Article published online: 2021-07-30

A perspective on the PCPNDT Act

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Abstract

Background: An important modern diagnostic tool, used for monitoring pregnancy and genetic defects; the ultrasound machine, has also become a selective killer of the female child. The male child preference in India was responsible for female infanticides in the past. With easy availability and accessibility of USG, a shift has occurred from infanticide to feticide, although female infanticides still continue. In the process doctors are blamed as "merchants of death". Peeved and pressed by national and internal agencies for the declining female child ratio (0-6 years), the Government of India reacted by enacting a stringent PC-PNDT Act almost solely aimed at doctors to prevent them from advertising and disclosing the sex of the fetus to the pregnant woman or her relatives. Since the enactment, hundreds of cases have been launched against the doctors. **Aims:** 1. In order to stand up to the law important sections and rules of the PC-PNDT Act have been analyzed for the benefit of our colleagues. 2. The Indian legal system rests the "burden of proof" on the prosecution. In two sections of The Act, these have been done away with. Instead, the accused doctor has to prove himself innocent. Therefore a demand has been made to make suitable amendments to The Act in this regard. 3. The inclusion of column numbers 9-19 in the form 'F' is not relevant for USG clinics/ imaging centers; inaccurate filling of which may attract a prison sentence of 3 years. This irrelevance has to be deleted. 4. Some suggestions.

Key words: Form-'F', 'Burden of proof', Imaging center, Ultrasound clinic

Introduction

Doctors are considered men of noble profession. However, in recent times, they have also often been projected as "Merchants of Death". This has happened in spite of the fact that there is a revolutionary transformation of the health scenario in our country, mainly related to the fact that doctors often have been caught indulging in wrongful acts and these have been splashed in the media.

The Genesis of the PC&PNDT Act- 1994

Male child preference in the society.
Girls are considered to be a burden.
Easy availability of intra-uterine sex determination.

Access this article online	
Quick Response Code:	Website: www.ijri.org
	DOI: 10.4103/0971-3026.101116

These are the reasons for female feticide that has supplanted the earlier practice of female infanticide.

The Government concerned with a 10% fall in girls at the all India level in the 0-6 years age group is determined to curb female feticides. Rights activists and organizations like UNICEF, UNDP, WHO are closely following and monitoring the increasing number of missing female children in India. The Government in its wisdom has created a stringent act, the PC&PNDT Act to curb the social evil of female feticide.

The PC&PNDT Act – 1994

At this stage, it would be pertinent to examine the basics of the Act and the consequences of violating the Act, advertently or inadvertently, either by acts of omission or commission.[1]

Some facts of The PC&PNDT Act

I. Implementing and prosecuting authority.
   1. The appropriate authority (AA) at District, State and union Territory level
   2. Any officer authorized by the AA. Any officer authorized by the central / State Govt.
   3. Any person, which includes a social organization, who has given a notice of 15 days; of the alleged

offence to AA and his intention to make a complaint in the court.

II. Gravity of the offence
   1. Cognizable offence; on a complaint by the above authorities in the court of the judicial magistrate 1st class/metropolitan magistrate; the magistrate takes cognizance of the case and charges are framed against the doctor concerned, for the violation of The Act.
   2. Non-bailable offence. No bail shall be granted to such an accused
   3. Offence non-compoundable: The case cannot be compromised without judicial proceedings.

III. Nature of The Act
   1. The Act is essentially prohibitive in nature; prohibition of sex selection, determination, disclosure and advertisement.
   2. Record keeping in the revised form (F) and preservation of records for the mandatory period of 2 yrs or till final disposal of case (if a case is filed) in the above offences with regard to invasive or noninvasive procedures with an ultrasound machine on a pregnant mother.These issues are categorized in Table 1.
      a. A host of minor offences.Table 2 reflects the same Violations and Punishments under the PC&PNDT Act 1994.

Having examined the intimidating penal provisions of The Act, we shall proceed to see the interpretation of The Act in its implementation as viewed by the learned judges of the Gujarat High Court in the following paragraphs.[3]

In a landmark judgment a three bench court of the Gujarat High court; consisting of Honorable Mr Justice M.S Shah, Honorable Mr Justice D.H Waghela and Honorable Mr Justice Akil Kureshi very clearly made the following pronouncement in criminal reference 3 and 4 of 2008; overruling the observations of a single judge bench in Dr. Manish C. Dave versus state of Gujarat (2008 (1) GLH 475).

i. Under the provisions of section 28 of the PC&PNDT Act, a court can take cognizance of an offence under The Act on a complaint made by an officer authorized on that behalf by the AA.
ii. The proviso to sub-section (3) of section 4 of the PC&PNDT Act does not require that the complaint alleging inaccuracy or deficiency in maintaining record in the prescribed manner should also contain allegations of contravention of the provisions of section 5 or 6 of the PC&PNDT Act.
iii. In a case based upon allegation of deficiency or

Table 1: Major violations

Nature of offence with explanation	Relevant sections and rules	Punishment under relevant sections
Sex selection, determination and communication prohibited	3(A), 4(3) explanation: violation of sec 5 and 6	Under sec 23 any medical man: punishment up to 3 yrs + fine up to ₹ 10,000 for 1st offence and for the 2nd offence onwards 5 yrs + fine up to ₹ 50,000 + temporary suspension of registration no by the MCI from the time of framing the case, up to disposal and on conviction - removal of the name from the MCI register for 5 yrs for 1st conviction and permanent erasure for subsequent convictions.
Deficiency or inaccuracy in record keeping as per revised form 'F'	Sec 4 (3), 29 and rule 9(4) explanation: Contravention of sec 5 and 6	Under sec 23, (1) and (2): same punishment as above.
Prohibition of advertisement relating to PC&PNDT	Sec 22, (1), (2) Explanation: Contravention shall attract	Under sec 22 (3) imprisonment up to 3 yrs + fine of Rupees. 10,000.

Table 2: Minor violations

Sl. No	Offence	Relevant sec/Act	Punishment
1	Non-availability of copy of the Act at the center at a conspicuous place.	Rule 17 (2)	Case to be launched in the court of J.M.F.C/ Metropolitan magistrate under sec 25 of the Act. 1st offence punishment 3 months prison or with fine: which may extend to ₹ 1000/- or with both. 2nd offence, additional fine up to ₹ 500/ day for the period of contravention. Show cause notice by AA for suspension or cancelation of registration of the center after being heard. AA may suo motto suspend the registration No. Likelyhood of launching criminal case in the court under relevant provisions. AA may suspend, cancel registration certificate. Seal the machine. Confiscate and impose fine five times the registration fee and an undertaking [2] Warning: This may attract major penalties in future. Seizure, sealing of machine and suspension of registration till finalization of the case. Same as above
2	Non-display of registration certificate issued by the appropriate authority at the center.	Rule 06(2)	
3	Non display of board in the premises of the center in English and local language that "disclosure of the sex" of the fetus is prohibited under law at a conspicuous place.	Rule 17(1)	
4	Minor deficiency in record keeping	Under rule 9.	
5	Complaints against the center	Sec 20 (1) (2) and (3)	
A	Owner/ employee not qualified and thus not authorized to conduct ultrasonography.	Sec 3(2) Rule 3(6)	
B	More ultrasound machines less no registered	Under rule 4, 6, 8 as perform 'A' SN 08	
C	Mobile ultrasounds conducting ultrasonography at locations not registered	Does not find mention in the Act	

inaccuracy in maintenance of record in the prescribed manner as required under sub-section (3) of section 4 of the PC&PNDT Act, the burden to prove that there was contravention of the provisions of section 5 or 6 does not lie upon the prosecution.

iv. Deficiency or inaccuracy in filling form 'F' prescribed under Rule 9 of the rules made under the PC&PNDT Act, being a deficiency of inaccuracy in keeping record in the prescribed manner, is not a procedural lapse but an independent offence amounting to contravention of the provisions of section 5 or 6 of the PC&PNDT Act and has to be treated and tried accordingly. It does not, however, mean that each inaccuracy or deficiency in maintaining the requisite record may be as serious a violation of the provisions of section 5 or 6 of The Act and the court would be justified, while imposing punishment upon conviction, in taking a lenient view in cases of only technical, formal or insignificant lapses in filling up the forms. For example, not maintaining the record of conducting ultrasonography on a pregnant women at all or filling up incorrect particulars may be taken in all seriousness as if the provisions of section 5 or 6 were violated, but incomplete details of the full name and address of the pregnant women may be treated leniently if her identity and address were otherwise mentioned in a manner sufficient to identify and trace her.

Discussion

Let us now see what happened in courts of law with regard to three heinous homicide cases that rocked the country in the recent past.

Burden of proof

1. The Jessica Lal murder case: in a New Delhi restaurant, the bar tender was killed by gun fire in full view of 50 persons and yet the accused were set free in the 1st instance as the prosecution failed to establish the guilt against the accused.[4]
2. The Arushi murder case, which occurred in the closed premises of residential quarters in the NCR (National Capital Region); was messed up by the Uttar Pradesh police and the Central Bureau of Investigation, i.e. the CBI which stepped in failed to file a charge sheet and instead preferred a petition to close the case for want of evidence.
3. The Mumbai terrorist attacks of 26-11-2008; more than 166 citizens inclusive of foreigners were mercilessly butchered in cold blood, including three brave police officers. Some of these incidents were videographed and yet the amount of energy, time and money spent have been considerable, to prove the world that the sole surviving terrorist Ajmal Kasab, is indeed guilty.

The initial outcomes of the first two cases show that the evidence and burden of proof lies on the shoulders of the prosecution. We would like to ask, why in the PC&PNDT Act, the prosecution does not take up the issue of "Burden of Proof"? Why should the doctor be standing in the dock to prove his innocence? Why this step-motherly attitude towards doctors? We feel that the prosecution has to take the responsibility of taking the burden of proof {ref.no (iii) of the High court judgment}

Issue of the 'F' Form

We shall now analyze the relevance of columns no 9 to 19 of the mandatory form 'F' being filled by USG clinic/genetic clinic as well.

No 9 - History of genetic/medical disease
Basis of diagnosis – Biological, cytogenic etc.
No 10 - indications for prenatal diagnostic procedures – genetic
No 11 - invasive procedures performed
No 12 - any complaints there off
No 13 - genetic lab tests prescribed
No 14 - results
No 15 - date of procedures
No 16 - date on which consent obtained
No 17 - date of conveyance of results of prenatal diagnostic procedures
No 18 - MTP advised/conducted
No 19 - date on which MTP conducted.

Exhaustive information as above needs to be filled, and any deficiency or inaccuracy in filling these columns may land the doctor in jail.

What is conducted in an ultrasound clinic/imaging center?

The ultrasound clinics/imaging center in case of pregnant woman conduct only non-invasive ultrasound imaging, on being referred by an obstetrician. There would be no facilities for conducting obstetric examination, invasive procedures, or emergency evacuation. Needless to say, there is also no scope for advising any further genetic lab tests. A simple report regarding progress of the pregnancy/ labor / welfare of the fetus is furnished. If that is the case, is it not unreasonable that if we don't fill up all the columns (9 to 19) properly we may get into trouble? In all probability those who framed this form presumed that these prenatal diagnostics etc are carried out in these simple centers also. This is a fundamentally a wrong notion and therefore we demand that form 'F' should be modified for ultrasound clinics and imaging centers.

The progress of the PC&PNDT Act-1994

18 years into the Act with amendments in 2003, following is the progress of the implementation of the Act.[5] As cited in Tables 3 and 4.

Cases of Violation of PC& PNDT Act in the country as on 30.6.2010.

In spite of the stringent law under implementation for the last 18 years and hundreds of prosecutions being launched and doctors being sent to jails there is no improvement in the

Table 3: Cases of Violation of PC, PNDT Act in the country as on 30.6.2010[6]

No of ultrasound machines registered	No. of machines sealed	No. of cases	Minor court cases		Major court cases		Miscellaneous
			Non registration of the center	Non maintenance of records	Communication of sex	Advertisement of the facility	Others
39,854	462	706	223	216	155	36	76

Table 4: Doctors punished under PC&PNDT act in 2010[6]

No of doctors convicted and punished	Fine alone	Imprisonment and fine	Analysis
13	2	11	6 from Haryana 3 from Panjab 2 from Delhi 2 from Maharastra

child sex ratio in India and especially in high focus states, as per statistics provided below.[7]

Sex ratio of female child population in age group 0-6 years, 1981 to 2011 as cited in Table 5.

The problem of missing female children in India is all-pervasive. The availability of ultrasonography on a large scale however is only from the mid 1990s, during which period the PC&PNDT Act has also been implemented. If 1991 is taken as base year, then the declining numbers of female children have further deteriorated over the years. Perhaps we need to search deeply for other remedies for this, essentially deep-rooted socio-economic evil of society.

Conclusion

The Act has not made much headway. The results are disappointing. Other technologies are threatening to allow much earlier sex determination including a non-invasive blood test.[8]

This problem has its deep-seated roots in society and not just within the medical community. Sustained credible campaigns for saving the girl-child for prolonged periods are necessary.

On the official front, teams of Anganwadi workers, ASHA and female Health Workers should monitor every pregnancy till the end of pregnancy and these activities in turn should be carried forward to the Mandal, Block, Tehsil and District levels and so on. All pregnancies that do not end in birth should be thoroughly investigated to know the cause of pregnancy loss. The country at present has a sufficient pool of these workers and systems are in the place to carry forward this exercise.

SAVE THE GIRL CHILD!!

Table 5: 0-6 yrs Child sex ratio showing declining no of female children

India/ high focus States	Census year				Decline in 2011 over 2001	Decline in 2011 over 1991	Decline in 2011 over 1981
	1981	1991	2001	2011			
All India	962	945	927	914	13	31	48
Haryana	902	879	819	830	11	49	72
Himachal pradesh	971	951	896	906	+10	45	65
Punjab	908	875	798	846	+48	29	62
Rajasthan	954	916	909	883	26	33	71
Gujarat	947	928	883	886	+3	42	61
Chandigarh	907	899	845	867	+22	32	40
Delhi	926	915	868	867	01	48	59

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Cite this article as: Patnaik AM, Kejriwal GS. A perspective on the PCPNDT Act. Indian J Radiol Imaging 2012;22:137-40.

Source of Support: Nil, **Conflict of Interest:** None declared.