

PROBLEMATISATION OF SEX-SELECTIVE CONCEPTION AND ABORTION IN INDIA: IMPLICATIONS AND LEGAL RESPONSES

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ABSTRACT

Discriminatory practices against women have been a common problem in Indian society since many decades. This is attributed to the rudimentary factor of a patriarchal dogma that is deeply rooted in our society. Women were mostly treated as a liability on the family and hence, treated *sans* dignified existence. Consequentially, inhuman social evils like female infanticide and female foeticide have been rampant. To aggravate the already persisting problem, modern technology in the form of assisted reproductive technology is being misused today for sex-selective conception. On account of such gender discriminatory practices, the declining sex ratio in India is still persisting. To remedy the evil of gender injustice, the Constitution of India envisions an egalitarian society to empower women. The attainment of the goal of gender equality is one of the most crucial Constitutional goals. In India, sex-selective conception and sex-selective abortion has been prohibited by the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994), the Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971) and the Indian Penal Code, 1860 (Act 45 of 1860). The effective implementation of these laws is still not in sight. It is thus, a necessity to critically understand the gravity of the problems highlighted by taking into account of the social and cultural factors along with the existing legal framework.

Keywords: Sex-Selective Conception; Sex-Selective Abortion; Gender Injustice; Legal Framework; Failures of Implementation

INTRODUCTION

Indian society is seen to be deeply rooted in a patriarchal dogma that translates into various forms of degrading and atrocious treatments against women, both at the domestic level and public life. Women were mostly treated as a mere property *sans* any dignified existence and as a burden on the family. Among the many inhuman practices against women, female foeticide since many decades has remained a constant issue in some parts of India. The uneven sex ratio is a testimony of the rampant practices of female foeticide in India. The possibility of sex-determination of the foetus through advanced medical techniques has thus, proven to be a bane in India. In the past, the practice of female infanticide was commonly practiced to get rid of unwanted female infant in the family. Today, such practice has comparatively reduced probably due to stringent laws and increasing level of public consciousness. Having said so, it does not imply to conclude that other forms of inhuman practices to get rid of female child has ceased to exist today. Besides the problem of female foeticide, the emergence of modern technologies in the form of Pre-implantation Genetic Testing (PGT) and Assisted Reproductive Technology (ART) has now opened up new room for gender discrimination. ART, a technology of the 21st century, which is meant to assist infertile couples, also allows sex selection of the preferred offspring. It has raised a range of new concerns in a country like India, where female has been considered unwanted in many families since the ancient period. The doctors, couples, family members and society at large are all blameworthy for contributing to the woe of sex-selective conception and abortion in India. To remedy the evil of gender injustice in myriad ways the Constitution of India envisions an egalitarian society to liberate and to empower women in all walks of life. Realisation of the notion of equality without having regard to difference in gender is *inter alia* a Constitutional goal. In India, sex-selective conception and abortion has been prohibited by way of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994) the Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971), the Surrogacy (Regulation) Act, 2021, the Assisted Reproductive Technology (Regulation) Act, 2021 (Act 42 of 2021) and other relevant provisions of the Indian Penal Code, 1860 (Act 45 of 1860). These legal instruments have however, not been successfully implemented owing to many factors that are deeply rooted in the Indian psyche. It is needless to mention that to achieve the objective of gender justice; various international human rights instruments have imposed state obligations on the signatory

members to translate such international law into actions at the municipal level. The eradication of the said problem of gender discrimination demands not only a strong legal framework but also, public sensitization about gender issues, so as to successfully implement the existing laws. Conscious collaborative efforts from the medical fraternity, state authority, couples and family members as well as the community as a whole would serve as the only solution to the evil of gender discrimination.

OBJECTIVES AND SCOPE OF STUDY

The purpose of the present paper is to critically analyze and understand the problems of sex-selective conception and abortion as manifestations of gender injustice in India. It takes into account of the existing statutory legal framework that prohibits the said practices along with the Constitutional mechanism to uphold gender equality and relevant appellate court cases. It also looks into the multi-dimensional factors that account for the failure of effective implementation of the existing laws. On the basis of critical understanding of the shortcomings in the existing laws and obstacles faced in terms of effective implementation of the laws, the paper finally proposes measures to improve the situation. The terms sex-selective conception and abortion are used in this paper to extend its scope to discrimination against female gender only and not otherwise.

CONCEPTUALIZING SEX-SELECTIVE CONCEPTION AND ABORTION

Sex-Selective Conception is an artificial method of conception done by selecting the preferred sex of the offspring. It is a technique done through embryoⁱ sexing where sex identification of the embryo is done using pre-implantation genetic testing (PGT). It involves taking a few cells from an embryo as it develops in the laboratory, and determining the sex, male or female, of the embryos through genetic analysis.ⁱⁱ The desired sex is then implanted in a woman during an embryo transfer procedure using Assisted Reproductive Technology (hereinafter ART). Thus, Sex-Selective Conception is a process of human intervention to manipulate the sex of the offspring before the conception takes place.

On the other hand, Sex-Selective abortion is a method applied to abort a foetus after conception has taken place on the ground of unwanted sex of the foetus. The term “foetus” is defined as a human organism during the period of its development beginning from fifty-seventh day following fertilization or creation (excluding anytime in which its development has been suspended) and ending at the birth.ⁱⁱⁱ There are various methods available for testing the sex of the foetus. One method is testing of foetal sex on the basis of assessment of the external genitalia and secondary sex characteristics by using machines like ultrasound, scanner, imaging or any other suitable devices.^{iv} Amniocentesis is another method, which is regarded as the most accurate scientific method for sex determination of the foetus. There is also a non-invasive prenatal testing (NIPT) by analyzing cell-free foetal DNA found in maternal blood sample for foetal sex determination.^v In relation to India, these medical techniques or technology are misused only against female gender. Although determination of sex at the pre-conception and pre-natal stage for the purpose of family planning is allowed in many countries, in India, the same has been prohibited to contain the problem of gender injustice.

SKEWED SEX RATIO IN INDIA – A MANIFESTATION OF GENDER INJUSTICE

As per the report released by the Ministry of Women and Child Development, Government of India, there has been an improvement in the sex ratio at birth from 918 girls per 1000 boys in 2014-15 to 934 girls per 1000 boys in 2019-20. The Government has accorded credit for the improvement to the mass awareness and sensitization efforts under the “Beti Bachao Beti Padhao” scheme launched on 22nd January 2015.^{vi} Though there is a commendable improvement in the sex ratio in the past decade across India, there are still few states wherein the ratio is not yet stabilized. As per the 2011 Census Report of India, the State of Haryana has the lowest rate of sex ratio in India with a figure recorded as 879 females against 1000 males. The child sex-ratio has dropped to 914 females against 1000 males in 2011 from 927 females in 2001.^{vii} Surprisingly there are however, two states, Puducherry and Kerala, where the number of women is more than that of men. While Kerala recorded a total of 1084 females as against 1000 males, Puducherry recorded 1037 females against 1000 males as per the 2011 Census.^{viii}

As per the NITI Aayog's Sustainable Development Goals (SDG) Index, released in 2021, Uttarakhand has emerged as one of the worst performing States in terms of sex ratio at birth. Uttarakhand recorded sex ratio of 840 against the national average of 899. Among the best performers, Chhattisgarh stood at the top rank with male to female ratio at birth recorded 958, which is much above the national average. Kerala stood at second rank with a sex ratio of 957. It may be mentioned that NITI Aayog's SDG Index was first launched in 2018 for evaluating the progress of States and UTs on social, economic and environmental parameters.^{ix}

According to a UN's State of World Population Report,^x 4.6 lakh girls were missing at birth each year from 2013 to 2017, as a result of sex selection that prefers male over female child. As per the said report, over the past 50 years, 4.6 crore women are missing in India.^{xi} The UN Report further stressed that sex selection tends to be higher among wealthy families, but percolates down to lower-income families over time, as sex selection technologies become more easily accessible and affordable.^{xii} Another Report by the Asian Centre for Human Rights found that India's sex ratio was one of the most skewed in the world.^{xiii}

The skewed child sex ratio in some of the states of India indicates a continuing preference of male child over females, which is a matter of grave concern. It reveals that gender injustice still runs deeply in our society and it is against constitutional ethos of justice. There is a need to stress on proper implementation of relevant laws, women and child development schemes and mass sensitization programmes.

SOCIO-CULTURAL FACTORS CONTRIBUTING TO SEX-SELECTIVE CONCEPTION AND ABORTION IN INDIA

Indian culture of perpetuating female inferiority and subordination contributes to the vicious cycle of large scale sex-selective conception as well as female foeticide. In India, around the 1990s when sex determination technology like ultrasound became widespread among those upper class families who could afford it, female foeticide escalated steeply.^{xiv} Studies reveal that imbalance sex ratios tend to show a more violent culture against women.^{xv} Many factors that influence preference of male over female child may be identified as: patrilineal traditions and widespread social norms; overwhelming belief that woman has lesser social value than

man; lack of education; rampant practice of dowry system, male as bread-winner of the family, one who continues family legacy and who performs funeral rites of their parents, tradition of women being confined only to domestic chores, etc. Injustice against women exists in various forms in Indian society. The Supreme Court, pondering on the issue of female foeticide, in *Voluntary Health Association of Punjab v. Union of India*, observed that:

Female foeticide has its roots in the social thinking which is fundamentally based on certain erroneous notions, egocentric traditions, perverted perception of societal norms and obsession with ideas which are totally individualistic sans the collective good. All involved in female foeticide deliberately forget to realize that when the foetus of a girl child is destroyed, a woman of the future is crucified.^{xvi}

A poll taken by Thomson Reuters Foundation Experts' Survey, London, in 2018 found that India is ranked as the world's most dangerous and unsafe country for women. As per the 2018 Report, India ranked as most dangerous on three main issues – (i) risks from sexual violence and harassment (ii) risk from cultural and traditional practices (iii) risk from human trafficking including sex slavery, forced labour and domestic servitude. Similar such survey was taken in 2011 too by the same Foundation wherein India was among the five top most unsafe places on earth for women.^{xvii} These findings are a strong indication that there is a systematic failure of legal and non-legal mechanism to safeguard the safety and dignity of women in India.

SCRUTINIZING CONSTITUTIONAL AND INTERNATIONAL LEGAL FRAMEWORK ON GENDER JUSTICE

More than seven decades after the Constitution of India outlawed the orthodox and inhuman practices of gender injustice against women, the gaps in reality still persist today. The Supreme Court in *Ajit Savant Majagvai v. State of Karnataka*^{xviii} emphasizing on crucial role of a female observed that:

It is unfortunate that in an age where people are described as civilized, crime against female is committed even when the child is in the womb as the female foetus is often destroyed to prevent the birth of a female child. If that child comes into existence, she starts her life as a daughter, then becomes a wife and in due course, a mother. She rocks the cradle to rear up

her infant, bestows all her love on the child and as the child grows in age, she gives to the child all that she has in her own personality. She shapes the destiny and character of the child. To be cruel to such a creature is unthinkable.

It was the noble vision of the founding fathers of the Constitution to attain the goal of justice in all its multidimensional aspects. Gender justice was also ingrained in the understanding of the philosophy of justice and hence, various provisions to strengthen it have been entrenched into the constitutional framework. The principle of equality as reflected in Articles 14 to 18 lends support to reaching the goal of gender justice. Article 14 espouses equal treatment to everyone in the eye of law regardless of one's gender, among other grounds. The Supreme Court has held equality as the essence of democracy and accordingly, a basic feature of the Constitution.^{xix} The principle of equality however, allows protective discrimination in favour of certain classes under Article 15(3) of the Constitution. While 15(1) and 15(2) prohibit the state to make any discriminatory law on the ground of gender alone, nonetheless, under Article 15(3), State is empowered to make special provisions for protection and empowerment of women (as well as children). This special protection in favor of women is necessitated by the fact that Indian women have been socially and economically handicapped for centuries and resultantly, deprived from participating in the socio-economic life of the nation on a footing of equality.^{xx} Reading Article 15(1) along with 15(3), it is evident that state may discriminate in favour of women against men, the contrary is however, not true.^{xxi} Gender equality is also reflected in matters of employment or appointment to any office under the State by way of prohibiting discrimination on the ground only of 'sex' in Articles 16(1) and 16(2). Additionally, the constitutional mandate to enforce equal pay for equal work for both men and women seeks to protect the equal worth of women for their labour and contributions in any kind of work at par with the male counterparts.^{xxii} In the political front too, efforts to empower women has been made by way of providing reservation of one-third of the seats in every Panchayat and Municipality in favor of women in Articles 243D and 243T of the Constitution. The aforementioned constitutional scheme therefore, is directed towards removing the obstacles prevalent in our society against women folks and to uplift their overall status at par with men. If the constitutional goal of empowering women in all walks of life is realized in letter and spirit, evil practices of sex-selective abortion and conception would naturally subside.

International effort to prohibit gender discrimination against women is equally reflected in various International Conventions. Articles 1 and 7 of the Universal Declaration of Human Rights, 1948 incorporate the doctrine of equality of all men. In Article 3 of the International Covenant on Civil and Political Rights (ICCPR), 1966, State parties undertake to ensure equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant. Article 7 prohibits subjecting of anyone to cruel, inhuman or degrading treatment or punishment. The UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979, condemns all forms of discrimination against women and insists nations to adopt such suitable legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.^{xxiii} It also insists member states to take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or superiority of either of the sexes or on stereotype roles for men and women.^{xxiv} An Interagency Statement on Preventing Gender-Based Sex Selection has been issued collectively by the Office of the High Commissioner for Human Rights (OHCHR), UNFPA, UNICEF, UN Women and WHO, in 2011. Conscious effort at the national level is inevitable if the international obligation under these international instruments is to be translated into action.

In India, NITI Aayog's effort to develop a National Gender Index seeks to serve as a tool to map the progress and identify the persisting gaps in gender equality. The index will back policy action and advocacy around gender justice and will be aligned to the framework of Sustainable Development Goals.^{xxv} The achievement of the goal of gender justice is critical to curbing the social evils of sex-selective conception and abortion in this country.

REGULATION OF PRENATAL DIAGNOSTIC TECHNIQUES AND PROHIBITION OF PRE-CONCEPTION AND POST-CONCEPTION SEX SCREENING IN INDIA

In India, sex screening before and after conception is prohibited by way of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994) (hereinafter PCPNDT Act, 1994). It nonetheless, allows application of pre-natal diagnostic

techniques for the purposes of detecting certain abnormal medical conditions. The PCPNDT Act, 1994 provides a legal framework for regulation of conducts of prenatal diagnostic techniques and the functioning of centres where such diagnosis should be conducted. The term “prenatal diagnostic techniques” has been used to include both “prenatal diagnostic procedures”^{xxvi} as well as “prenatal diagnostic tests”^{xxvii} under Section 2(j) of the Act.

PCPNDT Act, 1994 requires mandatory registration of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics^{xxviii} under the Act. Any pre-natal diagnostic techniques for detecting foetal abnormalities shall be done only in these registered centres and not otherwise, by those doctors or medical personnel who are qualified to do so under the Act. Section 3B of the PCPNDT Act, 1994 prohibits any person from selling any ultrasound machine or imaging machine or scanner or any other equipment capable of sex-detection to those Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics which are not registered under it.

By virtue of Section 4(2), prenatal diagnostic techniques shall be allowed to conduct for the detection of the following purposes only: chromosomal abnormalities; genetic metabolic diseases; haemoglobinopathies; sex-linked genetic diseases; congenital anomalies; any other abnormalities or diseases as may be specified by the Central Supervisory Board^{xxix}. Section 4(3) further requires that such techniques can be used only in case of a pregnant woman who is above thirty-five years; or has undergone two or more spontaneous abortion or foetal loss; or has been exposed to potentially teratogenic agents like drugs, radiation, infection or chemicals; or such pregnant woman or her spouse has a family history of mental retardation or physical deformities or any other conditions as may be specified from time to time.

PCPNDT Act, 1994 further prohibits use of Sex-Selection Techniques in the stages of conception and post-conception. To this effect Section 3A, prohibits any person or infertility specialist(s) from conducting or abetting the conduct of sex-selection on a woman or a man, or on both, or on any tissue embryo, conceptus, fluid or gametes derived from either or both of them.

Furthermore, Section 4(5) of the Act prohibits any person including the husband or relative of a woman to seek or encourage the conduct of any sex-selection technique on her or him or on

both. No person including the one, who has conducted prenatal diagnostic procedures, shall in any condition, disclose the sex of the foetus to the pregnant woman or her relatives or any other persons, by words spoken, or signs or in any other manner (Section 5(2), PCPNDT Act, 1994). The prohibition to conduct or caused to be conducted any sex determination test is equally applicable to all Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics or any person, whatsoever [Section 6(a), 6(b)].

Another noteworthy feature in the Act is the prohibition of any form of advertisement relating to pre-natal sex-determination test or pre-conception selection of sex through online or offline publications [Sections 22(1) and 22(2)]. The contravention of the said prohibition shall attract punishment with imprisonment upto three years or with fine upto Rupees ten thousand [Section 22(3)]. The Act also imposes on first conviction, a penalty of imprisonment which may extend upto three years and with fine upto ten thousand rupees; and on subsequent conviction, imprisonment upto five years and with fine upto fifty thousand rupees, for contravention by a doctor or owners of Genetic Counseling Centres, Genetic Laboratories or Genetic Clinics, of any provisions of the Act and the Rules thereunder [Section 23(1)]. The Act moreover, provides room for taking disciplinary actions against doctors who contravenes the provisions of the Act, by the concerned State Medical Councils, by way of suspension of its registration during the pendency of case in the court or by permanently removing its name from the State Medical Register upon conviction of the offence [Section 23(2)]. Above all, any person who voluntary seeks to conduct prenatal diagnostic techniques for sex determination of the foetus or sex-selective conception shall be punishable with imprisonment upto three years and with fine upto fifty thousand rupees on first conviction, and on subsequent conviction, with imprisonment upto five years and with fine upto one lakh rupees [Section 23(3)]. The nature of the offences under this Act is non-bailable, non-compoundable and cognizable (Section 27).

Under Chapter 4, Section 7(16), the PCPNDT Act, 1994, a Central Supervisory Board has been entrusted with the function to advice the Central Government on policy matters relating to the subject matter of the Act, to review and monitor the implementation of the Act, to create public awareness against the practice of sex-selection for conception and sex-determination leading to female foeticide; to lay down code of conduct for the personnel who are engaged in Genetic Counseling Centres, Genetic Laboratories or genetic Clinics; and to oversee the performance

of various bodies constituted under the Act. Similarly, at the State and Union Territory levels, State Supervisory Board and Union Territory Supervisory Board, respectively, shall have the responsibility to create public awareness, to review the activities of authorities functioning in the State and to recommend appropriate actions; to monitor the implementation of the Act and Rules thereunder and to recommend suitable measures; and to send reports to the Central Board and the Central Government in respect of various undertaken in the State [Section 7(16A)].

The functions of enforcing standards prescribed for Genetic Counseling Centres, Genetic Laboratories or genetic Clinics; investigating complaints for breach of the provisions of the Act and Rules thereunder; for taking legal actions against the use of any sex-selection techniques, *suo motu*, or otherwise, lies with the Appropriate Authority created under Section 17(1) of PCPNDT, Act, 1994. The Appropriate Authority shall also conduct mass awareness programme against sex-screening test, supervise the implementation of the Act and give to the Central Supervisory Board and State Boards, suitable recommendations for modifications needed in the Act according to the changing social and technological needs of time.^{xxx}

Despite a well-in-place statute like the PCPNDT, the effective enforcement of the same law has been questionable. In *Centre for Enquiry into Health and Allied Themes (CEHAT) & Others v. Union of India & Others*,^{xxxii} a Public Interest Litigation was filed challenging the government's failure to address the menace of anti-girl child sex selection and enforcement of the relevant laws adequately. The Supreme Court in the instant case directed the Union of India and its Committee to take appropriate measures so that the mandate of PCPNDT Act is not violated and the falling sex ratio in the country is controlled. It further, for effective implementation of the Act, stresses on the significance and necessity of creating public awareness at a large scale by all the concerned authorities established under the PCPNDT Act, 1994 including that of the Central and State Governments. It directed the concerned authorities to published relevant information against probation of sex-selective practices by way of advertisements as well as electronic media. In yet another Public Interest Case – *Sabu Mathew George v. Union of India and Others*,^{xxxiii} the petitioner sought issue of necessary directions for the effective implementation of PCPNDT Act, 1994 and especially, to prohibit advertisements which promote sex-selection on many websites. Herein, the Supreme Court reiterated its earlier judgment in CEHAT. It additionally, held that since many people are guided by inappropriate

exposure to the internet, the concerned websites have a responsibility to control it. It thus, directed the websites to cooperate and give their point of view for the purpose of a satisfactory solution to implement the Act. An earlier decision made in *Voluntary Health Association of Punjab v. Union of India and others*^{xxxiii} also affirmed that there has been no effective supervision or follow-up action so as to achieve the purpose of the Act. The court also expressed serious concern on the mushrooming of various sonography centres, genetic clinics / laboratories and genetic counselling centres sans proper monitoring and supervision by the authorities.

LEGAL PROHIBITION OF SEX-SELECTIVE ABORTION IN INDIA

In India, the regulation for lawful abortion on therapeutic, eugenic, humanitarian and social grounds is provided under the Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971) (hereinafter MTP Act, 1971). The MTP Act 1971 was enacted owing to the progress made in medical science that allows women to get access to safer abortions as a necessary provision to uphold right to reproductive health. Termination of Pregnancy may be allowed under the given circumstances:^{xxxiv}

- (i) Where the continuance of the pregnancy poses as a threat to the life of a pregnant woman; or grave injury to the mental or physical health of such woman.
- (ii) If there is a substantial risk to the child after birth that it would suffer from serious mental or physical abnormality.

Recently, the MTP Act has been amended by way of the Medical Termination of Pregnancy (Amendment) Act, 2021 (Act 8 of 2021), in order to permit termination of pregnancy on the above grounds where pregnancy is beyond twenty weeks. Previously, there was a ceiling limit of twenty weeks, for termination of pregnancy, beyond which abortion was statutorily impermissible.

Thus, after the Amendment made in 2021, termination of pregnancy in the above circumstances can now be carried out by a registered medical practitioner where the length of such pregnancy does not exceed twenty weeks; or where the length of pregnancy exceeds twenty weeks but

does not exceed twenty-four weeks, by two registered medical practitioners.^{xxxv} Such medical practitioners should be one who is specialized in gynaecology or obstetrics. The MTP Act, 1971 has provided two presumptions of grave mental injury to the pregnant woman, where the pregnancy of the woman is on account of: (a) failure of any contraceptive device or method, in which case, pregnancy may be terminated if the length of such pregnancy does not exceed twenty weeks; (b) rape, in which case pregnancy may be terminated if the length of such pregnancy exceeds twenty weeks but does not exceed twenty-four weeks.^{xxxvi} Another key feature brought in by the recent amendment is that it allows abortion even beyond twenty-four weeks of pregnancy for substantial foetal abnormalities on approval given by the State Medical Board.^{xxxvii} Additionally, a registered medical practitioner is allowed to terminate pregnancy of a woman at any time during the pregnancy, and at any place not specially authorized under the Act, where it is urgently necessary to do so, to save the life of the woman.^{xxxviii} All abortions shall be done after seeking informed consent of the woman and in case of a minor or mentally incompetent, such consent may be taken from the guardian, in writing [Section 4(a)(b)]. The Act penalizes any conduct which contravenes its provisions.^{xxxix}

The foregoing provisions under the MTP Act, 1971 reveals that abortion is allowed only under the prescribed conditions and not for the purpose of sex-selective abortion leading to female foeticide. No pregnant woman may be forced by her spouse or family members to abort the foetus on account of unwanted sex of the offspring. MTP Act moreover, aims to reduce maternity mortality rate caused by abortions that are done unauthorized or forcibly in an unsafe manner, especially, for aborting female foetus in a discreet manner.

LEGISLATIVE EFFORTS IN BRITISH INDIA

Since female foeticide was prevalent since the olden days, as early as in 1860 in British India, the Indian Penal Code, 1860 (Act 45 of 1860) incorporated specific provisions to penalize it. Thus, anyone, including the woman herself, who voluntarily causes miscarriage with *malafide* intention, will be punishable with imprisonment which may extend to three years, or with fine, or with both. A more grievous punishment is provided if miscarriage is caused of a woman, who is quick with a child, with an imprisonment which may extend to seven years, and along with fine.^{x1} If however, the aforementioned offence is committed without the consent of the

woman, such person shall be punishable with life imprisonment, or upto ten years imprisonment, and accompanied with fine.^{xli} A penalty of ten years imprisonment and along with fine is provided if death is caused of a pregnant woman, due to an intentional act of any person done to cause miscarriage, but with the consent of the woman. But if the same offence is committed in the absence of consent of the woman, the punishment may extend to life imprisonment or with a lesser penalty similar to the aforesaid.^{xlii} On the other hand, as a legislative tool to curb the menace of female infanticide, the Female Infanticide Prevention Act, 1870 (Act 8 of 1870) was enacted in British India. This legislation has now been repealed by the Repealing and Amending Act, 1952 (Act 48 of 1952).

CONCLUSION AND SUGGESTIONS

As a part of the 2030 Agenda for Sustainable Development, the United Nations Member States, including India, has adopted the seventeen Sustainable Development Goals, as an urgent call for national and global actions. Among these goals, which are set to achieve by 2030, “gender equality” is noteworthy to mention here.^{xliii} Thus, it can be seen that efforts towards gender equality is not just a domestic but a global concern today. The fact that there is disparity between male and female ratio in India even today points to the ground reality of persisting sex-selective conception and abortion preferring male over female child. This situation is despite the fact that India has well-established legal framework to prohibit sex-selective conception and abortion as discussed earlier. The problem lies with the failure of effective implementation of the relevant laws occasioned by many factors. These factors include the deeply rooted patriarchal mindset typical of Indian society, lack of awareness among the people about the values of gender equality, poor monitoring system by concerned authorities under the relevant laws, lack of community participation in eradicating the problem of gender discrimination, etc.

It is thus, desirable to provide sensitization and awareness among the masses, to educate women about their rights and empower them economically, socially and politically. The provision for fair working environment for women; and their exposure to leadership opportunities would be crucial to bridge the gap in terms of their status at par with men. The active role of mass media in steering the minds of the public about gender justice is critical to

abating the Indian psyche of preferring male over female. The statutory obligations of the Central Supervisory Boards and State / Union Territory Supervisory Board under the PCPNDT Act, 1994 to review and monitor the implementation of the Act and to carry out nationwide awareness and advocacy programme should be discharged in a well-planned manner. Education on human rights with special focus on gender justice should be made an integral component of academic curriculum from the primary education level. Conscious participation of community and civil societies in the fight for gender equality cannot be underestimated as they are one of the backbones of a strong nation. The aforementioned efforts, if translated into actions, can in the long run influence re-shaping of people with conservative psyche to be more tolerant and respectful towards female gender.

ENDNOTES

ⁱ “Embryo” is defined as a developing human organism after fertilization till the end of eight weeks (fifty-six days) under Section 2(bb), the Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994).

ⁱⁱ Sex Selection with PGT available at: <https://dallasivf.com> (last visited on August 21, 2021).

ⁱⁱⁱ The Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994), s. 2(bc).

^{iv} Asher Ornoy, Liza Weinstein-Fudim and Zivanit Ergaz (March 27th 2009), Methods of Prenatal Sex Determination and Their Importance in Understanding and Prevention of Gender Related Birth Defects, Childbirth, available at <https://www.intechopen.com/chapters/66413>, (last visited on August 21, 2021).

^v Non-invasive Prenatal Testing (NIPT) for Foetal Sex Determination, Health Technology Assessment Report, 2016, Folkehelseinstituttet, Norwegian Institute of Public Health, available at <https://www.fhi.no/en/publ/2016/ikke-invasiv-prenatal-testing-nipt-for-kjonnbestemmelse-av-foster-metodev/>, (last visited on August 21, 2021).

^{vi} Sex ratio up from 918 in 2014-15 to 934 in 2019-20, The Times of India, Jan 24, 2021, 02:03 IST, available at https://m.timesofindia.com/india/sex-ratio-up-from-918-in2014-15-to-934-in-2019-20/amp_articleshow/80428950.cms, (last visited on August 21, 2021).

^{vii} “Census of India 2011: Child sex ratio drops to lowest since independence”, *The Economic Times*, Last updated: March 31, 2011, 11:21 PM, IST, available at: <https://m.economictimes.com/news/economy/indicators/census-of-india-2011-child-sex-ratio-drops-to-lowest-since-independence/articleshow/7836942.cms>, (last visited on August 21, 2021).

^{viii} Sex Ratio in India, available at <https://www.census2011.co.in/sexratio.php>, (last visited on August 21, 2021).

^{ix} “India News, Uttarakhand has lowest child sex ratio in the country: NITI Aayog’s SDG Index”, *Hindustan Times*, New Delhi, June 07, 2021, 08:39 AM IST, available at <https://www.hindustantimes.com/india-news/uttarakhand-has-lowest-child-sex-ratio-in-the-country-niti-aayog-s-sdg-index-101623035143233.html>, (last visited on August 21, 2021).

^x The State of World Population is an annual report published by the United Nations Population Fund (UNFPA). Each edition covers and analyses developments and trends in world population and demographics, as well as shedding a light on specific regions, countries and population groups and the unique challenges they faced. For detail information, see the source available at: <https://www.un-ilibrary.org/content/periodicals/15648567> (last visited on August 21, 2021).

^{xi} UN Report says 4.6 lakh girls were missing at birth in India each year from 2013 to 2017, Scroll Ground Reporting Fund, June 30, 2020, available at: <https://scroll.in/latest/966035/uns-world-population-report-says-4-6-crore-women-are-missing-in-india-due-to-sex-selection> (last visited on August 21, 2021).

^{xii} *Ibid.*

^{xiii} Allie Declares, India's Skewed Sex Ratio and Its Long-Term Implications, Kennedy School Review, A Harvard Kennedy School Student Publication, January 22, 2019, available at <https://ksr.hkspublications.org/2019/01/22/india-skewed-sex-ratio/> (last visited on August 21, 2022).

^{xiv} Sonia Vase, Un-Natural Selection: Female feticide in India, the Public Health Advocate, Spring 2021, available at: <https://pha.berkeley.edu/2021/04/10/un-natural-selection-female-feticide-in-india/> (last visited on July 21, 2021).

^{xv} *Ibid.*

^{xvi} (2013) 4 SCC 1.

^{xvii} See Factbox: Which are the world's 10 most dangerous countries for women?, Thomson Reuters Foundation, London, June 16, 2018, available at: <https://www.reuters.com/article/us/women-dangerous-poll-factbox-idUSKBN1JM01Z> (last visited on July 5, 2022).

^{xviii} (2016) 10 SCC 265.

^{xix} See generally, *M.G. Badappanavar v. State of Karnataka*, AIR 2000 SC 260; *M. Nagaraj v. Union of India*, AIR 2007 SC 1.

^{xx} M.P. Jain, Indian Constitutional Law, 937 (LexisNexis, Haryana, 7th edn., 2014, Reprint (Oct. 2016)).

^{xxi} *Ibid* at 937.

^{xxii} See Constitution of India, art. 39(d).

^{xxiii} The Convention on Elimination of all Forms of Discrimination Against Women, 1979, art. 2(b).

^{xxiv} The Convention on Elimination of all Forms of Discrimination Against Women, 1979, art. 5(a).

^{xxv} Niti Aayog developing National Gender Index, The Economic Times, Last Updated March 02, 2022, available at: https://m.economictimes.com/news/economy/policy/niti-aayog-developing-national-gender-index/amp_articles/89920138.cms (last visited on September 11, 2022).

^{xxvi} The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994), s. 2(i) defines “**pre-natal diagnostic procedures**” as all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, blood or any other tissue or fluid of a man, or of a woman for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception.

^{xxvii} The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994), s. 2(k) defines “**pre-natal diagnostic test**” as ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any other tissue or fluid of a man, or of a pregnant woman, or of a conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases.

^{xxviii} The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994), s. 3.

^{xxix} Central Supervisory Board is constituted under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994), s. 7(1), by the Central Government.

^{xxx} The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994), s. 17(4).

^{xxxi} (2003) 8 SCC 412.

^{xxxii} (2018) 3 SCC 229.

^{xxxiii} (2013) 4 SCC 1.

^{xxxiv} The Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971), s. 3(2), (as amended in 2021).

^{xxxv} The Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971) (as amended in 2021), s. 3(2).

^{xxxvi} Explanation 1 and 2 under Section 3(2), Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971).

^{xxxvii} The Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971), s. 3(2), Explanation 2B.

^{xxxviii} Section 5(1), Section 3(2), Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971).

^{xxxix} Termination of pregnancy by an unregistered medical practitioner is punishable with rigorous imprisonment of not less than two years and which may go upto to seven years [Sec. 5(2), MTP Act, 1971]. The foregoing provision shall have an overriding effect over the Indian Penal Code, 1860. The confidentiality of the identity of the woman whose pregnancy has been terminated is protected under this Act by providing a penalty on the defaulting doctor in the form of imprisonment upto one year or with fine, or with both. All termination of pregnancy, except during emergency to save the life of the pregnant woman, shall be performed either in a government hospital or at such place approved under the Act (Section 4). On account of failure to comply with

Section 4, such person may be punishable with a rigorous imprisonment of not less than two years which may go upto seven years.

^{xl} The Indian Penal Code, 1860 (Act of 1860), s. 312.

^{xli} The Indian Penal Code, 1860 (Act 45 of 1860), s. 313.

^{xlii} The Indian Penal Code, 1860 (Act 45 of 1860), s. 314.

^{xliii} See, United Nations, Department of Economic and Social Affairs, The 17 GOALS, Sustainable Development, available at: <https://sdgs.un.org/goals#goals> (Last visited on September 11, 2022).

