic techniques. The reasons for testing should be recorded in writing. The pre-natal diagnostic techniques can be used in the following conditions namely:

(i) age of the pregnant woman is above thirty five years;
(ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
(iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
(iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
(v) the Central Supervisory Board may specify any other conditions as required

72 The PNDT Act, 1994, Section 3B as Amended up to date
73 The PNDT Act, 1994, Section 3A as Amended up to date
74 The PNDT Act, 1994, Section 5(2) as Amended up to date
75 The PNDT Act, 1994, Section 4(3) as Amended up to date
The Act also provides that no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except in certain conditions specified in clause 276 of section 4.

The Act by way of insertion after clause (b) in section 6 provides that "no person shall by whatever means cause or allow to be caused selection of sex before or after the conception."77

b. Constitution of State Supervisory Board and Union Territory Supervisory Board

The amended Act by way of insertion78 in Section 16 of the principal Act provides the constitution of SSB and UTSB. The Board shall meet at least once in four months.79 Already there is Central Supervisory Board in operation at the Central level. The State Supervisory Board will consist of:80

(a) The Minister in charge of Family Welfare in the State who shall be the Chairman, ex-officio

(b) Secretary in-charge of Development of Family Welfare who shall be the Vice-Chairman, ex-officio

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76 no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:
(i) Chromosomal abnormalities;
(ii) genetic metabolic disease;
(iii) haemoglobinopathies;
(iv) sex-linked genetic diseases;
(v) Congenital anomalies
(vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board

77 The PNDT Act, 1994, Section 6 (c) As amended up to date
78 The PNDT Act, 1994, Section 16- A As Amended up to date
79 The PNDT Act 1994, Section 16-A (3) As Amended up to date
80 The PNDT Act, 1994, Section 16 A (2) As Amended up to date
(c) Representatives of Departments of Women and Child Development and Law.

(d) Director of Health and Family Welfare of the State Government, ex officio

(e) Three women members of Legislative Assembly

(f) Ten members to be appointed by the State Government two each from amongst:
   i) Eminent Social Scientist
   ii) Eminent Women Activist from NGOs or otherwise
   iii) Eminent Gynecologist and Obstetricians
   iv) Eminent Pediatricians or medical geneticists
   v) Eminent Radiologists or sonologists

(g) An officer not below the rank of Joint Director in charge of Family Welfare will be Member Secretary ex-officio.

The State Supervisory Board shall perform the following functions:

(i) to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide in the concerned state;

(ii) to review the activities of the Appropriate Authorities functioning in the State and recommend appropriate
action against them, in case of contravention of rule;

(iii) to monitor the implementation of provisions of the Act and Rules and make suitable recommendations relating thereto to the Board;

(iv) to send consolidated reports as may be required under the Rules, in respect of the various activities under this Act to the Central Supervisory Board and the Central Government.

To make the Appropriate Authority more efficient a new section-to-section 17 of the principal Act is inserted. This new section\(^2\) shall have the powers in respect of the following matters, namely: -

(a) summoning of any person who is in possession of any information relating to violation of the provisions of this act or rules made there under;

(b) production of any document or material object relating to clause (a);

(c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and

(d) any other matter which may be prescribed

\[^{2}\] The PNDT Act, 1994, Section 17 A As Amended up to date
c. Punishment under the PC & PNDT Act, 2002

Act makes provision for prohibition of advertisement in any form relating to pre-conception sex selection and pre-natal sex determination.\(^{83}\)

Any medical genetist, gynecologist, registered medical practitioners or any person who owns genetic clinic, center or laboratory or employed in it or renders his professional or technical services on honorary basis or otherwise, and who contravenes any of the provision of the Act or rules shall be punishable with imprisonment for a term extending up to three years with a fine which may extend to Rs.10,000/- and any subsequent conviction with imprisonment up to five years and fine up to Rs. 50,000/- in addition, the name of Registered Medical Practitioner convicted by the Court shall be reported to Medical Council for temporary cancellation of medical registration for a period of five years for the first offence and permanently for the subsequent offence.\(^{84}\)

Any person who seeks PNDT Techniques on any pregnant woman, including such woman, unless she was compelled to undergo such technique for purpose other than specified earlier will be punishable with similar punishment and fine. Court shall presume, unless the contrary is proved, that the pregnant woman has been compelled by her husband or relatives to undergo PNDT and such person will be liable for abetment of offence. Every

\(^{83}\) The PNDT Act, 1994, Section 22 As Amended up to date
\(^{84}\) The PNDT Act, 1994, Section 23 (2) As Amended up to date
offence under this Act shall be non-bail able, cognizable and non compoundable.\textsuperscript{85}

Thus it is rightly said that "Technology is not inherent evil: it is neutral how we use it is key. There is lot more positive than negative that will be coming out of biotechnology, but we need to know what we are getting into."\textsuperscript{86} It is truism that the advancement in the area of biotechnology have contributed towards the sex selective abortions. The unholy alliance between the tradition of son preference and technology is playing havoc with the Indian society. But, at the same time one has to equally blame and look into the other factors such as the social, economic and cultural conditions, which are responsible and becoming motivational factors towards the barbarous practice. Until such a mindset changes, the number of sex selections and female foeticides will only increase.

The PNDT Act, as well as amendment in the Pre-natal Diagnostic technique (Regulation and Prevention of Misuse) Act 1994, which make the law more stringent and more severe punishments are prescribed in case of the violation of the provisions of law is a welcome step which seeks to put an end to an atrocious practice of pre-conceptual sex selection as well as female foeticide consequent upon a pre-natal sex determination tests. This practice has as is well known, arisen out of the social

\textsuperscript{85} The PNDT Act, 1994, Section 24 As Amended upto date
conditions in our country, under which a woman has a comparatively very low status. Often, a woman who gives birth to a daughter only is faced with a risk of being divorced or tortured. In this situation she has a difficult choice to make—either she puts her own life in peril or she puts an end to a female child whom she is about to give birth. So long people continue to hanker after sons, a mere legal ban on sex determination tests may not achieve much success.

Mere making the law stringent and prescribing severe punishment to violators will not serve the purpose or will not achieve the desired objective. There has to be a very strong political will and honesty in the enforcement of such a law. It is through proper dissemination of information regarding the provisions of the Act and its strict implementation, by ensuring a registration of the clinic and punishment of the offenders, that there can be some hope of change in this heinous trend of female foeticide.

The urge of reform has to come from within the community. But, the problem lies in the fact that no formal complaints are being lodged against the perpetrators. The doctor conducting sex determination tests, and the man and woman are opting for these tests are willing partners in the act and keep the offence behind closed door.

So, for a proper implementation of PNDT Act, especially convicting doctors who are carrying on scans for sex
determination, what is required is a strong will on the part of the Appropriate Authority.

It is high time for the Government to plunge into action with a comprehensive action plan involving various ministries, departments and other non-governmental organizations for overhauling the existing societal structure. To this end, as a first step the Government should remove gender discrimination in the school curriculum, secondly take steps to sensitize society towards the concept of equality of sexes and the girl child’s right to life and survival, thirdly take steps to empower women and girls in the area of education, employment and decision making, last but not least take stringent measures to eliminate sexual abuse and the dowry system.

The institutions, which are given licenses for pre-natal diagnostic tests, should be closely monitored and those, which violate the law, stringently dealt with. Needless to say that more than anything, what is needed is change in the attitudes of the society towards the female species, awareness and education. This along with legislation can go a long way in curbing the evil sought to be protected by the law.