

Research Article

Missing female foetus: A study of judicial perspectives on PC and PNDT Act, 1994

Dr Priya A Sondhi^a, Anoop Kumar^b, Ankur Pahade^c

^a Associate Professor, School of Law, Bennett University, Greater Noida, Uttar Pradesh, India

^b Advocate, District Court, Bareilly, Uttar Pradesh

^c Partner, SSH Legal, Office no 8, Rajmahal, Veer Nariman Road, Churchgate, Mumbai, India

Abstract

The 2021 census does not show a very good picture of the sex ratio in India. The missing female foetuses are a great challenge for society and administration. Though we have PC and PNDT Act for prevention of female foeticide, there are various issues of interpretation which have been addressed by the judiciary. This article aims at evaluation of the issues and their interpretation so that through constructive implementation we are able to pave our way to a better gender balance in our society. The article begins with the proportion of the challenge of missing female foetus

The judicial stance has been tilted towards complete prohibition of sex determination even in case of surrogacy and test tube babies. Similarly public interest seems to be the thread running around the judicial precedents. Nevertheless, effectiveness of these judicial precedent lies in a change of attitude towards girl child.

Keywords: Female foetus, foeticide, missing females, judiciary, girl child, sonography.

Introduction

Amidst the chaos on the Central Government's slogan "Beti Bachao, Beti Padhao" (<http://www.wcd.nic.in>), we cannot run away from accepting the existence of national shame - female foeticide. The issue has reached such proportions after the 2011 census reports the Islamic seminary Darul Uloom Deoband issued a fatwa in June 2016 holding female foeticide as "unlawful" and "haram (forbidden)". It said that during "ignorance era", people used to bury their daughters alive, "which the Holy Quran condemned severely" (Indian Express, n.d.). On 1st July 2016 Akal Takht Jathedar Giani Gurbachan Singh while addressing the public on the occasion of the foundation day of Akal Takht expressed his concern at female foeticide (www.tribuneindia.com).

In this article the authors seek to understand the judicial perspectives of the issues and challenges in implementation of the PC and PNDT Act. This needs attention in view of the mild increase in sex ratio as per the 2011 census and strikes by the Doctors over the issues of implementation of the Act. The conviction and sentencing of a radiologist from Pune, Maharashtra to one year imprisonment for failing to maintain records as per the PC&PNDT Act in December 2015 proved to be a catalyst for the movement against the Act (Times of India, n.d.).

Scope of the Study

Missing females is a growing concern in many countries specially India. The reflection of the psychology of daughter aversion and also son preference has historically reflected itself by way of female infanticide or female child abandonment. The psychology aided with development in science and technology, resulted into a new practice – female foeticide. In order to systematically eradicate the practice of female foeticide , the government of India passed ‘Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994’ (PNDT), was amended in 2003 and is now known as ‘The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act’ (PCPNDT Act). The overall functioning of the law has resulted into many significant issues which have been addressed by the judiciary. It is important to understand those issues so that the PCPNDT Act is implemented in its true spirit. The authors envisage a holistic view of the judicial perspectives for proper understanding of the law.

Rationale

The operation of law undeniably brings social change, but it requires addressing of vital issues concerning the implementation. Hence, it is very important to understand the extent of problem, the operation of law and how the significant issues were addressed. The authors have analyzed the extent of problem of missing females, the development of law and the role played by the judiciary in addressing significant issues.

Materials and Methods:

The research is essentially doctrinal in nature. The research design is descriptive and diagnostic in nature because it suits the need to study and evaluate the judgments of Supreme Courts and various High Courts relating to core issues of implementation of PC and PNDT Act. The authors are conscious of and have prior knowledge of the main issues and challenges to be investigated.

The authors have studied the original judgments from library and online resources to understand judicial perspectives.

The primary source of information is the bare act of PC and PNDT Act. Judicial precedents and other print or online sources are secondary in nature.

The focus of the study as stated were reflected in the following objectives-

1. To study the extent of issue missing females in the sex ratio

2. To study the evolution of law relating to missing females and missing female foetuses.
3. To evaluate the judicial precedents relating to core issues in implementation of the PC and PNDT Act.

with the above methodology in mind the research results into the following discussion-

Discussion:

In this Article the authors will focus on the issues of implementation of the PC and PNDT Act in the entire country. The Article is divided into four parts. Part I - *Missing females?* - seeks to make the reader aware of the chronic problem. Part II - *Legal Regulation and other initiatives* - seeks to visit the legal norms since more than 200 yrs and recent initiatives. Part III- *Judicial Perspectives* - throws a light on the landmark judgments followed by conclusions and suggestions.

Part I: Missing Females?

Female foeticide is a product of fusion of misuse of science with the psychology associated with daughter aversion resulting in female infanticide in olden times. Thus, its study begins with Female Infanticide. Female infanticide in India was observed first in the year 1789 by the Britishers but documented in detail in 1857 in the region of colonial Punjab, by John Cave-Brown (Basumatary, 2015). Female Infanticide posed a big challenge for the Colonial legal system also. Census statistics of 1841 disclosed the seriousness of discrepancy in Kutch (335 girls: 2625 boys) and Kathiawad (1370 girls: 5760 boys) (Bhat, 2009, p.102-103). The reasons for the practice in some communities were extravagant expenses in marriage, problem of dowry and strict practice of endogamy.

In post-Independence era also the psychology reflects itself in the records of National Crime Bureau(NCRB). As per NCRB, from 1994-2014, a total of 2266 cases of infanticide were recorded(<http://ncrb.gov.in/>).

The issues remain more or less the same today with an additional problem of safety of women and strong preference for male child. Though the sex ratio in 2011 census shows increase as there are 943 females per 1000 males (As per 2001 census we have 933 females per 1000 males), the child sex ratio results are alarming as there are 919 girls per 1000 boys (As per 2001 census there were 927 girls per 1000 boys). In case of child sex ratio the states of Uttarakhand (890:1000), Maharashtra (894:1000), Rajasthan (888:1000), Gujarat (890:1000), Punjab (846:1000), Jammu and Kashmir (862:1000), Haryana (834:1000), Delhi (871:1000) and Chandigarh (880:1000) are the worst affected(<https://www.censusindia.gov.in/>).

Thus, the problem of female infanticide might be comparatively new, but the psychology associated with it seems to be old. Only the nature of the crime has changed due to advancement in science and technology.

Part II: Legal Regulation and other initiatives

As mentioned earlier, the psychology against girl child had given a difficult time to the colonial rulers also. But the initial British policy was of noninterference in social issues of Indian society. Female infanticide was existent in some tribes as a practice with a strong backing of its mores and ethos. Thus, the initial actions were persuasive only.

It is worthwhile to mention that once persuasive and coercive method to curb this chronic menace proved ineffective, coercive methods followed. Hence came Bengal Regulation XXI of 1795 and Regulation III of 1804 was enacted in India (Basumatary, 2015). In 1870 John Strachey's Female Infanticide Prohibition Bill became law which provided with a scheme of "surveillance". It threw the burden upon village servants such as peons, watchman, midwives and accountants to keep surveillance and inform the authorities and prevent occurrence (Bhat, 2009, p.103).

Thus, the legal regulation of this psychology in favor of sex selection by family is comparatively old. The law against infanticide entered the national framework with Indian Penal Code with inclusion of Sec 315 (act done with intent to prevent child being born alive or to cause it to die after birth) and 316 (Causing death of quick unborn child by act amounting to culpable homicide) in the Code.

The recent one amongst this list is the PC and PNDT Act 1994. 'Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994' (PNDT), was amended in 2003 and is now known as 'The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act' (PCPNDT Act) It came into operation after 2 years on 1.1.1996 and its rules were also notified in the same year followed by amendments in 2012 and 2014. The governmental apathy for 5 long yrs. resulted into first famous case known as *CEHAT* in 2001.

Amidst this discussion we should also be careful about three things: firstly, the demands being made by the medical lobby and radiologists for amendments to the Act; secondly, the possible implications of 2016 amendment Bill; thirdly, Comptroller and Auditor General (CAG) of India's reports, about gross anomalies in implementation of the PC&PNDT Act.

Part III: Judicial Perspectives:

Judiciary has played a very crucial role in shaping and in implementation of the PC and PNDT Act. Judicial pronouncements in this area can be divided into the kinds of cases; constitutional validity cases, directions-oriented cases, procedure oriented cases, interpretation and explanation oriented cases, convictions/acquittals under the Act, family balancing and cases related to sonography machines.

A. Constitutional Validity:

In 2005 a petition was dismissed by the Bombay High Court challenging the constitutionality of the Act under Art 21 based on the interpretation that the right to life or personal liberty can be expanded to mean that it includes the personal liberty to determine the sex of a child which may come into existence (Vinod Soni and Anr. v. Union of India, 2005).

In 2007 Bombay High Court dismissed a writ petition filed under Article 226 of the Constitution of India by a married couple challenging the constitutional validity of sections 2, 3-A, 4(5) and 6(c) of the PC&PNDT Act on the ground that it violated Article 14 of the Constitution. The case was filed by a couple having two daughters, desirous of a male child. The Hon'ble High Court stated that the position of a mother with first pregnancy and desirous of a male child and that of a parent already having a daughter is the same (Mr. Vijay Sharma and others v. Union of India, 2007). This question of 'family balancing' arose again before Delhi High Court in case of surrogacy by an Australian resident couple desirous of a male and a female child. The Court was pleased to dismiss the petition (Amy Antoinette McGregor & Anr v. Directorate Of Family Welfare, 2013).

In its 2014 judgment, Allahabad High Court dismissed the petition, challenging the constitutional validity of provisions prohibiting disclosure of sex of the foetus under Section 5(2) and banning sex determination [Sections 6(a) and 6(b)] (Saksham Foundation Charitable Society v. Union of India, 2014). The Court held that PCPNDT Act did not violate Articles 14 and 21 of the Constitution of India, and that the object of the statute was to ensure that diagnostic techniques are not misused for sex determination and sex selection.

B. Directions oriented cases:

The first case about governmental apathy was filed in Supreme Court in 2000. Though commonly known as the CEHAT case was filed by CEHAT, MASUM and Dr. Sabu George. This case has six orders (CEHAT and others v. Union of India, 2001; 2003), which have directions for Central Government, State Governments/ UT Administrations, Central Supervisory Board (CSB), and appropriate authorities. These directions laid the essential founding stones for the implementation of the PC and PNDT Act.

In a PIL filed by the social activist Hemanta Rath the Orissa High Court observed that the Act has not been implemented properly even after 13 yrs and gave directions to appoint Appropriate Authority and Advisory Committee (Hemanta Rath v. Union of India, 2008). Similar apathy was observed by the Punjab and Haryana High Court in case of non-publication of the statutory notification to appoint Civil Surgeon of 12 yrs and other lapses (Gaurav Goyal v. State of Haryana, 2009).

The Punjab and Haryana High Court also disposed of a Writ petition on presence of sex determination kits in market after observing the efforts of the State Government to curb the sale of the same in the markets (Court on its own motion v. State of Punjab and others). Recently, the Supreme Court issued directions for monitoring the implementation of the PC and PNDT Act in *Voluntary Health Association of Punjab v. Union of India (2016)*. Doctrine of "auto block" will now be applied in India on e-searches which relates to pre-conception and/or pre-natal determination of sex or sex selection (Sabu Mathew George v. Union of India, 2016). To ensure compliance, the Court had also ordered the creation of a nodal agency that would provide search engines with details of websites to be blocked (Sabu Mathew George, supra.).

C. Procedure oriented cases:

Procedure prescribed under the PC and PNDD Act resulted into many cases. The Bombay High Court held that if the Public Authority forms an opinion that pending a prosecution, a particular activity (suspension of registration of Diagnostic Centre in this case) should be suspended and reasons are recorded in writing (reference to prosecution) a detailed discussion is not required (*M/S Malpani Infertility Clinic Pvt Ltd and Others v. Appropriate Authority, PNDD Act and Others*, 2005).

The Punjab and Haryana High Court held that when PC and PNDD Act is not challenged which validates the acts done by the Appropriate Authority prior to the Gazette publication, the Petitioners' challenge to the show cause notices and the suspension orders issued by the Competent Authority prior to the notification in official gazette i.e. under the ordinance cannot survive for adjudication (*Dr. Mrs. Sudha Samir v. State of Haryana and others*; *Dr. Mrs. Maninder Ahuja v. State of Haryana and others*; *Dr. R.D. Negi v. State of Haryana and others*, 2010). It has been held by the Central Information Commission that information on form F cannot be provided as third party information about a pregnant woman (*Bhoopender v. Deputy Commissioner Office*, 2016).

Answering the question as to class of persons competent to initiate action, the Punjab and Haryana High Court has held that Section 28 does not narrow down the class of persons who can initiate action. As the Act intends to prevent a social evil, it allows for fairly large body of persons to set the law in motion (*Dr. Preetinder Kaur and others v. State of Punjab and others*, 2011; (*Suo Motu v. State of Gujarat*, 2009).

As far as burden of proof in cases based upon allegation of deficiency or inaccuracy in maintenance of record in the prescribed manner as required under sub-section (3) of section 4 of the PNDD Act is concerned, it has been held that the burden to prove that there was contravention of the provisions of section 5 or 6 does not lie upon the prosecution (*Suo Motu, Supra.*).

D. Interpretation and explanation oriented cases:

Till 2008, the judicial stand regarding "Deficiency or inaccuracy in filling up of Form 'F'" was unclear. While the single judge bench of Gujarat High Court in *Dr. Manish C. Dave vs. State of Gujarat*, (2008) held that "Deficiency or inaccuracy in filling up of Form 'F' is merely a procedural lapse which does not in any manner amount to contravention of the provisions of Section 5 and 6 of the Act", in *Jagruti R. Sanghvi v. State of Gujarat* (2008), it disagreed with the above view.

Faced with these two conflicting views, the matter was referred to a larger bench (*Hitesh D. Shaha v. State of Gujarat*, 2008). In *Suo Motu v. State of Gujarat*, (2009), deciding the issue, the Court held that, deficiency or inaccuracy in filling Form 'F' prescribed under Rule 9 of the Rules made under the PCPNDD Act amounts to deficiency or inaccuracy in keeping records in the prescribed manner and not merely a procedural lapse. Thus, it amounts an independent offence amounting to contravention of the provisions of Section 5 or 6 of the PNDD Act (*Suo Motu, supra*).

Interpreting the words “Appropriate Authority” used under section 28 of the Act, the court also held that a court can take cognizance of an offence on a complaint made by any officer authorized, in that behalf by the Appropriate Authority(Suo Motu, supra.).It has been held in another case that Section 28 must not be read as constituting a narrow class of persons who could initiate the action (Dr. Preetinder Kaur and others v. State of Punjab and others, 2011).

Interpreting the proviso to sub-section (3) of section 4 of the Act, it has been held in *Suo Motu (supra)* that it is not mandatory to include allegation of contravention of the provisions of section 5 or 6 of the PNDT Act in the complaint alleging inaccuracy or deficiency in maintaining record in the prescribed manner (Suo Motu, Supra.).

Bombay High Court judgment of *Dr. (Mrs.) Suhasini Umesh Karanjkar v. Kolhapur Municipal Corporation and Ors(2011)* brought a paradigm shift in the powers of seizure. Analyzing the provisions of the Act, the full bench came to conclusion that the expression “any other material object” used in Section 30 confers the power to seal and seize the ultrasound machine used in genetic clinics.

E. Conviction/acquittal and consequence thereof under the Act:

Conviction or acquittal under the PC and PNDT Act became a very important issue for the medical fraternity. Bombay High Court has held that unintentional and inadvertent mistakes in not recording certain details does not amount to violation of Section 5 r/w Rule 9 of the said Act & Rules framed thereunder (Dr Sai v. State of Maharashtra, 2016).

Where the legality of removal of the petitioner’s name from the Medical Register for 5 years under section 23 (2) of the Act upon his conviction, who was released on probation, is concerned, the court has accepted the contention that only after the amendment of PNDT Act which came into effect from 14/02/2003, the period of 2 years for the first offence had been enhanced to 5 years and reduced the period to 2 years from 5 years (Dr. Pradeep Ohri v. State of Punjab and Anr, 2008). The court found such action to be hit by the Constitutional prohibition as imposed by Article 20(1) of the Constitution against retrospective effect to any penal law (Dr. Pradeep Ohri, supra.).

As there is no legal presumption under the Act that the foetus was to be considered as female if abortion is done, no case will be made out against the accused in absence of evidence (Sadhu Ram Kusla v. Ranjit Kaur and others, 2009).

F. PCPNDT and Family Balancing.

A survey of judgments of the various high courts and the Supreme Court clarify the judicial stand that “sex determination test” under the guise of “family balancing” has been prohibited (Writ Petition of 2001; *Malpani Infertility Clinic Pvt v. Appropriate Authority, PNDT Act, 2005*).

The Delhi High Court held that the Act strictly prohibits child sex determination and it equally applies to both Indian and foreign nationals seeking to conceive a child in the country. Thus, it decided against sex selective surrogacy for reasons of family balancing using the pre-natal diagnostic techniques(Amy Antoinette Mcgregor&Anr v. Directorate of Family Welfare, 2013).

G. Cases relating to Sonography machines.

Under the provisions of the Act, to prevent the misuse of Ultrasound/Sonography machines for the purpose of sex determination, wide powers have been conferred on the Appropriate Authority to seal and if necessary, seize the machine.

It is noteworthy that development of the prenatal diagnostic techniques like amniocentesis and sonography or Ultrasonography (USG) machine had the object of detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders etc. However, at the later stages, these techniques became notorious for being excessively used for detecting the sex of the foetus and to terminate the pregnancy of the unborn child, which was found to be female. Thus, the courts have inclined in favour of sealing and seizure of the machines in order to prevent doctors from indulging in sex determination by misusing the modern technology so that the repetition of such crime is curbed(Dr. Vandana Ramchandra Patil v. State of Maharashtra and Anr., 2012).

The provision of sealing machines under the Act has been compared by the courts with the provisions of sealing the premises of a brothel in an offence committed under Section 18 of the Immoral Trafficking Prevention Act, 1986 and it has been held that this power of the Magistrate is the most potent weapon in the case of prevention and further recurrence of the offence. This power, therefore, has to be used in the interest of the general public (Dr. Vandana Ramchandra Patil , supra.).

The Court further held that the order of opening of the seal and release of the machine cannot be made mechanically, like the release of any other property. The Court has to consider the effect and impact of such an Order (Dr. Vandana Ramchandra Patil , supra.).

In the landmark judgment of *Voluntary Health Association of Punjab v. Union of India and Others (2013)*, the honorable apex court considered the chart and data made available by various States, which depicted a pathetic state of affairs. Being lamented over lack of proper supervision and effective implementation of the Act by states, the court was inclined to pass a slew of directions, which inter alia included direction to States and District Advisory Boards to ensure that all manufacturers and sellers of ultra-sonography machines do not sell any machine to any unregistered centre, as provided under Rule 3-A. further it directed them to disclose, on a quarterly basis, to the concerned State/Union Territory and Central Government, a list of persons to whom the machines have been sold, in accordance with Rule 3-A(2) of the Act.

The Punjab and Haryana High Court, while hearing the petition that challenged the order of suspension of registration of a sonography machine installed in the hospital run by the Petitioner and sealing of the equipment on the ground that as the Petitioner was not qualified

as per Section 2 (g) of the Act to possess the said machine, considering various provisions and the Object of the Act. It rejected the contention of the petitioner and held that even if the Practitioner under Indian Medicine System has a requirement of Sonography machine for determination of foetal abnormalities for appropriate treatment, he must possess the particular qualification required under the PCPNDT Act to operate the sonography machine (Dr. Devendra Bohra v. State of Haryana, 2010).

Further, it held that the Government notification permitting use of the machine by a BAMS degree holder is irrelevant for testing the competence for obtaining registration under the relevant rules. Such notification cannot displace the requirement of Rule 3 of the Act (Dr. Devendra Bohra supra.).

Hearing the petition that challenged the impugned Circular Collector and District Magistrate, Kolhapur dated 10 March 2010, which required all doctors, sonologists and radiologists practicing in Kolhapur District to install the device 'Silent Observer' in their sonography/ultra-sound machines on the ground that the machine and its software invade privacy of the patients, the honorable Bombay High Court held that right to privacy is circumscribed by the compelling public interest, which is ingrained in each and every provision of the Act in the Background of declining sex-ratio (Radiological & Imaging Association v. Union of India, 2011).

Another issue that often courts face is requirement of "prior Show Cause Notice or opportunity of hearing" in order to seize and seal Sonography machine. The honorable Gujarat High Court examined the entire scheme of the Act, including its Preamble, Objects and Reasons and other provisions, and came to the conclusion that the Appropriate Authority has power under Section 30 of the Act and Rule 12 to seize and seal the machine if it has reason to believe that it may furnish evidence of the commission of an offence under the Act (Dr. Kalpesh J. Patel v. State of Gujarat &Ors2011). It gave the reason that the purpose behind seizure of the machine is to furnish evidence of the commission of an offence. There is no specific provision in the Act or in the Rules framed thereunder contemplating the issuance of the show cause notice before seal or seizure of the machine.

Similar issue cropped up before the honorable Bombay High Court, wherein it held that in order to protect the larger public interest, the Appropriate Authority has been given exceptional powers under sub-section 3 of Section 20 of the Act to suspend the registration of the clinic and seize the sonography machine, without giving show cause notice or an opportunity of hearing to the accused (Dr. Sujit Govind Dange v. State of Maharashtra, 2012).

Before 2011, the judicial stand was that the Appropriate Authority was not empowered under Section 30 of the Act and Rule 12 Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 to seize the sonography machine used in the genetic clinic (Dr.Dadasaheb v. State Of Maharashtra, 2010). Consequently, the Appropriate Authority could not seize sonography machines and even the already seized machines had to be released and returned. However, the 2011 judgment of the Bombay High Court in *Dr. (Mrs.) Suhasini Umesh Karanjkar v. Kolhapur Municipal Corporation and Ors (2011)*

brought a paradigm shift in the powers of seizure. Analyzing the provisions of the Act, the full bench came to conclusion that the expression “any other material object” used in Section 30 confers the power to seal and seize the ultrasound machine used in genetic clinics.

Where the court found that the recording of the Panchnama does not disclose use of sonography machine in breach of the provisions of the Act or its involvement for the purpose of sex determination, it has inclined to pass the order of de-sealing of the sonography machine (*Mehul Acharya v. Jayesh Kantilal Shah*, 2019). Regarding the application for de-sealing of the sonography machine in question, being the property of crime, it is settled position of law that such relief could be sought only from the concerned Magistrate dealing with the complaint being property of crime (*Mehul Acharya v. Jayesh Kantilal Shah*, 2020).

Conclusions and Suggestions:

It is the effect of the deep rooted psychology of female child aversion that even after amendment in the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, it has failed to curb the menace of female foeticide. As a result, the sex ratio in India shows a dismal picture. To deal with the situation, the judiciary, through its verdicts and directions has time and again played its role in curbing the social evil. The slew of directions issued in the *Voluntary Health Association of Punjab case (supra)* and *Sabu Mathew George (supra)* can be considered a significant step in clearing the path for gender equality.

One of such directions was to take steps to educate the people about the necessity of implementing the provisions of the Act by conducting workshops as well as awareness camps at the state and district levels. However, following changes are necessary in the Act so as to create enough deterrence against social evil:

1. Some of directions issued by the Courts, especially in *Voluntary Health Association of Punjab case (supra)* should be inserted in the Act through amendment. Such directions are:
 - a. Meeting of Central Supervisory Board and the State and Union Territories Supervisory Boards, at least once in six months, in order to supervise and oversee the implementation of the Act.
 - b. Reporting the details of the charges framed and the conviction of the persons who have committed the offence, by State Advisory Committees and District Advisory Committees to the State Medical Councils for proper action, including suspension of the registration of the unit and cancellation of licence to practice.
 - c. Prohibiting the sale of ultra-sonography machines to any unregistered centre. Such duty lies with States and District Advisory Boards. Also, disclose of a list of persons to whom the machines have been sold, to the concerned Government.
 - d. Mapping of all registered and unregistered ultra-sonography clinics by Government.
 - e. Provision of conducting workshops as well as awareness camps various levels to educate the people of the necessity of implementing the provisions of the Act.

- f. Constituting a special cell by the State Governments and the Union Territories to monitor the progress of various cases pending in the Courts under the Act and take steps for their early disposal.
- g. Disposal of all pending cases by the courts under the Act, within a period of six months.
2. The Appropriate Authorities must be made aware of the provisions of the Act and well as Rules. Further, the copy of relevant judgments will add to their power to curb the social evil.
3. Certain penal provisions of the Act fail to create deterrence in the mind of offenders as the quantum of punishment is negligible as compared to the benefits reaped by the offenders. Therefore, provisions of the Act must be strengthened.
4. Under Rule 11(2) under the amended PNDDT Rules, the machines that have been seized and sealed may be released if the organization pays penalty equal to five times of the registration fee to the Appropriate Authority concerned and gives an undertaking that it shall not undertake detection of sex of foetus. This provision weakens the deterrence of the Act as the offender, after paying the penalty and giving undertaking, may continue the violation of the Act. Such provision must be removed.
5. A good rate of conviction is litmus test of penal statutes. However, the Act has a dismal record of conviction rate. Therefore strong prosecution and timely disposal of cases is the need of the hour. Creation of special courts for the same purpose is a welcome suggestion.
6. The appointment of nodal agencies through *Sabu Mathew George (supra)* is a welcome step. However, it must prescribe a review mechanism for providing search engines with details of websites to be blocked.

However, the solution lies not only on legal end; it also involves change in the attitude of society towards girl child. Fascination for male child and aversion for girl child mars the Sustainable Development Goal of Gender Equality. Instead of behaving like a passive spectator to the malpractices and violations by the members of medical profession in such acts, the professional bodies like the Indian Medical Association (IMA) must boycott such culprits from medical fraternity.

REFERENCES:

- [1] (2013)4 Supreme Court Cases 1.
- [2] (2013)4 Supreme Court Cases 401.
- [3] (2014)16 Supreme Court Cases 426.
- [4] (2014)16 Supreme Court Cases 733.
- [5] (2015)9 Supreme Court Cases 740.
- [6] (2016) 10 Supreme Court Cases 265.
- [7] 2009 CRI. L. J. 721, (2009)1 GLR 64, MANU/GJ/0717/2008.
- [8] 2011(4)Bom. C.R. 293.
- [9] 2011(4)Bom. C.R. 293.
- [10] AIR 2013 SC 1571.
- [11] Amy Antoinette Mcgregor&Anr v. Directorate Of Family Welfare, W.P.(C)6332/2013, Delhi High Court, 24 October, 2013.
- [12] Amy Antoinette Mcgregor&Anr v. Directorate Of Family Welfare, W.P.(C) 6332/2013, Delhi High Court, 24 October, 2013.
- [13] Basumatary, Asha (2015). Study of institution of female infanticide in colonial India. Journal of International Academic Research for Multidisciplinary, 3(7), 407. www.jiarm.com.
- [14] Bhat, Ishwara P, (2009) Law and Social Transformation. Eastern Book Company.
- [15] CEHAT and others v. Union of India. Orders dated 04/05/2001, 19/09/2001, 07/11/2001, 11/12/2001, 31/03/2003 and 10/09/03 reported in AIR 2001 SC 2007, (2003)8SCC 406, (2003)8SCC409, (2003) 8 SCC 410, (2003)8SCC 412 and (2003)8SCC 398 respectively.
- [16] Centre can dilute PCPNDT Act. (2015, December 15). The Times of India. <http://timesofindia.indiatimes.com/city/pune/Centre-can-dilute-PCPNDT-Act/articleshow/50182061.cms>
- [17] Court on its own motion v. State of Punjab and others.
- [18] Dr Sai v. State of Maharashtra, 2016, SCC Online Bom 8812.
- [19] Dr.Dadasaheb v. The State Of Maharashtra, 2010 (2) Mah. L.J. 110.
- [20] Dr. Devendra Bohra v. State of Haryana, MANU/PH/0364/2010.
- [21] Dr. Kalpesh J. Patel v. State of Gujarat &ors MANU/GJ/0994/2011
- [22] Dr. Manish C. Dave vs. State of Gujarat, [(2008) 1 GLR 239]
- [23] Dr. Mrs. Maninder Ahuja v. State of Haryana and others, Civil Writ Petition No. 19740 of 2009.
- [24] Dr. Mrs. Sudha Samir v. State of Haryana and others, Civil Writ Petition No. 18365 of 2009;
- [25] Dr. Pradeep Ohri v. State of Punjab and Anr. AIR 2008 P H 108.
- [26] Dr. Preetinder Kaur and others v. State of Punjab and others, 2011 CriLJ 876, (2010)158 PLR63, MANU/PH/0449/2010.
- [27] Dr. Preetinder Kaur and others -VsThe State of Punjab and others, 2011 CriLJ 876, (2010)158 PLR63, MANU/PH/0449/2010.
- [28] Dr. R.D. Negi v. Stae of Haryana and others, Civil Writ petition No. 19794 of 2009. Bhoopender v. Deputy Commissioner Office. 2016 SCC OnLine CIC 10820.

- [29] Dr. Sujit Govind Dange v. State of Maharashtra, Division Bench of Bombay High Court Dated 16.8.2012.
- [30] Dr. Vandana Ramchandra Patil v. State of Maharashtra and Anr., Cr. Writ Petition No.4399 of 2012
- [31] Gaurav Goyal v. State of Haryana, decided by Punjab and Haryana High Court on 07/07/2009.
- [32] Hemanta Rath v. Union of India AIR 2008 Orissa HC 71.
- [33] Hitesh D. Shaha v. State of Gujarat on 19 June, 2008.
- [34] Jagruti R. Sanghvi v. State of Gujarat (Criminal Miscellaneous Application No.4996 of 2008).
- [35] M/S Malpani Infertility Clinic Pvt Ltd. And Others vs Appropriate Authority, PNNDT Act AND Others, AIR 2005 Bom 26.
- [36] Malpani Infertility Clinic Pvt v. Appropriate Authority, PNNDT Act, AIR 2005 Bom 26, 2005 (1) BomCR 595, (2005) 107 BOMLR 737, 2004 (4) MhLj 1058.
- [37] Medical Dialogues, (n.d.) <http://medicaldialogues.in/>.
- [38] Mehul Acharya v. Jayesh Kantilal Shah, 2019 SCC Online Guj 4120.
- [39] Mehul Acharya v. Jayesh Kantilal Shah, decided on 13 February, 2020.
- [40] Mr. Vijay Sharma and others v. Union of India, Writ Petition No. 2777 of 2005, decided on 06/09/2007
- [41] National Crime Records Bureau. (n.d.).Crime in India report series 1994 to 2014. <http://ncrb.gov.in/>
- [42] Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act (PCPNDT Act).
- [43] Radiological & Imaging Association v. Union of India, MANU/MH/1050/2011.
- [44] Sabu Mathew George vs Union of India. 2016 SCC OnLine SC 955.
- [45] Sadhu Ram Kusla v. Ranjit Kaur and others, Criminal Misc. No. 337-MA of 2007. Decided on 23/03/2009.
- [46] Saksham Foundation Charitable Society v. Union of India, (2014) 5 All LJ 496.
- [47] Suo Motu v. State of Gujarat, 2009 CRI. L. J. 721, (2009)1 GLR 64, MANU/GJ/0717/2008.
- [48] Vinod Soni and Anr. v. Union of India, 2005 (3) MhLj 1131