

## AN ANALYSIS OF SEX SELECTIVE ABORTION IN INDIA: ITS LAWS AND TRENDS

*Saloni Gupta & Mahak Paliwal*

Symbiosis Law School, Pune

*In a land where sex selective abortion prevails and where the society is swallowed by the myth surrounding the birth of a girl child, we bring to light the adversities inflicted upon a girl even before she is born, violating her basic human right. Section 3 of the Medical Termination of Pregnancy Act, 1971 legalizes abortion under certain conditions in India. Section 3A of the Pre Conception and Pre Natal Diagnostic Techniques Act, 1994 prohibits the act of sex selection by doctors or patients. We also provide recent case laws and judgments governing the same. This paper seeks to identify the extent to which implementation of PNDT Act, 1994 and MTP Act, 1971 has influenced sex ratio all over India. The authors aim to discuss whether these stringent laws have had any impact on sex ratio. Based on the recent Census of India and the National Family Health we give a detailed analysis of the current scenario regarding sex determination in India.*

**Keywords:** PCPNDT, MPT, Sex determination, Sex ratio

### Introduction

The just-released data from the National Family Health Survey-4 (2015-15) certainly grabs the world's attention on the dark side of India's demographic change -- a falling ratio of girls to boys. Amartya Sen, Nobel Prize Laureate coined the term "missing women" which rightly defines the growing demographic deficit of women. Declining sex ratio depicts the adversity prevailing towards the girl child. If we look at the census it is quite evident that even though there has been a favorable growth in sex ratio from 933 in 2001 to 943 in 2011, the child sex ratio has shown an unfavorable growth i.e. from 927 in 2001 to 918 in 2011.<sup>1</sup> Despite the drastic increase in economic growth in the recent years, gender inequality remains a major affair. None the less this skewed sex ratio is one of the greatest threats to our contemporary civilization. India, among other developing nations is infamous for low a literacy rate and sex ratio. The World Economic Forum Gender Gap Report 2015 has ranked India at 108 out of 145 countries. According to this report, India's rank has increases by 2 or 3 ranks each year in the last decade.<sup>2</sup> This shows that India's sex ratio has reached "emergency proportions" and requires thorough review and change. It also indicates how deeply gender inequality is integrated in our country.

This paper focuses on the PCPNDT Act, 1994 that primarily banned doctors from revealing the sex of the fetus to the parents and MTP Act, 1971 which made abortion legal in India. We observe the salient features, penalties and remedies provided by the law.

<sup>1</sup> Census of India 2001, 2011

<sup>2</sup> World Economic Forum Gender Gap Report 2015  
<http://reports.weforum.org/global-gender-gap-report-2015/>

We also observe statistics from the censuses conducted in the past and also examine the trend shown in the previous National Family Health Surveys (NFHS). Moreover, we give a detailed analysis of the latest NFHS-4 and study its impact on the Indian demographic. To our knowledge, one of the ways in which our paper is unique is that we identify the myths surrounding the depleting the sex ratio and enumerate on it causes.

## 1. Objectives

- To shed light on the Indian laws governing sex determination and sex selective abortion in India with the help of recent landmark cases and judgments.
- To measure the statistical trends in sex ratio, which is a major indicator of family welfare and health at national and state level.
- To study the myths that are strongly hold in India and bring the material facts and problems it might lead to light.
- To recommend future directions to be taken to combat the prevailing situation.

## 2. Myths

### A. Reality

One of the major causes governing the increasing gap between the number of females per thousand male or the decreasing number of girl child are the Myths surrounding girls in society. Myths have always played an important role in the Indian society right from the ancient era and have always led to destruction.

Similarly, various myths contributing to the declining sex ratio involves the belief that if a boy child is born he will take the family name forward whereas if a girl child is born she would eventually have to marry and settle in her husband's house. The very made up belief that it is only a boy child who can take the family name forward is contradicted by the fact that the world has always remembered those who have done something which makes people remember them or worth remembering. We are born in a country where women's like Rani Lakshmi Bai, Lata Mangeshkar, Sania Mirza, Mary Kom, P.T Usha and Kalpana Chawla are born. They are all women's and there is no suspicion on the extent to which they have taken their family name forward.

Also, People strongly believe that a boy or a male child would act as an old age security for them and they won't have to worry about his physical security whereas if it's a girl child it would impose a very big liability on them whereby they will have to worry about her physical security due to the increasing number of rapes and mishaps happening with the girls nowadays. Rapidly increasing number of old age homes in the country and the increase in number of registrations or applications for the same is good enough a point to contradict the view. Physical security of the girl child is always made an issue due to the increasing number of rapes especially in the recent years. It is believed that if a girl child is born she might become a victim of social abuses like rape and eve teasing because of which eventually

family will have to suffer and face societal constraints whereas in reality there are several significant cases which shows the physical abuse that the boys have to go through. Hence, more than physical security it is the societal constraints which debar them from giving birth to the girl child. Dowry is another major concern for huge masses. They consider it as a burden. However, when we talk about the current scenario, it is quite evident that people's perspective has changed with each generation. Today's Generation is very much against this system and several strict laws have been made to deal with the same. Talking about last rights, media which is the fourth pillar of our democracy can be of great helpfulness to contradict this view. Very often we see daughters performing the last rights.

Hence, none of myths prevailing in the society is not far from reality.

## **B. Consequences**

The rapidly increasing sex ratio would certainly curtail the much needed growth leading to various early marriages, whereby people will start marrying their children at a very early stage which would act as a hurdle to much needed upbringing and awareness regarding various aspects of the society.

Declining sex ratio is leading to increase in violence against the women's rapidly. Day by day the no. of cases relating to sexual harassment at work place, rape, kidnapping, murder, dowry death, domestic violence and many other kind of violence against women are registering speedy growth. If the condition continues to be the same for a longer period of time we would very soon be struck in a condition where no prospect of growth would be seen.

This is not the only imbalance causing a lot of destruction. Very often we come across newspaper headlines being loaded with the cases of bride trafficking. Business in brides is booming in north-west India as a result of female foeticide. Also, the women bought and sold are often trapped in lives of slavery and abuse. In one of case that happened in thriving city of Gurgaon, near Delhi the facts involved a women being shared by 7 brothers. The reason behind the same was a dearth of young women in the village for the marital relation.<sup>3</sup>

It has been seen that populations with more number of males remain at risk of social unrest and their also exists a risk of polyandry.<sup>4</sup> Female feticide is rampant because people bitterly oppose the laws which demand equal rights for both girl and a boy child. Various other common problems faced by the country due to the increasing sex ratio involve Women's being treated as slaves. Though quiet a improvement can be seen in the sex ratio of the

---

<sup>3</sup> Anu Anand, India's Bride Trafficking Fueled by Skewed Sex Ratios, The Guardian, Dec, 2014  
<https://www.theguardian.com/global-development/2014/dec/17/india-bride-trafficking-foeticide>

<sup>4</sup> Singh D, Kumar A, Vij K, Skewed Sex Ratio In Punjab-A Demographic Catastrophe, Department of Forensic Medicine, Govt. Medical College, Chandigarh, Vol 2, 2004

recent years condition of our country is getting worst day by day. It is high time government must intervene or take some tremendous steps.

### 3. Laws & Judgements

*The Medical Termination of Pregnancy Act-* This Act provides for the termination of certain pregnancies by registered medical practitioners. It was enacted by the Parliament in tin 1971.<sup>5</sup> The Act aims to improve the maternal health scenario by preventing large number of unsafe abortions and consequent high incidence of maternal mortality & morbidity. It was the first act in India to legalize abortion services and promotes access to safe abortion services to women. It also offers protection to medical practitioners who otherwise would be penalized under sections 3015-316 of the Indian Penal Code.

#### (i) Objectives

- It aims to regulate and ensure access to safe abortion care and defines ‘when’, ‘where’ and under what circumstances abortions are permissible.
- It provides for termination of certain pregnancies by a registered medical practitioner.

#### (ii) Salient Features

- Section 1 of the act defines guardian, Lunatic and minor and registered medical practitioner.
- Section 3 lays down provisions that allow abortion by a registered medical practitioner as follows:
  - This section provides that doctors may not be held liable if he participates in an abortion if it’s in accordance with the law.
  - An abortion can only take place if the length of the pregnancy is between twelve and twenty weeks.
  - It can also take place if the pregnancy involves a risk to the life of the mother or if there is risk of the child being born with physical or mental abnormalities.
  - If the pregnant woman is below 18 years of age or is a lunatic, an abortion cannot be done on her without the consent her guardian.
  - Consent of the pregnant women is essential for the termination of her pregnancy.

---

<sup>5</sup> The Medical Termination Of Pregnancy Act, 1971

- Section 8 of the said act talks about the protection that is granted to the medical practitioner when the action is taken in good faith. No suit for other legal proceedings shall lie against any registered medical practitioner for any damage caused likely to be caused by anything which is in good faith done or intended to be done under this act.

*Pre Conception-Pre Natal Diagnostic Techniques Act, 1994-* In response to the introduction of ultrasound scanning in India in the 1980s, the national government passed this piece of legislation making determination of fetal sex illegal. This act provided for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of their misuse for sex determination leading to female foeticide.<sup>6</sup> The PNDT Act prohibited the use of diagnostic methods to diagnose the sex of an unborn child.<sup>7</sup>

Recently, PNDT Act and Rules have been amended keeping in view the emerging technologies for selection of sex before and after conception and problems faced in the working of implementation of the act. Certain directions by the Supreme Court were given after a PIL was filed in 2000 by CEHAT and Others, an NGO on slow implementation of the Act. These amendments have come into operation with effect from 14th February, 2003.<sup>8</sup>

(i) Objectives

- Prohibition of sex selection in the country.
- Regulation of prenatal diagnostic techniques for detecting the chromosomal abnormalities or genetic metabolic disease or haemoglobinopathies<sup>9</sup> or sex linked genetic diseases or congenital anomalies or any other abnormalities or diseases as may be specified by the Central Supervisory Board.
- Also, the act puts emphasis on prevention of such techniques which are used for the purpose of sex determination for female foeticide.

---

<sup>6</sup> Pre Conception-Pre Natal Diagnostic Techniques Act, 1994

<sup>7</sup> Arindam Nandi and Anil B. Deolalikar, Does a Legal Ban on Sex-Selective Abortions Improve Child Sex Ratios? Evidence from a Policy Change in India, April, 2011

<sup>8</sup> Dr. Prativa Panda, Female Foeticide in India, University Law College, Utkal University, BBSR- 4, Vol 5, Issue 2, Feb, 2016

<sup>9</sup> It is a kind of genetic inherited single-gene disorder.

(ii) Salient Features

- Section 3 of the Act talks about the regulations of genetic counseling centres, genetic laboratories and genetic clinics. Also, it involves sub section 3A which deals with the prohibition of sex selection whereby any specialist or team of specialist in the field of fertility is allowed to conduct or aid in conducting the sex selection and sub section 3B which deals with provisions related to prohibition on sale of ultrasound machines, etc., to persons, laboratories, clinics, etc which are .not registered under the Act.
- Section 4 (2) deals with the abnormalities for the detection of which Pre -Natal diagnostic techniques can be used, such as :
  - Chromosomal abnormalities;
  - Genetic metabolic diseases
  - Hemoglobinopathies;
  - Sex-linked genetic diseases or;
  - Congenital anomalies.
- Sec 4(3) deals with the circumstances or the conditions under which diagnostic techniques can be used:
  - Age of the pregnant woman is above thirty-five years;
  - The pregnant woman has undergone of two or more spontaneous abortions or foetal loss;
  - The pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
  - The pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
  - However, the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6.
  - The Act also provides for the constitution of a Central Supervisory Board to monitor and regulate this act in the country. it also lays down rules for appointment of its members, their eligibility, meetings of the board and disqualification.

- It makes it mandatory of Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic to get a certificate of registration.
  - It must be noted that the central and the state supervisory board will have representatives of woman welfare organizations, obstetricians, social scientists as well as medical experts like gynecologists and radiologists as the Appropriate Authority.
- (iii) Registration of Genetic Counseling Centers, Genetic Laboratories and Genetic Clinics:

No person shall open any Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic or any other technology capable of undertaking determination of sex of fetus after the commencement of the PNDT Amendment Act, 1994 unless such centre, laboratory or clinic is duly registered under the Act.<sup>10</sup>

- (iv) Certificate of registration:

The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made there under and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration as the case may be and every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.

- (v) Offences and Penalties

If any person is found advertising for the pre-natal and pre-conception facilities in the form of any wrapper, document or advertises through the internet or through the medium of any other electronic or print media he can be imprisoned for up to three years and a fine of Rs. 10,000. Also, if any of the medical geneticist, gynecologist, registered medical practitioner or any other person who owns a genetic counseling centre, a genetic laboratory or genetic clinic where test is conducted can be imprisoned for up to three years of imprisonment and is required to pay Rs. 10,000. Further if he commits any subsequent offence then he can go up to Rs. 50,000 and imprisonment up to seven years. Any person who seeks to aid sex determination for the purpose, other than mentioned in Section (2), through any of the techniques with the help of any of the clinic or laboratory might have to face an imprisonment for up to three years and be required to pay Rs. 10,000 and for any subsequent aid a compensation amounting Rs. 50,000 and an imprisonment for up to five years.

**Landmark Judgments-** The Preconception and Prenatal Diagnostics Techniques (Prohibition of Sex Determination) Act 2003, with Rules made there under is an act to safeguard the girl child. The Courts have delivered judgments which indicate that the PC-

---

<sup>10</sup> Supra note 10

PNDT Act is actually a whip to penalize those indulging in sex determination and to serve as a deterrent to others. Some of the landmark cases involve-

*Centre For Enquiry Into Health And Dr Sabu George v Union of India and others*<sup>11</sup>

A petition, was filed and it was inter alia prayed that as the Pre-natal Diagnostic Techniques contravene the provisions of the PNDT Act, the Central Government and the State Governments be directed to implement the provisions of the PNDT Act (a) by appointing appropriate authorities at State and District levels and the Advisory Committees; (b) the Central Government be directed to ensure that Central Supervisory Board meets every 6 months as provided under the PNDT Act; and (c) for banning of all advertisements of pre-natal sex selection including all other sex determination techniques which can be abused to selectively produce only boys either before or during pregnancy.

Supreme Court of India directed all the State Governments/Union Territory administrations to create public awareness against the practice of pre-natal determination of sex and female feticide through advertisements in the print and electronic media by hoardings and other appropriate- ate means.

*Qualified Private Medical Practitioners and Hospitals As- sociation Vs State of Kerala*<sup>12</sup>

In the aforementioned case there was a common prayer for a declaration that laboratories and clinics which do not conduct pre-natal diagnostic, test using ultrasonography shall not come within the purview of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (and for a direction to the respondents not to insist for registration of all ultrasound scanning centers irrespective of the fact as to whether they are conducting ultrasonography, under the Act, 1994.

It was declared that laboratories and clinics which do not conduct pre-natal diagnostic, test using ultra sonography will not come within the purview of the Pre- Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.<sup>13</sup> A similar view was taken in the case of *Malpani Infertility Clinic Pvt. Ltd. and Others Vs Appropriate Authority, PNDT Act and Others*<sup>14</sup>

*Vinod Soni and another Vs Union of India*<sup>15</sup>

By this petition, the petitioners who are married couple, seek to challenge the constitutional validity of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 (hereinafter referred to Sex Selection Act of 1994). The petition contains basically two challenges to the enactment. First, it violates Article 14 of the Constitution and second, that it violates Article 21 of the Constitution of India. In order to decide the case reliance was placed on supreme court's judgment of *Shantistar Builders*

---

<sup>11</sup> AIR 2003 SC 3309

<sup>12</sup> 2006 (4) KarLJ 81

<sup>13</sup> Supra note 10

<sup>14</sup> AIR 2005 Bom 26

<sup>15</sup> 2005 (3) MhLj 1131



*v. Narayan Khmalal Totame.*<sup>16</sup> It was held that the Right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself to be a right.<sup>17</sup>

*Dr Smt Pooja Agrawal Vs. Shivbhan Singh Rathore & another*<sup>18</sup>

It was held that Act of 1994 and rules made there under to be strictly implemented.<sup>19</sup> The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act under Section 17(2) having regard to the intensity of the problem of pre-natal sex determination leading to female feticide.<sup>20</sup>

#### 4. Data Analysis & Methods

##### A. Research Methodology

The census of India is conducted every 10 years by the Registrar General and Census Commissioner of India. This census gives us statistical data on the sex ratio in India in rural and urban areas. Sex ratio is used to describe the number of females per 1000 of males. Sex ratio is a valuable source for finding the population of women in India and what is the ratio of women to that of men in India. In the latest Population Census of 2011 it was revealed that the population ratio in India 2011 is 940 females per 1000 of males. The human sex ratio is of particular interest to anthropologists and demographers. However, sex ratios at birth may take an oblique course due to factors such as the age of mother at birth, by sex-selective abortion and female feticide, especially in India.

In this paper we use secondary sources of data from the two decennial Indian censuses of 2001 and 2011. We use a graphical representation to compare the general sex ratio with the Rural and Urban Sex Ratios and try to analyse the trend in the data and the causes for it. We also study the pattern of sex ratios from the last 12 census conducted in India and comment on whether the introduction of the PCPNDT Act 1996 and MPT Act 1971 has made any impact on the sex ratio.

<sup>16</sup> AIR 1990 SC 630

<sup>17</sup> Supra note 10

<sup>18</sup> AIR 1992 sc 637

<sup>19</sup> Supra note 10

<sup>20</sup> The Court relied on State of Haryana and others vs. Ch. Bhajan Lal and others MANU/SC/0115/1992; *Daman Municipal Council and another, etc. vs. M/s. Paramount Traders and others* MANU/SC/0116/1992; *Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors.* MANU/SC/1090/1998; *Sharad Kumar Sanghi vs. Sangita Rane* MANU/SC/0205/2015; *Monju Roy and Ors. vs. State of West Bengal* MANU/SC/0466/2015; *D.P. Gulati vs. State of Uttar Pradesh and Ors.* MANU/SC/0373/2015; *Rishipal Singh vs. State of U.P.* MANU/SC/0564/2014; *K.K. Kuda vs. Chief Enforcement Officer, Enforcement Directorate* MANU/SC/0011/2015; *Voluntary Health Association of Punjab vs. Union of India (UOI) and Ors.* MANU/SC/0205/2013; *Amit Kapoor vs. Ramesh Chander and Anr.* MANU/SC/0746/2012 (Manupatra)

Another source of data we have used is the National Family Health Survey- 4 (NFHS-4) that is conducted by the Ministry of Health and Family Welfare. It is associated with International Institute for Population Sciences. It is also supported by UNICEF for survey implementation. This national survey covers all 29 states in India and 99 percent of India's population. NFHS collects information from a nationally representative sample of 109,041 households, 124,385 women age 15-49.<sup>21</sup>

Through the NFHS data collected over the years, we examine the sex ratio of different states in India through a map of India. So far, four such surveys have been conducted: NFHS-1(1992-93), NFHS-2 (1998-99) and NFHS-3 (2005-06). We also look at the latest NFHS-4 (2014-15) and examine the current situation in India.

NFHS-4 is the first of the NFHS series that provides estimates of most indicators at the district level for all 640 districts of the country included in the 2011 Census. In NFHS-4, women aged 15-49 years and men aged 15-54 years were interviewed. NFHS-4 sample size is expected to be approximately 568,200 households. In these households information on 265,653 children below age 5 was collected in the survey. The survey covered a range of health-related issues, including fertility, infant and child mortality, maternal and child health etc.<sup>22</sup>

The statistical information on 13 states and 2 Union territories (Andaman and Nicobar Islands and Pondicherry) has been made available. This data has been plotted and analyzed in depth.

## B. Data analysis

### 1. Comparison Of Sex Ratios As Per Census Of India<sup>23</sup>

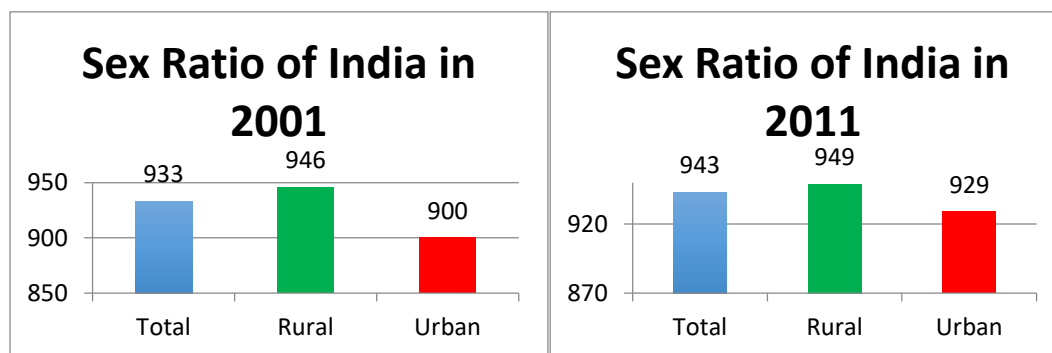


Figure 1.1 (Source: Census of India 2001) / Figure 1.2 (Source: Census of India 2011)

<sup>21</sup> Priya Bhakat, An Analysis of Abortion Laws and Sex Selective Abortion in India: A Case Study of Rajasthan, International Journal of Social, Behavioral, Educational, Economic, Business and Industrial Engineering Vol:7, No:6, 2013

<sup>22</sup> National Family Health Survey 4 (2015-16)

<sup>23</sup> Census of India 2001, 2011

[http://www.dataforall.org/dashboard/censusinfoindia\\_pca/](http://www.dataforall.org/dashboard/censusinfoindia_pca/)

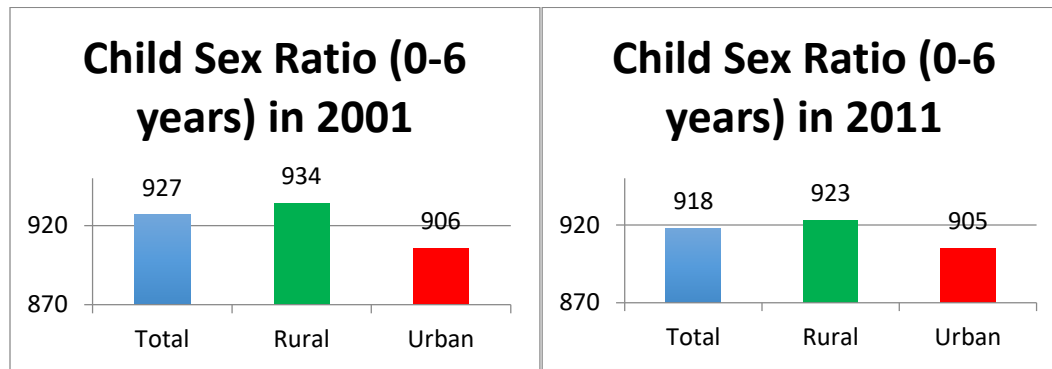


Figure 1.3 (Source: Census of India 2001) / Figure 1.4 (Source: Census of India 2011)

The above figures (1.1, 1.2, 1.3 and 1.4) present the decadal sex ratio from recent Indian censuses. The graphs clearly show a drastic rise by 10 points in total overall sex ratio (OSR) from 933 (females per 1000 males) in 2001 to 943 in 2011. However, there is a fall in the child sex ratio (CSR) from 927 in 2001 to 913 in 2011. Since the last five decades the sex ratio has been moving around 930 of females to that of 1000 of males.

In rural areas, statistics shows that the OSR has increased by 3 points and CSR had reduced by 11 points. On the contrary, in urban areas, the OSR has shown tremendous increase by 29 point and CSR has reduced by only 1 point. The increase of OSR in urban areas is owed to the educated and working class that usually have 2 children per household and have a lesser prejudice towards a girl child than in rural areas if India.

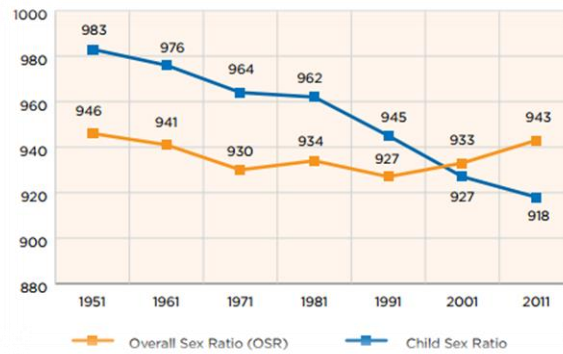
The major cause of the decrease of the female birth ratio in India is considered to be the violent treatments given to the girl child at the time of the birth. The Sex Ratio in India was almost normal during the phase of the years of independence, but thereafter it started showing gradual signs of decrease. Though the Sex Ratio in India has gone through commendable signs of improvement in the past 10 years, there are still some states where the sex ratio is still low and is a cause of concern for the NGO organizations.<sup>24</sup> The state with the highest sex ratio is Kerela with 1084 of overall sex ratio and 964 as child sex ratio. The Union territory of Daman & Diu suffers from the worst sex ratio of the nation. Its overall sex ratio is 618 and child sex ratio is 904.<sup>25</sup>

The main cause of the decline of the sex ration in India is due to the biased attitude which is meted out to the women. The main cause of this gender bias is inadequate education. Pondicherry and Kerala houses the maximum number of female while the regions of Daman and Diu and Haryana have the lowest density of female population.<sup>26</sup>

<sup>24</sup> Census of India 2011

<sup>25</sup> Supra note 28

<sup>26</sup> Supra note 28



*Figure 1.5: Comparative Trends in Overall Sex Ratio and Child Sex Ratio<sup>27</sup>*

Figure 1.5 gives us the all India statistical picture from 1951 to 2011.<sup>28</sup> The sex ratios in the country, taken as a whole in the last half century, declined slightly from 946 in 1951 to 927 in 1991 and have been slowly rising since then. Most demographers are in agreement that the more recent improvements in overall sex ratios point to the increasing life expectancy among the women, who are born, which, in the past and contrary to all other parts of the world, were lower than that of men due to processes of premature aging. Women in India now outlive men, as improvements in male life expectancy appear to have been slowed down by factors such as life styles and diseases that take a greater toll on them.<sup>29</sup>

The pattern of CSRs is in marked contrast to overall sex ratios as Figure 1.5 clearly shows. They have been declining and the rate of decline has in fact worsened in the very years when overall sex ratios began to improve. This corresponds to the decades following 1981 and offers incontrovertible evidence of the effects of resorting to sex determination testing and the selective elimination of female fetuses prior to birth, along with possible female infanticide, and skewed infant and child mortality. However, the final population figures of 2011 census were 918, making for a nine point decline from 2001 compared to that of 18 points in the previous decade. This would indicate a slowing down in the rate of decline in the practice of sex selection, and clearly calls for further investigation. These figures also need to be interpreted in conjunction with changing patterns of OSRs which have also shown small improvements since 2005 in several states.<sup>30</sup>

Furthermore, we observe that after the enactment of the Pre Natal Diagnostic Technique Act, 1994 (PNDT) the Overall Sex Ratio has steadily risen, however, the Child Sex Ratio has drastically fallen. This can be credited to the stringent laws that this Act imposes on private doctors who allow their patients to know the sex of the fetus. This act criminalized doctors from revealing the sex of the fetus and also put a ban on sex selective abortion.

<sup>27</sup> [Sex Ratios and Gender Biased Sex Selection](#), UN Women, United Nations Population Fund (2014)

<sup>28</sup> Refer to Appendix, Table for Figure 1.5

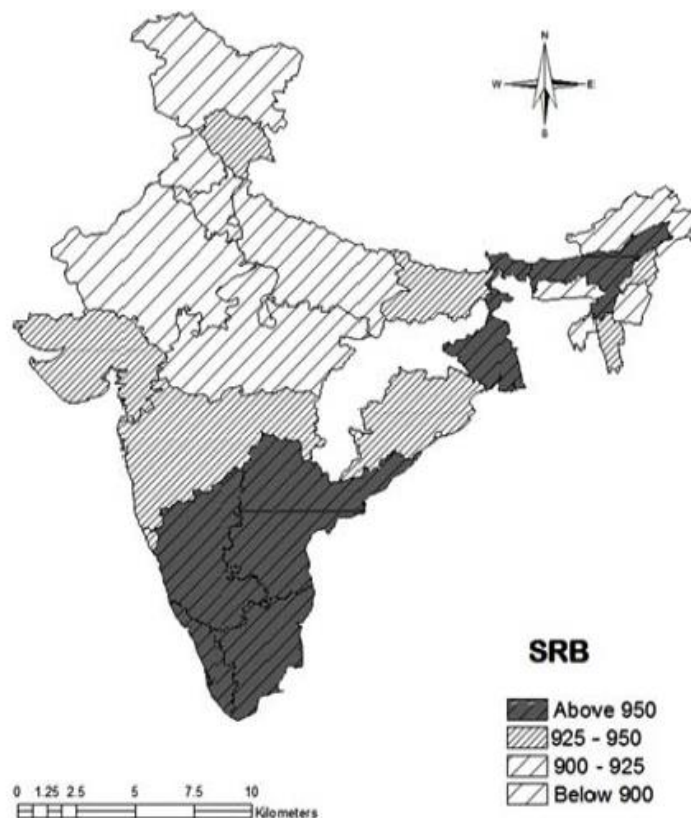
<sup>29</sup> Supra note 31

<sup>30</sup> Supra note 31

Therefore, after this act the sex ratio gradually started to rise as sex selective abortion became rarer occurrence.

Following to the Medical Termination of Pregnancy Act, 1971 (MTP), the OSR remained more or less steady from 930 in 1971 to 927 in 1991, following which it steadily rose to 943, its highest in 2011. On the other hand, the CSR continued to decline from 964 at the time of enactment of the MTP Act, 1971 to 927 in 2001, which was after the implementation of the PCPNDT Act, 1994. The primary function of this act was to make abortion legal in India. Ensuring this act, we see the descent of the CSR due to the increased number of abortions taking place in the nation.

## 2. State Wise Comparison of National Family Health Surveys (NFHS) 1, 2,3

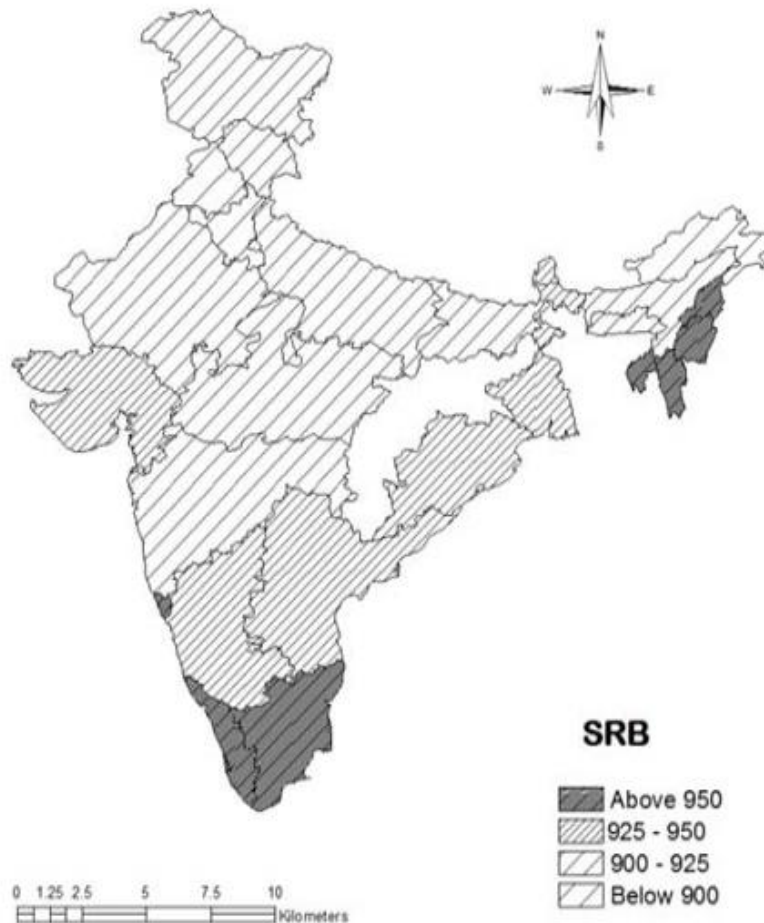


*Figure 2.1 State level analysis of Sex ratio at Birth (SRB) in India, NFHS 1 (1992-93)<sup>31</sup>*

Figure 2.1 depicts a map of India and the Sex ratio at Birth (SRB) all over the country as per the National Family Health Survey 1 (1992-93). It shows in a limp manner that the

<sup>31</sup> Supra note 25

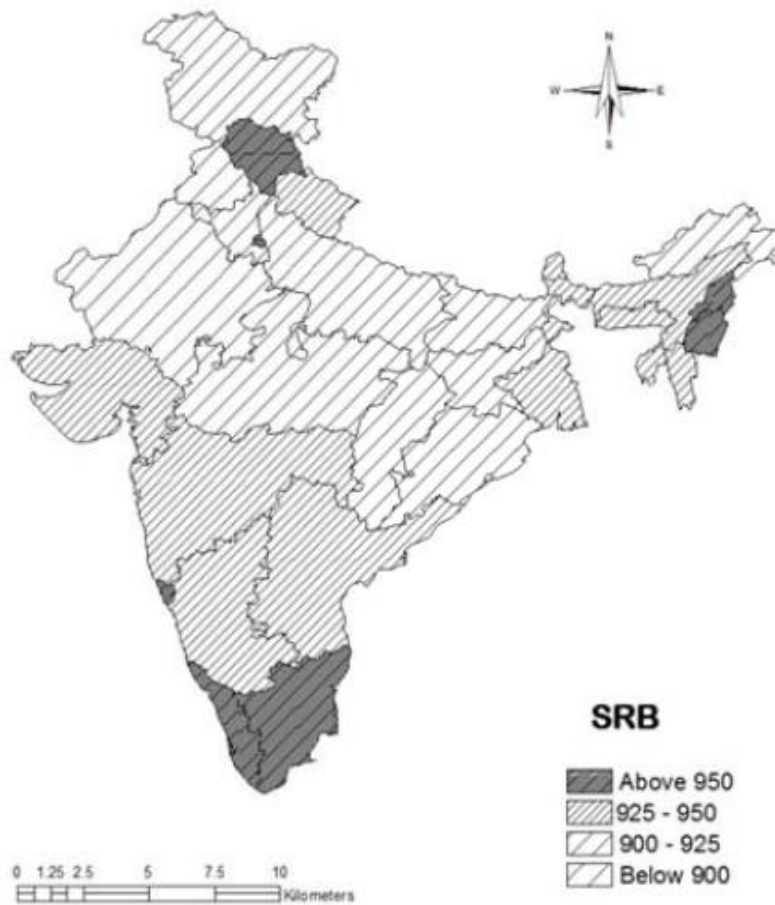
South Indian states such as Kerala, Tamil Nadu, Karnataka, West Bengal, Andhra Pradesh as well as North Eastern states such as Assam and Sikkim have the highest sex ratio above 950 (females per 1000 males). This can be attributed to the high literacy rate of the southern region of India. However, the states with lower sex ratios between 900-925 tend to be in the Northern region due to lack of development and low literacy rate.



*Figure 2.2 State level analysis of Sex ratio at Birth (SRB) in India, NFHS 2 (1998-99)<sup>32</sup>*

In Figure 2.2, NFHS 2 that was conducted 5 years after NFHS 1, we see that the sex ratio remains above 950 in Tamil Nadu and Kerala, however it has decreased in the other southern states such as Karnataka. Moreover, states such as Goa, Nagaland, Manipur, Mizoram and Tripura have seemed to have increased their sex ratio above 950. On the other hand, the sex ratio of northern states remains the same with the exception of Himachal Pradesh and Bihar.

<sup>32</sup> Supra note 25



*Figure 2.3 State level analysis of Sex ratio at Birth (SRB) in India, NFHS 3 (2005-06)<sup>33</sup>*

In Figure 2.3 we observe that 6 years after NFHS 2 was conducted, new states that have emerged with high sex ratio are New Delhi, Himachal Pradesh, Nagaland and Manipur. Earlier, Himachal Pradesh and New Delhi had a low sex ratio of 900-925, however, in 2005 it has drastically increased to above 950.

A general distribution of SRB among the states in India based on NFHS 3 data can be categorized in three groups:

**High:** Tamil Nadu, Kerala, Delhi, Nagaland, Manipur, Himachal Pradesh

**Medium:** Andhra Pradesh, West Bengal, Karnataka, Sikkim, Maharashtra

**Low:** Punjab, Rajasthan, Haryana, Bihar, U.P., Chhattisgarh<sup>34</sup>

<sup>33</sup> Supra note 25

<sup>34</sup> Supra note 25

## State wise Analysis of NHFS-4 (2014-15)

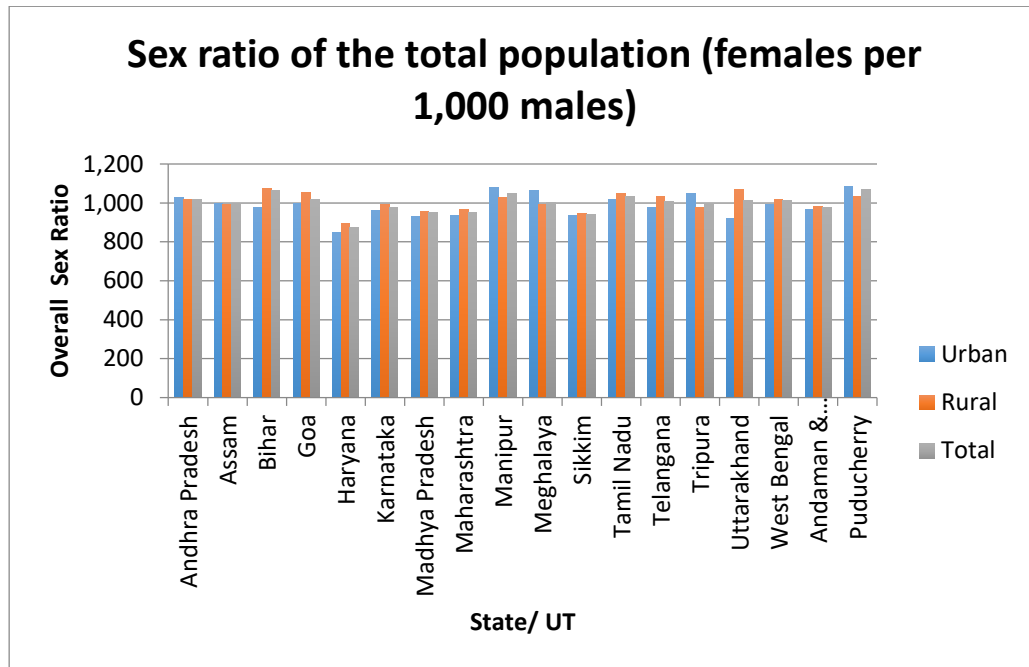


Figure 2.4 (Source: National Family Health Survey- 4 (2014-15))<sup>35</sup>

Figure 2.4 represents the Overall Sex Ratio in Rural and Urban areas of 18 different states and Union Territories as per the latest NFHS-4 (2014-15). We observe that Uttarakhand (1,015 females per 1,000 males) and Meghalaya (1,005 females per 1,000 males) are having higher sex ratio and remaining states saw a disturbing fall in sex ratio. In these 18 states, on an average, there are 985 females per 1,000 males in 2014-15 compared to 1,000 females per 1,000 males in NFHS-3 (2005-06).<sup>36</sup>

The states with total sex ratios above 1000 are Andhra Pradesh, Bihar, Goa, Manipur, Meghalaya, Tamil Nadu, Telangana, Uttarakhand, West Bengal and Puducherry. The highest being Puducherry with a sex ratio of 1068.

The states with Urban sex ratio above 1000 are Andhra Pradesh, Manipur, Meghalaya, Tripura and Pondicherry. The highest among them is Pondicherry at 1083.

The states with Rural sex ratio above 1000 are Andhra Pradesh, Bihar, Goa, Manipur, Tamil Nadu, Telangana, Uttarakhand, West Bengal and Puducherry. Bihar having the highest rural sex ratio of 1075 females per 1000 males. However, the lowest sex ratio was observed in Haryana with only 876 in total, 846 in urban and 895 in rural areas.<sup>37</sup>

<sup>35</sup> National Family Health Survey 4 (2014-15)

<sup>36</sup> Supra note 25

<sup>37</sup> Refer to Appendix, Table for Figure 2.4



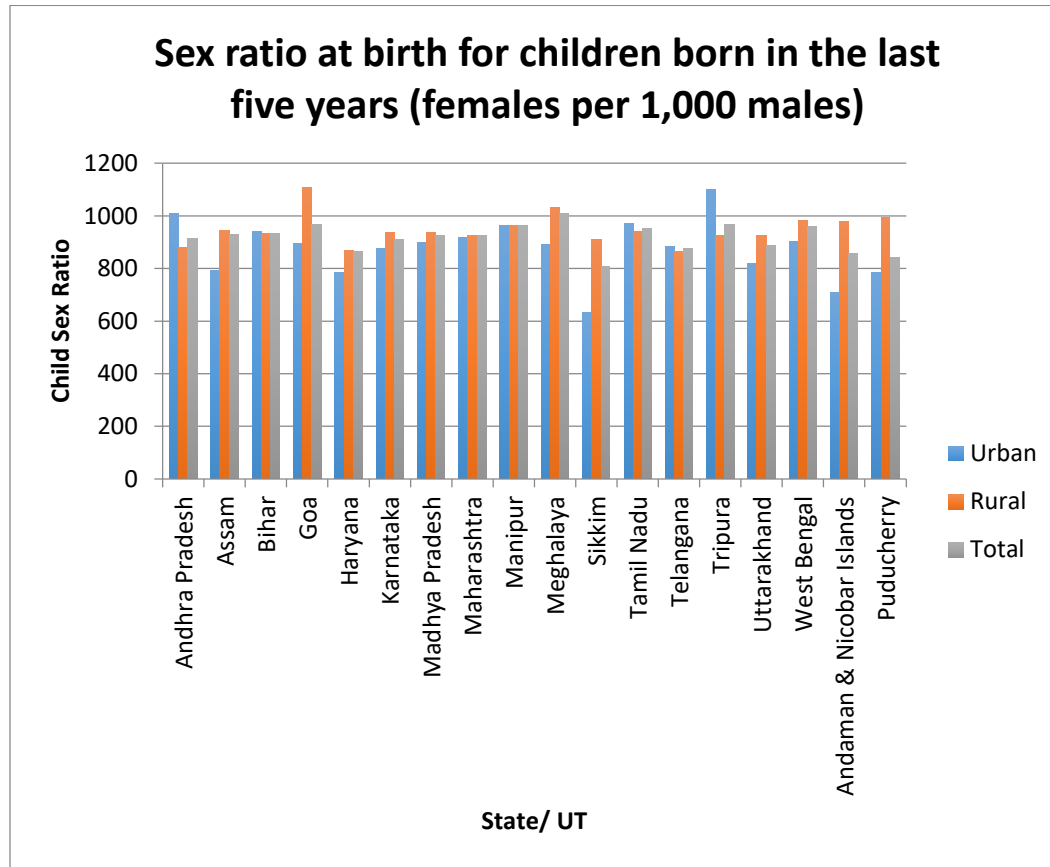


Figure 2.5 (Source: National Family Health Survey- 4 (2014-15))<sup>38</sup>

Figure 2.5 represents the Child Sex Ratio in Rural and Urban areas of 18 different states and Union Territories as per the latest NFHS-4 (2014-15). We observe that the child sex ratio (children below 5 years) is quite varied in each state. The only state with total Child sex ratio above 1000 is Meghalaya at 1009. The states with Urban CSR above 1000 are Andhra Pradesh at 1010 and Tripura at 1100. The states with Rural CSR above 1000 are Goa at 1109 and Meghalaya 1030. However, the state with the lowest CSR is Sikkim with its total ratio at 809 females per 1000 males.<sup>39</sup>

### Conclusion

Using the urban and rural, national and state data from the 2001 and 2011 census, we have analyzed sex ratios over the years. Also, we examined data from NHFS 4 (2014-15). It reveals quiet a positive and significant impact of PNDT Act 1994 on sex ratio. In our analysis of case laws and judgments, we see that all the courts have upheld the fact that choosing sex of a fetus cannot in itself be a right. This is gross violation of basic human right to life and no one has the authority to decide on one life over the other. Various

<sup>38</sup> Supra note 25

<sup>39</sup> Refer to Appendix, Table for Figure 2.5

landmark cases have been discussed above. The main cause of sex selective abortion is the societal pressures on households. It is evident that the myths influence the minds of people very aptly and certainly have a great impact. Also, implications of declining sex ratio lead to lack of women in society which in turn results in violence against the women.

Statistical data has shown that over the last decade even though the overall sex ratio has been gradually rising, the child sex ratio has continued to decline. One of the major trends we noticed is that the conditions in urban areas is much worse than in rural areas. The general perception is that educated people in urban areas are more aware and are against such practices; However, through our research we see a data that supports the contrary. Sex Ratio in urban areas is much less than in rural areas, which contradicts the view held by the majority of society.

### **Recommendation**

To combat the problem of decreasing sex ratio, a few steps need to be taken. It is recommended that the literacy rate be increased so that awareness can be created through the education system. Children 70% of their time in school and often come across various aspects of life. Right from childhood they nurtured in such a way that they have no gender bias in their mind. Gender Equality and the importance for women in society must be imbibed in them from the very beginning. Government has a very significant role to play in the same.

Setting up self-help groups among women, targeting educated women, rewarding all girl families, setting up help-lines adopting new social customs, banning dowry stringently, registering and taking care of expectant mothers including postpartum follow-up, rewarding voluntary sterilization in girl dominating families etc. are some other measures that the government can take.<sup>40</sup> People these days are highly influenced by movies and T.V series. Majority if the older population in India was television channels such as “Aastha” and “Sanskar”. These can contribute and spread awareness about importance of a girl child and laws regarding sex selective abortion.

However, the most important step has to be taken by girls themselves. Girls should be taught to live with self- esteem and say “NO” to anything that goes against her dignity. It is only when they voice their opinions against the injustice that is being done to thousands of girls that this country will have hope to have a better demographic.

### **Appendix**

#### **Table for Figure 1.5**

Comparative Trends in Overall Sex Ratio and Child Sex Ratio

CSR and OSR

---

<sup>40</sup> Supra note 6

Census Year	1951	1961	1971	1981	1991	2001	2011
Overall Sex Ratio (OSR)	946	941	930	934	927	933	943
Child Sex Ratio (CSR)	983	976	964	962	945	927	918

**Table for Figure 2.4**

Sex ratio of the total population (females per 1,000 males)

State/ UT	Urban	Rural	Total
Andhra Pradesh	1,027	1018	1020
Assam	996	993	993
Bihar	977	1075	1062
Goa	996	1054	1018
Haryana	846	895	876
Karnataka	963	990	979
Madhya Pradesh	933	955	948
Maharashtra	935	967	952
Manipur	1081	1030	1049
Meghalaya	1062	991	1005
Sikkim	936	944	942
Tamil Nadu	1020	1047	1033
Telangana	976	1035	1007
Tripura	1051	978	998
Uttarakhand	921	1070	1015
West Bengal	991	1020	1011
Andaman & Nicobar Islands	966	984	977
Puducherry	1083	1033	1068

Table for Figure 2.5

Sex ratio at birth for children born in the last five years (females per 1,000 males)

State/ UT	Urban	Rural	Total
Andhra Pradesh	1010	880	914
Assam	794	945	929
Bihar	942	933	934
Goa	894	1109	966
Haryana	785	867	863
Karnataka	875	935	910
Madhya Pradesh	899	937	927
Maharashtra	920	927	924
Manipur	962	962	962
Meghalaya	891	1030	1009
Sikkim	632	911	809
Tamil Nadu	972	939	954
Telangana	884	865	874
Tripura	1100	925	966
Uttarakhand	817	924	888
West Bengal	902	984	960
Andaman & Nicobar Islands	708	978	859
Puducherry	786	992	843