

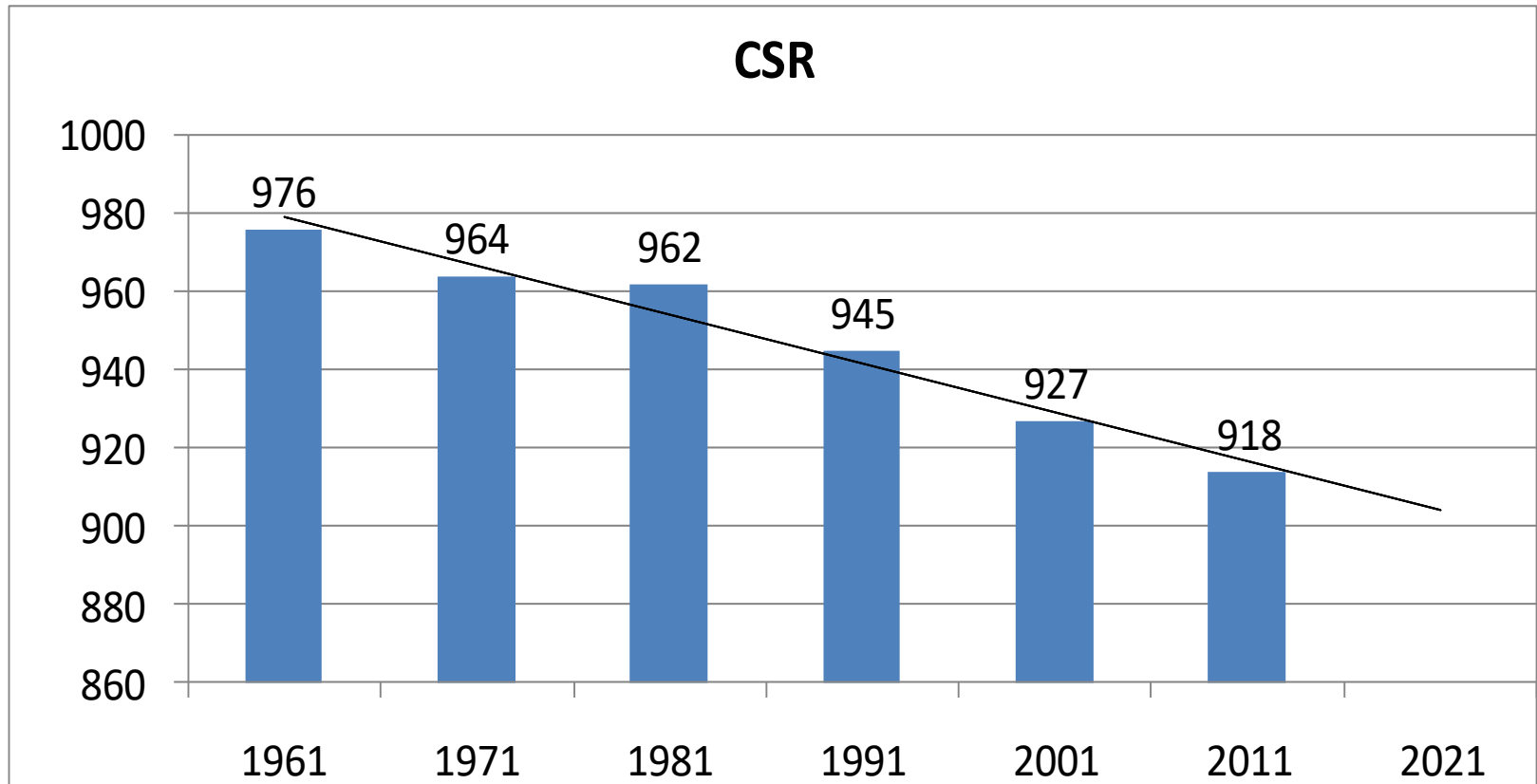


Jurisprudential and socio-cultural foundation of PCPNDT Act

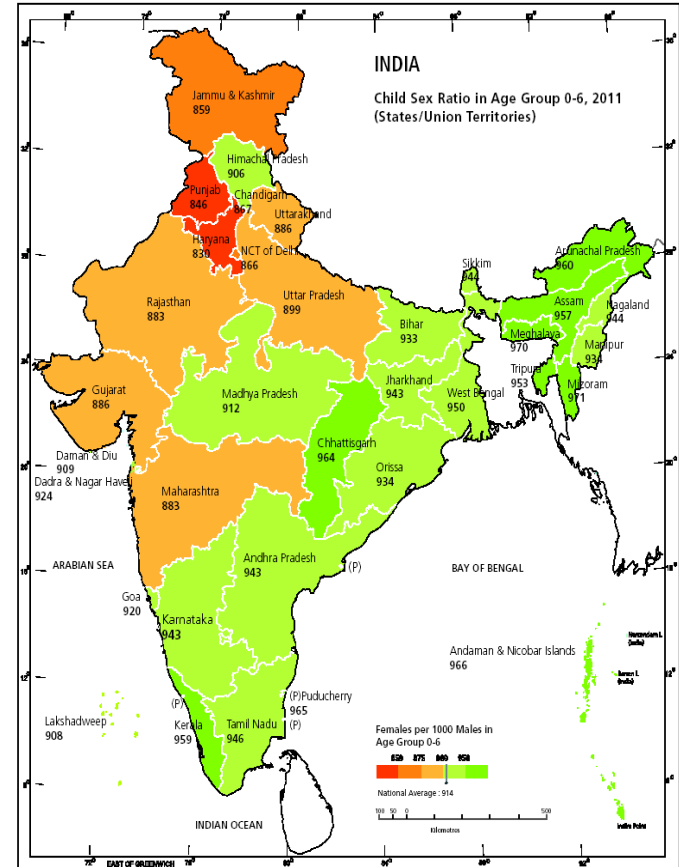
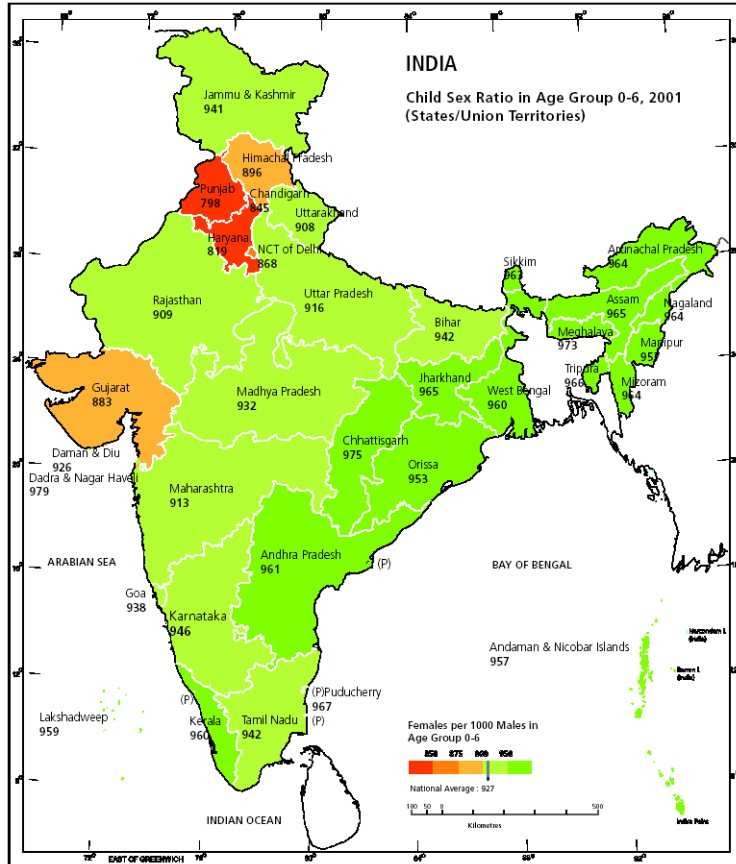
India's missing daughters : Data and Trends



Trends in Child Sex Ratio in India



Child Sex Ratio in India 2001-2011



Trends in CSR as per census 2011

- 24 out of the 35 States and UTs showed a decline in CSR between 2001-2011.
- 13 out of 35 States and UTs have CSR lower than the National average.
- CSR ranged from 972 in Arunachal Pradesh to 834 in Haryana.
- Punjab, Haryana, J&K, Delhi, Chandigarh, Rajasthan, Uttrakhand, Gujarat, Maharashtra have CSRs lower than 900.

Trends in CSR as per census 2011... Contd

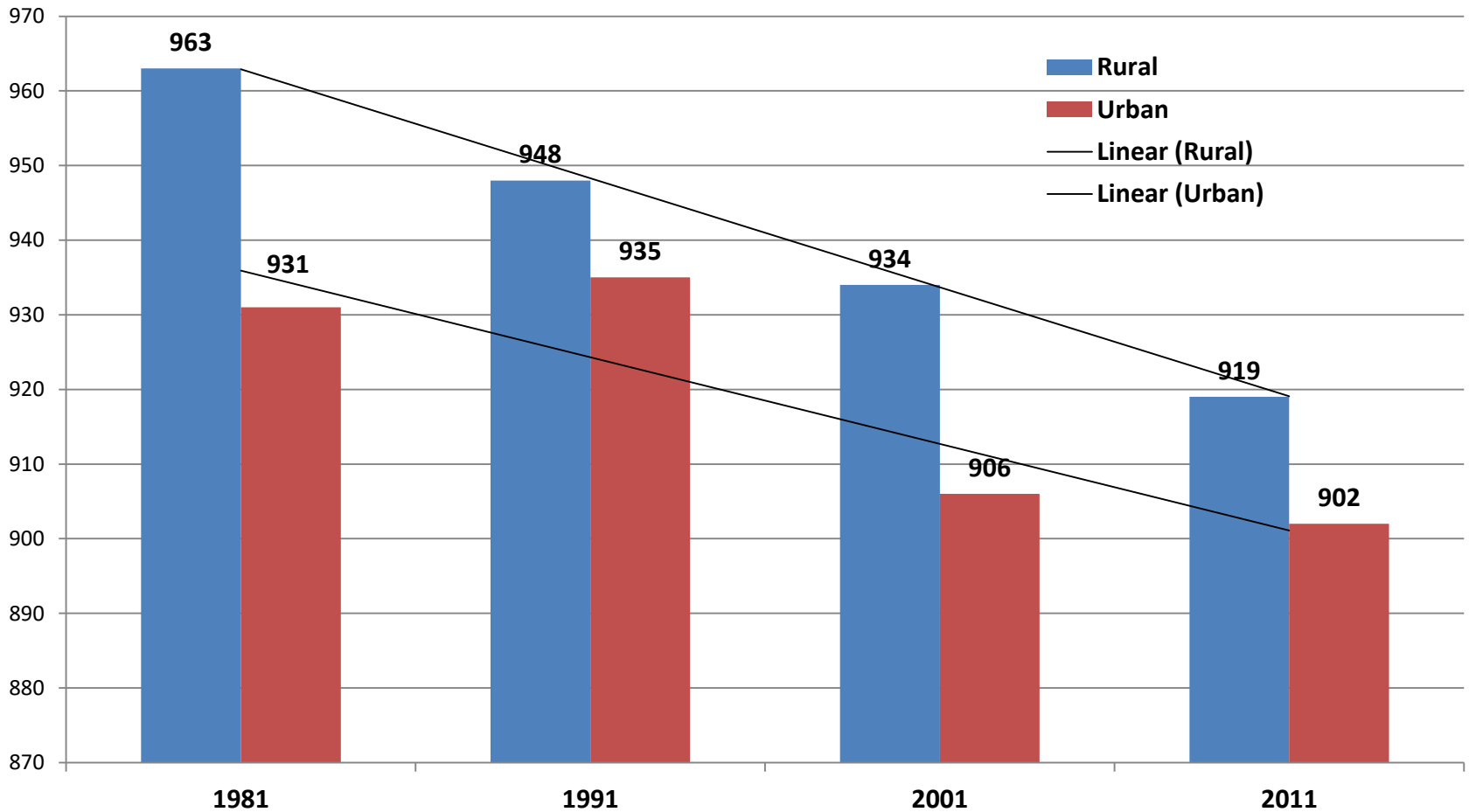
- 26 Districts recorded more than a 50 point decline in CSR in last decade
- 16 Districts witnessed a decline of 40-49 points in CSR.
- 36 Districts experienced a decline of 30-39 points in CSR.
- Declining trends have spread from urban areas to rural and tribal areas.
- There has been a spread around areas of low sex ratios.

CSR and variations by socio- economic indicators

- Urban areas have worse child sex ratios than rural areas. [Sex ratio by residential status](#)
- Prosperous regions have worse sex ratios. Wealthier households tend to sex select more.
- Women with no education have better sex ratios as compared to women with some education. (Guilmoto, 2009)
- CSRs are normal where women have an important and visible role in the economy.

Sex ratio by residential status

CSR and variations by socio- economic indicators



Estimates of missing girls per year

India- 4.56 Lakhs an year over twelve years. (SRS data)

3.6% of female births out of total female births did not occur due to GBSS.

2001-2006 - 5.83 Lakhs per year; 2007-2012 3.29 Lakhs per year

Conditional sex ratios



- There is no significant difference in SRB for first child.
- If first born is a girl, SRB declines dramatically for the second child to 836. If first two are girls it falls to 768 for third child.
- If first born is a boy, SRB for second child remains close to normal average.
- This phenomenon is more predominant in educated and rich people.

Why do daughters go missing?



Understanding the practice

Gender is a social construct

Norms, expectations, behaviors, roles for men and women in society are prescribed

Women have less access to productive resources, assets, decision-making, mobility

Unequal power relations between men and women

Subordinate status for women making them vulnerable

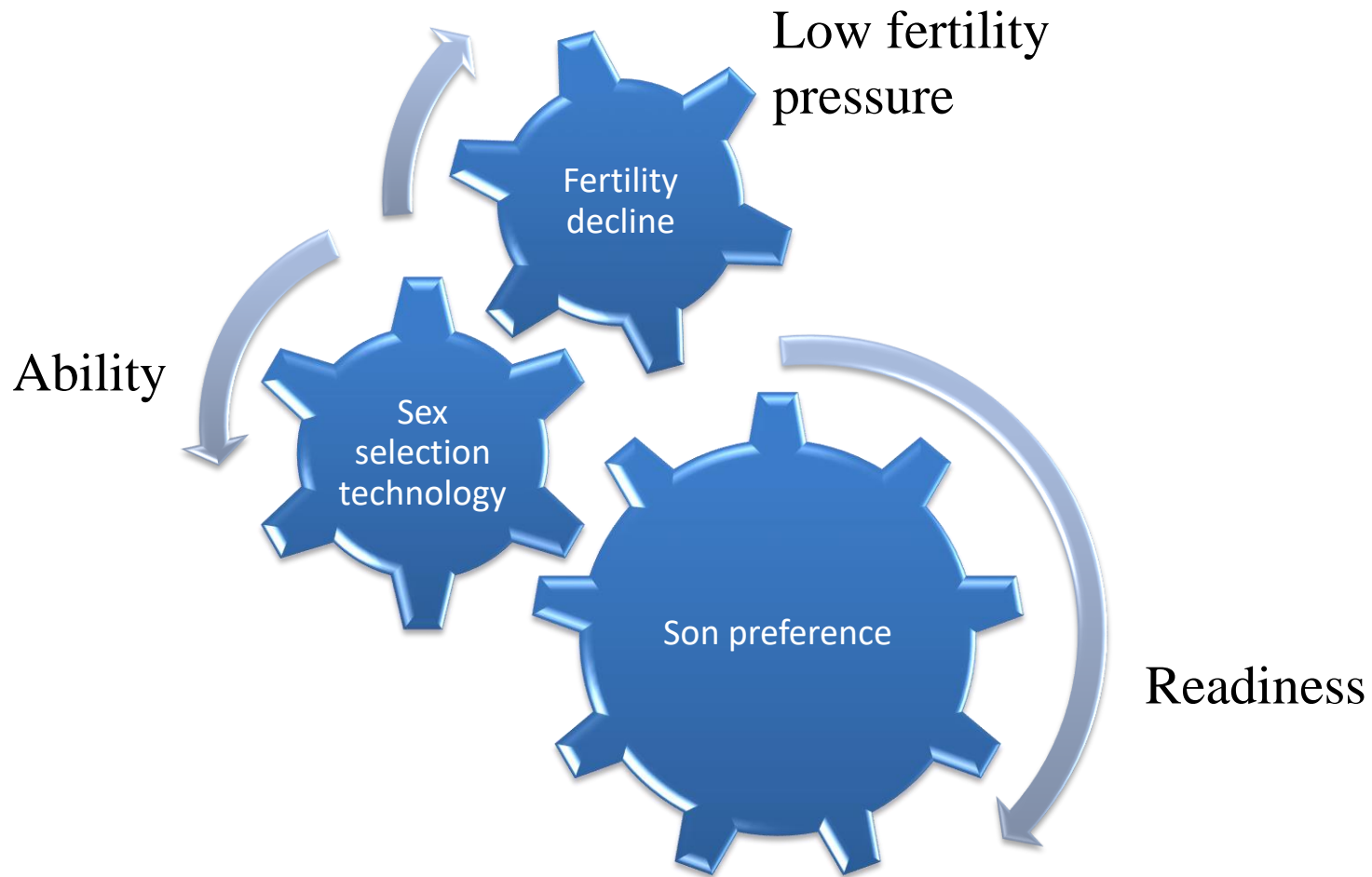
Unequal treatment, discrimination, denial of rights in education health inheritance etc.

All forms of discrimination to maintain imbalance

Causes for sex selection

- Patriarchal mindsets that prefer boys over girls
 - Dowry
 - Family lineage
 - Old-age support
 - Last rites
 - Patrilocal marriages
- Desire to have small families but not without sons
- Two child norm imposed by certain State Governments combined with strong son preference
- Easy accessibility to technology for sex determination at affordable prices.

Three preconditions of modern sex selection



In a desperate attempt to have a son



After the accidental death of her only child, an 18-year-old son, Shweta was desperate for another one. On the advice of a 'baba', she had a concoction of peacock feathers, gold ash and other such ingredients known to be laced with unhealthy arsenic levels. She did have a son, but due to a fusion deformity he was stillborn.

In a desperate attempt to have a son



Bani has conceived 11 times till date. While five of these ended in miscarriages, six of her daughters are alive. Feeling she is too poor to opt for any sex-selective techniques, she continues to try for a male child even though she has been medically advised against it.

Breaking the myth – do sons really care for parents in old age



- Phoolwati and Dharam had celebrated the birth of their sons with grandeur, relieved that *burapa me sahara hoga*. - Even though both their sons live in the same village, neither have looked in on them in the last 20 years. They have now resigned to the unthinkable future of living in their daughters house

Consequences of declining sex ratios



Implications of sex ratio decline

- Increase in violence against women and sex related crimes. (rape, polyandry, abduction and bride trafficking)
- Impacts health of women –physical, mental and reproductive.
- Increase in sexual exploitation of women.
- Marriage squeeze and increase in male bachelorhood

Implications visible over generations and across geographical locations

Polyandry- *All in the family*



In Dang district, Gujarat-Rajasthan border, 8 brothers of the same family are married to Sarup, in the centre. Getting a wife is extremely difficult in this region— Sept. 2001, India Today

Trafficking- *Courting luckless lady*



20-year old Chandni's neighbours brought her 11 months ago from Orissa to 'help' her settle in Delhi. Instead, she was married off to Jabbar, a 70-year old widower with six daughters who lives in a village in Haryana with his 60-year old bachelor brother. Already seven months pregnant, Chandni is being treated well for now, as her husband has found out that she is carrying a son.

Physical and mental violence- *Street Spirit*



After six daughters, when Kalpa got pregnant for the seventh time, her husband threw her out of the house on the grounds of her being a girl-bearing wretch. She gave birth to her seventh daughter on the streets, who died soon after. Kalpa now shares quarters with mentally unstable women at a short-stay shelter. Her husband has remarried since then.

Jurisprudence in relation to PCPNDT Act



Constitutional provisions related to gender equity and equality

- Constitution of India emphasizes on equality of status and opportunity. PCPNDT Act draws its origin and power from the Constitution.
- Fundamental rights provided by the Constitution
 - Article 14- Equality before law and protection against discrimination
 - Article 15- Prohibition of discrimination on any basis including on the basis of sex
- Directive Principles of State Policy: Uphold human dignity and welfare of society especially women and children.
- Fundamental Duties: Renouncing all practices derogatory to the dignity of women.

International Conventions addressing sex selection

- **Article 5 of CEDAW**- Eliminate practices and prejudices that are based on the idea of inferiority or superiority of either of the sexes.
- **ICPD Program of Action** calls upon Governments to eliminate all forms of discrimination against girl child and the root causes of son preference which result in unethical practices like female infanticide and pre- natal sex selection.
- **Beijing Platform for Action** Calls for the elimination of all kinds of harmful practices including pre natal sex selection

The Law

- Maharashtra first State to enact Maharashtra regulation of PNDT Act-1987
- PNDT Act was passed in 1994
- Act was amended in 2003 to include Pre conception techniques (PCPNDT Act)



Key Milestones

- PNDT Act was passed in 1994
- Supreme Court passed an Interim judgment in 2001 for strict implementation of Act based on PIL.
[CEHAT Vs Union of India \(2001\)5 SCC 577 ;](#)
[CEHAT Vs Union of India \(2003\)8 SCC 398 ;](#)
[Gaurav Goyal –Vs- State of Haryana Civil Writ Petition...;](#) [Hemant Rath Vs Union of India AIR 2008 Ori 71](#)
- PNDT Act amended in 2003- Pre conception and Pre natal Diagnostic Technique Act (PCPNDT)

Cases challenging Constitutional validity of PCPNDT Act

- Constitutional Validity of the Act challenged but upheld [Vinod Soni Vs Union of India](#)
[2005 Cri.L.J. Bom. 3408](#) ; [Vijay Sharma Vs Union of India](#) [AIR 2008 BOM 29](#)

CEHAT Vs Union of India (2001)5 SCC 577

PIL filed under Article 32 of the Constitution by CEHAT, MASUM and Dr Sabu George

Supreme Court passed several orders and directions from time to time for proper and effective implementation of the Act, with all vigour and zeal it deserves. S.C. also gave directions:

- For appointment of Appropriate Authorities.
- For amendment of the Act in view of emerging technology.
- To review and monitor the implementation of the Act.
- To create public awareness against the practice of sex-determination and sex-selection. [Key Milestones](#)

CEHAT Vs Union of India (2003)8 SCC 398

SC again expressed grave concern about discrimination against girl-child prevailing in India. It opined that the reasons for this are:

- The mind set which still favours a male child against a female.
- The misuse of modern science and technology preventing the birth of Girl Child by sex determination.

Hence, SC gave further directions for effective implementation of the Act:

- Activation of CSB to monitor and review implementation of Act by States
- States to appoint AAs by notification
- States to publish list of AAs
- States to create awareness against the practice of sex determination [Key Milestones](#)

Gaurav Goyal –Vs- State of Haryana

Civil Writ Petition No 15152 of 2007

PIL filed for conducting inquiry into illegal elimination of female fetuses on basis of news of 250 female fetuses recovered from a septic tank in Buala nursing home, Pataudi, Gurgaon, Haryana

High Court after referring to the object of the Act, and Constitutional Principles, stressed on Constitutional obligation of the States to implement the Act. HCs gave directions to :

- Hold Administrative enquiry and examine role of officers responsible for Act implementation.
- Although CSs were notified as AAs in 1997, notification was not published in official Gazette until 2009 – To be done with immediate effect. Non publication of notification adversely reflected upon official machinery of State Government given responsibility of implementing an important legislation. [Key Milestones](#)

Hemant Rath Vs Union of India and Ors

Civil Writ Petition No 9596 of 2007

PIL filed under Article 226 seeking directions for effective implementation of Act on basis of news regarding the recovery of skeletons, skulls and body parts of infants close to nursing homes and clinics

High Court after referring to the object of the Act, and Constitutional Principles, stressed on Constitutional obligation of the States to implement the Act. HCs gave directions to :

- Appoint Appropriate Authority and Advisory committee.
- Further directed the committee to take strict measures to implement provisions of the Act. [Key Milestones](#)

Vinod Soni Vs Union of India

2005 Cri.L.J. Bom. 3408

Constitutional validity of the Act was challenged on the ground that it violates Article 21 of Constitution - the right to personal liberty of a citizen of India, guaranteed under Art. 21 of the Constitution, includes the liberty of choosing the sex of the child.

Bombay High Court held that:

- Right to bring into existence a life in future with a choice to determine the sex of that life can not in itself be a right.
- Right to personal liberty cannot include liberty of choosing sex of the child
- Right to life under Article 21 cannot include right to selection of sex, whether pre-conception or post-conception. [Cases challenging Constitutional validity of PCPNDT Act](#)

Vijay Sharma Vs Union of India

AIR 2008 BOM 29

In this writ petition Constitutional validity was challenged on the ground that it violates the principle of equality enshrined in Article 14 of the Constitution.

Petitioners argued that couples having children of one sex should be allowed to make use of pre natal or pre conception diagnostic techniques to have a child of the opposite sex.

The High Court after elaborately dealing with the object, reasons and provisions of the Act held that:

- Sex selection is against the spirit of Law and Constitution.
- It affects the dignity of Women and undermines their importance.
- It insults and humiliates womanhood.
- It violates woman's right to life. [Cases challenging Constitutional validity of PCPNDT Act](#)

Thanks