

## **(Prohibition of Sex Selection ) Act 2002**

According to the Census Report 2001, the sex ratio of 0-6 years fell from 945 females per 1000 males in 1991 to 927 per 1000 males in 2001 and 943 in 2011. The new figure gives India one of the world's lowest ratios for women to men. The statistical drop in the number of girls born in India is being blamed on a strong cultural preference for sons. Impoverished parents' reluctance to raise large amounts of money for a girl's dowry is often cited as the reason for a male child. The drop is largely due to the widespread but illegal practice of using ultrasound scans to identify female foetuses and then aborting them.

Abortion is legal as per Medical Termination of Pregnancy Act, 1971 when a woman's life or health at risk, or in cases of foetal impairment, rape and contraceptive failure. The prenatal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders etc. But they are being misused on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be a female child. Techniques are also being developed to pre-select the sex of child before conception. These practices are wholly discriminatory to the female sex and affect the dignity and status of women. The proliferation of these technologies may, in the future, precipitate a catastrophe, in the form of severe imbalance in male-female ratio. It is therefore necessary to bring an amendment in the PNDT Act, 1994. The machinery required to enforce the PNDT Act, 1994 at the State and District levels was not put into place. The required allocation of resources needed was general disinterest on the part of various governance bodies to take this Act seriously. Not a single pre-natal until

20-01 in Punjab even though it was the first State to provide sex selection facilities as early as in the 1970s and the sex ratios in the 0-6 age group have been on the decline. Due to the non-maintenance of adequate records by the clinics it is difficult to identify the purpose for which an ultra-sound test has been conducted. The absence of such records affects the enquiry. Further the Family Planning programme's insistence on the small family norm coupled with the son-preference bias in India added pressure on families to look at sex-selection as a via media for their desired family composition. And also the Medical Profession and its associations (IMA), Radiologist Association and Forum for Obstetrician and Gynaecologist (FOGSI) remained silent over such malpractices by their members. So, the State's complacency coupled with socio-cultural demands of son's preference and the unconcern of the Medical Profession led to the failure of the PNDT Act, 1994. Although the Act has been on the statute books since 1994, it remained largely ineffective in checking the proliferation of ultrasound machines and Mobile Clinics clandestinely offering sex-selection services throughout the country.

After that, the Parliament on December 20 passed the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2002 which was based on SC order and Central Supervisory Board recommendations. The objectives of this Act were to ban and regulate the pre-conception sex selection techniques. Its aim was to use the technique for appropriate scientific use for which they are intended and to prohibit the pre-natal diagnostic techniques and to ensure the effective implementation of the Act at all levels.

### **Medical Termination of Pregnancy Act, 1971**

“Women’s right to abortion is an absolute right. Abortion should be available for any woman without insolent inquisition or ruinous financial charges, for our bodies are our own”.

About 50 to 60 million abortions occur every year throughout the world, up to half of them illegal and dangerous, killing about half a million annually. In order to respond to it promptly, some countries in the world have adopted more liberal laws that allowed abortion when requested by the concerned woman. Canada, China, Cuba, Denmark and South Africa are among such countries that have laws which permit abortion at her request. The right to abortion on demand could apply to either the entire period of pregnancy or be limited to a proportion of the time period. It can usually be performed without the approval of authorities if asked within a given duration, usually 12 weeks. Laws have been amended in many countries to allow late abortions since the discovery of prenatal diagnostic techniques. In UK, a grossly abnormal foetus can be aborted at any stage of pregnancy. According to statistics put out by the UK government, the vast majority of abortions beyond 24 weeks are on grounds of serious foetal abnormality. In England, Scotland and Wales the Abortion Act 1967 (as amended by the Human Fertilization and Embryology Act, 1990) permits termination of pregnancy up to 24 weeks gestation.

Abortion is a serious crime under the Indian Penal Code, 1860 (IPC) which makes voluntarily causing miscarriage an offence under Section 312. Section 312 gives the right of motherhood to women but simultaneously takes away the right of abortion to the women. It means she has no absolute right over her body. However, there is one exception under Section 315 of the IPC which protects any act done with intent to prevent the child from being born alive or causing it to die after its birth,

“ if such act has been done in good faith for the purpose of saving the life of the mother”. Here the word “abortion” has been used in the IPC. To soften the rigours of the law of abortion contained in the code, the Medical Termination of Pregnancy Act, 1971 (MTPA) was passed which permits abortion in a number of situations. In India, it is illegal to terminate a pregnancy if it is in contravention of the provisions of the MTPA. According to Section 3 of the MTPA, termination of pregnancy is not an offence, if pregnancy involves---

- \* A risk to the life of the pregnant women.
- \* A risk of grave injury to her mental or physical health.
- \* There exists a substantial risk that, if the child were born, it would suffer from some physical or mental abnormalities so as to be seriously handicapped.
- \* The pregnancy is caused by rape.
- \* Failure of any device or method used by the married couple for the purpose of limiting the number of children.
- \* A risk to the pregnant women by reason of her actual or reasonable foreseeable environment.

The medical practitioners are required to give their assent for termination of pregnancy contingent upon the duration of the pregnancy. If the termination of pregnancy is done within 20 weeks of pregnancy, then the decision about the abortion should be taken by two doctors ( up to 12 weeks of pregnancy, only one doctor may form opinion). Termination of pregnancy must be done with the written consent of the pregnant married women and if such woman is below 18 years of age or mentally ill, then the consent in writing of her guardian is essential. In case of an unmarried woman and above 18 years of age, the woman’s own written consent is needed.

MTPA has few lacunas. The MTPA legalised abortion subject to the fulfilment of few conditions. But these conditions may appear to be flexible; each condition can be inflexible, because each condition can be interpreted according to the ethics of the practitioner. The MTPA allows abortion if the medical practitioner is of the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped. The term “serious physical and mental abnormalities” is subjective and in the absence of any definition of what constitutes such abnormality and what a “substantial risk” is this open-ended condition can be applied according to an individual’s understanding of ethics. Similarly, “failure of contraception” may be taken as “non-use of contraceptives”. So, there is a need to give proper definition of these phrases.

The MTPA prescribes that “where any pregnancy occurs as a result of failure of any device or method used by any married women.., the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman”. Here it is clear that the abortion due to a failure of contraceptives available only to married woman and in this way this Act discriminates against unmarried women by not recognizing that unwanted pregnancies in unmarried women could result in at least in at least as much anguish and suffering as that experienced by married women. laws related to abortion must also benefit persons whose sexual relationship are beyond the legitimacy conferred by law, especially when some courts have taken the view that live-in relationships are not illegal. Therefore, married and unmarried / single women, both must get the protection of this Act.

To implement the interim orders given in CEHAT v Union of India case, the new Pre-conception and Pre-natal Diagnostic Techniques Act ,2003 (PCPNDT) was enacted, which regulated as well as prohibits the

use of pre-natal diagnostic techniques for determination of the sex of a foetus to stop female foeticide. This contradicts the MTPA which permits abortion of a foetus that is at a risk of being born with serious physical and mental disabilities. Because in fact, sex-detection techniques help to detect genetic disorders, metabolic disorders, chromosomal abnormalities, and sex-linked diseases of foetuses. So, with the blanket prohibition of sex selection under the PCPNDT Act, it is not possible in India to use pre-natal diagnostic techniques to abort foetuses whose sex and family history indicate a high risk of certain sex-linked diseases. These contradictions should be removed.

The government needs to address the shortcomings in the MTPA so that it helps women who face the trauma of an unwanted pregnancy and at the same time it must be seen that the freedom to terminate pregnancy does not get misused. Women are the only ones who become pregnant and bear children. Society as a whole has to be very sensitive and responsive to its female members regarding the issue of abortion.