

## EDITORIAL

# PC-PNDT ACT: THE NEED OF THE HOUR

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The Government of India passed the Pre Conception and Pre-Natal Diagnostic Techniques (prohibition of sex Selection) (PC-PNDT) Act with the aim of preventing female foeticide on in 1994. The implementation of the Act was slowing rather almost nonexistent. There was further dip in child sex ratio in 2001 census and that leads to amendment of the Act and replaced in 2002 by Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (The Act). It was effectively implemented in 2003 and amended further in 2011. The Act No 57 was enacted on September 20<sup>th</sup> 1994, with an aim to prohibit sex determination before birth and leading to female feticide there by to safeguard the girl child.

### **THE ACT**

#### **Definition**

“An act to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purpose of detecting abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex –linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto”.<sup>1</sup>

The Act itself is draconian if you look in to the point of its effects on radiologist/sinologist.<sup>2</sup> The Act offers no escape to the erring physicians (radiologist, sonologist, gynecologist, geneticist, etc). At the same time it is very simple to abide by the Act. But, non-compliance of the Act in any form invites the penalty. There are many instances of penalization for either involvement of sex determination or non-maintenance of records.

Registration of Machines and Hospital, Diagnostic center, Genetic clinics, etc are mandatory under Section (18) the Act and also the written consent of the pregnant woman and prohibition of communicating the sex of fetus under Section 5 of the Act.

Maintenance of records as provided under Section 29 of the Act are required. Record keeping in revised form (F) and preservation of records for mandatory period of 2 years or till final disposal of cases (if a case is filed) in regardless of offences (invasive or non-invasive) with a ultrasound machine in a pregnant mother is also important.

The nature of the Act is essentially prohibiting sex selection, determination, disclosure and advertisement.

To create awareness amongst the public with the help of large

board about the prohibition of sex determination and penalty of violation, etc. is to be kept in the premises.

#### **The Implementing Authority and the Penalty**

Unfortunate decline of sex ratio has brought the stringent measures like suspension of registration, filing of criminal cases, sealing of machines, etc. There is also suspension and cancellation of registration of physicians besides the criminal prosecution. There may be fine of Rs. 10,000/ and jail up to three years in first offence. On subsequent offence it may invite fine of Rs. 50,000/ and jail up to five years for the doctors apart from other penalty.

The implementing authority is the Appropriate Authority at the district, state and in union Territory level. **The level of management of the Act:** These are like central-level and state-level Supervisory Board, an **Appropriate Authority (AA)** and supporting Advisory Committee. The Supervisory Board is to observe, monitor, and make amendments to the provisions of The Act. The Appropriate Authority provides registration and conducts the administrative work including penalization of noncompliance. The Advisory Committee provides expert and technical support to the Appropriate Authority.<sup>1</sup> It is mandatory to have license to conduct such type of test in the Hospital, Diagnostic and Genetic clinics. The person conducting the test has to follow strict code of conduct laid by the act and has to report to the Appropriate Authority, in time. The AA can authorize any officer for this. Any person or social organization also can bring the notice of 15 days of alleged violation to AA with an intention to complaint in the court.

#### **Offence to be Cognizable, non-bailable and not compoundable<sup>1</sup>**

Once the complaint is lodge by the authority in court, the magistrate takes cognizance of the case and charges are framed for violation of the Act against the concern doctor. This is non-bailable offence and is also non-compoundable. Without judicial proceedings the case cannot be compromised. This is the gravity of the offence.

A court can take cognizance of an offence under the Act on complaint made by an officer authorized on that behalf by the AA by the provision of section of the PC-PNDT Act. Alleged deficiency or inaccurate maintenance of records in a prescribed manner as required under sub-section (3) of section 4 of the Act, the burden of proof that there is contravention of provisions of section 5 or 6 does not lie upon the prosecution.

Here, the prosecution does not take up the issue of “Burden of Proof”. The doctor has to stand in the dock to prove his innocence. This is a step-motherly attitude towards the doctors in this regards.

### Violation of the Act

Preconception sex selection refers to any procedure attempting to influence sex of offspring before pregnancy. Initially it was devised to select female fetus to get rid of as carrier of some diseases. Most recently this has been used for family balancing. The techniques includes methods of sperm processing to enrich for a particular sex chromosome by flow cytometry or various density gradient to separate heavier X sperm which carries more genetic elements and less heavier Y sperm contains less genetic elements. Over last one decade new technique called pre implantation genetic diagnosis (PGD) is the most effective method of sex selection and goes for in vitro fertilization (IVF) to enable testing of several embryos and there by select sex of desired embryo for implantation. These are very highly sophisticated technique carried out in genetic clinics, mostly.

“Pre-natal diagnostic procedures” means all gynecological 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 a woman for being sent to Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception.<sup>1,3</sup>

The ultrasound clinics/imaging centers conduct only non invasive US imaging in a pregnant woman while referred by a doctor. There is no provision of obstetric examination, invasive facilities or termination of pregnancy in such centers. That is done elsewhere. There is also no scope of advertising of further genetics test. A simple report regarding the status and well fare of the fetus is furnished in such centers. The US centers, hospitals etc. have to be registered and must follow the instructions accordingly. If the form (F) is not filled up all the columns (9 to 19) properly we may get in to trouble.

Few important points of form (F) are as follows:

No. 9: History of genetic/medical disease-Basis of diagnosis-Biological, cytogenetic etc.

No. 10: Indication for prenatal diagnostic procedures-genetic.

No. 11: Invasive procedures performed.

No. 18: MTP advised/conducted.

No. 19: Date on which MTP conducted.

There is scope of revision of form (F) especially for the Ultrasound /imaging centers.

The unauthorized persons and unregistered centers also do antenatal USG examination with an intention to do sex detection of the fetus and do the heinous crime. The radiologist who does not perform the actual act of abortion, but are the victims. because of these unscrupulous centers where the big business of detection and abortion are done around the country.<sup>4</sup> There is provision for tracking of pregnancies, medical termination of pregnancies (MTP) and birth registrations by involving Anganwadi workers and the ASHAs (Accredited Social health

Activists).<sup>5</sup> But this is not sufficient to put a check on illegal abortions.

### The outcome and our role

There is no significant improvement in the child (0 – 6 years) sex ratio in India in highly focus states in 2011 census despite of the stringent law under implementation since 2003 and hundreds of prosecution being launched and doctors being sent to jail.

The Act has not made much head way till now. The problem of missing female child is grave. The results are to some extent disappointing. Other non-invasive technology like blood test allows much earlier sex determination and is threatening to this.<sup>6</sup> But due to the sustained campaign there is little improvements of CSR in India in 2016, i.e. 940. There is significant improvement of sex ratio at birth in states like Haryana and recorded 950 girls against 1,000 boys in March, 2017. Haryana recorded sex ratio at birth only 832, in 2012 according to civil registration system which records all birth in a state.

The problem is deep rooted in the society and not just within the medical community. A strong and sustained campaign involving the doctors, NGOs and Government may be the solution of the problem. Awareness programs like articles, interview in media, publicity in cinema and television should go deep in to the society that the guilty would be punished. As a doctor we have to play an important role to save the society from this man-made catastrophe not only by abiding the PC-PNDT Act and also educating the society about the misuse of modern technologies for sex detection before birth and selective abortion.

### REFERENCE

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