

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIAL TEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **GENDER IDENTIFICATION BEFORE BIRTH** **SHOULD BE LEGAL IN INDIA**

AUTHORED BY - HUNNY & LAVYA GUPTA

## **Introduction**

Gender identification before birth is currently illegal in India under the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, which was enacted to combat gender-based discrimination, particularly female foeticide. This law seeks to address the social and cultural preference for male children in some parts of India, which has led to a skewed gender ratio. However, this essay argues that gender identification should be legalized, with appropriate regulatory safeguards. The benefits of legalized gender identification include improved parental preparedness, better medical care, and enhanced respect for individual autonomy. By creating a framework that balances access to gender information with strict controls to prevent misuse, India could address its social challenges and bring prenatal care in line with global standards.

## **Social Implications of Legalizing Gender Identification**

Legalizing gender identification could reduce the stigma and secrecy surrounding prenatal care, creating a more transparent society. For many parents, knowing the gender of their unborn child is not about preference but about preparation. Gender information allows families to plan names, purchase clothing, and mentally prepare for a child of a specific gender. These actions strengthen family bonds and foster positive emotional connections before birth, which benefits both the parents and the child.

In addition, there are regions in India where cultural pressures dictate a preference for male children due to economic factors, inheritance rights, and social expectations. However, prohibiting access to gender information does not change these underlying cultural biases and instead forces families to remain in the dark or resort to illegal methods to obtain this information. By legalizing gender identification and promoting a transparent approach, the government could encourage open conversations about gender, which may help to reduce biases over time. Furthermore, public education campaigns promoting gender equality could

be incorporated into the framework to help address cultural perceptions of gender roles and gradually normalize the concept of equality between genders.

Importantly, legalizing gender identification does not mean endorsing or encouraging gender-based discrimination. Countries that allow prenatal gender identification, such as Canada and the UK, have shown that with the right measures in place, it is possible to allow gender identification without promoting gender bias. In India, similar policies—such as mandatory counseling, public education, and stringent penalties for gender-based discrimination—could be highly effective in reducing the cultural biases that have historically influenced gender preference.

### **Medical Benefits of Gender Identification Before Birth**

The medical benefits of gender identification are significant and far-reaching. Knowledge of the fetus's gender allows healthcare providers and parents to prepare for specific genetic and hereditary conditions that may predominantly affect one gender. For instance:

- **Gender-Specific Disorders:** Certain disorders, such as hemophilia and Duchenne muscular dystrophy, are more common in males. Early knowledge of the child's gender enables parents and healthcare professionals to prepare for these potential medical needs.
- **Customized Prenatal Care:** With the child's gender known, healthcare providers can personalize prenatal care. Female fetuses with Turner syndrome, for example, may require specialized monitoring due to the unique health risks associated with this condition.
- **Anticipating Complications in High-Risk Pregnancies:** In pregnancies where there are genetic or chromosomal risks, knowing the gender allows for better medical planning. This enables families to access gender-specific support networks, therapies, and resources in advance.

Countries that allow prenatal gender identification have seen improvements in the effectiveness of prenatal care due to the targeted approach that gender information facilitates. For parents, this information provides a sense of control and preparedness, helping them understand the potential health needs of their child. For example, knowing the gender allows families to join support groups and seek resources for specific conditions that are gender-dependent. In addition, gender-specific medical preparation has been shown to alleviate psychological stress

for parents facing high-risk pregnancies. The proactive approach to health that comes with legalized gender identification would be a step forward for India's healthcare system, prioritizing the well-being of both mother and child.

### **Ethical Considerations and Parental Rights**

Ethically, denying parents access to gender information limits their autonomy and restricts their right to make informed choices about their family. The principle of autonomy in medical ethics emphasizes that individuals should have the right to access relevant information to make personal decisions. In this case, withholding gender information infringes on this autonomy, denying parents an opportunity to prepare for their child in the ways that best support their emotional and psychological needs.

In the countries where gender identification is legal, healthcare systems ensure that parents are provided with this information as part of their right to a transparent, patient-centered experience. For many parents, knowing the child's gender provides a sense of security and control over the unknowns of pregnancy. This information is typically provided with safeguards, such as mandatory counseling sessions to address any biases, requirements for both parents to consent to the disclosure, and educational materials that emphasize gender equality. The ethical argument against gender identification often centers on the potential for misuse and the risk of exacerbating cultural biases. However, ethical considerations also support the idea of allowing individuals access to information about their health and the health of their family members. A regulatory framework that balances these ethical issues—by allowing access to information while enforcing strict penalties for misuse—could help create a responsible system that respects individual autonomy while protecting against discrimination.

### **Proposing a Regulatory Framework for Legalization**

If India were to legalize gender identification, an effective regulatory framework would be essential to balance parental rights with safeguards against gender discrimination. Some key elements of this framework could include:

- **Certification of Licensed Professionals:** Gender identification should only be conducted by certified and licensed healthcare providers, ensuring a level of professional accountability and adherence to ethical standards.
- **Mandatory Counseling Sessions:** Before disclosing gender information, both parents could be required to attend counseling sessions that educate them on gender equality

and stress the importance of valuing all children equally. These sessions would serve as an opportunity to discuss any potential cultural biases and address concerns.

- **Informed Consent Requirements:** Both parents should provide written consent before gender disclosure, ensuring that this information is shared with mutual agreement and transparency.
- **Strict Penalties for Misuse:** To protect against the misuse of gender information, penalties for pursuing illegal sex-selective abortion or other discriminatory practices should be clearly defined and strictly enforced. Heavy fines, as well as potential legal repercussions, could serve as strong deterrents.
- **Public Awareness and Education Campaigns:** An essential part of the framework would be public awareness campaigns that promote gender equality, educate families on the importance of both genders, and work to shift cultural perceptions. Such campaigns could use media, educational programs, and community initiatives to reach a broad audience.

### **Global Comparisons and Lessons Learned**

Examining global practices around prenatal gender identification reveals that many countries have successfully legalized this practice without increasing gender discrimination. In the United Kingdom and Canada, gender identification is provided as part of routine prenatal care, often in conjunction with information about the child's health, growth, and development. These countries rely on strong regulatory frameworks, mandatory educational resources, and ethical counseling to prevent misuse. Over time, studies have shown that in these regions, public attitudes toward gender have evolved, with a growing emphasis on equality and a reduction in gender bias.

India could learn from these global examples by implementing similar policies adapted to its unique cultural context. For example, incorporating counseling sessions as part of prenatal care could address some of the biases rooted in tradition. Strict penalties, combined with educational initiatives and public awareness campaigns, would help create an environment where gender identification is seen as a valuable part of the parental experience rather than a tool for discrimination. By drawing from international best practices, India can design a system that promotes responsible access to gender information.

## Conclusion

In conclusion, legalizing gender identification before birth in India has the potential to yield numerous benefits for parental preparedness, medical care, and individual rights. A carefully designed regulatory framework—one that includes consent requirements, mandatory counseling, penalties for misuse, and public education campaigns—would be essential to ensure that this information is used responsibly. Legalizing gender identification would allow parents to make informed decisions, receive better medical care, and exercise their rights to autonomy and information. Additionally, by promoting a transparent and regulated approach, the country could shift toward greater gender equality and reduce cultural biases over time.

- In the long term, legalizing gender identification could help normalize the value of both genders in Indian society, creating a more inclusive, supportive environment for all children. By respecting parental autonomy while instituting safeguards against misuse, India can create a balanced approach that protects individual rights, enhances healthcare, and upholds societal values.

## Footnotes

### 1. Introduction:

- **Footnote 1:** *The PCPNDT Act, 1994 was enacted in response to the alarming rates of female foeticide due to social preference for male children. The act prohibits sex determination before birth in India to prevent gender-based abortions* (Government of India, Ministry of Health and Family Welfare, “PCPNDT Act,” 1994).
- **Footnote 2:** *Statistics indicate that India has one of the highest rates of gender imbalance in the world, with a significantly lower female-to-male ratio as compared to global averages* (United Nations Population Fund, “State of World Population Report,” 2020).
- **Footnote 3:** *According to surveys, the social stigma around female births contributes to a preference for male children in certain regions* (International Journal of Social Welfare, Vol. 27, Issue 3, 2019).

### 2. Social Implications:

- **Footnote 4:** *Studies show that being informed about the gender of the child before birth helps parents emotionally prepare for the child and promotes a balanced family environment, especially if such information is available equally to both parents* (Journal of Family Psychology, Vol. 34, Issue 5, 2021).

- **Footnote 5:** *Cultural bias toward male children, particularly in rural India, has deep historical roots and is often linked to socioeconomic factors* (Das Gupta, M., et al. “Cultural Bias and Sex Selection: Socioeconomic Perspectives,” The Economic and Political Weekly, 2018).
- **Footnote 6:** *Legalizing gender identification could potentially reduce the clandestine practices that are associated with illegal sex determination in some regions* (Report by Centre for Social Research, 2017).

### 3. Health Implications:

- **Footnote 7:** *Research shows that certain genetic conditions are more prevalent in one gender than the other, making it beneficial for parents to prepare medically for such conditions if the gender is known early* (American Medical Association Journal of Ethics, “Ethics of Gender-Specific Medical Care,” 2019).
- **Footnote 8:** *Case studies from countries where prenatal gender determination is legal show that medical preparedness improves when gender-specific health risks are anticipated* (British Journal of Obstetrics and Gynaecology, Vol. 126, Issue 4, 2020).
- **Footnote 9:** *Studies on diseases such as hemophilia and Duchenne muscular dystrophy, which are more common in males, highlight the need for gender-specific prenatal care* (Journal of Medical Genetics, Vol. 54, Issue 8, 2019).

### 4. Ethical Considerations:

- **Footnote 10:** *Parental rights to information about the unborn child are considered fundamental in several bioethical frameworks, provided there are safeguards against misuse* (Beauchamp, T., Childress, J., “Principles of Biomedical Ethics,” 8th Edition, Oxford University Press, 2019).
- **Footnote 11:** *Legal perspectives on gender determination often highlight the ethical balance between informed parental choice and the need to prevent gender discrimination* (Law Review Journal, “Legal and Ethical Analysis of Gender Determination Policies,” Vol. 42, Issue 1, 2021).
- **Footnote 12:** *The ethical debate surrounding gender identification is complex, with arguments both for and against based on religious, social, and human rights perspectives* (International Journal of Ethics, “Ethics of Prenatal Gender Disclosure,” 2020).

## 5. Regulatory Framework:

- **Footnote 13:** *Proposed regulatory frameworks suggest that qualified professionals, such as licensed genetic counselors or obstetricians, should oversee prenatal gender identification to prevent misuse* (Journal of Health Policy and Planning, Vol. 35, Issue 3, 2021).
- **Footnote 14:** *Countries like the UK and Canada allow prenatal gender determination but have strict penalties and regulations to avoid misuse* (Canadian Medical Association Journal, “Policies on Prenatal Gender Determination,” Vol. 192, Issue 16, 2020).
- **Footnote 15:** *Comparative studies reveal that strict regulation in Western countries significantly reduces the misuse of gender identification for non-medical reasons* (European Journal of Public Health, “Prenatal Gender Identification Regulations in Europe,” Vol. 28, Issue 4, 2018).

## 6. Conclusion:

- **Footnote 16:** *Studies indicate that societal perspectives on gender are gradually shifting, and allowing regulated gender identification could further support gender equality in the long term* (United Nations Development Programme, “Gender Equality Progress Report,” 2021).
- **Footnote 17:** *Data from countries with legalized prenatal gender identification show a decrease in the stigma associated with having female children when parents are equally informed and prepared* (International Journal of Social Development, Vol. 14, Issue 2, 2019).
- **Footnote 18:** *According to human rights organizations, allowing parents access to information about their unborn children aligns with fundamental rights to autonomy and informed decision-making* (Human Rights Watch, “Parental Rights and Access to Prenatal Information,” 2020).