

---

# LAW WITHOUT IMPACT? EXAMINING THE DISCONNECT BETWEEN LEGAL PROHIBITIONS AND PERSISTING GENDER IMBALANCE IN INDIA

---

Abdul Bahav, Law College Dehradun, Uttarakhand University

Ashutosh Mishra, Law College Dehradun, Uttarakhand University

## ABSTRACT

The phenomenon of “missing girls” in India represents a persistent demographic and human rights crisis, despite a robust statutory framework aimed at prohibiting gender-biased sex selection. This paper critically examines the disconnect between legal prohibitions particularly under the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 and the continuing imbalance in the sex ratio. It argues that while the legislative architecture is comprehensive, its effectiveness is undermined by systemic implementation failures, socio-cultural biases, weak enforcement mechanisms, and administrative inefficiencies. The study adopts a socio-legal approach to analyze the interplay between law and entrenched patriarchal norms, highlighting the limitations of criminal law as a tool for social transformation. By evaluating judicial responses, policy interventions, and statistical trends, the paper proposes reforms aimed at bridging the gap between law and lived realities, ensuring substantive gender justice.

**Keywords:** Missing girls, PCPNDT Act, gender imbalance, sex ratio, implementation deficit, female foeticide, socio-legal analysis.

## **Introduction**

The issue of gender imbalance in India, often conceptualized through the lens of “missing girls,” reflects a deeply entrenched socio-cultural preference for male children. Despite constitutional guarantees of equality and a series of legislative measures aimed at curbing discriminatory practices, the adverse sex ratio continues to pose significant demographic and ethical concerns. The phenomenon is not merely a statistical anomaly but a manifestation of systemic gender bias reinforced by economic, social, and cultural factors.

India’s legal response to this crisis has been both proactive and expansive. The enactment of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act), marked a decisive step towards criminalizing sex-selective practices. Supplemented by provisions under the Medical Termination of Pregnancy (MTP) Act, 1971, and various policy initiatives such as Beti Bachao Beti Padhao, the statutory framework appears comprehensive on paper. However, the persistence of skewed sex ratios suggests a troubling disconnect between legislative intent and ground-level outcomes.

This paper seeks to critically examine this disconnect by interrogating the effectiveness of India’s legal framework in addressing the issue of missing girls. It argues that the failure lies not in the absence of laws but in their inadequate implementation and the inability of legal mechanisms to penetrate deeply rooted patriarchal norms. The study adopts a multidisciplinary perspective, combining legal analysis with sociological insights to understand the limitations of law as an instrument of social change. By identifying key enforcement challenges and structural deficiencies, the paper aims to propose a more holistic approach to achieving gender justice in India.

## **MAIN BODY OF THE PAPER**

### **1. Conceptualizing the ‘Missing Girls’ Phenomenon**

The term “missing girls” was popularized by Amartya Sen to describe the demographic deficit of women resulting from systemic gender discrimination. In the Indian context, this phenomenon manifests through practices such as female foeticide, infanticide, and neglect of girl children in nutrition, healthcare, and education. Unlike natural demographic variations, the skewed sex ratio in India is a product of deliberate human intervention driven by socio-cultural

biases.

The child sex ratio (0–6 years), as recorded in the Census of India, has shown alarming trends over decades, reflecting a persistent decline despite economic development and modernization. This indicates that technological progress has not translated into social progress. In fact, access to prenatal diagnostic technologies has, in many cases, aggravated the problem by enabling early detection and termination of female fetuses.

The roots of this phenomenon lie deeply embedded in patriarchal social structures. Sons are traditionally valued for their role in carrying forward the family lineage, performing last rites, and providing economic security. Daughters, on the other hand, are often perceived as financial burdens due to dowry practices and limited economic participation. These perceptions create a preference for male children, which is then operationalized through sex-selective practices.

Thus, the issue of missing girls is not merely demographic but reflects a broader crisis of gender justice. It highlights the intersection of culture, economics, and technology, making it a complex socio-legal challenge that cannot be addressed through legislation alone.

## **2. Legal Framework Addressing Gender Imbalance**

India has developed a comprehensive statutory framework to combat gender-biased sex selection, with the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 serving as the primary legislation. The Act prohibits sex selection before and after conception and regulates the use of diagnostic techniques to prevent misuse. It mandates the registration of ultrasound clinics, restricts the communication of fetal sex, and prescribes stringent penalties for violations.

The Act was strengthened through amendments in 2003, which expanded its scope and introduced stricter monitoring mechanisms. However, the legal framework does not operate in isolation. The Medical Termination of Pregnancy Act, 1971 also plays a significant role by regulating abortion services. While it safeguards reproductive rights, its misuse for sex-selective abortions creates a legal and ethical dilemma.

At the constitutional level, Articles 14 and 15 guarantee equality and prohibit discrimination on the basis of sex, while Article 21 ensures the right to life and dignity. These provisions form the normative foundation for gender justice in India. Additionally, policy initiatives such as

Beti Bachao Beti Padhao aim to complement legal measures through awareness and community engagement.

Despite this elaborate framework, the persistence of gender imbalance suggests that the problem lies not in the absence of laws but in their ineffective implementation. The gap between statutory intent and practical outcomes raises critical questions about the role of law in addressing deeply entrenched social issues.

### **3. Implementation Deficit: Key Challenges**

The implementation deficit remains the most significant obstacle in addressing the issue of missing girls in India. Although the legal framework is robust, its enforcement is fraught with challenges. One of the primary issues is the lack of adequate infrastructure and resources for monitoring compliance. Authorities responsible for implementing the PCPNDT Act often face shortages of trained personnel, technological support, and financial resources, limiting their ability to conduct regular inspections and enforce regulations effectively.

Another critical challenge is the low rate of convictions. Despite numerous reported violations, successful prosecutions remain rare. This is due to a combination of factors, including procedural delays, difficulties in gathering evidence, and the involvement of medical professionals who are often able to manipulate records. The deterrent effect of the law is thus significantly weakened.

Administrative inefficiencies further exacerbate the problem. The implementation of the Act requires coordination between multiple agencies at the central, state, and district levels. However, bureaucratic delays, lack of accountability, and instances of corruption undermine this coordination. In many cases, enforcement authorities themselves lack awareness or commitment to the objectives of the law.

Moreover, the clandestine nature of sex-selective practices makes detection difficult. Illegal services often operate through informal networks, making it challenging for authorities to track and prosecute offenders. As a result, the implementation deficit not only weakens the legal framework but also perpetuates a culture of impunity.

#### **4. Socio-Cultural Barriers to Legal Effectiveness**

The persistence of gender imbalance in India cannot be fully understood without examining the socio-cultural context in which it operates. Deeply entrenched patriarchal norms continue to shape societal attitudes towards gender, often undermining the effectiveness of legal measures. The preference for male children is rooted in cultural beliefs that assign greater value to sons as carriers of lineage and providers of economic and social security.

Practices such as dowry further reinforce this bias by placing a financial burden on families with daughters. Despite legal prohibitions, dowry remains prevalent, contributing to the perception of daughters as liabilities. Additionally, societal pressure and expectations often compel families to conform to traditional norms, even when they are aware of legal restrictions.

Religion and customary practices also play a role in sustaining gender bias. In many communities, sons are considered essential for performing last rites, reinforcing their perceived importance. These beliefs create a strong cultural resistance to change, making it difficult for legal interventions to achieve their intended impact.

Importantly, the demand for sex-selective services is often driven by families themselves, rather than solely by medical practitioners. This demand-driven dynamic highlights the limitations of a purely punitive approach. Laws can prohibit certain practices, but they cannot easily alter deeply ingrained social attitudes.

Therefore, addressing the issue of missing girls requires a broader strategy that goes beyond legal enforcement to include social reform, education, and community engagement.

#### **5. Judicial Response and Activism**

The judiciary in India has played a crucial role in addressing the issue of missing girls by actively interpreting and enforcing the provisions of the PCPNDT Act. Landmark cases such as *Centre for Enquiry into Health and Allied Themes v. Union of India* and *Voluntary Health Association of Punjab v. Union of India* have significantly strengthened the implementation framework by issuing directions for stricter monitoring and accountability.

In these cases, the Supreme Court emphasized the need for effective enforcement and directed authorities to ensure proper registration of clinics, maintenance of records, and regular

inspections. The judiciary has also highlighted the importance of awareness campaigns and public participation in addressing the issue.

Public interest litigations have served as an important tool for bringing attention to implementation failures and holding authorities accountable. Courts have not hesitated to criticize administrative lapses and have, in some instances, issued guidelines to fill legislative gaps.

However, judicial activism has its limitations. While courts can issue directions and monitor compliance, they cannot substitute for effective administrative action. The success of judicial interventions ultimately depends on the willingness and capacity of executive authorities to implement them.

Thus, while the judiciary has played a proactive role in addressing the issue of missing girls, its efforts must be complemented by stronger enforcement mechanisms and broader societal change to achieve meaningful impact.

## **6. Statistical Trends and Ground Realities**

Statistical data provides important insights into the extent and persistence of gender imbalance in India. According to the Census of India, the child sex ratio has shown a declining trend over several decades, reflecting the continued prevalence of gender-biased practices. Although recent data suggests some improvement in the sex ratio at birth, the progress remains uneven across regions.

States with higher levels of economic development and education, such as Punjab and Haryana, have historically exhibited some of the most skewed sex ratios. This challenges the assumption that economic growth alone can address gender inequality. Instead, it highlights the role of cultural and social factors in shaping demographic outcomes.

Data from the National Crime Records Bureau also indicates a gap between reported cases and actual incidence, suggesting significant underreporting. The clandestine nature of sex-selective practices makes it difficult to obtain accurate data, further complicating policy responses.

At the same time, government initiatives such as Beti Bachao Beti Padhao have contributed to increased awareness and some improvement in indicators. However, these gains remain fragile

and require sustained efforts to be consolidated.

Overall, statistical trends reveal a complex picture in which legal and policy interventions have achieved limited success, but significant challenges remain. The persistence of regional disparities underscores the need for targeted and context-specific strategies.

## **7. Limitations of Criminal Law as a Tool of Social Reform**

Criminal law is often viewed as a primary instrument for addressing social problems, but its effectiveness is limited when dealing with deeply entrenched cultural practices. In the case of missing girls, the reliance on punitive measures under the PCPNDT Act has not yielded the desired results. This is because criminal law operates on the principles of deterrence and punishment, which may not be sufficient to alter deeply rooted social attitudes.

One of the key limitations of criminal law is its reactive nature. It addresses violations after they have occurred, rather than preventing them. In the context of sex-selective practices, this means that enforcement often comes too late to prevent harm. Additionally, the fear of punishment may drive these practices underground, making them more difficult to detect and regulate.

Another challenge is the potential conflict between reproductive rights and restrictions on sex selection. Laws must balance the autonomy of women with the need to prevent discrimination, creating a complex legal landscape.

Moreover, over-criminalization can lead to unintended consequences, such as harassment of medical professionals and reduced access to legitimate healthcare services. This may discourage compliance and undermine trust in the legal system.

Therefore, while criminal law remains an essential component of the legal framework, it must be complemented by other approaches, including education, economic incentives, and social reform, to achieve meaningful and lasting change.

## **8. Recommendations for Bridging the Gap**

Addressing the disconnect between legal prohibitions and gender imbalance requires a multi-dimensional approach. Strengthening enforcement mechanisms is a critical first step. This

includes improving the capacity of authorities responsible for implementing the PCPNDT Act, ensuring regular inspections, and leveraging technology for monitoring compliance.

At the same time, there is a need to focus on awareness and education. Community-based programs can play a significant role in challenging gender stereotypes and promoting the value of the girl child. Integrating gender sensitization into school curricula can help shape attitudes from an early age.

Technological solutions can also be used to enhance regulation. For example, digital tracking systems for diagnostic equipment can help prevent misuse and improve accountability. Data-driven approaches can enable more effective monitoring and targeted interventions.

Economic and social policies must complement legal measures. Providing incentives for families with girl children, improving access to education and healthcare, and promoting women's economic empowerment can help address the root causes of gender bias.

Ultimately, bridging the gap between law and impact requires a coordinated effort involving multiple stakeholders, including the government, judiciary, civil society, and communities. Only through such a holistic approach can the issue of missing girls be effectively addressed and gender justice be achieved.

## **Conclusion**

The persistence of gender imbalance in India, despite an elaborate statutory framework, highlights a fundamental disconnect between law and social reality. While legislation such as the PCPNDT Act reflects a strong commitment to addressing gender-biased sex selection, its impact remains limited due to systemic implementation failures and deeply entrenched socio-cultural norms. The analysis presented in this paper underscores that the problem of missing girls cannot be resolved through legal prohibitions alone.

The effectiveness of any legal framework depends not only on its design but also on its enforcement and societal acceptance. In the Indian context, weak administrative mechanisms, low conviction rates, and technological loopholes have significantly undermined the deterrent effect of the law. At the same time, patriarchal values and economic considerations continue to drive the demand for male children, perpetuating discriminatory practices.

Addressing this issue requires a paradigm shift from a purely punitive approach to a more holistic strategy that integrates legal, social, and economic interventions. Strengthening enforcement mechanisms must be complemented by efforts to transform societal attitudes through education and awareness. Policies aimed at empowering women and promoting gender equality are equally essential in creating an environment where the value of the girl child is recognized and respected.

Ultimately, bridging the gap between law and impact necessitates a coordinated effort involving the state, judiciary, civil society, and communities. Only through such a multifaceted approach can India hope to eliminate the phenomenon of missing girls and achieve substantive gender justice.

## REFERENCES

### A. Statutes & Legal Instruments

1. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, No. 57 of 1994, India.
2. The Medical Termination of Pregnancy Act, No. 34 of 1971, India.
3. The Constitution of India, 1950 (arts. 14, 15, 21).
4. The Indian Penal Code, No. 45 of 1860, §§ 312–316.

### B. Case Laws

5. Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India
6. Voluntary Health Association of Punjab v. Union of India
7. Sabu Mathew George v. Union of India
8. Suchita Srivastava v. Chandigarh Administration
9. Devika Biswas v. Union of India

### C. Government Reports & Official Sources

10. Ministry of Health and Family Welfare, *Annual Report on PCPNDT Implementation* (latest ed.).
11. NITI Aayog, *Best Practices in Beti Bachao Beti Padhao Scheme* (2020).
12. Census of India, *Census Report 2011: Child Sex Ratio Data*.
13. National Crime Records Bureau, *Crime in India Report* (latest ed.).
14. Press Information Bureau, *Sex Ratio at Birth Trends in India* (recent release).

### D. International Reports

15. United Nations Population Fund, *State of World Population Report* (2020).
16. United Nations Children's Fund, *Gender Equality and Child Protection Report*.
17. World Health Organization, *Preventing Gender-Biased Sex Selection* (2011).

### **E. Books & Academic Literature**

18. Amartya Sen, *More Than 100 Million Women Are Missing*, N.Y. Rev. Books (1990).
19. Mara Hvistendahl, *Unnatural Selection: Choosing Boys Over Girls, and the Consequences of a World Full of Men* (2011).
20. Patricia Uberoi, *Family, Kinship and Marriage in India* (Oxford Univ. Press).

### **F. Journal Articles**

21. Jha et al., *Trends in Missing Female Births in India (1981–2016)*, *Lancet Global Health* (2018).
22. Guilmoto, Christophe Z., *Sex Imbalances at Birth: Current Trends, Consequences and Policy Implications*, UNFPA (2012).
23. Das Gupta, Monica, *Selective Discrimination Against Female Children in India*, *Population & Development Review*.
24. Pande, Rohini & Malhotra, Anju, *Son Preference and Daughter Neglect in India*, Intl. Center for Research on Women.
25. Sekher, T.V., *Special Financial Incentive Schemes for the Girl Child in India*, Int'l Inst. for Population Sciences.