

## INDEX

### C R I M I N A L

Subject :- The Pre-conception and pre-natal Diagnostic  
Techniques(Prohibition of Sex Selection) Act, 1994

Sr. No.	Subject	Page Numbers
1	Introduction	1 to 4
2	Offences under PCPNDT Act.	5 to 9
3	Procedures for Search & Seizure of Panchnama	10 to 11
4	Presumption under PCPNDT Act	12
5	Implementing Authorities under PCPNDT Act	12 to 15
6	Relevant citations on PCPNDT Act	16 to 18
7	Conclusion	18

## SUMMARY OF WORKSHOP PAPER

**Topic of Paper** :- The Pre-conception and pre-natal Diagnostic Techniques (Prohibition of Sex Selection ) Act,1994.

### **Background, purpose and need of PCPNDT Act**

#### **Introduction** :-

The pre-natal Diagnostic Techniques ( Regulation and Prevention of Misuse) Act 1994, as amended in 2003 to the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PC & PNDT Act), is a legislation to curb the abhorrent practice of sex determination and sex selection.

In recent years the misuse of medical technologies that have the potential to detect sex in the pre-natal period of even select the sex at the pre-conception stage, have added a new dimension to this issue. Pre-natal diagnostic techniques such as amniocentesis and ultrasonography, have been used all over the world for detection of genetic abnormalities., However, in India, they are being misused for almost past three decades for detection of the sex of unborn children and subsequently for sex-selection. The disturbing sex ratios in the 1991 census and consistent campaigning on this issue by civil society groups led Parliament to enact the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act-PC and PNDT Act- in1994)

In 2001 census, not surprisingly, revealed a drastic fall in the sex ratio for the 0-6 age group, signaling the precipitation of a

demographic catastrophe on a nation-wide scale. Alarmed by these happenings, and in response to the directives of the Supreme Court (SC) in a PIL filed on this issue, the PC and PNDT Act was amended in 2003. The pre-conception and Pre-natal diagnostic Techniques (Prohibition of Sex Selection) Rules 1996, amended in 2003, came into force with effect from February 14, 2003. the change in nomenclature denotes a shift in emphasis from “regulation” of techniques to “prohibition” of sex selection. It also represents a widening of the scope of law to include pre-conception of sex selection techniques.

### Key Features of the Act

- Prohibition of sex selection, before and after conception.
- Regulation of pre-natal diagnostic techniques (e.g. amniocentesis, ultra sonography, etc. for detection of genetic abnormalities, by restricting their use to registered institutions. The Act allows the use of these techniques only at a registered place for a specified purpose and by a qualified person, registered for this purpose.
- Prevention of misuse of such techniques for sex selection before or after conception.
- Prohibition of advertisement of any technique for sex selection as well as sex determination.
- Prohibition on sale of ultrasound machines to persons not registered under this Act.
- Punishment for violation of provisions of the Act.

### REGULATION OF PRE-NATAL DIAGNOSTIC TECHNIQUES

Section 4 :- Regulation of pre-natal diagnostic techniques- On and from the commencement of this Act-

- 1) No place including a registered Genetic Counselling Center or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);
- 2) No pre-natal diagnostic techniques shall be conducted except for purposes of detection of any of the following abnormalities, namely :-
  - i) Chromosomal abnormalities;
  - ii) genetic metabolic diseases;
  - iii) hemoglobinopathies;
  - iv) sex-linked genetic diseases;
  - v) congenital anomalies;
  - vi) any other abnormalities or diseases as may be specified by the Central Supervisory Boards.
- 3) No pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely :-
  - i) age of the pregnant woman is above thirty five years;
  - ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
  - iii) the pregnant woman had been exposed to potentially teratogenic agents such as, drugs, radiation, infection or chemicals;
  - iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
  - v) any other condition as may be specified by the Board :

Provided that 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 unless contrary is proved by the person conducting such ultrasonography ;

- 4) No person including a relative or husband of pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2) ;
- 5) No person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both

**Section 5:-** Written consent of pregnant woman and prohibition of communicating the sex of foetus :-

- 1) No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless
  - a) he has explained all known side and other effects of such procedures to the pregnant woman concerned ;
  - b) He has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and
  - c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

i) Offence under PCPNDT Act

What are the offences under the Act ?

Nature of offences	Persons Liable
Conducting or associating or helping in conduct of PND techniques/tests in an <b>unregistered unit</b>	Unit owner and or person responsible for conducting the PND test
Sex selection on a woman or a man or both or on any tissue, embryo, conceptus fluid or gametes derived from either or both of them  (The fact that these actions do not result in the birth of a child of a particular sex is no excuse as any attempt to ensure birth of a particular sex is an offence under the Act) S.2(o) & 3	In case of sex selection the specialist or team of specialists
Taking the services of an unqualified person, whether on an honorary basis or on payment, for conducting PND tests	Unit owner Person responsible
Conducting PND tests for any purpose other than those mentioned as permissible in the Act S.4(1)	Unit owner person responsible Any person conducting such procedures
Sale, distribution, supply, renting, allowance or authorization of use of any ultrasound machine or any other equipment capable of detecting sex of a foetus to non-registered units	Any organisation, including commercial organization/Company, Manufacturer, importer, Dealer, supplier

Advertisement or communication in any form in print, by electronics media or internet by units, medical professionals or companies on the availability of sex determination and sex selection in the form of services, medicines, or any kind of techniques, methods, ayurvedic medicines.	Unit Owner Person responsible Distributors Printers Publishers Website host Website developer Anyone connected with issuance of any such communication or advertisement
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Unit Owner includes individuals(s), a company/body corporate, a firm or an association of individuals, who own the unit

Person responsible includes person in charge of the unit or the person(s) responsible for the company, manager, secretary or any other officer in charge.

#### What are punishments under the Act ?

Offences/Offender	Punishment
Breach of any provision of the Act by any service providers	3 years imprisonment and/or fine of Rs.10,000/-
For subsequent offences	5 years imprisonment (section 23(1)) and/or fine of Rs.50,000/-
Medical professionals	The Appropriate Authority will inform the State Medical Council and recommend suspension of the offender's registration if charges are framed by the court and till the case is disposed off Removal of name from register for 5 years on first conviction and permanently in case of subsequent breaches (section 23(2)),

<p>Persons seeking to know the sex of the foetus ( A woman will be presumed to have been compelled to undergo sex determination tests by her husband and relatives. If the presumption is not dispelled, then the person concerned will be punishable for abetment of the offence)</p>	<p>Imprisonment extending upto 3 years and/or fine of Rs.50,000/-  Imprisonment upto 5 years and/or fine of Rs.1,00,000/- (Section 23 (3) )</p>
<p>For subsequent offence Persons connected with advertisement of sex selection/sex determination services</p>	<p>Imprisonment up to 3 years and/or a fine of Rs.10000/- with additional fine of continuing contravention at the rate of Rs.500 per day (Section 22(3) )</p>
<p>Contravention of provisions of the Act/rules for which no specific punishment is provided in the Act/Rules. Such provisions can be presumed to be the non-maintenance of records, non-compliance with standards prescribed for the maintenance of units etc.</p>	<p>Imprisonment up to a month and / or fine of Rs.1,000/- with additional fine of continuing contravention at the rate of Rs.500 per day (Section 25)</p>

The offences under this Act are non-bailable, cognizable and non-compoundable.



Difference between S. 23 & S. 25 of PCPNDT Act

<p>Difference between S. 23 &amp; S. 25 of PCPNDT Act</p>	<p>The major difference in these two sections is that if there is contravention of any of the provision, it is punishable under Sec. 23 of the said Act. Whereas Sec. 25 comes into picture, if there is contravention and for which no penalty is prescribed. In Other words, if penalty is prescribed Sec. 23 will be applicable and if not then Sec. 25 of the said Act.</p> <p>Legislature intend not to skip any offender for any possible contravention only on the pretext that penalty is not prescribed in that eventuality Sec. 25 comes into picture. In other words, it can be said that Sec. 25 is residuary Section.</p>
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Who can file a prosecution complaint under the Act ?

- a) Appropriate Authority (Appropriate Authority) or any officer authorised on his/her behalf by the Central Government or the State Government or any officer authorised by Appropriate Authority.

Who is the Appropriate Authority under this Act ?

Under section 17, one or more Appropriate Authorities are appointed by the Central Government through a notification in an Official Gazette for each of the Union Territories. For the whole or a part of the State, the State Government appoints one or more

Appropriate Authorities in a similar manner. When appointed for the whole of the State or UT, the Appropriate Authority shall be a multi-member body, consisting of the following members :

- i) An officer or or above the rank of the Joint Director of Health and Family Welfare (Chairperson)
- ii) An eminent woman representing women's organization
- iii) An officer of the Law Department of the concerned State of UT Government

When appointed for a part of the state or UT, Appropriate Authority consists of an officer of a suitable rank, as decided by the concerned Government.

#### What are the powers of Appropriate Authority ?

Section 17 A of the PC and PNDDT Act lays down the powers of Appropriate Authority as follows

- Summoning a person having information about violation of the Act or its Rules;
  - Providing the documents material relating to the violation;
  - Issuing search warrants and conducting searches at places suspected of violating the law. This includes the power to enter premises, seize materials, and seal equipment or to seal the entire premises;
  - Any other matter that may be prescribed.
- b) A person who has given the Appropriate Authority notice of not less than 15 days of the alleged offence and of his/her intention to make a complaint to the court
  - c) Person also means any social organization

ii) Procedure for search and seizure of panchanama :-

1.	The Appropriate Authority has the power	To enter and search any premises where it has a reason to believe that a breach of law has taken place or is taking place. Provisions of the Code of Criminal Procedure,1973 shall apply in all such cases. It can take the help of any agency ( e.g. police for protection) which it deems appropriate. At least two respectable members of society should be taken along as witnesses.
2.	After entering the premises, the Appropriate Authority.	Must make its identity known and may summon people, search premises and examine and seize material (records, files, registers, books, pamphlets, advertisement etc.)which could serve as evidence. It may also seal equipment or other material if necessary.

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| 3. Before leaving, the<br>Appropriate Authority<br>must make | A list (in duplicate) of all materials found by the Appropriate Authority (or by the officer authorised on his/her behalf) (and by the independent be handed over to the owner of the premises or the person from whose custody the material may be carried out outside the premises, if required; but the reasons for doing the list may be sent by registered post or under acknowledgment. |
| 4. The<br>Appropriate Authority does not need                | A court summons for entry, search, seizure or summoning a person as it has the requisite powers under the Act.  |

In case of perishable material, the Appropriate Authority must arrange for its prompt sealing, identification and preservation before it can be sent for testing or analysis at an appropriate place. In the meantime, the material may be kept in a refrigerator or other equipment and the same may be sealed till arrangements for its transportation are made. It should be included in the list of seizures. If the search is incomplete, the premises may be sealed or a guard may be appointed to prevent any tampering of evidence. (Rule 12(5))

Are the Appropriate Authorities protected under the law for their actions? Yes, they are protected, if their actions are undertaken in good faith (Section 31).

iii) Presumption under PCPNDT Act :-

Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4 and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section.

iv) Implementing authorities under PCPNDT Act :-

Central Supervisory Board

State Supervisory Board/Union Territory Supervisory Board

State Appropriate Authority

State/Union Territory  
Advisory Committee

Appropriate Authority at  
District Levels

Advisory Committee at  
District Level

Appropriate Authority at  
Sub-District Levels

Advisory Committee at  
Sub-District Levels

The Central Supervisory Board has to meet at least once in six months and functions include

- Advising the Central Government on policy matters relating to the use of pre-natal diagnostic techniques;

- reviewing implementation of the Act and the Rules, as well as suggesting changes in the Act
- Creating public awareness against the practice of sex selection;
- Laying down a code of conduct to be observed by persons working as Genetic Clinics, Counseling Centers or Laboratories and Ultrasound or Imaging Centers (Section 16)

The functions of the State Supervisory Board/Union Territory Supervisory Boards has to meet at least once in four months and its functions are

- reviewing activities of the Appropriate Authorities and recommending appropriate actions against them if they are found not functioning as per the Act, to the CSB;.
- Monitoring the implementation of the Act;
- sending consolidated reports to the CSB regarding various activities undertaken in their State ;
- creating public awareness against the practice of sex selection

### The story in numbers

	Total Cases filed/Registered	Action Taken
Till March 2014	567 through Helpline	33 Sonography Machines sealed
	629 through Website	29 Sonography Machines sealed
Till March 2015	481	Convicted Accused – 62 Suspended Accused - 42
In Pune	23	Convicted Accused – 14

### Implementation of the PCPNDT Act in Medical Faculty

The implementation of the PCPNDT Act in Medical Faculty	After two decades of the implementation of the PCPNDT Act, a total of 481 cases have been filed against doctors in the state. Till March this year, 62 doctors have been convicted and 42 suspended by the Maharashtra Medical Council. In Pune, 23 cases are in the court while 14 doctors have been convicted. The state helpline and website have also helped in tracking cases related to gender-based sex selection. Till March 2014, as many as 567 complaints were registered on the helpline and 33 sonography machines were sealed. Of 629 complaints registered on the website, action was taken by sealing 29 sonography machines, as per a state report. A recent study has also found that the PCPNDT Act can play an important role in addressing the alarming decline in sex ratio, change in attitudes and perceptions to accept daughters as equal to sons if there is a supporting legal and policy environment.
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### Sensitization and Training programme for judges

As many as 1,800 judicial officers and 795 prosecutors have been sensitised in dealing effectively with cases under the Pre Conception and Pre Natal Diagnostic Techniques (PCPNDT) Act.

Between 2009 and 2011, the United Nations Population Fund (UNFPA), in collaboration with the Bombay High Court, State Health Systems Resource Centre, Maharashtra Legal Services Authority and the Public Health Department, supported the organising

of judicial colloquia for capacity building of judicial officers and prosecutors on the causes and implications of declining child sex ratio and the PCPNDT Act for speedy redressal of cases.

Hon'ble former joint director of the Maharashtra Judicial Academy, has compiled and analysed case laws on PCPNDT Act. A second edition of the same was released on International Women's Day March 8, 2014. State health officials actively involved in the training programme conducted at the academy say the manual serves as "good reference" when dealing with cases under the Act.

As part of an effort to understand the reasons for such lax implementation of a crucial social legislation, the National Human Rights Commission (NHRC) and the United Nations Population Fund (UNFPA) had jointly requested the Public Health Foundation of India (PHFI) to undertake a study to assess the status of implementation of the PCPNDT Act across 18 states in the country where skewed sex ratios are a major problem and urgent intervention is required.

The aim was that remedial measures to make the law more effective could be found through a more detailed understanding of various impediments. "Maharashtra then took the first step to address the issue of sensitization of the judiciary and over the past couple of years has undertaken an exercise to enable judicial officers to interpret the law in a broader context --- of how it impacts the social fabric of the country," said Anuja Gulati, state programme officer, UNFPA.



**Relevant Citations on PCPNDT Act :-**

**1. Provisions of the Act cannot be called discriminatory**

**Vijay Sharma & others V/s. Union of India. AIR 2008 Bombay 29.**

In this writ petition, the validity of the PCPNDT Act was challenged on the ground that it violates the principle of equality of law enshrined in article 14 of the Constitution. In para 17 the Hon'ble High Court after elaborately dealing with the object reasons and the provisions of the Act held that there could be no comparison between the two legislations viz. MTP & PCPNDT Act. The object of both the Acts differs. MTP Act does not deal with the sex selection before or after conception. Anguish of a mother who does not want to bear a child of a particular sex can not be equated with a mother, who wants to terminate the pregnancy not because of the sex of the child, but for other reasons. Thus, by process of comparative study, the Hon'ble High Court held that the provisions of the Act cannot be called discriminatory & hence violative of article 14 of the Constitution.

**2. Procedure of seizure of sonography machine**

**Janaki Ultrasound Center, Jalna V/s. The Appropriate Authority under PCPNDT Act. WP No.1 of 2015 Bom. High Court, Bench at Aurangabad. Date of decision : 12/03/2015.**

In this judgment, Hon'ble Bombay High Court made observation regarding procedure of seizure & sealing of the sonography machine under PCPNDT Act.

3. Expression Any other material object

Dr.Suhasini Umesh Karanjkar V/s. Kolhapur Municipal Corporation and other. 2011(4)Mh. L. J. 21.

In this judgment, Hon'ble Bombay High Court, Full bench held that the expression 'any other material object' in section 30 of the PCPNDT Act includes ultrasound machines, other machines and equipments capable of aiding or assisting in selection of sex, or capable of performing any procedure, techniques or tests for pre-natal detection of sex of foetus.

4. Constitutional validity of the Act

Vinod Soni & Anrs. Vs. Union of India [2005 Cr. L. J. 3408]

In this judgment Hon'ble Bombay High Court held that "The petitioners in this case were a married couple. They had challenged the Constitutional validity of the Act basically on two grounds - first, that it violates Article 14 and second, that it violates Article 21 of the Constitution of India. However, at the time of argument, challenge to Article 14 was not pressed into submission." The Hon'ble High Court however exposed the fallacy of this argument by observing that, "right to personal liberty cannot be expanded by an stretch of imagination to liberty to choose the sex of the child and prohibit to coming into existence of a female foetus".

5. Abuse of diagnostic techniques

Dr. Sujit Govind Dange Vs. State of Maharashtra and Others.  
Writ Petition 11059 of 2011

In this judgment Hon'ble Bombay High Court held that after perusing and taking review of the relevant provisions of the Act and earlier decisions of the Full Bench in case of Suhasini Umesh Karanjkar and of Division Bench in Radiological and Imaging Association, the Court held that in order to prohibit abuse of diagnostic techniques Legislature has incorporated a proviso to sub-section 3 of Section 4 of the Act which stipulates maintaining that and any deficiency preserving or inaccuracy complete record in shall amount to contravention of the provisions of the Section 5 or 6, unless the contrary is proved. This provision is thus completely consistent with the objective of the Act.”

CONCLUSION

The judiciary plays an important role for implementation and application of law. With the help of legal aid clinics, we can create social awareness in the society about this important and serious problem. With this, I conclude my paper.

Alibag  
Date. 19/01/2016.

*S. S. Tambe*  
19-1-2016  
( S. S. Tambe )  
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