JUDICIAL INTERPRETATION OF THE PCPNDT ACT: BALANCING WOMEN'S RIGHTS AND THE STATE'S DUTY TO PREVENT FEMALE FOETICIDE

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ABSTRACT

[1]Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) was adopted to stop female foeticide in India. This Act attempts to strike a balance between the equality of the genders and also safeguard the girl child, as stated in [2]Articles 14 and 15(3) of the Constitution. Its jurisprudential meaning has created significant disputes with Articles 21, reproductive autonomy, privacy, and the bodily integrity of women. The following paper provides a critical analysis of the way the PCPNDT Act has been interpreted and applied by Indian courts, along with some landmark cases, including [3]*CEHAT and Ors. v. Union of India (2001),* [4]*Voluntary Health Association of Punjab vs Union of India (2013)*, [5]*Vinod Soni & Anr. v. Union of India and* [6]*FOGSI vs Union of India*. The paper contains a feminist and constitutional argument, which states that the Act, despite its good intentions, often reduces women to passive objects of protection instead of being active and bearers of rights. Comparative study of the reproductive rights models in the United States, South Korea and Nepal proves that social reform, education and empowerment can be more effective than criminalisation alone. The paper concludes that the rights-based, proportional, and intersectional approach is needed to counter the female foeticide without violating the constitutional right to prevent sex discrimination and the dignity, privacy, and reproductive freedom of women.

Keywords: PCPNDT Act, Judicial Interpretation, Reproductive Rights, Women's Autonomy, Right to Privacy.

[1] The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (India).
[2] The Constitution of India, arts. 14, 15(3), 19, 21
[3] Centre for Enquiry into Health & Allied Themes (CEHAT) v. Union of India, (2003) 8 SCC 398
[4] Voluntary Health Association of Punjab v. Union of India, (2013) 4 SCC 1 (India)
[5] Vinod Soni v. Union of India, 2005 SCC OnLine Bom 117.
[6] Federation of Obstetrics & Gynaecological Societies of India v. Union of India (2019) 6 SCC 283

INTRODUCTION

The Pre-Conception and Pre-Natal Diagnostics Techniques (Prohibition of Sex Selection) Act, 1994, is a historic law that seeks to curb female foeticide and enhance the deteriorating ratio by outlawing sex selection and regulating the prenatal diagnostic methods. It dwells on the abuse of technology such as ultrasound, which may be applied in ascertaining the sex of the foetus and abortions. The Act was established in 1994 to control the diagnostic methods, and it was later amended in the year 2003. It encompassed pre-conception methods and forbade sex selection before and after conception. It introduces under its scope all the facilities culminating in sex determination, the prescription regulations on the same, including compulsory registration, record keeping, consent and others. The primary aim of introducing this act was to prohibit sex selection abortion, and as such, this would aid in the prevention of female foeticide. The introduction of ultrasound in the late 20th century further made sex-selective abortions easier, which also led to the creation of an unequal sex ratio of sexes in some regions of the country. And the fact that these practices still exist even with economic development in India and even with the promotion of women's rights is a problematic contradiction in Indian society. Although there has been a great improvement in gender equality due to urbanisation, education and legal reforms, in most societies, there are still traditional prejudices that stipulate that sons should be given preference over daughters.

FEMALE FOETICIDE

Female foeticide refers to an unlawful procedure whereby sex is determined on the foetus, and then the embryo is aborted. These traditions are deeply patriarchal, meaning that a man is favoured over a woman because of socio-economic, cultural and historical factors, which are such as patrilineal inheritance, dowry system, as well as economic strain of raising an offspring. The practices have resulted in female infanticide and female foeticide. Sex ratio at birth (SRB) has always been an indicator of high gender prejudice, which shows female foeticide. It is approximately 105 boys to 100 girls in the natural biological ratio. Demographic research has identified high rates of male births, as pointed out by the Pew Research Centre. This disequilibrium is more pronounced in the Child Sex Ratio (CSR), which is the number of girls per 1,000 boys under the 0-6 age group. Census 2011 estimated that CSR has declined to 918 states, including Haryana, Punjab, Maharashtra and Jammu and Kashmir. Alarming disparities, prenatal and postnatal, are among the factors that have led to the decline.

AMENDMENT:

The judgment in [7]*CEHAT & Others v. Union of India* (W.P. (C) 301 of 2000), which was decided on 10 September 2003 it marked a turning point in addressing female foeticide and misuse of diagnostic tests in India. The petition was filed under Article 32 by CEHAT, MASUM, and Dr Sabu George, which highlighted the decline in the Child Sex Ratio by the 2001 Census and exposed the misuse of modern techniques despite the PNDT Act being in force in the year 1994. Supreme Court observed that there was discrimination against girl child, which was generated by dowry demand, patriarchal mindset and preference for male heirs, which created a dangerous situation where unborn girls were being aborted. The Court criticised the Central and State Governments' failure to implement the Act. No authorities were appointed at the district or sub-district levels, and clinics and ultrasound were functioning without registration. From 2001 to 2003, multiple interim orders were issued by the court directing the government to conduct a mass awareness campaign, ensure regular meetings of the CSB, which is the Central Supervisory Board. The state government was instructed to appoint Appropriate Authorities and Advisory Committees and publish reports by conducting a survey. The court strictly directed the enforcement of Section 22, which clearly prohibits advertisements of sex determination. In March 2003, the court amended the act and renamed it the *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003* (PCPNDT Act), including the pre-conception sex selection. The final order of the court directed full compliance with instructions, campaigns, publication of reports and transparency in records, monitoring of the National Monitoring Committee, etc. Judgement of this case led transformation in the enforcement of the Act, leading to ensuring that the State's duty to protect the girl child.

DEBATES IN PARLIAMENT:

The bill for the same was passed in 1994. Members from different parties agreed that female foeticide was a national crisis and that it was deeply rooted. During a debate in [8]Lok Sabha, Sushma Swaraj then a member of parliament, argued that this legislation was essential for restoring respect and dignity to a girl child. She bravely stated in her speech that society had reached a point where mothers were fearing the birth of a daughter, and the law must send a

[7] Centre for Enquiry into Health & Allied Themes v. Union of India, (2001) 5 SCC 577 (India).
[8] Sushma Swaraj, Lok Sabha Debates, Pre-Natal Diagnostic Techniques Bill, 1994.

strong message to women for their girl child. Parliamentarian further mentioned that it was not the women who were to be the targets in this act, but the medical professionals and family pressures as they took such action because of the coercion they were facing.

In [9]the Rajya Sabha during 2003, when the amendment of the act was being discussed about Brinda Karat provided feminist reading of the law, which reported that the implementation machinery transformed a protective law into a surveillance over a woman's body. She believed that gender justice cannot come by restricting women's reproductive freedoms. It should come from social structures, that is the preference for sons, the inheritance system and dowry practices, that have led to sex-selective abortions in the first place. Her debate highlighted that women needed to be empowered and not be policed.

[10]Renuka Chowdhury, who was a Minister for Women and Child Development in the 2000s that described female foeticide as a "national shame" and it was a moral failure. She stated that it was the state constitutional duty to protect the girl child and ensure gender equality. She advocated for stricter enforcement but also highlighted the awareness campaigns, community education and gender sensitisation among practitioners. It was more of a shared responsibility, and that could be attained through social transformation.

The debates in the parliament had two sides, one which was the urgent call for gender justice and the state's duty to prevent female foeticide, whereas the other side feared state paternalism and too much involvement in women's bodily autonomy. The act came into existence because of the dual impulse, which was to correct a historical wrong against women, but enacted, that treated women's as instruments of policy rather than a right-bearing individuals. Tensions continues till now.

KEY PROVISION OF THE PCPNDT ACT

Section 3A of the [11]Prohibition of Sex Selection, which was inserted through the 2003 amendment, strengthens the PCPNDT Act by strictly banning sex selection both before and after conception. The provision prohibits any person from using any technique or technology

[9] Brinda Karat, Rajya Sabha Debates, Pre-Conception and Pre-Natal Diagnostic Techniques (Amendment) Bill, 2003.
[10] Brinda Karat, Rajya Sabha Debates, Pre-Conception and Pre-Natal Diagnostic Techniques (Amendment) Bill, 2003.
[11] Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, No. 57 of 1994, §§ 3A, 4, 5, 22–23 (India*)*

for the purpose of determining the sex of the child. It talks about prenatal diagnostic tests as well as pre-conception techniques such as sperm sorting and in vitro fertilisation methods, which lead to selecting the sex of the embryo. Not only medical professionals but also to the individuals who are offering or promoting such service, this section reflects the legislature's intention to curb the deep-seated cultural preferences for sons and to prevent female foeticide.

Section 4 regulates that the Pre-Natal Diagnostic techniques procedure is performed only for medically justified purposes, such as detecting chromosomal or genetic abnormalities or certain metabolic disorders. Section mandates that these procedures can only be conducted with the written consent of the pregnant woman.

Section 5 talks about written consent and prohibiting communicating foetal sex. Provides that no person shall conduct any prenatal diagnostic procedure without obtaining the written consent of the pregnant woman in the form. There should be a declaration by a woman stating that she does not wish to know the sex of the foetus by words, signs, or any means whatsoever. It is important because it criminalises even indirect disclosure of foetal sex. It upholds the ethical medical practice by preventing any breach of confidentiality.

Section 22 of the act states that public communication and promotion of sex selection. It prohibits any person, clinic, or organisation from publishing, distributing or displaying advertisements relating to pre-conception or prenatal sex determination. It extends to all offers that provide sex determination or sex selection facilities. Violation of these may lead to three years and a fine up **to ₹10,000** for the first offence, and up to **five years imprisonment** with a fine up to **₹50,000** for subsequent offences. This section aims to eliminate the commercial and cultural aspects of sex selection and is considered as public wrong.

Section 23 is the backbone of the act as it prescribes punishments for individuals as well as institutions. A medical professional who owns, operates, or assists in conducting unlawful sex determination leading to imprisonment up to three years and a fine up to **₹10,000** for the first offence and a **fine up to ₹50,000**. It also gives powers to the State Medical Council to suspend or cancel the registration of any practitioners convicted under the act. To further add on to that, section 23(3) makes it an offence for any husband, family member or relative to compel or abet a woman to undergo sex determination. It broadens liability beyond doctors and also ensures criminal and professional accountability, ensuring that violators face consequences.

CONSTITUTIONAL DIMENSION OF THE PCPNDT ACT

Article 14 of the Constitution guarantees equality before the law and equal protection of the law. This principle is invoked to justify the state's duty to prevent discrimination against women even before birth. Female foeticide highlights that there was a denial of the right to equality, and cases such *as* [12]*CEHAT vs Union of India (2003)* recognise that the act eliminated the gender bias. It also guards the arbitrary state action, therefore licensing, inspection, and record-keeping must operate rationally, not indiscriminate harassment.

Article 15(3) grants the state to make special provisions for women and children, creating a constitutional basis for protective discrimination. It restricts private choices to secure a broader public good, which is the dignity of women. These measures are affirmative, as the Supreme Court in [13]*Voluntary Health Association of Punjab v. Union of India* (2016), the State bears a positive constitutional obligation to protect the girl child and ensure gender parity.

Article 19, which talk about freedom of speech and expression, the restriction imposed by section 22, which bans advertisements. Under 19(2), reasonable restrictions can be imposed in the interest of public order, decency, morality, or incitement to an offence. It serves as a compelling public interest that prevents violence and dignity of women.

Article 21 guarantees the right to life and personal liberty, which include reproductive autonomy and privacy, and also restriction on sex selection represents a qualified limitation on reproductive freedom which is justified to preserve the life and dignity of the female child. The right to have privacy does not include the right to choose the sex of the child, as held in the case [14]*Vinod Soni & Anr. v. Union of India,* the state's intervention is acknowledged as an attempt to balance the individual liberty with social justice and gender equality.

CASES

In the case of [15]*Voluntary Health Association of Punjab vs Union of India (2013),* which talks about the Supreme Court against female foeticide, stating that it is the worst form of dehumanisation, which is undermining the dignity of women. The implementation of the act

[12] Centre for Enquiry into Health & Allied Themes v. Union of India, (2001) 5 SCC 577 (India).
[13] Voluntary Health Association of Punjab v. Union of India* (2016) 10 SCC 265
[14] Vinod Soni v. Union of India, 2005 SCC OnLine Bom 117.
[15] Voluntary Health Association of Punjab v. Union of India, (2013) 4 SCC 1 (India)

issued detailed directions, such as the Central and State Supervisory Boards were supposed to meet every six months, and the State and District advisory to actively monitor violations. It was instructed to seize and seal illegal machines and report them to the State Medical Councils for suspension or cancellation of licenses. Maintaining statutory forms and sending copies to authorities and while manufacturers cannot sell ultrasound machines to unregistered centres. Emphasised conducting an awareness campaign. Directed courts to dispose of pending PCPNDT cases within six months, and the judgment was affirmed as welfare legislation under Article 15(2).

The Supreme Court of India *in* [16]*CEHAT and Ors. v. Union of India (2001)*, held that a defendant should not be held liable if they meet the requirements set by the law. The Court of India was very active in regard to the implementation of. The PCPNDT Act. These petitioners included NGOs. and health activists, claimed that although the enactment of the law had occurred, it was nonetheless insufficient. PCPNDT Act, female foeticide remained unaffected because of weak implementation and ignorance. The Court directed the Central and State Governments to make up Central and Supervisory Boards by the states in regard to the implementation. the Act. Establishment of the right officials at. it was required to ensure that the district and sub-district levels were mandated. frequent check-ups and enforcement of the Act. The Court stated that there is a necessity to tightly register and monitor. Genetic counselling centres, genetic laboratories, and all. clinics that perform ultrasound. The Court directed the Public awareness to be done by Central and State Governments. educational campaigns about the legal and the Act itself. social impacts of female foeticide. These directions has made the implementation of the PCPNDT much stricter. Counselled and emphasized the proactive attitude of the judiciary in addressing the issue..

In [17]*FOGSI vs Union of India*, the Federation of Obstetricians and Gynaecologists of India questioned what is described as burdensome and the interpretation of the act. FOGSI argued that clerical mistakes in Form-F were being criminalised leading to the spread of fear and resentment among doctors. It was considered over-policing and the actual people who promoted it were not being held liable. The court was sympathetic to the medical community but held that the decision of the government stating that compliance was necessary to curb

[16] Centre for Enquiry into Health and Allied Themes (CEHAT) & Ors. v. Union of India & Ors., (2001) 5 S.C.C. 577 (India)
[17] Federation of Obstetrics & Gynaecological Societies of India v. Union of India (2019) 6 SCC 283

deep-rooted socio-cultural bias. Judicial interpretation has reached where doctors ' rights became part of the legal debate.

The state's power in combating female foeticide, starting from CEHAT (2001) and later on Voluntary Health Association (2013) has repeatedly interpreted the act in purposive manner, meaning upholding wide powers of inspection, seizure, sealing of machines and record keeping. The judiciary has clearly put public interest over individual autonomy, and the fight against female foeticide is framed only as a statutory obligation, not as a mandate under Articles 14 and 15(3). Declining of child sex ratio as a "social emergency", highlighting how courts have taken strict action against these issues.

Article 21 of the Constitution guarantees the right to life and personal liberty, giving women the right to make reproductive choices. In the case [18]S*uchita Srivastava v. Chandigarh Administration (2009)***,** the Supreme Court acknowledged that reproductive autonomy is an important aspect of personal liberty. The bench in the case [19]***Justice K.S. Puttaswamy v. Union of India*** talked about the right to privacy, also including bodily autonomy, stating that the state cannot intervene in personal choices. A woman's right to choose whether she wants to bear a child must be protected from moral policing. Article 21 is not merely to avoid abortion but to bring into bodily self-determination and dignity. The concept of bodily integrity implies that individual control over their own body cannot be given to social morality. The act aims to curb abortions, such as registration, inspections and surveillance intrude upon women's privacy. Feminist scholars argue that women are reduced from autonomous subjects to objects of state regulation and are reduced them correction rather than agents of choice. The state also has a duty to protect women and children under Article 15 (3), which allows the state to make special provision for them, leading to the prevention of female foeticide, which is not merely a goal but a constitutional obligation to gender justice. In the case [20]*Voluntary Health Association of Punjab v. Union of India* (2013), the Supreme Court described the female foeticide as a "crime against humanity" and directed the strict enforcement of the PCPNDT Act, thereby giving importance to the protection of the unborn child over reproductive choice. It is a moral and social duty to prevent such evil practices, upholding the Constitution.

[18] Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1
[19] Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1
[20] Voluntary Health Association of Punjab v. Union of India* (2016) 10 SCC 265

COMPARATIVE STUDY OF INDIA AND THE USA

The Indian "balancing test" of constitutional right is very different from that of the United States "strict scrutiny" framework that has brought reproductive rights. The system of both countries aims to regulate the limits of state power over individual liberty, but they are fundamentally very different. United States the Supreme Court has developed that the strict scrutiny test as the highest standard of judicial review but under this doctrine law if infringed upon rights such privacy, bodily autonomy and equality the state has to follow certain things checking that it is compelling government interest and it is narrowly achieved through least restrictive means. Test was brought forward in the case [21]***Roe v. Wade*** (1973) where the women's right to terminate their pregnancy within the first trimester was recognized as a right to privacy under fourteenth amendment. India harmonizes individual autonomy with collective social welfare. India Supreme Court acknowledges that fundamental nature or reproductive autonomy and declares as state responsibility to protect vulnerable groups under article 15(3). This method justifies individual freedom with a legitimate social objectives eliminating gender based discrimination.

FEMINIST VIEWPOINT

Feminist scholars critique the judicial interpretation of the PCPNDT Act limits the women's reproductive liberty for their "own good" or for the "good of society". Paternalism in theory refers to government interfere in individual autonomy on the belief that individual is capable of making rational decisions. The act exemplifies by subordinating women's as a collective moral imperative preventing female foeticide. The act does not only on medical practitioners but also on pregnant women by imposing blanket on determination the law proceeds with that women are weak actors incapable of fighting societal pressure from family. This approach from feminist standpoint infantilizes women making treated as victims rather than decision makers. Instead of empowering women for fighting against coercion state responds by withdrawing information. This targets discrimination that is the technology rather than focusing on patriarchy, dowry practices, and son preferences state ignores these factors.

PCPNDT Act often reinforces a binary between "good mother" and "bad mother" court always upholding enforcement rely on celebrating "dignity of motherhood", "the sanctity of women"

[21] Roe v. Wade (1973) 410 U.S. 113

and the duty to preserve the girl child. Women's aligns with vision of nurturance and sacrifice but who seek information, autonomy, or privacy are portrayed as threats to social morality. It transforms motherhood into a public function where women body is projected as a site for desirable citizens rather than private domain. Scholars argue that it is the reproductive decision making in the guise of moral protection.

PCPNDT ACT VS MTP ACT

The Medical Termination of Pregnancy Act recognizes abortion as a matter of healthcare and autonomy permitting termination only when a person is suffering from mental health, contraceptive failure and foetal abnormalities. State trusts women to make decision of terminating a pregnancy and yet denies access to information about the sex of the foetus. This is a striking contradiction the state trusts a women to make decision acknowledging their capacity to access the information about the sex of the foetus. The sex selection is treated as moral evil that justifies overriding autonomy, privacy and self-determination. Choices of women are only approved till they are aligned with the state approved outcome and the feminist criticizes that it is a form of conditional autonomy where liberty exists only on boundaries and are drawn by moral beliefs.

[22]*Vinod Soni vs Union of India (2005)* talk about judiciary endorsement of paternalism. Bombay High Court held that right to choose sex of one's offspring does not fall within the ambit of article 21 and that female foeticide is a "social disease." Sacrificing individual autonomy for social morality. The court failed to apply proportionality where information was least restrictive means to achieve a goal.

PRACTICAL AND ETHICAL IMPLICATIONS OF THE ACT:

Three decades of existence of the PCPNDT Act, but it continues to face low conviction rates and ineffective enforcement across states. The Ministry of Health and Family Welfare (Annual report 2023) has recorded more than 5,200 prosecutions under this act, but only 750 convictions a rate of only 14%. Further, on National Inspection and Monitoring Committee Report, 2022, noted that 80% pending cases are delayed due to inadequate lapses. In *Dr. Priya Balasubramaniam v. State of Maharashtra* [23]in the Bombay High Court, quashed proceedings

[22] Vinod Soni v. Union of India*, AIR 2005 Bom 145
[23] Dr. Priya Balasubramaniam v. State of Maharashtra *(2021 SCC OnLine Bom 1079)*

were quashed against a gynaecologist, stating that the clerical errors in Form F cannot amount to an offence unless related to sex determination. *Dr Nitin Pandey v. State of M.P.*[24] the proceedings were delayed for five years and had failed to collect material evidence.

The harassment of doctors and radiologists for minor infractions. In *Dr Mukesh Rathod v. State of Maharashtra*[25] the court observed that a law cannot be turned into a tool of professional prosecution courts directed authorities to differentiate between deliberate violation omissions. Radiologists face license suspension, court proceedings and confiscation of machines and creating a chilling effect of the medical profession. Patterns demonstrate over policing affects cooperation pushing doctors away from the system they support. The paper work including Form F and submission of monthly reports have distorted the bureaucratic approach has distorted the act. In 2021 parliamentary committee defined the system "paper trail obsession" has transformed into moral crusade against patriarchy.

"Beti Bachao, Beti Padhao" are central to the act of social messaging that often recasts women as reproductive instruments of national morality. Theorists argue that it objectifies women and does not consider them decision makers. [26]Flavia Agnes (2012) protects the girl child from women rather than with women, ignoring that coercive families and not individual choice. The law only targets doctors and clinics but does not confront family coercion and patriarchal decision-making, which is the root of the evil practice.

The [27]*National Family Health Survey* reported that sex ratio at birth has improved 929 females per 1,000 males as compared to 919 in the 2011 Census this shows that there was reduction in sex selective practices. [28]*Sample Registration System (SRS)* Statistical Report shows increase to 934 females per 1,000 males reflecting growth but if it is seen state wise it is in Kerala (951), Chhattisgarh (961)**,** and Odisha (948) there is positive impact and whereas Haryana (918)**,** Punjab (914)**,** and Gujarat (921) remain below the Nation's average.

According to [29]*National Crime Records Bureau (NCRB, 2023)* annual convictions remain

[24] Dr. Nitin Pandey v. State of M.P. *(2022 SCC OnLine MP 1453)*
[25] Dr. Mukesh Rathod v. State of Maharashtra *(2019 SCC OnLine Bom 2003)*
[26] Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India (Oxford Univ. Press 2012).
[27] Ministry of Health & Family Welfare, Annual Report 2022–23 (Gov't of India).
[28] Sample Registration System (SRS), Statistical Report (2022).
[29] National Crime Records Bureau, Crime in India Report 2023.

below 100, with **more than 4,000 pending trials** across various states. In [30]Sabu Mathew George vs Union of India (2018) the judiciary addressed that online dimension of sex selection directing to remove advertisements which promotes prenatal sex determination. The technological regulation must go hand in hand with constitutional rights to privacy and autonomy. Moral policing undermine fundamental rights under article 21.

From the Delhi High Court to the Bombay High Court, advocate for gender-sensitive governance rather than fear-based enforcement, providing gender-sensitive education in rural and semi-urban regions, giving financial help to the families and reforms in medical governance to ensure fairness and proportionality.

It expresses that all women experience reproductive control. Caste, class and religion shape women's vulnerability to coercive family practices and state surveillance. Dalit, Adivasi and non-working class individuals lack access to safe reproductive healthcare and face scrutiny under the act. Upper-class families engage in sex selection with the help of private clinics and escape the scrutiny. [31]Kimberlé Crenshaw and [32]Nivedita Menon have highlighted how women are treated as a homogenous category and fail to address the oppressions. Structural inequality limits the choices of a rural woman who undergoes sex-selective abortion due to family and then she is held liable rather than being recognised as a victim of patriarchal pressure.

The Indian government has introduced digital monitoring system which stores all the information sonography data and patient details which intends to detect illegal practices it raises concerns about surveillance, consent and privacy. Intimate reproductive data is stored without the consent of the women. Indirectly the state is controlling the women's choices.

[33]Digital Personal Data Protection Act, 2023 in the Section 4 (2) states that health data of a patient can only be accessed when lawful purpose and with safeguard which would be aligning with privacy principle. Any real time monitoring must comply with protections and ensuring that reproductive surveillance. [34]European Union General Data Protection Regulation (GDPR, 2018) considers health and genetic data as subject of importance and treats it "special category

[30] Sabu Mathew George v. Union of India *(2018) 3 SCC 229*
[31] Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex, 1989 U. Chi. Legal F. 139.
[32] Nivedita Menon, Seeing Like a Feminist (Zubaan 2012).
[33] Digital Personal Data Protection Act, No. 22 of 2023, INDIA CODE (2023).
[34] General Data Protection Regulation, Regulation (EU) 2016/679, 2016 O.J. (L 119).

data" which is subjected to strict safeguards. The [35]UNESCO Universal Declaration on Bioethics and Human Rights (2005) provides autonomy, privacy and consent to reproductive governance. The system is surveillance heavy and is required to align with global ethics India is required to shift from state centric to rights-respecting.

[36]South Korea in 1990s faced one of the world's worst sex ratios at birth that is around 850 females per 1,000 males but through comprehensive social reform which include media campaigns, incentive for daughters and equality measure the ratio normalized to 1,003 females per 1,000 male. South Korea did not emphasis on criminalization but cultural transformation that is changing people perspective through education, urbanization and welfare access. India can also draw this by providing tax benefits and scholarships.

Nepal's Safe Motherhood and [37]Reproductive Health Rights Act (2018) legalized abortion up to 12 weeks emphasizing women's consent and privacy. The National Strategy to End Gender-Based Sex Selection (2020) promotes education and targets anti-discrimination programs the dual framework reproductive right coupled with social awareness show the can co-exist together. India should understand that law alone cannot change patriarchal norms but it requires cultural and economic changes. Education, social security and inheritance play an important role. India should adopt a intersectional sensitivity, safeguards and empowerment of women.

RECOMMENDATIONS

Firstly, the Court is required to promote mechanism that invites the voices of women's groups, medical professionals and data ethics in monitoring processes. It also ensures that decisions reflect lived experiences and not assumptions. Secondly, the judges recognise the nature of legal enforcement. It requires training in gender theory and bioethics, highlighting patriarchy in law and culture. Thirdly, applying a one-size-fits-all mode that interprets each case by balancing the state's duty to prevent female foeticide. Fourthly, the proportionality test is central to reproductive rights cases. "Sex selection" definition under Section 2(o) of the act creates confusion as there is no distinction between diagnostic use of the medical test to sex-

[35] Universal Declaration on Bioethics and Human Rights, UNESCO, art. 5 (2005).
[36] Korean Statistical Information Service (KOSIS), Gender Ratio at Birth, 1980–2020 (Republic of Korea Statistics Bureau, 2021).
[37] Ministry of Health & Population, National Strategy to End Gender-Based Sex Selection 2020–2030 (Gov't of Nepal, 2020).

determination test. Punishment should be given according to mistakes, fines or warnings for small ones, and for grievous matters, punishment should be given. Consent should be given for any data that is being uploaded by the medical officers so as to protect women's privacy. Special benches or fast-track courts can handle these cases at a quick pace compared to the other normal courts. Proper education and awareness should be spread in the very backward places so as to avoid any kind of discrimination against women. Also, preventing the illegal practice of female foeticide. Rather than surveillance, the government should conduct audits.

CONCLUSION

Judicial interpretation of the PCPNDT Act reveals that the challenges of protecting the girl child and also ensuring women's reproductive autonomy have to be balanced, but in reality, it ends up in state enforcement at the expense of privacy and choice. The court is not required to act as moral guardians but as a protector of constitutional freedoms. Saving the daughters should go hand in hand with empowering women to make informed choices. Courts' implementation often focuses on compliance and punishment, ignoring privacy and consent concerns. For example, in the case *Voluntary Health Association of Punjab v. Union of India* (2013), it was emphasised on aggressive enforcement, ignoring women's rights. Further on it is pointed out that protective laws often control women's bodies, as mentioned by the feminist scholars. The surveillance can make women feel policed rather than protected. The law should account for social realities such as caste, class and family pressure and put more importance on education, empowerment and awareness. Future of PCPNDT Act must be guided by constitutional morality and following values of dignity, equality and liberty, and it requires the judiciary to ignore paternalism and adopt rights-based interpretation of the act.