The Usurpation of PCPDNT Act by Radiologists

(Source: http://www.hfea.gov.uk/pgd-sex-selection.html)
LEAD ESSAY:

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The Usurpation of PCPDNT Act by Radiologists

The objective of Pre-Conception & Post-Natal Diagnostic Techniques, 1994 (PCPNDT Act) was to reduce gender-based sex selection through regulation of the use of ultrasound machines as it is the one device which can effectively determine the sex of the child and therefore is the point at which sex selection truly becomes an option. It came into force after a PIL filed by Sabu M. George, Centre for Enquiry into Health and Allied Themes (CEHAT) and the Mahila Sarvangeen Utkarsh Mandal (MASUM). However it was only after the intervention of the Supreme Court in 2001 that the Central Supervisory Board (CSB), a monitoring panel, was established in the health ministry which was necessary for the implementation of the Act. Even after over a decade the biggest flaw of the legislation is inadequate implementation. Lately there has been visible unrest among radiologists who have been claiming of harassment under the ‘draconian’ provisions of the PCPNDT Act.

As the radiologists, who have control over the ultrasound machines that can reveal the sex of the foetus, obsess over filling of forms the larger objective the PCPNDT Act sought to achieve has become hazy. The radiologists who should actually be aiding the government in effective implementation of the Act by extending their support are on the contrary demanding a dilution of the Act. They have forgotten that the main reason for the birth of this Act in 1994 was because professionals were not following medical ethics rather they were perpetrating sex selection by exploiting advancement in technology.

The Indian Radiology and Imaging Association, which has more than 20,000 radiologists as its members, had stated that it, will go on a nationwide indefinite strike in September this year to protest against the PCPNDT Act. Although this strike was deferred reports suggest that the National Steering Committee on PCPNDT Act may consider a pan India protest from November 16, 2016 if an ‘urgent meeting’ of the central supervisory board to consider views of the radiologists is not convened.¹

It can be gleaned that the most pressing concern of the radiologists is equation of ‘minor clerical errors’ in filling of the forms enlisted under the PCPNDT Rules, 1996 to sex determination. Consequent to this the inspecting authority can take action against the radiologists as per the Act, which could also result in incarceration.

In April this year, the Minister of Health and Family Welfare, Shri J.P. Nadda and Minister of Women and Child Development, Smt. Maneka Gandhi during a meeting with the Central Supervisory Board had assured the radiologists that the following demands would be looked into:

- Clerical errors in Form F/not wearing apron/non-display of notice board/not keeping handbook on PNDT Act should not be equated with sex determination
- Punishment should be in grade (in line with offence)
- There should be standardized implementation of PNDT Act throughout the country
- Ultrasound machine should not be sealed and medical qualifications should not be cancelled on minor clerical error

The Gazette notification dated June 5, 2012 regarding restriction to radiologists for visiting more than two ultrasound centres in a district and intimation of change of radiologists and equipment one month in advance should be de-notified, suitably amended.

Renewal of PNDT registration should not be denied until and unless case is proved in the court of law.

Amongst the above the one demand that must be carefully scrutinised is that of decriminalization of ‘clerical errors’ which would entail decriminalization of missing signatures and not filling or incomplete filling of on the forms enlisted under the PCPNDT Rules, 1996. The suggestion is to keep record-keeping errors non-indicative of culpability.  

Here, we need to consider two important questions:

**Will decriminalization of record keeping stop the harassment of the radiologists by authorities?**

Often reprimanded and harassed for incomplete or inadequate filling of forms, particularly Form F, the radiologists’ demand reveals that if filling this form appropriately is decriminalized they will not be harassed. This argument, that by converting the criminal offence of improper record keeping into a civil one, the radiologists will not suffer harassment, is rather simplistic.

As per Section 17A of the PCPNDT Act pervasive powers are granted to the ‘Appropriate Authority’ appointed under the Act to monitor its implementation. For instance such an authority can issue search warrant for any place suspected to be indulging in sex selection techniques. As the ambit of ‘suspicion’ in this provision is at the discretion of the authority it seems unlikely that the harassment radiologists want to escape by demanding decriminalization of record keeping will be achieved by the particular demand that they have made.

If the argument of the radiologists is that they are being singled out on the basis of nitty-gritty’s in form filling there is no reason why they could not face continued harassment, now on the basis of unfounded suspicions of the Appropriate Authority.

Their concern rather should have been of effective monitoring of the authority or restriction on their pervasive powers. This does not surface in their demands on the contrary they emphasize on dilution of record keeping norms.

**Will decriminalization of record keeping cause dilution in the implementation of the PCPNDT Act?**

For sure, yes.

The contentious Form F maintains a very important record of pregnant women coming to the Genetic/Ultrasound Clinic or Imaging Centre to ensure no misuse of technology for sex selection as strictly as possible. The Supreme Court while deciding a writ petition filed by a NGO Voluntary Health Association of Punjab in 2006 recognised the importance of maintaining records. In its guidelines it directed all Genetic Counselling Centers, Genetic Laboratories, and Clinics to

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maintain all statutory forms provided under the Rules, failing which appropriate action should be taken by the authorities concerned.3

Form F in particular records details regarding history of genetic/medical disease, indication for pre-natal diagnosis, previous complications in invasive and non-invasive procedure and medical termination of pregnancies. A perusal of this collation of details in Form F is indicative of whether the ultrasound technology was used for any purpose other than determining an abnormality in the foetus or investigating the health of the mother. These details help in striking down all possibilities of sex selection. The larger point that is being made here is that if the PCPNDT act is amended as per the demands of the radiologists there will be a definite dilution of the legislation at hand.

The PCPNDT Act needs to be strictly interpreted and implemented to show positive results

It is ironic that the PCPNDT act which is criticised for being poorly implemented is now being considered for an amendment that will further dilute its implementation. In a study conducted by a Pune-based NGO in four districts of Western Maharashtra, some respondents stated that filling in details in Form F is a more time consuming process rather than a difficult one.4 It is important to evaluate whether the dilution of the PCPNDT Act consequent to the demand of the radiologists is commensurate with the need for it in the first place.

As is claimed by the radiologists, if they are being harassed for not wearing aprons or not keeping a copy of the PCPNDT act then that issue must be tackled separately and not kept within the same bracket of clerical errors in Form F. Since it is only record keeping that will help and had helped in nabbing offenders under the PCPNDT Act in the past, as the likelihood of authorities catching a radiologist indulging in sex determination practice red handed, is slim.

The PCPNDT act without stringent paperwork will be redundant as these forms will not be considered credible evidence to prove culpability any more. The discrepancies in the filling of forms push the burden on the doctor to prove his/her innocence. The scheme of the Act is such that once it is established through faulty or incomplete form filling that there is a possibility of use of sex determination techniques, the presumption that the pregnant woman was compelled by her husband or any other relative to undergo pre-natal diagnostic technique sets in. The language of the statute was purposely strict so that offenders cannot find loopholes. And thus, record keeping forms an important foundation of culpability under the Act.

Have we judged the PCPNDT Act, to be irrelevant, too soon?

Understanding that the PCPNDT Act is an important legislative intervention, at the other end of the spectrum is the fact that only 206 convictions have so far been secured under the Act as per reports submitted by States/ UTs.5

When a law is introduced to initiate a radical change that is contrary to the socio-cultural climate, it is bound to take time to show positive results. Essentially the PCPNDT Act is attempting a mammoth task of subverting a deep set patriarchal mindset of preference for sons embedded in a complex socio-cultural history of India. Specific research on

3 Voluntary Health Association of Punjab versus Union of India and Others, WP (Civil) No. 349 of 2006
violence against women and girls and gender based violence in Punjab and Haryana has revealed that ‘female deselection is not just a matter of gender based violence but a much deeper and complex social issue involving culturally entrenched gender norms’.  

In light of this fact the only two decades old PCPNDT Act has indeed produced decent results. One of the biggest advantages of the Act is that it has helped in identification of the ultrasound centres through registration. In the year 2000, there were just 600 registered ultrasound centres in India whereas the number stands at 53,000 today. The strict implementation of the PCPNDT Act has positively resulted in improving the sex ratio at birth in Haryana. Sabu M. George, the well known activist on the basis of his PIL in the Supreme Court the PCPNDT Act was enacted in 1994 and recently has been successful in obtaining directions from the Supreme Court to stop advertisement of sale of online sex determination kits, agrees that improvement in the child sex ratio of Punjab, Haryana and Maharashtra has been achieved due to the effective implementation of the PCPNDT Act. He further states that a denial of the impact of the PCPNDT Act in Maharashtra is responsible for its setback in gaining a positive response in other states.  

A recent paper analysing the impact of PCPNDT Act on sex ratio at birth by looking at disaggregated Census data of more than half a million Indian villages and 1,500 towns over two time periods 1991 and 2001 has concluded that the legislation has improved the child sex ratio. The paper finds that the Act may have resulted in at least an additional 106,000 surviving girls aged 0-6 years in rural India. Even though the magnitude of this change may be small, its significance and future value if PCPNDT Act is consistently enforced cannot be undermined.

The Ministry of Health and Family Welfare in its proposed amendments to the PCPNDT Act, released in March this year, suggested gradation of offence under Section 23 of the Act. While first time contravention of the Act or Rules would attract a penalty of fifty thousand and three years imprisonment; not wearing an apron with the correct name plate while conducting a diagnostic procedure, not putting a disclaimer for sex selection at a prominent place in the clinic and not possessing a copy of PNDT Act would attract a fine of thousand rupees for the first time. However this clearly has failed to satisfy the radiologists.

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Activists against these demands have opined that radiologists are resisting regulation by way of this Act as the ultrasound business is a lucrative industry.\textsuperscript{12} It is the legal framework of the PCPNDT Act that keeps the doctors in check, preventing them from exploiting technology for monetary gains while defeating the larger social purpose.

**The current narrative is being dominated by a strong radiologist lobby which has polarised the debate to focus on their harassment under the PCPNDT Act.**

In the absence of strong voices that speak on behalf of pregnant women who are forced to undergo sex determination and subsequent gender biased abortions, it is to be hoped that the Ministry of Health and Family Welfare and the Ministry of Women and Child Development will live up to its mandate and will not buckle under pressure. There has been a visible improvement of sex ratio at birth from 883 in 2001-03 to 906 in 2009-11 not only nationally but also in states like Haryana (807 to 854), Rajasthan (855 to 878), Uttar Pradesh (853 to 875) and Maharashtra (887 to 893) where female foeticide has traditionally been rampant\textsuperscript{13}, according to Sabu M. George, a study of census data showed that 72 lakh girls would have been killed in the womb in the past decade.

Clearly, the improved sex ratios tell us that the PCPNDT Act has made significant contributions in reducing the number of female foeticides. Considering this the need of the hour is to strengthen the implementation of this Act so that these improvements can be replicated at a much larger scale. The government must extend support towards the PCPNDT Act by allocating adequate funds and bolster it with the government’s much publicised ‘Beti Bachao Beti Padhao’ program to turn into a success over the course of time. What it definitely does not require is decriminalization of an effective basis of evidence gathering against offenders by giving in to the demands of the radiologists. For the PCPNDT Act to become a success it essential that the government has faith in its capability as a sound legislative intervention aimed to improve society’s attitude towards gender based violence through sex selection.

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Headlines

India is moving towards a flawed GST

(Live Mint, October 24, 2016)

India began to reform its tax system in 1991 when almost nine out of every 10 rupees flowing into the national treasury came from indirect taxes rather than direct taxes. One of the explicit goals of economic reforms was to raise the contribution of direct taxes in the total kitty. There was good reason to do so. Most large economies depend more on direct taxes because they are progressive while indirect taxes are regressive. One of the many hypocrisies of Indian socialism was that it was built on one of the most regressive tax systems in the world.

Read More: http://www.livemint.com/Opinion/ggV7zpCZgQGLQMety42mwJ/India-is-moving-towards-a-flawed-GST.html
Economy

Is it the right time to switch home loan interest rate from base rate to MCLR?
(Sunil Bhawan, The Economic Times, October 21, 2016)

As an existing home loan borrower, if you are expecting a reduction in interest rates in line with the recent Reserve Bank of India (RBI) repo rate cut, you could be disappointed. For those who had taken loans after July 1, 2010, but before April 1, 2016, the loans are linked to the lending bank's base rate. And for most of these borrowers, the home loan interest rate is upwards of 10 per cent.


Tobacco, smoking are injurious to your interest rates
(Vimuck Dave, Business Standard, October 21, 2016)

According to the bank, officials of the bank personally meet the borrowers and their family before approving loan to ensure the borrower has no addiction and if found, the borrower is charged additional interests on advances.

"As part of our 'No Addiction' drive, we are taking one per cent extra interest from the borrowers if he or she has any tobacco (gutka etc) or smoking habits.

And this actually works. "Many borrowers have abandoned their year-old addiction and their family members too are happy about it," said Shamjibhai Khunt, chairman of the Bank.


RBI Governor Urjit Patel cuts interest rates, bats for growth in first monetary policy
(Saloni Sukla, The Economic Times, October 4, 2016)

Reserve Bank of India Governor Urjit Patel cut interest rates by a quarter point as forecast by economists citing softening inflation outlook and retained growth forecast but said outlook is improving with good monsoon. All six of the monetary policy committee unanimously voted in favour of the rate cut.

"The Committee expects that the strong improvement in sowing, along with supply management measures, will improve the food inflation outlook,” RBI said. "The sharp drop in inflation reflects a downward shift in the momentum of food inflation – which holds the key to future inflation outcomes – rather than merely the statistical effects of a favourable base effect.”

**EDUCATION**

**Education In India: Proselytization Poses As Policy**  
(Chittaranjan Kaul, *Fair Observer*, October 22nd, 2016)

Governments the world over have sought to control what passes for education in schools. Many have called schools an institution for brainwashing young minds so they subscribe to some particular idea of a nation. Others, more charitably, call it an exercise in nation-building, especially necessary for “young” nations to help build a sense of togetherness. They usually mean the same thing.


**HEALTH**

**UK county signs MoU for quality healthcare in India**  
(Parsun Sonwalker, *Hindustan Times*, October 18th, 2016)

The Indo-UK Institute of Health programme is considered one of the world’s largest healthcare initiatives. It aims to transform the provision of quality healthcare and medical education services across India. The programme will deliver a staged rollout linked to the Smart City project across 100 cities and involve the setting up of 11 Indo-UK Institutes of Health Medicities along with 89 Indo-UK Clinics.


**URBAN**

**Making cities inclusive**  
(*The Hindu*, 24th October, 2016)

India’s ambition to harness science and data for orderly urbanisation is articulated in a set of policy initiatives, chiefly the Smart Cities Mission and the Atal Mission for Rejuvenation and Urban Transformation. There is little evidence so far that these could achieve the scale needed to address the contradictions of building 21st century cities for 20th century industrial technologies. Today, these conflicts are reflected in the lack of adequate parks and public spaces, suitable land for informal workers who offer services in a city, egalitarian and non-polluting mobility options and new approaches to low-cost housing.

Read More: [http://newsite.thehindu.com/opinion/editorial/Making-cities-inclusive/article15726437.ece](http://newsite.thehindu.com/opinion/editorial/Making-cities-inclusive/article15726437.ece)  

**Smart Cities: Here’s how Nagpur, Chandigarh, Puducherry could evolve**  
(Rohaun Sharma, *The Financial Express*, October 24, 2016)

With the Smart Cities mission well under way, get ready for a slice of Paris in India! Three cities—Chandigarh, Puducherry and Nagpur—have attracted interest from the French who have proposed developing them as Smart Cities. Strong on aesthetics as well as energy conservation, the French model of development would also focus on the user at the centre of development. French Consul General to India Yves Perrin says, “My concept of Smart Cities is based on at least four pillars, namely, energy, transport, water and waste management. These basic things have to be implemented first. Only then can cities be made smart.”

GLOBALIZATION

Land grabbing intensity doubled in last four years, says report
(Jitendra, Down to Earth, October 13, 2016)

Around the world, 26.7 million hectares of agricultural land have been handed over to foreign investors since the year 2000. Hence, these investors possess approximately 2 per cent of the arable land worldwide, or roughly the equivalent to the total area covered by the United Kingdom and Slovenia together. This finding comes from a new report titled ‘Land Matrix Analytical report II: International Land deals for Agriculture for Agriculture’. It was released on October 11.

**GENDER**

Centre’s stand on triple talaq based on gender justice: Ravi Shankar Prasad  
(Nistula Hebbar & Krishnadas Rajagopal, *The Hindu*, October 17, 2016)

“We don’t see it (UCC) just as part of the manifesto. Article 44 is part of our Constitution enjoining UCC. The framers of our Constitution were big leaders like Pandit Nehru, Sardar Patel, Maulana Azad, Dr Ambedkar; 99 per cent of the founding fathers were of the Congress school of thought and they were clear that we must steadily progress towards a UCC,” the Law Minister said. “Any need for an observation on the UCC from our side will emerge only when there is a report from the Law Commission, based on the widest public consultation. It is not fair for some groups to say they will not give their views. It is for groups that boycott to reflect on the kind of language they are using with regard to women’s rights in the 21st Century.”

Date Accessed: 17.10.2016

**Muslim Women: Historic Demand for Change**  
(Jyoti Punyani, *The Economic and Political Weekly*, October 15, 2016)

A number of Muslim women and their organisations are part of the national debate on ending the system of triple talaq. Triggered by the public interest litigation currently being heard in the Supreme Court, this represents a major change from the past when individuals like Shah Bano went to court raising issues around marriage and divorce procedures for Muslim women. What remains unchanged is the position of the ulema and the All Indian Muslim Personal Law Board.

Date Accessed: 17.10.2016

**Women in Villages Pay a Big Price for Working Away from Home**  
(*The Huffington Post*, October 13, 2016)

Despite their role of fulfilling family financial responsibilities, women who migrate for work face stigmatization at home and in their communities. After they return from urban destinations such as the National Capital Region, they are often stereotyped as "Delhi-returned", a label that is loaded with such a negative connotation that it makes it difficult for them to find good husbands.

Date Accessed: 17.10.2016

**SOCIAL JUSTICE**

**Govt plans full social security for workers**  

The Union government plans a massive social security coverage scheme for workers, including those in the unorganised sector. The benefits are to include all the branches under the International Labour Organization’s Social Security (Minimum Standards) Convention, 1952 (No 102). These cover preventive and general practitioner care, benefits for sickness, unemployment, old age, employment injury, maternity, invalidity and some others.

The idea is that about a dozen laws would be merged into a single law or code.

Officials in the labour and employment ministry told Business Standard the guidelines were being framed. The government will identify a threshold income, beyond which citizens have to pay for the benefits. The workforce will be divided into three parts -- a section which will pay, a second one which can partially pay and a third layer for which the government will pay.
Society

Date Accessed: 17/10/2016

ELDERLY

While targeting poverty in all forms, don’t forget the elderly

(Mala Kapur Shankardass, The Asian Age, October 17, 2016)

Persistent poverty of older people, like that of other groups including women, is a denial of human rights and its eradication takes more than just improving the material well-being, which no doubt should be our foundation to end poverty everywhere.

However, there is now realisation that poverty is invariably closely intertwined with humiliation and exclusion and this, we increasingly see in growing elder abuse and domestic violence incidents as well in other shades of violence against the disadvantaged around us. So long as people, old and young, living in poverty continue to suffer discrimination, humiliation and exclusion, their fundamental human rights will continue to be abused and their access to basic needs will be limited.

Read More: http://www.asianage.com/india/while-targeting-poverty-all-forms-don-t-forget-elderly-846
Date Accessed: 17.10.2016
INTERNATIONAL AFFAIRS

Stuck in the Terrorism Groove
(T. P. Sreenivasan, The Hindu, October 24, 2016)

The BRICS Goa summit was turned into a battle of wits between India and its guests as to how far the group could go in identifying itself with India in isolating Pakistan. Moreover, India made no secret of its motivation and made it clear to its guests that the way to India’s heart was by targeting Pakistan. Given the fact that no one wants to create enemies in such diplomatic conclaves, many of them, particularly the Chinese, may have felt uncomfortable to be caught in an awkward situation. Eventually, China acted as Pakistan’s proxy in the discussions in Goa.


MIDDLE-EAST

Battle for Mosul May Be Long and Hard, But Can Shape or Break Iraq Further
(Samia Nakhoul, Michael Georgy and Stephen Kalin, The Wire, October 24, 2016)

Mosul, Iraq’s second-biggest city, is where ISIS leader Abu Bakr al-Baghdadi declared his Sunni caliphate in 2014, after his alliance between millenarian Islamists and veteran officers from the disbanded army of Saddam Hussein roared back into Iraq from bases they set up in the mayhem of Syria’s war. Five Iraqi army divisions melted away before jihadis numbered in hundreds.

Read More: http://thewire.in/75360/battle-for-mosul-can-be-long-and-hard-can-shape-or-break-iraq-further/