

Constitutional remedies against female foeticide: Evaluating the effectiveness of the PCPNDT act in India

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Abstract

This paper evaluates the effectiveness of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act) in combating female foeticide in India. Enacted in 1994, the PCPNDT Act aims to prevent sex selection and regulate pre-natal diagnostic techniques. This study examines the Act's implementation, judicial interpretations, and landmark cases, highlighting the challenges and gaps in enforcement. Despite the robust legal framework and proactive judiciary, the Act's effectiveness is hindered by lack of awareness, inadequate monitoring, corruption, societal biases, and judicial delays. While improvements in the sex ratio at birth are evident in some regions, disparities persist across the country. The paper proposes strengthening enforcement mechanisms, increasing awareness, addressing corruption, promoting gender equality, and enhancing judicial processes to bolster the Act's effectiveness. Collaboration with non-governmental organizations and civil society is emphasized to leverage their grassroots networks and advocacy efforts. The study concludes that while the PCPNDT Act has laid a strong foundation, continuous and concerted efforts are essential to overcome challenges, ensure successful implementation, and foster a societal shift towards valuing girl children and achieving gender equality in India.

Keywords: PCPNDT act, female foeticide, pre-conception

Introduction

Female foeticide remains a critical issue in India, deeply entrenched in the cultural, socio-economic, and historical context of the country. Despite being legally prohibited and morally condemned, the practice persists, reflecting the pervasive gender bias that favors male children over female ones. The Indian Constitution, which guarantees equality and protection against discrimination, serves as the foundation for addressing this grievous issue. Article 14 ensures equality before the law, Article 15 prohibits discrimination on grounds of sex, and Article 21 guarantees the right to life and personal liberty. Additionally, Article 42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief, which indirectly supports women's rights and well-being.

The enactment of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act) in 1994 ^[1] marked a significant legal step towards curbing female foeticide. The Act aims to prevent the misuse of prenatal diagnostic techniques for sex determination, thereby addressing the root cause of sex-selective abortions. Over the years, various amendments and judicial interventions have strengthened the Act, yet its implementation faces numerous challenges.

This paper explores the constitutional remedies against female foeticide, focusing on the effectiveness of the PCPNDT Act. It aims to provide a comprehensive evaluation of the legal and policy measures in place, their enforcement, and the challenges encountered in eradicating this practice. By examining judicial interpretations, landmark cases, and the role of governmental and non-governmental organizations, this study seeks to assess the successes and limitations of the current framework. Furthermore, it will offer recommendations for enhancing the effectiveness of these measures, emphasizing the need

for a multi-faceted approach that combines legal enforcement with societal change.

The importance of addressing female foeticide extends beyond legal compliance; it is crucial for ensuring gender equality and protecting the rights and dignity of women in India. Through a detailed analysis of constitutional provisions and the PCPNDT Act, this paper aims to contribute to the ongoing discourse on gender justice and the protection of women's rights in India. This paper examines the constitutional remedies available to combat female foeticide in India, focusing on the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act). It evaluates the effectiveness of the Act and other related legal and policy measures, considering their implementation and challenges.

Constitutional Provisions and Legal Framework

Female foeticide, the practice of aborting a fetus because it is female, is a grave issue in India, deeply rooted in societal preferences for male children. This practice not only violates the rights of the unborn girl child but also perpetuates gender inequality. The Indian Constitution and various legal frameworks provide robust mechanisms to combat this issue.

1. Article 14: Equality Before Law

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws within the territory of India. It prohibits discrimination on various grounds, including sex. This article forms the cornerstone of the right to equality and is fundamental in combating gender discrimination, including practices like female foeticide.

2. Article 15: Prohibition of Discrimination

Article 15 explicitly prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. It empowers the state to make special provisions for women and children. This provision is crucial in addressing the systemic gender biases that lead to female foeticide.

3. Article 21: Right to Life and Personal Liberty

Article 21 ensures the right to life and personal liberty. The Supreme Court of India has interpreted this article expansively to include the right to live with dignity. Female foeticide directly violates this right, as it denies the unborn girl child her basic right to life.

4. Article 42: Provision for Just and Humane Conditions of Work and Maternity Relief

Article 42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief. This article underscores the state's role in ensuring the health and well-being of women, indirectly supporting the fight against female foeticide.

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ^[1] (PCPNDT Act) is the primary legislation aimed at curbing female foeticide. The Act was enacted to prohibit sex selection before or after conception and regulate the use of pre-natal diagnostic techniques to prevent their misuse for sex determination, leading to female foeticide.

The Act prohibits sex selection, both pre-conception and post-conception, and the advertisement of such techniques. It regulates the use of diagnostic techniques such as ultrasound and amniocentesis, ensuring they are used only for legitimate medical purposes. All genetic counseling centers, genetic laboratories, and genetic clinics must be registered under the Act. The Act prescribes stringent penalties for violations, including imprisonment and fines.

Medical Termination of Pregnancy Act, 1971 While primarily aimed at regulating abortions, this Act is relevant to the issue of female foeticide as it specifies the conditions under which pregnancies may be terminated. Amendments to this Act have aimed to prevent sex-selective abortions. Provisions of the IPC, such as Section 312 (causing miscarriage) and Section 315 (act done with intent to prevent child being born alive or to cause it to die after birth), can be invoked in cases of female foeticide. These sections provide for punishment of those involved in illegal abortions and infanticide. Indian judiciary has played a proactive role in enforcing the PCPNDT Act and addressing female foeticide. Landmark cases such as Centre for Enquiry into Health and Allied Themes (CEHAT) & Ors. v. Union of India (2001) ^[2] and Voluntary Health Association of Punjab v. Union of India (2013) ^[3] have resulted in directives to strengthen the implementation of the PCPNDT Act, increase awareness, and enhance monitoring mechanisms. Various national and state-level initiatives complement the legal framework. Programs like Beti Bachao Beti Padhao (Save the Daughter, Educate the Daughter) aim to change societal attitudes towards girls and promote their education and welfare.

Judicial Interpretations and Landmark Cases

The Indian judiciary has played a pivotal role in addressing female foeticide and upholding the constitutional and legal provisions designed to combat this heinous practice.

Through various landmark judgments, the courts have not only reinforced the legal framework but also emphasized the need for stringent implementation and monitoring mechanisms.

In Centre for Enquiry into Health and Allied Themes (CEHAT) & Ors. v. Union of India (2001) ^[2], the Supreme Court of India dealt extensively with the implementation of the PCPNDT Act. The petitioners, which included NGOs and health activists, argued that despite the enactment of the PCPNDT Act, female foeticide continued unabated due to poor enforcement and lack of awareness. The Court directed the Central and State Governments to constitute Central and State Supervisory Boards to monitor the implementation of the Act. The appointment of appropriate authorities at district and sub-district levels was mandated to ensure regular inspections and enforcement of the Act. The Court emphasized the need for strict registration and monitoring of all genetic counseling centers, genetic laboratories, and clinics conducting ultrasound tests. The Court directed the Central and State Governments to conduct public awareness campaigns to educate people about the Act and the legal and social consequences of female foeticide. These directions significantly strengthened the enforcement of the PCPNDT Act and highlighted the judiciary's proactive stance in addressing the issue.

In Voluntary Health Association of Punjab v. Union of India (2013) ^[3], the Supreme Court revisited the issue of female foeticide in light of continuing violations of the PCPNDT Act. The petitioners highlighted that despite previous judicial directives, the implementation of the Act remained inadequate, and sex-selective abortions persisted. The Court ordered the establishment of robust monitoring and reporting mechanisms to track the implementation of the PCPNDT Act at the ground level. The Court directed regular audits of ultrasound machines to ensure they were not misused for sex determination. The Court emphasized the accountability of medical professionals involved in sex-selective abortions and mandated stringent actions against violators. The Court strengthened the role of appropriate authorities by providing them with additional powers to enforce the Act effectively. This judgment further reinforced the judiciary's commitment to eradicating female foeticide and ensured stricter compliance with the PCPNDT Act.

In Sabu Mathew George v. Union of India (2016) the court addressed the role of technology in perpetuating female foeticide. The petitioner argued that advertisements for sex determination and pre-natal sex selection were proliferating online despite being illegal. The Supreme Court directed search engines like Google, Yahoo, and Microsoft to ensure that such advertisements were not displayed on their platforms, thereby preventing misuse of technology.

In State of Maharashtra v. Dr. Mangala Patil (2015), the court highlighted the misuse of pre-natal diagnostic techniques by medical professionals. The Bombay High Court upheld the conviction of a doctor under the PCPNDT Act, setting a precedent for stringent action against medical practitioners involved in sex-selective abortions.

The proactive stance of the Indian judiciary in addressing female foeticide reflects a broader trend of judicial activism aimed at protecting the rights of marginalized groups and enforcing constitutional and legal provisions. By issuing detailed directives and monitoring their implementation, the judiciary has ensured that the legal framework is not just

symbolic but effectively enforced on the ground. The judgments have also emphasized the importance of multi-faceted approaches, combining legal enforcement with public awareness and societal change. The judiciary's interventions have highlighted the need for continuous vigilance and adaptation of strategies to address the evolving challenges in combating female foeticide.

Judicial interpretations and landmark cases have played a critical role in strengthening the legal framework against female foeticide in India. The proactive and vigilant approach of the judiciary has ensured better enforcement of the PCPNDT Act and related provisions. However, the persistence of female foeticide indicates that continuous efforts are needed to address implementation gaps and societal attitudes. The judiciary, along with other stakeholders, must continue to work towards eradicating this practice and ensuring gender equality and the protection of women's rights in India.

Evaluating the Effectiveness of the PCPNDT Act

The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act) was enacted in 1994 ^[1] to address the alarming rate of female foeticide in India. Despite its clear legal provisions and the Indian judiciary's proactive stance, the effectiveness of the Act in curbing this practice remains a subject of considerable debate. This section evaluates the effectiveness of the PCPNDT Act by examining its implementation, challenges, and the overall impact on female foeticide rates. The PCPNDT Act was designed to prevent sex selection and the misuse of pre-natal diagnostic techniques. It mandates the registration of genetic counseling centers, laboratories, and clinics, and regulates the use of diagnostic techniques. Key provisions include:

The Act prohibits sex selection before or after conception and restricts the use of pre-natal diagnostic techniques to specific medical purposes. All centers conducting pre-natal diagnostic procedures must be registered and comply with the regulations laid down in the Act. Clinics are required to maintain detailed records of all diagnostic procedures and report them to the appropriate authorities. The Act prescribes stringent penalties, including imprisonment and fines, for those found guilty of violating its provisions. The Act empowers appropriate authorities at the central, state, and district levels to enforce its provisions, conduct inspections, and take legal action against violators.

There is a significant lack of awareness among the public and medical professionals about the provisions of the PCPNDT Act and the legal and ethical implications of female foeticide. Insufficient monitoring and enforcement mechanisms have led to widespread non-compliance. Many clinics operate without proper registration, and the use of unregistered ultrasound machines is prevalent. Corruption and collusion between healthcare providers and enforcement authorities have undermined the effectiveness of the Act. There are instances where records are falsified, and inspections are evaded through bribery.

Deep-rooted societal attitudes favoring male children contribute to the persistence of female foeticide. Cultural and economic factors often drive families to seek sex-selective abortions despite the legal prohibitions. Delays in the judicial process and a backlog of cases related to violations of the PCPNDT Act have hindered timely justice and deterrence. The effectiveness of the PCPNDT Act can

be measured by its impact on female foeticide rates and the sex ratio in India. While there have been some positive developments, significant challenges remain. The sex ratio at birth (number of girls per 1,000 boys) is a key indicator of the prevalence of female foeticide. According to the Census of India, the sex ratio at birth has shown some improvement since the enactment of the PCPNDT Act, but disparities persist in certain states and regions.

States like Haryana, Punjab, and Rajasthan, known for high rates of female foeticide, have shown improvements in their sex ratios. However, these improvements are not uniform across the country, and some states continue to report skewed sex ratios. Increased awareness and reporting of violations have led to more legal actions against offenders. However, the actual number of convictions remains low, indicating gaps in the enforcement and judicial process. NGOs have played a crucial role in raising awareness, monitoring compliance, and supporting the implementation of the PCPNDT Act. Their efforts have complemented government initiatives and contributed to the overall impact.

Recommendations and Future Directions

The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act) is a vital legislative measure designed to curb the alarming practice of female foeticide in India. This Act, supported by the constitutional guarantees of equality and the right to life, provides a robust framework to prevent sex selection and ensure the ethical use of pre-natal diagnostic techniques. Judicial interpretations and landmark cases have significantly contributed to strengthening its implementation and enforcement.

Despite these efforts, the effectiveness of the PCPNDT Act is hampered by several challenges. Lack of awareness, inadequate monitoring, corruption, deep-rooted societal biases, and delays in the judicial process have all impeded the full realization of the Act's objectives. While there have been improvements in the sex ratio at birth in certain regions, disparities persist, highlighting the need for more comprehensive and targeted interventions.

To enhance the effectiveness of the PCPNDT Act, it is crucial to adopt a multi-faceted approach. Strengthening enforcement mechanisms, increasing public and professional awareness, addressing corruption, promoting gender equality, and streamlining judicial processes are essential steps. Collaboration with non-governmental organizations and civil society can further bolster these efforts, leveraging their grassroots networks and advocacy capabilities. To enhance the effectiveness of the PCPNDT Act, the following recommendations can be considered:

1. Enhance the capacity of appropriate authorities to conduct regular inspections, monitor compliance, and take swift legal action against violators. Use technology to track and audit ultrasound machines and diagnostic procedures.
2. Conduct widespread awareness campaigns targeting both the general public and medical professionals. Emphasize the legal, ethical, and social implications of female foeticide and the importance of gender equality.
3. Implement stringent anti-corruption measures to prevent collusion between healthcare providers and enforcement authorities. Establish independent oversight bodies to monitor and investigate cases of corruption.

4. Address the root causes of female foeticide by promoting gender equality through education, economic empowerment, and social reforms. Encourage community involvement and grassroots movements to change societal attitudes.
5. Streamline the judicial process to ensure timely resolution of cases related to violations of the PCPNDT Act. Increase the number of special courts and expedite the handling of these cases.
6. Strengthen collaboration with NGOs and civil society organizations to leverage their expertise, resources, and grassroots networks. Support their efforts in monitoring, awareness, and advocacy.

The PCPNDT Act is a critical legal tool in the fight against female foeticide in India. While it has made some progress in addressing this issue, significant challenges remain in its implementation and enforcement. By strengthening enforcement mechanisms, increasing awareness, addressing corruption, promoting gender equality, and streamlining the judicial process, the effectiveness of the Act can be enhanced. Continuous efforts and a multi-faceted approach are essential to eradicate female foeticide and ensure the protection of the rights and dignity of girl children in India. In conclusion, while the PCPNDT Act has laid a strong foundation for combating female foeticide, continuous and concerted efforts are required to overcome the existing challenges and ensure its successful implementation. By fostering a societal shift towards valuing and respecting the rights of girl children and promoting gender equality, India can move closer to eradicating female foeticide and achieving a balanced and just society.

References

1. Pre-Conception, Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Available at: Legislative Department, Government of India
2. Centre for Enquiry into Health and Allied Themes (CEHAT) & Ors. v. Union of India. Supreme Court of India, 2001.
3. Voluntary Health Association of Punjab v. Union of India (2013). Supreme Court of India.
4. Raman A. "Female Foeticide in India: A Literature Review." *Journal of Humanities and Social Science*, 2017;22(9):75-82.
5. Das Gupta M. "Why is Son Preference so Persistent in East and South Asia? A Cross-Country Study of India, China and the Republic of Korea." *Journal of Development Studies*, 2003;40(2):153-187.
6. Unnithan Kumar M. "Female Selective Abortion: Beyond 'Culture': Family Making and Gender Inequality in a Globalising India." *Culture, Health & Sexuality*, 2010;12(2):153-166.
7. Srinivasan S, Bedi AS. "Daughter Elimination: Cradle Baby Scheme in Tamil Nadu." *Economic and Political Weekly*, 2009;44(48):10-12.
8. Sharma R. *Gender Bias in India: A Comprehensive Study*. Oxford University Press, 2020.
9. Sinha S. *Law and Gender Inequality: The Legal Framework of Women's Rights in India*. Routledge, 2019.
10. Reddy M. *Human Rights and Gender Justice: A Critique of Indian Laws*. Sage Publications, 2018.
11. Journal Articles
12. Bhatt P. "A Critical Analysis of the Effectiveness of the PCPNDT Act in Preventing Female Foeticide." *Indian Journal of Law and Society*, 2023;15(2):112-130.
13. Kumar A. "Constitutional Remedies for Gender Discrimination: An Assessment of the PCPNDT Act." *Journal of Constitutional Law*, 2022;30(1):45-68.
14. Desai N. "The Role of Judicial Activism in Enforcing the PCPNDT Act: A Case Study." *National Law Review*, 2021;19(4):55-73.
15. Reports and Case Studies
16. National Commission for Women. *Report on the Implementation of the PCPNDT Act*. Government of India, 2020.
17. Ministry of Health and Family Welfare. *Annual Report on the Status of Female Foeticide and the PCPNDT Act*. Government of India, 2019.
18. UNICEF. *Gender Bias and Female Foeticide: A Review of Indian Legislative Measures*. UNICEF Publications, 2018.