

**WORKSHOP ON THE SUBJECT  
CRIMINAL & CIVIL TOPICS**

**C R I M I N A L**

**SEX DETERMINATION WITH REFERENCE  
TO PCPNDT ACT, 1994.**

**C I V I L**

**-: LAW OF INJUNCTIONS :-  
TEMPORARY INJUNCTIONS INCLUDING  
EXPARGE TEMPORARY INJUNCTIONS,  
PREPETUAL INJUNCTION AND  
MANDATODY INJUNCATION.**

**DATED SUNDAY THE 15TH DAY  
MARCH, 2015.**

**VENUE :- COURT HALL OF PRINCIPAL  
DISTRICT JUDGE, RATNAGIRI.**

## I N D E X

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## **Workshop Paper**

**Paper prepared by J. P. Zapate, District Judge - 1 &  
Asstt. Sessions Judge, Ratnagiri.**

**Subject :- Sex Determination With Reference To PCPNDT  
Act, 1994.**

(1). Sex selection is the practice of determining the sex of the unborn foetus and eliminating it if found to be female. In recent years, the use of ultrasound technology has become the most common mode of sex determination followed by elimination of the female. Easy access to ultrasound since the early 1980s has contributed to increased sex selection and the rapid decline in the child sex ratio. Sex selection is not only about misuse of technology. The issue needs to be seen in the context of a male-dominated social and family structure and a value system based on son preference. Further, the practice of dowry and the tag of 'paraya dhan' translate into daughters being seen as liabilities. In one of its worst forms, it leads to complete rejection of daughters even before birth, as practiced through sex selection. Child sex ratio is calculated as the number of girls per 1000 boys in the 0-6 years age group. In India, the ratio has shown a sharp decline from 976 girls (1961 census) to 914. In Maharashtra the CSR has declined to 883 in 2011. As per global trends, the normal child sex ratio should be above 950. Therefore, there was need to pass the present Act. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act regulates sex selection, before or after conception. The law was first enacted in 1994 and amended in 2003. In India, abortion is legal under certain circumstances as defined by the Medical Termination of Pregnancy Act, 1971. These reasons are, for example, danger to the mother's life, foetal abnormality, rape or contraceptive failure. However, the law does not permit abortion for the reason of sex selection.

(2). In the year 1994 this Act came to be passed. The title of this Act is The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The Act seeks to prohibit pre-natal diagnostic techniques for determination of the sex of the foetus leading to sex selective elimination of female foetuses. It bans the use of pre-conception sex selection techniques that would help in selecting the sex of the unborn child. The Act also aims to uphold medical ethics and initiate the process of regulation of medical technology in the interest of society. The Act extends to the whole of India except the State of Jammu and Kashmir.

(3). **Preamble of the PCPNDT Act** - "An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal 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 and for matters connected therewith or incidental thereto."

(4). This preamble substituted by the Act of 14 of 2003. Prior to its substitution the title of this Act was very much long. The main object of this Act is to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to elimination of female foeticide. It is abuse of techniques which is discriminatory against the female sex and affects the dignity and status of women. The need was therefore felt to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman acts.

(5). In the year 2003 the object and reasons were amended to include proliferation of new technologies that are being developed to select the sex of the child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of women. Hence the object of the Act "is to

ban pre-conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex selective abortion and to provide for the regulation of such abortions."

(6). The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 is divided into eight chapters with 34 Sections and 19 Rules. The rules were framed in 1996. The Act also contains schedules giving various importance Proformas. The Act was amended in 2003. The Rules were further amended in 2011 and 2012. The two-fold object of the Act is regulation of the use of pre-natal diagnostic techniques and prohibition of misuse of these techniques for sex selection.

(7). Chapter One of the Act elaborates on the title of the Act and also provides key definitions, like the definition of genetic counselling centre, genetic laboratory and genetic clinic. Definitions of pre-natal diagnostic procedures, techniques, tests, definition of sex selection etc. are covered in this chapter. Chapter Two of the Act talks of regulation of genetic counselling centres, genetic laboratories and genetic clinics for the purpose of prohibiting sex selection and Chapter Three deals with regulation of use of pre-natal diagnostic techniques. Chapter Four of the Act provides for establishment of a Central Supervisory Board (CSB) and State Supervisory Boards (SSB). The CSB and SSB are the main policy making bodies under the Act. Their role is to advise the government, create public awareness and review and monitor implementation of the Act. Chapter Five of the Act provides for appointment of Appropriate Authorities (AAs) and Advisory Committees who have been assigned the functions of grant, suspension and cancellation of registration of genetic counselling centres, genetic laboratories and genetic clinics, enforcing standards prescribed for them, investigating complaints about the breach of provisions of the Act and overall supervision of the implementation of the provisions of the Act and Rules. Chapter Six of the Act deals exhaustively with registration, cancellation or suspension of the

registration of the genetic counselling centres, genetic laboratories and genetic clinics. Chapter Seven deals with offences and penalties and Chapter Eight with documentation and maintenance of the records at genetic counselling centres, genetic laboratories and genetic clinics. While all the chapters are important for effective implementation of the Act. Judicial Officers would be most concerned with Chapters Two and Seven.

(8). **Salient features of the PCPNDT Act.**

- (1) Use of Pre-natal diagnostic techniques are allowed only on medical grounds for detecting abnormalities and anomalies and not for sex determination.
- (2) No person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives the sex of foetus by words, signs or in any other manner (Sec.5)
- (3) All clinics conducting ultrasound must be registered and certificate displayed - No of machines, qualification of person conducting sonography and period of registration [Sec.19(4)]
- (4) All clinics should display prominently 'disclosure of sex of the foetus is prohibited under the law' in English as well as local language [Rule 17(1)]
- (5) All clinics should have available copy of the Act [Rule 17(2)]
- (6) Doctors or clinics advertising sex determination test in any form are liable for punishment (Section 22)
- (7) Woman is exempt from punishment - Presumption in case of conduct of pre-natal diagnostic techniques (Section 24)
- (8) Every offence under this Act is cognizable, non-bailable and non-compoundable (Section 27)
- (9) Implementing Authority under the Act is Appropriate Authority (Section 17)

- (10) Under Act Appropriate Authority has power to search, seize and seal clinics (Section 30)
- (11) Act has made it mandatory to maintain records of every scan done (Section 29 and Rule 9) Section 5 and Rule 10(1A).

(9). This statute was enacted to prohibit the preconception and prenatal diagnostic techniques. Such techniques discriminate against the female sex and affects the dignity of women. Therefore this Act came into existence. Section 3 provides for the regulation of genetic counselling centres, genetic laboratories and genetic clinics by their registration under the Act and by their operation by qualified persons. Section 3(A) imposes a prohibition etc. to persons, laboratories, clinics etc. not registered under the Act. Section 4 regulates prenatal diagnostic techniques. Section 5 requires the written consent of the pregnant woman and prohibits the communicating of the sex of the foetus. Section 6 prohibits the determination of the Sex. Chapter IV (Section 7 to 16(A)) deals with the constitution of the Central Supervisory Board to, *inter alia*, review and monitor the implementation of the Act and Rules. Under Section 16(A) State and Union Territory Supervisory Boards are to be established for the same purpose. Chapter V (Section 17, 17(A)) covers the Appropriate Authorities and Advisory Committees. The Appropriate Authorities have extensive powers under Section 17 *inter alia* to grant, suspend or cancel registration of centres etc., to investigate complaints and to take legal action. The Appropriate Authorities have, *inter alia*, the power to summon persons, order the production of documents and issue search warrants.

(10). Sections 18 & 19 deal with the registration of centres etc. Section 20 deals with the cancellation or suspension of registration. Section 22 makes it an offence punishable with imprisonment and fine for advertising relating to determination of sex. Sections 23 & 25 make it an offence punishable with imprisonment and fine for contravening

any of the provisions of the Act and Rules. Section 24 creates a presumption in favour of the pregnant woman to the effect that she was compelled by her husband or relatives to undergo a diagnostic technique amounting to an offence. Section 26 deals with offence by companies. Section 27 makes every offence cognizable, non-bailable and non-compoundable. Section 28 lays down the procedure for taking cognizance. Section 29 lays down the requirement for maintenance of records by clinics etc. Section 30 gives the power to the Appropriate Authorities to do search and seizure of records. Section 32 is the rule making power. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 have been framed. Form D & E are for the maintenance of records by a genetic counselling centre and genetic laboratory respectively. Form F is particularly important. This is for the maintenance of records in respect of pregnant women by clinics etc. If these forms are filled properly and honestly it would be possible to detect contravention of the provisions of the Act by scrutiny of these forms alone. However, in order to hide sex selection and determination this form is either not filled up at all or improperly prepared.

### **Landmark decisions on constitutional validity of the Act.**

(11). As on date there are two decisions, both of Hon'ble Bombay High Court, in which the constitutional validity was challenged but upheld. Both decisions are landmark in the way deals with this most sensitive and socially relevant issue. These are as under;

(1) **Vinod Soni & Anrs. Vs. Union of India [2005 Cr. L. J. 3408] (B.H.C.)**

"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".

(2) **Vijay Sharma & Ors. Vs. Union of India**  
**[AIR 2008 Bombay 29]**

"In this Writ Petition filed under Article 226 of the Constitution of India, by Mr.Vijay Sharma and Others, the validity of the Act was challenged on the ground that it violates the principle of 'equality of law' enshrined in Article 14 of the Constitution of India."

The Hon'ble Judges of the High Court, after elaborately dealing with the Object, Reasons and Provisions of the Act, held that there could be no comparison between the two legislations viz., MTP Act and 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 cannot be equated with a mother who wants to terminate the pregnancy not because of the sex of child but for other reasons. Thus by process of comparative study, the High Court held that provisions of the Act cannot be called discriminatory and hence violative of Article 14 of the Constitution (para 17)

**Penal Provisions under the Act**

(12). Penal provisions deal with the offences and penalties and list punishments for contravention of the Sections and Rules of the Act. Any medical professional who contravenes any of the provisions of this Act or Rules is liable for imprisonment for a term which may extend to three years and with fine which may extend to Rs.10,000/- and on any subsequent conviction, with imprisonment which may extend to five

years and with fine which may extend to Rs.50,000/-. A person who seeks pre-natal diagnostic facilities for purposes of sex selection is liable to three to five years imprisonment and fine ranging from Rs.50,000/- to Rs.1,00,000/-. Any person advertising about sex selection is liable for imprisonment upto three years and fine of Rs.10,000/-. Whoever contravenes any of the provisions of this Act or any Rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to Rs.1000/- or both and in the case of continuing contravention with an additional fine which may extend to Rs.500/- for every day during which such contravention continues after conviction for the first such contravention.

<b>Section/ Rule</b>	<b>Penal Provisions</b>
Section 22(3)	Penalty for advertisement - prohibited under the Act
Section 23(1)	Punishment for medical practitioner contravening any provision of the Act or Rules.
Section 23(2)	Suspension of registration/removal of name from Register of Medical Practitioners by State Medical Council.
Section 23(3)	Punishment for person seeking aid of pre-conception or pre-natal diagnosis for the purpose of sex selection.
Section 24(4)	Provision of Section 23(3) does not apply to pregnant women.
Section 25	Anyone contravening any provision of the Act or Rules for which no penalty has been provided elsewhere.

**Structure and Implementing Authorities under the Act.**

(13). The PCPNDT Act envisages the constitution of certain structures for effective implementation of the Act. These include;

- (1) Central Supervisory Board
- (2) State/UT Supervisory Board
- (3) State Appropriate Authority/State Advisory Committee
- (4) District Appropriate Authority / District Advisory Committee.

(14). **In Dr. Sujit Govind Dange Vs. State of Maharashtra and Others. Writ Petition 11059 of 2011 [2012(10) LJSOFT 22] (B.H.C.)**

"It is held by Hon'ble Bombay High Court 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 that any deficiency or inaccuracy in maintaining and preserving complete record 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."

(15). **Suhasini Umesh Karanjkar Vs. Kolhapur Municipal Corporation and others. [2011(4) Mh.L.J. 21]**

"This decision is landmark in more than one sense and a long and much awaited one. It overrules the earlier decision delivered by the two Judge Aurangabad Bench of the same High court in Write Petition No.1587 of 2009."

Accordingly, the matter was considered in detail by the Full Bench, which in its decision dated June 12, 2011 positively and conclusively held that the analysis of the provisions of the Act is sufficient to hold that the expression 'material object' in respect of which the power to seize and seal is conferred upon the AA/authorised officer includes ultrasound machines, other machines and equipment which are used for pre-natal diagnostic techniques or sex selection techniques and hence now it can be held as settled law that AA has the power to seize the ultrasound machines used in genetic clinics.

The Hon'ble High Court also felt distressed by the fact that a number of cases for trial of offences registered under the Act are pending in Courts of the Judicial Magistrate First Class for a long period, sometimes up to 6 years and in a few cases as long as 6 to 8 years. The High Court has, therefore, directed that all cases under the Act shall be taken up on top priority basis and the Metropolitan Magistrates, Mumbai and the J.M.F.C.s in other districts shall try and decide such cases with utmost priority and preferably within one year. Criminal cases instituted in the year 2010 and prior thereto shall be tried and decided by December 31, 2011.

#### **Presumption under the Act.**

(16). The PCPNDT Act is a progressive piece of legislation as it makes a presumption under Section 24 that a pregnant woman would be exempt from punishment unless the contrary is proved. It will be assumed that the pregnant woman was compelled by her husband or any other relative to undergo pre-natal diagnostic technique for the purpose of sex selection.

(17). The Act also makes a presumption that any deficiency or inaccuracy found in maintenance of records as prescribed under Section 29 and Rule 9 of the Act shall amount to contravention of provisions of Sections 5 & 6 unless contrary is proved by the person conducting such ultrasonography.

### **Who can file a complaint ?**

(18). Under the Act a complaint has to be filed by the AA concerned, any officer authorised in this behalf by the Central or State Government or AA or a person who has given notice of at least 15 days to the AA of the alleged offence and of his/her intention to make a complaint in the Court. As per explanation to Section 28, 'person' includes a social organisation.

(19). In the case of Dr. Kavita Pramod Kamble (Londhe) Vs. State of Maharashtra and Anr., Hon'ble Bombay High Court held that not only AAs but any officer on whom the powers are conferred by the Central Government , State Government or by the AA can institute a complaint and the court can take cognizance on a complaint made by an officer authorised in that behalf.

### **Who can take cognizance ?**

(20). As per Section 28 sub-clause 2 no court other than that of a Metropolitan Magistrate or a Judicial Magistrate First Class shall try any offence punishable under the Act. Hence exclusive jurisdiction is conferred on the Court of Metropolitan Magistrate or Judicial Magistrate First Class to take cognizance of the offence under the Act. In the case of Dr. Mrs. Kakoly Borthakur Vs. Dr. Pramodkumar s/o. G. Babar and Ors., the issue relating to territorial jurisdiction of the Court which can entertain a complaint filed under the PCPNDT Act was raised.

**In Dr. Mrs. Kakoly Borthakuar Vs. Dr. Pramodkumar  
s/o. Babar and Ors. (B.H.C.)**

"The only issue involved in this petition filed under Section 482 of Cr.P.C. related to territorial jurisdiction of the Court which can entertain a complaint filed for the offence punishable under the PCPNDT Act."

It was held by the High Court that, perusal of Section 28(1) is clear that the AA concerned is required to file a complaint. The word "concerned" has been deliberately used and the territorial jurisdiction will be decided in accordance with the provisions of Section 177 Cr.P.C. In this case it was held that as the sonography test to find out the sex of the child in the womb was admittedly done at Vashi, Navi Mumbai, therefore, the local place for commission of offence under the Act is Vashi and hence the AA concerned as per Section 28(1)(b) shall be at Vashi. Merely because girl child is born in Nagpur, territorial jurisdiction for trial of the case cannot change to Nagpur. It was necessary for the AA at Nagpur to forward the said complaint to the AA at Vashi for filing it before the proper court. The direction was given accordingly.

**Why no role of police under the Act ?**

(21). Although all the offences punishable under the Act are cognizable, non-bailable and non-compoundable in view of Section 27 of the Act, no role is given to the police for implementing provisions of the Act considering the technical and medical issues involved in implementation of the Act. The entire role for implementation of the Act and filing of complaint is given to the AA who is a person with a medical background.

**What are the procedures for conduct of trial under the Act**

(22). As per Section 27 of the Act, every offence under this Act shall be cognizable, non-bailable and non-compoundable. Cases under this Act are instituted not on police report. They are supposed to be conducted as warrant cases on a complaint other than on police report. Hence evidence has to be recorded before framing of charge. The case of *Dr. Ravindra s/o. Shivappa Karmudi Vs. State of Maharashtra* clarifies this issue.

(23). **In Dr. Ravindra s/o Shivappa Karmudi Vs. State of Maharashtra. (B.H.C.)**

"Section 28 of the Act makes it clear that the Court can take cognizance of the offence punishable under the Act only on the complaint lodged by the AA or the persons or organization fulfilling the criteria laid down therein. Therefore, this is a case instituted not on the police report but otherwise. As the punishment provided for the offences under Sections 22 & 23 of the Act is of imprisonment for a term which may extend to three years and fine which may extend to Rs.10,000/- the procedure for trial of these offences is of warrant trial as laid down in Chapter XIX of Cr.P.C. specifically provided in Part B of the Chapter for cases instituted otherwise than on police report.

**How to pass final order ?**

(24). The Act provides that any contravention of any provisions of the Act is liable for punishment with imprisonment and fine. It does not make any distinction in punishment for conducting sex selection, disclosure of sex of foetus, non-maintenance of records and/or advertisement. If the case ends in conviction of the accused, the punishment has to be deterrent so as to send a proper signal to other erring doctors and to society at large to restrain them from indulging in such unethical and unlawful practices. The Act provides for graded punishment of imprisonment and fine or first and subsequent offence.

(25). According to the Act, even the non-maintenance of records is not merely a technical or procedural lapse but has to be also dealt with sternly as the punishment provided for the said offence is also imprisonment extending upto three years and fine. In view of Section 23(2) of the Act, in case of conviction, the Judicial Officer should pass a specific order of removal of the name of the medical practitioner from the Register of the Medical Council for a period of five years for the first offence and permanently for the subsequent offence.

(26). As the sonography machine seized by the AA was used for the commission of the offence, the Judicial Officer should pass the order of confiscating the same to the state in case of conviction. In the case of *Dr. Vandana Ramchandra Patil Vs. State of Maharashtra*, the High Court did not permit the release of the machine even on indemnity bond during pendency of inquiry and trial.

(27). Thus, the provisions of the Act needs to be implemented seriously and honestly. Every attempt should be made by each authority to carry the object of the Act. The Courts must be sensitive about the cases arising out of the Act.

Hence, I conclude my paper with due respect.

Date :-07/03/2015

( J. P. Zapate )  
District Judge - 1 &  
Asstt. Sessions Judge, Ratnagiri

**N.P.Kapure.**  
**Ad-hoc District Judge-1 &**  
**Additional Sessions Judge,**  
**Ratnagiri.**  
**Date : 04/03/2015**

**Article prepared by me on the Topic Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) 1994 for the Workshop to be held in the month of March 2015.**

### **GENERAL**

1) The words "pre-natal diagnostic Procedures" means all gynaecological or obstetrical or medical procedures such as ultra-sonography foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo, blood or any other tissue or fluid of a man, or of a woman before or after conception, for being sent to a Genetic Laboratory or genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception.

2) The words "Pre-natal diagnostic techniques" includes all pre-natal diagnostic procedures and pre-natal diagnostic tests.

3) According to Section 2(k) of the Pre-conception and pre-natal Diagnostic Techniques (Prohibition of Sex-Selection - Act , 1994, the words "Pre-natal diagnostic tests" means ultra -sonography or any test or analysis of amniotic fluid, chorionic Villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases.

4) The pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and the rules framed thereunder came into force with effect from 1st January 1996. The Act provides

for regulation of the use of pre-natal diagnostic techniques for detecting genetic or metabolic disorders, chromosomal abnormalities, certain congenital malformation of sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide, and for matters connected therewith or incidental thereto :-

5) A central Supervisory Board has been constituted under Section 7 of the Act which includes three women Members of Parliament. At present, there is no provision in Act for deemed termination of membership of a Member of Parliament of her subsequent appointment as a Minister or Minister of State or Deputy Minister or the Speaker or Deputy Speaker, Lok Sabha or Deputy Chairman, Rajya Sabha, it is proposed to provide that Consequent upon a member of Parliament becoming a Minister or Minister of State or Deputy Minister or the Speaker or Deputy Speaker of the house of the People, or the Deputy Chairman of the council of States, her membership of that body shall stand terminated. (See Central Act 27 of 2001, under the heading "Statement of Objects and Reasons")

6) The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. During recent year, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.

7) The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female.

Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.

8) The Proliferation of the technologies mentioned above may in future precipitate a catastrophe, in the form of severe imbalance in male-female ratio. The state is also duty bound to intervene in such matters to uphold the welfare of the Society, especially of the women and children. It is therefore necessary to enact and implement in letter and spirit a legislation to ban the pre-conception sex selection techniques and the misuse of the pre-natal diagnostic techniques for sex selective abortions and to provide for the regulation of such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the larger interests of the Society.

9) Accordingly it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended. (See Central Act No.14 of 2003, under the heading "Statements of Objects and Reasons")

## **2) INTRODUCTION AND BACKGROUND**

1) Declining Sex-ratio- Socio-cultural and biological factors together influence the overall demographic composition of a population and its sex ratio (SR). As a key demographic indicator, SR generally depicts the number of males per 100 females in a given population. In international demographic terms, a high sex ratio society is defined as one that has disproportionately more males and a low sex-ratio society that has disproportionately less females .

However , in India the Sex Ratio is expressed as the number of females per 1000 males in a given population. Thus here a declining Sex Ratio indicates that the number of females is getting disproportionately less, In India as per the last census there are 933 females per 1000 males.

### **3) THE PCPNDT ACT (Silent Features )**

#### **The PCPNDT Act 1994 provides for :-**

- Prohibition of sex selection, before and after conception (Sec.3A of the Act).

- Regulation of pre-natal diagnostic techniques (e.g. Amniocentesis and ultra -sonography ) for detection of genetic abnormalities, by restricting their use to register institutions.

- The Act allow the use of these techniques only at a registered place for a specified purpose and by a qualified person, registered for this purpose.(Sec.4 of the act)

- Prevention of misuse of such techniques for sex selection before or after conception (Sec.6 of the Act).

- Prohibition of advertisement of any technique for sex selection as well as sex determination (Sec.22 of the Act).

- Prohibition on sale of ultrasound machines to persons not registered under this Act (Rule 3-A, inserted vide GSR,109(E) dt.14/02/2003.

- Punishment for violation of provisions of the Act. (Sec.23)

1) Once the sex of the foetus is determined , it is aborted if it is female. The difference between female infanticide and foeticide is a matter of technique and timing. But for female foeticide, the assistance of a third party, namely a medical practitioner, is required to determined the sex of the foetus. This intervention could have played a role as a great deterrent in effectively countering female foeticide, instead, unfortunately, incessant demand and the lure of easy money have led to medical practitioners colluding with parents

and relatives to carry out sex determination tests. Consequently, sex determination centres have mushroomed in all parts of the country including small districts and villages. Overnight, medical practitioners have changed their discipline to fulfill the never-ending demand for sex determination. In money cases, these centres are manned not by qualified doctors, but by technicians. It is certainly a fact that sex determination techniques have been in use in India since 1975, primarily to detect genetic abnormalities. However these techniques have been widely misused to determine the sex of the foetus and the consequent abortion of the female foetus.

#### **4) REGULATION OF GENETIC COUNSELLING CENTRES. GENETIC LABORATORIES AND GENETIC CLINICS.**

Regulation of Genetic Counselling Centre. Genetic Laboratories and Genetic Clinics. - On and from commencement of this Act, -

(1) No Genetic counselling centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques.

(2) No Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess qualifications as may be prescribed.

(3) No medical geneticist, gynaecologist, paediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under the Act.

#### **3-A) Prohibition of sex selection :-**

No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in

conducting by himself or any other persons, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.

**3-B) Prohibition on sale of ultrasound machines, etc. To persons, laboratories, clinics, etc. Not registered under the Act :-**

No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other persons not registered under the Act.

**5) OFFENCES AND PENALTIES**

**Prohibition of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention -**

1) No person, organization, Genetic Counselling Centre, Genetic laboratory or Genetic Clinic, including clinic, laboratory or center having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities or pre-natal, determination of sex or sex selection before conception available at such center, laboratory, clinic or at any place.

2) No person or organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or caused to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise.

Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

Explanation :- For the purposes of this section, "Advertisement" includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal, light sound, smoke or gas

## **6) OFFENCES AND PENALTIES**

1) Any Medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such as centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

2) The name of the registered medical practitioner shall be reported by the appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the council for a period of five years for the first offence and permanently for the subsequently offence.

3) Any person who seeks the said of the Genetic Counselling Centre. Genetic Laboratory, Genetic Clinic or ultra sound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant women for the purposes other than those specified in sub-section (2) of Section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one Lakh rupees

4) For the removal of doubts, it is hereby provided, that the provisions of sub-section 3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.

**7) Presumption in the case of conduct of pre-natal diagnostic techniques :-**

Notwithstanding anything contained in the Indian Evidence Act, 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 purpose 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.

**8) Penalty for contravention of the Provisions of the Act or rules for which no specific punishment is provided :-**

Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a

term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

### **9) Cognizance of Offences**

No Court shall take cognizance of an offence under this Act except on a complaint made by :-

(a) the appropriate authority concerned, or any officer authorized in this behalf by the central Government or State Government, as the case may be or the Appropriate Authority, or

(b) a person who has given notice of not less than (fifteen days) in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the Court.

### **10) Explanation : For the purpose of this clause, "person" includes a social organization.**

a) No Court other than that of a metropolitan Magistrate or a judicial Magistrate of the first class shall try any offence punishable under this Act.

b) Where a complaint has been made under clause (b) of sub-section (1), the Court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

### **11) Power to search and seize records, etc .**

a) If the appropriate authority has reason to believe that an offence under this act has been or is being committed at any Genetic counselling Centre, Genetic laboratory or Genetic Clinic or

any other place , such authority or any officer authorized thereof in this behalf may , subject to such rules as may be prescribed , enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre , Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document , book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

b) The Provisions of the Code of Criminal Procedure, 1973 ( 2 of 1974) relating to searches and seizures shall , so far as may be apply to every search or seizure made under this Act.

Date : 04/03/2015

(N.P.Kapure)  
Adhoc District Judge -1 &  
Addl. Sessions Judge, Ratnagiri.

B.D.Kulkarni  
Chief Judicial Magistrate,  
Ratnagiri.

PAPER FOR WORKSHOP TO BE HELD ON TOPIC

**SEX DETERMINATION WITH REFERENCE TO  
PCPNDT ACT, 1994**

The legislation has introduced the statute "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994" on noticing abuse of Pre-natal diagnostic techniques for determination and selection of sex of foetus leading to the female foeticide which is discriminatory against the female sex and affects the dignity and status of the women.

In ancient India and in literature i.e. Scriptures, Vedas, Puranas, Epics Ramayana, Mahabharata the female was well respected and she was enjoying all the powers and dignity equal to the men. Moreover, she was known as the font of creation and as an equal half of her husband. In that period every father feels proud on birth of daughter and daughters taking the name of their father in the form of female gender like king Drupada's daughter known by name Draupadi, king Janaka's daughter known by name Janaki, king Parvata's daughter known by name Parvati etc. Many Hindu are worshiping women like deities as proud and powerful goddess. There was prohibition for abortion. There was no discrimination in gender. According to spiritual thinking and ethics the abortion of pregnancy is sin. The many religions are believing in the spiritual thoughts i.e. rebirth, incarnation and reason behind it as to the Jiva gets rebirth or incarnation as per Sanchit Karma. The judiciary has faith in 'Bhagvad Gita' the manner of behaviour of every person while living in society. To get it in spiritual way and prohibit to everybody for aborting the foetus in the womb, in the book of '**Parashar Smriti**' the shloka says that, "यत्पापं ब्रह्महत्याया द्विगुण गर्भपातने । प्रायश्चित्तं न तस्यास्ति तस्यास्त्यागो विश्वियते॥" means abortion

is serious sin than the sin accrues on killing Brahma and no expiation for such sin. The following Sanskrit Shlokas in spiritual and mythological book “वृद्धसूर्यारुण कर्मविपाक” are outcome of such thinking.

“वन्ध्येया महाभाग वृच्छती स्व प्रयोजनम् । गर्भपातरता पूर्वे जनुष्यत्र फल खिदम ॥” means a lady asked question about reason behind her barrenness and the answer thereof is that it is fruit of her act of abortion in previous life.

“पूर्वे जनोषि या नारी गर्भघातकरी हयभूत् । गर्भपातेन दुःखार्ता साऽत्र जन्मनी जायते ॥” means a lady who aborted the foetus in her womb in her previous life, she bears such sadness in present life and she cannot get an issue/child.

“गर्भपातन पापाढ्या बभूव प्राग्भवेऽण्डज । साऽत्रेव तेन पापेन गर्भस्थैर्य न विन्दति ॥” means 'O Sun ! who abort the foeticide in womb in previous birth, and because of that such sin, her pregnancy in present life cannot succeed.

Most of us have heard that a child is a gift from the god. It is not an uncommon sight in India to see couples praying to be blessed with a child. All these spiritual thoughts depicts that in Shastra there is no discrimination about the sex of foetus in the womb. The Shastra has given to the woman the higher place in the society and directed to worship mother firstly before worshipping father and other deities and in the result of which the prayer 'Matru Devo Bhava, Pitru Devo Bhava' is available in the mouth of every person. The woman in the role of mother is a manager of entire family. Although the male members in the family are earning, but they unable to manage their family without help of mother, wife. Her place in the family is high and the Shastra is intending to maintain her place and dignity under some directives.

No doubt, in Shastra there are some directions that the woman alone cannot leave the home, she may work in the home, the last ceremony of parents to be performed by son etc. These are the directives of Shastra. There are not mandatory. There is no total prohibition to perform such acts by woman. The mind of woman is very

emotional and she is unable to bear such things easily and it is her nature by birth. From the directions of Shastra it reveals that the woman works under husband or male member in the family. But, the directions in respect of women as to not to leave the house and works in house is carrying the philosophy that to maintain the dignity and place of woman in the society. Although she is working under control of male members in the family, on leaving home for work purpose she may works under lot of strangers who were stranger to her and some times she may get abnormal treatment at work place. For avoiding these shameful treatment with smooth hearted lady who is unable to bear such things easily, such positive directions are there. The work of women who is engaged in household work cannot be evaluated in kinds. Her work is more important than the earning male members.

In now days the society has misinterpreted the Shastra. If Shastra prohibiting to the woman for performing any activity as per her wish, the Shastra cannot allow them to elect their bridegroom by way of 'Swayamvara' nor the woman was getting the name of her father as stated above. No workship of women in the form of deity. Moreover, in now days the people are under belief that the female children are inherently less worthy because they leave home when they marry, on the contrary son makes a daughter in law an addition and asset to the family providing additional assistance in household work and brings an economic reward through dowry. Moreover there is thinking that the daughters get married of and merit an economic penalty through dowry charges. The society has taken wrong message of Shastra and they are relying on self interpreted meanings of Shastra as well as developing their own thinking by wrong way, they started to abort the female foeticide in the womb by taking disadvantage of Pre-Conception and Pre-natal Diagnostic Techniques.

In the background of aforesaid factors the people started to take help of Pre-Conception and Pre-natal Diagnostic Techniques for determination and selection of sex with help of Medical Practitioner and Technique Operators and kill unwanted girls foeticide in the womb by

way of abortion and giving premature birth. The consequences of such thing became imbalanced the ratio in between male and female. Moreover, the killing of girl in the womb amounts to infringement of fundamental right of woman as well as denial of dignity of woman. In the circumstances, the number of women in society become less than men, and thereby increase in violence against women, increase in sex related crimes, adverse impact on reproductive health of women because of repeated pregnancy and abortions, increase of adverse impact on mental health of women as they are normally blamed for their inability to produce son etc. Therefore, the legislation introduced the statute The Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and banned the sex determination and selection in the India.

Section 4, 5 and 6 of The Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 are in reference of sex determination. Section 4(2) leads that no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities namely

- i)* chromosomal abnormalities i.e. problem in structure and body cells of genes,
- 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 Board.

Section 4(3) says that no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for the reasons to be recorded in writing that any of the following conditions are fulfilled, namely -

- i)* age of the pregnant woman is above 35 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.

No person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes of specified in clause (2) of section 4. 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.

The person who is conducting the pre-natal diagnostic technique shall follow the procedure as to

- a) he has to explain all known side and after effects of such procedures to the pregnant woman concerned,
- b) he has to obtain 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 to be given to the pregnant woman and

No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner and all these procedure and conditions imposed by section 5 of

PCPNDT Act, on person who is conducting such procedures.

The section 6 has prohibited the determination of sex. On commencement of PCPNDT Act, the Genetic Counselling Center or Genetic Laboratory or Genetic Clinic is prohibited to use their Center, Laboratory, Clinic for conducting the pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of foetus. Moreover, there is prohibition against every person for conducting pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of foetus and cause or allow to be caused selection of sex before or after conception.

No doubt, the Medical Termination of Pregnancy Act, 1971 has permitted to terminate the pregnancy through Government hospital or at a place accrued by the Government under condition that two medical practitioners has to terminate it, if the pregnancy is more than twelve weeks, but less than 20 weeks duration, but where the pregnancy less than 12 weeks, one Medical Practitioner can terminate it. The consent of woman alone is required if she above 18 years of age, but if she is a minor or lunatic, consent of the guardian is necessary. It means of section 3 of MTP Act permits abortion only until the 20 week of pregnancy. No doubt, the MTP Act permits termination of pregnancy where the substantial risk that if the child born, it would suffer from such physical or mental abnormalities as to seriously handicap, in order to prevent injury to the physical or mental health of the woman, as the pregnancy is alleged by a pregnant woman to have been caused by rape, as a pregnancy has occurred as result of failure of any contraceptive device or method used by married woman or her husband for the purpose of limiting the number of the children, continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the woman.

On comparison of provisions of PCPNDT Act with MTP Act, it reveals that the abortion of pregnancy of up to 20 weeks without sex selection is permitted. Moreover the pre-natal diagnostic technique can be used for any purpose except the selection of sex.

B.D.Kulkarni.

C.J.M.Ratnagiri.

**Vinay B. Kamble**  
**2nd Jt. Civil Judge, (J.D.) &**  
**Judicial Magistrate, (F.C.)**  
**Ratnagiri.**  
**Date :-04/03/2015**

**SUBJECT :-     "SEX DETERMINATION WITH REFERENCE TO  
PCPNDT ACT, 1994"**

**Introduction and background :-**

1           Declining Sex-ratio. - Socio-cultural and biological factors together influence the overall demographic composition of a population and its Sex Ratio (SR). As a key demographic indicator, SR generally depicts the number of males per 100 females in a given population. In international demographic terms, a high sex-ratio society is defined as one that has disproportionately more males, and a low sex-ratio society that has disproportionately less females. However, in India the Sex Ratio is expressed as the number of females per 1000 males in a given population. Thus here a declining Sex Ratio indicates that the number of females is getting disproportionately less. In India, as per the last census, there are 933 females per 1000 males.

2.           It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. A legislation is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.

1.       This Bill provides for :-

(i)       prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide.

(ii)      prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex.

- (iii) permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;
- (iv) permitting the use of such techniques only under certain conditions by the registered institution; and
- (v) punishment for violation of the provisions of the proposed legislation.

3. The Pre-natal Diagnostic Techniques ( Regulation and Prevention of Misuse) Act, 1994 and the Rules framed thereunder came into force with effect from 1st January, 1996. The Act provides for regulation of the use of pre-natal diagnostic techniques for detecting genetic or metabolic disorders, chromosomal abnormalities, certain congenital malformation of sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide, and for matters connected therewith or incidental thereto.

4. A Central Supervisory Board has been constituted under Section 7 of the Act which includes three women Members of Parliament.

(1) The Pre-natal Diagnostic Techniques ( Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. During recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the Act.

(2) The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of unborn child if

found to be female. Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of women.

- (3) The proliferation of the technologies mentioned above may in future, precipitate a catastrophe, in the form of severe imbalance in male-female ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children. It is, therefore, necessary to enact and implement in letter and spirit a legislation to ban the pre-conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex selective abortions and to provide for the regulation of such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the larger interests of the society.
- (4) Accordingly it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended.

**Guiding Directions :-**

5. The Act largely remained to be implemented as on the date of petition by CEHAT and other voluntary organizations. The Court feeling the need for intervention issued a set of guiding directions, so as to get the PNDT Act executed by the -

- (i) Central Government ;
- (ii) Central Supervisory Board (hereinafter CSB);
- (iii) State Governments / Union Territories' Administrations &
- (iv) Other appropriate Authorities.

6. At the core of direction, the concern has been for creation and awareness in the society against the practice of pre-natal determination of sex and female foeticide through appropriate releases/programmes in the electronic media.

7. Secondly, to conduct periodic stock taking/review meetings by all the concerned authorities.

8. Thirdly, to furnish quarterly reports on the implementation and working of the Act in this regard the specific information about the following scheme are emphasised :

- (a) Survey of bodies specified in Section 3 of the Act.
- (b) Registration of bodies specified in Section 3 of the Act;
- (c) Action taken against non-registered bodies operating in violation of Section 3 of the Act, inclusive of search and seizure of records;
- (d) Complaints received by the appropriate authorities under the Act and action taken pursuant thereto;
- (e) Number and nature of awareness campaigns conducted and results flowing there from. ( See AIR 2004, Journal Section, at page 263).

9. **Salient Features of PCPNDT Act**

PCPNDT Act 1994 provides for;

- (1) Prohibition of sex selection, before and after conception (Sec.3-A of the Act)
- (2) Regulation of pre-natal diagnostic techniques (e.g. amniocentesis and ultra-sonography) for detection of genetic abnormalities, by restricting their use to registered institutions.
- (3) 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 (Sec.4 of the Act)

- (4) Prevention of misuse of such techniques for sex selection before or after conception (Sec.6 of the Act)
- (5) Prohibition of advertisement of any technique for sex selection as well as sex determination (Sec.22 of the Act)
- (6) Prohibition on sale of ultrasound machines to persons not registered under this Act (Rule 3-A, inserted vide GSR, 109(E) dt.14-02-2003)
- (7) Punishment for violation of provisions of the Act (Sec.23)

10. **Judicial Notice :-**

On 31st March 2003 it was brought to the judicial notice that in conformity with the various directions issued by the Court, the Act has been amended inter alia and retitled as "The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act". The reliefs sought were as follows -

- (1) The appropriate authority as envisaged, to prohibit sex selection techniques and its advertisement through out country;
- (2) The vehicles (mobile labs), with ultra sound machines should also be surveyed and reported.
- (3) The seller / dealer of ultra sound machine should furnish information to the appropriate authority.
- (4) State Supervisory Boards (SSB) are stipulated to be constituted as per the amended provisions.
- (5) Appropriate authorities are empowered to initiate sue motu legal action under the stipulation of amended provisions.

CSB shall publish the compilation of the quarterly reports submitted by State Government and Union Territories on half yearly basis providing information about -

- (i) Survey details
- (ii) Functioning of regulatory bodies, details
- (iii) Action against non-registered bodies, etc.

- (iv) Complaint received and action taken thereof.
- (v) Nature and number of awareness programmes organized
- (vi) CBS to supervise and monitor and oversee the overall performance.

11. The Supreme Court after pursuing the goals of PNDT Act motivated the prime runners of the system and of the implementation instrumentalities of the nation. The needs for public access to records maintained by the different bodies constituted under the Act, to enhance the information dissemination, public participation, transparency and research for driving home the objects of the PNDT Act is further emphasised. The Supreme Court specifically announced that its portals are open to the parties finding any difficulty in implementing the directives. [See AIR 2004, Journal Section, at page 264]

#### **Mandate for Registration**

12. The PNDT Act, made it mandatory for registration of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic. It prohibited the unregistered bodies from undertaking any activity relating to pre-natal diagnostic. It prohibited employment of any unqualified personnel at the registered centres of genetic techniques. Any pre-natal tests shall have to be conducted at the registered address of the centre by the person qualified and registered for the purpose.(Sec. 3).

#### 13. **Section 4 of the PCPNDT Act, 1994 read as under -**

On and from commence of this Act, -

1. No place including a registered Genetic Counselling Centre, 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 purpose 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 the purpose of detection of any of the following abnormalities, namely-
  - (a) Chromosomal abnormalities;
  - (b) Genetic metabolic diseases;
  - (c) Hemoglobin opatheis;
  - (d) Sex linked Genetic Diseases ;
  - (e) Congenital anomalies ;
  - (f) Any other abnormality or diseases as may be specified by the CSB;
  
3. No pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied that any of the following conditions are fulfilled, namely-
  - (a) Age of the pregnant woman is above 35 years;
  - (b) The pregnant woman has undergone two or more spontaneous abortions or foetal loss;
  - (c) The pregnant woman had been exposed to potentially teratogenic drugs, radiation, infection or hazardous chemicals ;
  - (d) The pregnant woman has a family history of mental retardation or physical deformities such as specificity or any other genetic disease ;

(e) Any other condition as may be specified by the CSB.

4. No person being a relative or the husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques except for the purpose specified in Clause (2). ( AIR 2004 Journal Section, at page 261 ).

**Maintenance of Records & Power to search & seize records**

14. Maintenance of records – According to Section 29 of the Pre-conception and Pre-natal Diagnostic Techniques ( Prohibition of Sex-selection) Act, 1994 - (1) All records, charts, forms, reports, consent letters and all other documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed.

*Provided that, if any criminal or other proceedings are instituted against any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, the records and all other documents of such Centre, Genetic Laboratory or Clinic shall be preserved till the final disposal of such proceedings.*

All such records shall, at all reasonable times, be made available for inspection to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf.

15. **Power to Search and seize records, etc.**

1. According to Section 30 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex-selection) Act, 1994 - (1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, or any other place, such Authority or any officer authorised in this behalf

may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

2. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures, shall, so far as may be, apply to every search or seizure made under this Act.

### **Punishment**

16. Any violation, including unlicensed labs, of the Act leads to seizure of equipments. The fine for those who indulge in sex selection procedure has been double from Rs.50,000/- to Rs.1,00,000/- (One Lac) with additional provisions for the suspension and cancellation of the Registration of those as a Medical Practitioner by the concerned Medical Council or any other Registering Authority. The Act should be backed by stringent implementation machinery by the State.

### **Right to Life of Foetus :-**

17. Our Constitution provides for the Right to Equality under Article 14 and right to live with dignity under Article 21. Sex detection tests violate both these rights. Right to life is a well established right and is recognized by various international instruments. Now the question is, Does a foetus enjoy this right? Globally, Constitutions

recognize the sanctity of life, yet have failed to adequately protect the life of foetus. Judicial pronouncements are also not conclusive and vary in different jurisdictions. In India the right to life is guaranteed to every person under the Constitution of India. The concept of personhood complicates the position of legal status of foetus. Often Courts shy from answering this question due to complex issues that arise in determining this question like when does foetus attain personhood? This question is baffling the Courts worldwide. There is a desperate need for the Courts to come clear on this vital issue and recognize the rights of the foetus.

18. In India, Article 21 of the Constitution guarantees the life and liberty of every person. But it is doubtful if this would include the life of foetus as the meaning is restricted by the use of the word person. The Indian Constitution has recognized the right to life under Article 21 as also recognized in several cases. But this is hardly available to the unwanted girl child. Hence the right of the girl child may be construed in broader terms and should be inferred as

- Right to be born and not to be aborted only because she is a girl.
- Right to remain alive after birth and not to be killed at any moment after birth.
- Right of the girl child to her mind her body, right to childhood and right to a healthy family environment.

19. However, there are a number of statutes that indirectly provide protection to the life of foetus. The Indian Penal Code under various provisions makes causing miscarriage an offence.

20. In *Bandhu Mukti Morcha Vs. Union of India*, the Hon'ble Supreme Court held that it is a fundamental right to everyone in this country assured under the interpretation of Article 21 to live with human dignity..... it must include the tender age of children to develop in a healthy manner and in conditions of freedom and dignity.

21. The Medical Termination of Pregnancy Act 1971 provides for limited and restricted right to terminate the pregnancy, when the life of the mother is at stake or there is a substantial risk to the life of the child. What is to be noted here is that the MTP Act 1971, does not recognize the right of the mother to abort, this right to decide on termination of pregnancy vests with a registered medical practitioner. Further some states in India have made special legislations to confer special protection to the life of foetuses. The Nuclear Installations Act, 1965 recognises liability for compensation in respect of injury or damage caused to an unborn child by the occurrence involving nuclear matter or the emission of ionizing radiation. The Code of Criminal Procedure under Section 416 mandates that the High Court shall order of execution of capital sentences on a pregnant woman be postponed or it may commute the sentence to imprisonment for life, thereby indirectly recognizing the right to life of foetus. It is only an escapist view to deny the right to life to a foetus by giving such frivolous reasons, although it indirectly recognizes that an unborn can enjoy certain interests in property.

22. In the light of the discussion above it is agreed that foetus should enjoy the right to life. The foetus should be recognized as a separate entity enjoying distinct legal right and is not a part of the mother. (See Article by Dr. Krushna Chandra Jena, printed in Orissa Review, December 2008]

23. The concept of personhood is a myth and a mere creation of law. This legal fiction must not come in the way of conferring right

to the foetus. Failure to recognize the rights on the foetus would amount to discrimination thereby violating the right to equality enshrined in Article 14 of the Indian Constitution. [See Article by Dr. Krushna Chandra Jena, printed in Orissa Review, December 2008]

Hence, submitted with respect.

Date :- 04/03/2015

(Vinay B. Kambale)  
2<sup>nd</sup> Jt. Civil Judge, (J.D.) &  
Judicial Magistrate, (F.C.),  
Ratnagiri

**A.G.Behere  
Civil Judge J.D. &  
J.M.F.C., Dapoli.**

**Group – A**

**CRIMINAL**

**PAPER FOR THE THIRD WORKSHOP ON THE TOPIC**

**“Sex determination with reference to PCPNDT Act, 1994”.**

Female foeticide or sex selective abortion is the elimination of the female foetus in the womb itself. However, prior to the elimination, the sex of the foetus has to be determined and it is done by methods like amniocentesis, chorion villus biopsy and now by the most popular technique ultrasonography. Once the sex of the foetus is determined, if it is a female foetus, it is aborted. Apart from the technique and timing varying between female infanticide and female foeticide, for female foeticide the assistance of a third party namely a medical practitioner is required to determine the sex of the foetus. This intervention could have been a great deterrent in effectively countering female foeticide, instead the continuous demand and easy money has lead to the medical practitioners colluding with parents and relatives to do sex determination. As a consequence sex determination centres have mushroomed in all parts of the country including small districts and villages. Medical practitioners have overnight changed their discipline to fulfill the never-ending demand for sex determination. In many cases, these centres are manned not by qualified doctors but by only technicians.

If there are fewer women in society, the violence against women in all its forms would go up and the resultant atmosphere of insecurity would lead to women again being confined within the four walls of the home. The girls would not be allowed to go out to study and women would not be allowed to take up jobs. A time would come when woman would be married off to several men, the manifestations of which are already visible in areas like Dang district of Rajasthan where a woman is living as the wife of eight brothers. Thus the issue of

female foeticide is one that needs to be addressed urgently. While it is a social problem requiring changing the mindset of people, yet all possible efforts need to be made at every level. Here law can be used as an effective tool to create fear in the minds of those who resort to sex determination or those who carry out such techniques.

Female infanticide had been prohibited through legislation in the pre-independence period, however the legislation sadly remained toothless with few or no convictions under the law. Certain provisions were also included in the Indian Penal Code, 1860 punishing causing of miscarriage and other like offences but unfortunately these provisions were rarely resorted to.

With the rise of pre-natal diagnostic techniques especially amniocentesis, the government in 1978 issued a directive banning the misuse of amniocentesis in government hospitals/laboratories. Thereafter due to the relentless efforts of activists, a law to prevent sex determination tests was passed in Maharashtra known as Maharashtra Regulation of Pre-natal Diagnostic Techniques Act, 1988. Finally after intensive public debate all over India the Parliament enacted the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act on 20th September 1994 (hereinafter referred to as the PNDT Act) to provide for the regulation of:

- the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital mal -formations or sex linked disorders;
- for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and
- for matters connected there with or incidental thereto.

This Act came into force in 1996. By itself it is a comprehensive piece of legislation which defines the terms used therein, lays down when the use of pre-natal diagnostic techniques is prohibited and where it is regulated It has provisions for bodies which are responsible for policy making under the Act and those which are responsible for the implementation of the Act. The penalties for various offences and how and by whom cognizance of complaints is to be

taken, are also elaborated.

Pre-natal diagnostic techniques include all pre-natal diagnostic procedures and pre-natal diagnostic tests.

(A) Pre-natal diagnostic procedures mean all gynaecological or obstetrical or medical procedures such as: 1) Ultrasonography; 2) Foetoscopy; 3) Taking or removing samples of:- amniotic fluid, chorionic villi, blood, any tissue, fluid

of a man or a woman before or after conception for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception.

(B) Pre-natal diagnostic test means:

- Ultrasonography
- Test or analysis of: amniotic fluid, chorionic villi, blood, any tissue, fluid

of any pregnant woman or conceptus conducted to detect: genetic disorders, metabolic disorders, chromosomal abnormalities, congenital anomalies, haemoglobinopathies, sex-linked diseases.

(C) Sex selection includes: Procedure, Technique, Test, Administration, Prescription, Provision

of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex.

The PNDT Act is a comprehensive piece of legislation which prohibits sex selection before or after conception and misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide as also advertisements in relation to such techniques for detection or determination of sex. The Act also specifies the punishment for violation of its provisions. Accordingly, the Act imposes the following PROHIBITIONS -

A) ON PLACES - No genetic counselling centre or genetic clinic or genetic laboratory shall

- conduct; or associate with; or help in conducting pre-natal diagnostic techniques unless registered. Moreover the Registration certificate has to be displayed prominently on a board in such place.

- employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess prescribed qualifications.

A qualified person could be: Gynaecologist, Medical Geneticist, Paediatrician, Registered Medical Practitioner, Radiologist, Sonologist, Imaging Specialist Who fulfils the requirements laid down under the Act.

- conduct or cause to be conducted a pre-natal diagnostic technique except for the purposes specified in the Act.

- conduct or cause to be conducted a pre-natal diagnostic technique including an ultrasonography for the purpose of determining the sex of the foetus.

Every genetic counseling centre or genetic clinic or genetic laboratory is required to display prominently a notice in English and in the local language or languages that conduct of sex-determination tests/disclosure of sex of the foetus is prohibited.

## B) ON PERSONS

- No person shall open any genetic counselling centre, genetic clinic or genetic laboratory including clinic, laboratory or center having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus and sex selection unless such centre, clinic or laboratory is duly registered separately or jointly.

- No qualified person shall conduct or aid in conducting himself or through any other person a pre-natal diagnostic technique at any place other than the place registered.

- No person shall render any services to any facility, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such facility is duly registered under the Act.

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

Section 4 of the Act.

- 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.
- No person shall conduct or cause to be conducted any pre-natal diagnostic technique including ultrasonography for purpose of sex determination.

In fact a good doctor should counsel the patient that sex-determination is illegal and should also positively propagate about the girl child. A doctor is highly regarded in the society and any counselling by him/her will have great impact in the implementation of the Act.

- No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.
- No person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.
- No person including the person conducting a pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner whatsoever.

The Central Supervisory Board has laid down a code of conduct under section 16 (iv) of the Act to be observed by persons working in bodies specified therein and as such the same has to be strictly followed.

#### C) MISCELLANEOUS

- No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or center having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any

advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such center, laboratory, clinic or at any other place.<sup>16</sup>

- No person, organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in

any manner regarding pre-natal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise.

- No person shall sell, distribute, supply, rent, allow or authorize the use of any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus whether on payment or otherwise to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person or body not registered under the Act.

“Person” includes manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment capable of detecting sex of foetus” as also any organization including a commercial organization. Further the provider of such machine/equipment to any person/body registered under the Act shall:

a) send to the concerned State/UT Appropriate Authority and to the Central Government, once in three months a list of those to whom the machine/equipment has been provided; and

b) take an affidavit from such body or person purchasing or getting authorization for using such machine/equipment that the machine/equipment shall not be used for detection of sex of foetus or selection of sex before or after conception.

The conduct of pre-natal diagnostic techniques is further permissible if the person qualified is satisfied for reasons to be recorded in writing that any of the following conditions exist:

- age of the pregnant woman is above thirty-five years;
- pregnant woman has undergone two or more spontaneous abortions or foetal loss;
- pregnant woman has 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;
- any other condition specified by the Central Supervisory Board.

The doctors conducting pre-natal diagnostic techniques should maintain proper documentation. Under the amendments it has been made mandatory 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. Once the doctor follows all the necessary requirements under the law and does the necessary paperwork as mentioned below, he can have no fear from the law. The woman must not only make sure that her consent is taken in case of invasive procedures but must ask for a copy of every document that she signs. If she does not understand anything she must ask for an explanation and it is her right to be told.

2011(4) Bom.C.R. 293 (FULL BENCH)

Suhasini Umesh Karanjkar V/s. Kolhapur Municipal Corporation & anr.

Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Sec. 30 - Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996, Rr. 11(1) & 12(1) - Sealing ultrasound machine - "Any other material object" - Seizure of 'ultrasound machine' and hospital records - Challenged - Point, whether to search, seize and seal includes power to seize and seal ultrasound machine or any machine or equipment - If Appropriate Authority has reason to believe that it may furnish evidence of commission of offence punishable under Act - Held, power under section 30 to seize and seal "any material object" includes power to seize and seal ultrasound machine and other machines and equipments capable of selection of sex or capable of performing any procedure, techniques or test for pre-natal determination of sex of

foetus. 2009(6) Bom.C.R. 133 does not lay down correct law and overruled. (Paras 27, 28, 33 34, 36 & 38)

Submitted with respects,

Place : Dapoli.

Date : 05/03/2015

( A.G.Behere )  
Civil Judge (J.D) & J.M.F.C., Dapapoli

**Paper prepared by :**

Sou. Susheela R. Patil,  
Joint Civil Judge(J.D.) &  
Judicial Magistrate,F.C.,  
Khed.

**W O R K S H O P**

TO BE HELD ON

March, 2015

**Subject - Sex determination with  
reference to PCPNDT Act, 1994****INTRODUCTION : -**

1] That the society should not want a girl child; that efforts should be made to prevent the birth of a girl child and that society should give preference to male child over a girl child is a matter of grave concern. Such tendency offends dignity of women. It undermines their importance. It violets woman's right to life. It violates Article 39(e) of the Constitution which states the principle of state policy that the health and strength of women is not to be abused. It ignores Article 51A(e) of the Constitution which states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Sex selection is therefore against the spirit of the Constitution. It insults and humiliates womanhood. This is perhaps the greatest argument in favour of total ban on sex selection.

2] Government and a plethora of organizations opposing the sex selection has streched the need of some watchon this practise because sex selection was fast catching up, surely as a serious fallout of the low status overall of women in society over the years. In view of this, first yield on the part of the Government of India is the out come of Pre-natal Diagnostic Techniques Act (PNDT) in 1994, and the same was further amended into the Pre-Conception and Pre-natal Diagnostic

Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act in 2004 as a powerful legal instrument to nurtur positive change in this modern sociological trend.

### **PURPOSE OF THE ACT**

3] The basic purpose of the Act is three-fold, with a focus on averting further decline in sex ratio:

- Regulation of Pre Natal Diagnostic Techniques only for legitimate uses as prescribed under the Act;
- Complete ban on misuse of pre-conception diagnostic techniques` (PCDT) and pre-natal diagnostic techniques` (PNDT) for sex selection / determination;
- Absolute prohibition of selection of sex of the foetus, both before and after conception, except for detecting sex- linked diseasesThe Pre-conception & Pre-natal Diagnostics Techniques (PC & PNDT) Act, 1994.

4] The Pre-conception & Pre-natal Diagnostics Techniques (PC & PNDT) Act, 1994 was enacted in response to the decline in Sex ratio in India, which deteriorated from 972 in 1901 to 927 in 1991. Female infanticide had been prohibited through legislation in pre-independence period and certain provisions were included in the Indian Penal code, 1860 for punishing causing miscarriages and other such offences, but with the advent of diagnostic technology to detect the sex of the foetus very early during pregnancy, a need was felt for a specific law to prevent the misuse of technology which could lead to female foeticide.

### **What was the need for such an Act ?**

5] The hon'ble Supreme Court, taking a serious view of the onslaught of sex-selective discriminatory practices by medical fraternity, and connection it may have with the use of pre-natal sex determination, directed the Centre to implement the PC & PNDT Act in

all its aspects [AIR 2003 SC 3309]. The order came following a public interest petition filed by the centre for the Enquiry of Health and Allied Themes (CEHAT), the Mahila Sarvangeen Utkarsh Mandal (MASUM) and Dr. Sabu George, who had done extensive research in this area.

6] In 1988, the State of Maharashtra became the first in the country to ban pre-natal sex determination through enacting the Maharashtra Regulation of Pre-natal Diagnostic Techniques Act. At the national level the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted on September 20, 1994. This act came into force in the year 1996.

7] The Act was amended in 2003 following a PIL filed in 2000 to improve regulation of technology capable of sex selection and to arrest the decline in the child sex ratio as revealed by the Census 2001. With effect from February 14, 2003, due to the amendments, the Act is known as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

8] The main purpose of enacting the PC & PNDT (prohibition of Sex Selection) Act, 1994 has been to: Ban the use of sex selection techniques before or after conception. Prevent the misuse of pre-natal diagnostic techniques for sex selective abortions. Regulate such techniques

Amendments to the Act mainly covered: i) bringing the technique of pre-conception sex selection within the ambit of the Act, ii) Bringing the use of Ultrasound Machines within the purview of the Act more explicitly, iii) Further empower the Central Supervisory Board for monitoring the implementation of the Act, iv) Constitution of State level Supervisory Boards and a multi-member State Appropriate Authority for better implementation, v) More stringent punishments, vi) Empowering the Appropriate Authorities with the powers of the Civil Court for search, seizure and sealing the machines/equipments/records of the violators, including sealing the premises and commissioning of

witnesses, vii) making mandatory the maintenance of proper records in respect of the use of ultrasound machines and viii) Regulate the sale of ultrasound machines only to the registered bodies.

9] **Offences under the Act**

1) Conducting or associating or helping in the conduct of PND techniques/tests in an un-registered unit: Liable person is the owner or person responsible for conducting the PND test;

2) 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: Liable person is the specialist or team of specialists;

3) Taking the services of an un-qualified person, whether on honorary or payment basis: Liable person is the Unit owner or person responsible;

4) Conducting a PND test for any purpose other than those mentioned as permissible in the Act: Liable person is the Unit owner, person responsible or person conducting the procedure;

5) 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: Liable person is any organization, company, manufacturer, Importer, Dealer, supplier;

6) Advertisement or communication in any form in print, electronic 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 or ayurvedic medicines: Liable person is the unit owner, person responsible, distributor, printer, publisher, website host, website developer or anyone connected with the issuance of any such communication or advertisement.

10] **Penalties under the Act**

- 1) Breach of any provision by the service provider: 3 years imprisonment and/or a fine of Rs. 10,000/-; For any subsequent offence: 5 years imprisonment and/or fine of Rs. 50,000/- (Section 23 (1));
- 2) Medical Professionals: Appropriate Authorities 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 the register for 5 years on 1st conviction and permanently in case of subsequent breach (Section 23 (2));
- 3) Persons seeking to know the sex of the foetus (A woman will be presumed to have been compelled by her husband and relatives): Imprisonment extending up to 3 years and a fine of up to Rs. 50,000/-; For subsequent offences: Imprisonment upto 5 years and or a fine of Rs. 1,00,000/- (Section 23 (3));
- 4) Persons connected with advertisement of sex selection/sex determination services: Imprisonment up to 3 years and/or a fine of Rs. 10,000/- with additional fine of continuing contravention at the rate of Rs. 500/- per day (Section 22 (3));
- 5) Advertisement for the purpose of Section 22 (3) includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes visible representation made by means of any hoarding, wall painting, signal, light, sound, smoke, gas, etc.;
- 6) Contravention of provisions of the PC & PNDT Act, 1994 for which no specific punishment is provided in the Act are punishable with imprisonment up to 3 months and/or fine of Rs. 1,000/- with additional fine of continuing contravention at the rate of Rs. 500/- per day (Section 25);
- 7) Such contraventions can be presumed to be the non-maintenance of records, non-compliance with standards prescribed for the maintenance of units, etc.

11] The PCPNDT Act prohibits a person including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, concepts, fluid or gametes derived from either or both of them.

12] 1) Cognizance of offences No court shall take cognizance of an offence under this Act except on a complaint made by-

a) the Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

b) a person who has given notice of not less than thirty days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation:- For the purpose of this clause, "person" includes a social organization. 2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. 3) Where a complaint has been made under clause (b) of sub- section (1), the Court may, on demand by such person direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

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### **CITATIONS:-**

Petition challenging constitutional validity of the Act :-

1] Vinod Soni and Anr. -Vs- Union of India (UOI) 2005 Cri.LJ 3408, 2005 (3) MhLJ 1131. :-

A very interesting argument was advanced in this case by the Petitioner that the right to life guaranteed under Article 21 of the Constitution includes right to personal liberty which in turns includes the liberty of choosing the sex of the offspring and to determine the nature of the family. Therefore, it was contended that the couple is

entitled to undertake any such medical procedure which provides for determination or selection of sex. The High Court however exposed the fallacy of this argument by observing that, "right to personal liberty can not be expanded by any stretch of imagination to liberty to prohibit to coming into existence of a female or male foetus which shall be for the nature to decide." After making reference to the decisions of the Supreme Court, which explain that Article 21 includes the right to food, clothing, decent environment and even protection of cultural heritage, the High Court held that "these rights, even if, further expanded to the extremes of the possible elasticity of the provisions of Article 21, cannot include right to selection of sex, whether preconception or post-conception." It was observed by the High Court that "this Act is factually enacted to further the right of the child to full development as given under Article 21. A child conceived is, therefore, entitled under Article 21 to full development, whatever be the sex of that child." Accordingly High Court dismissed the Petition by holding that it does not even make a prima facie case for violation of Article 21 of the Constitution.

2] In the case of Vinod Soni And Ans. Vs. Union of India, 2005 Cril. L.J. 3408, 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. The Hon'ble Apex Court held that, "cases are permitted as mentioned in sub clause 3 of section 4, where certain dangers to the pregnant woman are noticed. A perusal of those conditions which are five and which can be added to the four, existence on which is provided by the Act. It will therefore be seen that the enactment does not bring about total prohibition of any such tests. It intends to thus prohibit user and indiscriminate user of such tests to determine the sex at preconception stage or post conception stage. The right to life or personal liberty cannot be expanded to mean that the right of personal liberty includes the personal liberty to determine the sex of a child which may come into existence. The conception is a physical phenomena. It need not

take place on copulation of every capable male and female. Even if both are competent and healthy to give birth to a child, conception need not necessarily follow. That being a factual medical position, claiming right to choose the sex of a child which is come into existence as a right to do or not to do something which cannot be called a right. The right to personal liberty cannot expand by any stretch of imagination, to liberty to prohibit coming into existence of a female foetus or male foetus which shall be for the Nature to decide. To claim a right to determine the existence of such foetus or possibility of such foetus come into existence, is a claim of right which may never exist. 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." Mr. Vijay Sharma And Mrs. Kirti Vs. Union of India AIR 2008 Bom. 29

3] While upholding the constitutional validity, the Hon'ble Bombay High Court has held that the section 4 can not be called that it violates Art 14 of constitution of India. Section 4 regulates use of the said techniques. Section 4(2) states that the said techniques shall not be conducted except for the purpose of detection of (i) chromosomal abnormalities; (ii) genetic metabolic diseases; (iii) hemoglobinopathies; (iv) sex linked genetic diseases; (v) congenital anomalies or any other abnormalities or diseases as may be specified by the Central Supervisory Board that too on fulfillment of any of the conditions laid down in subsection 3. Thus the said techniques are to be used only to detect abnormalities in the foetus and not for sex selection or sex selective abortions to couples who are desirous to have a male child even after birth of daughter.

Submitted with respects.

Khed  
Date: 05/03/2015.

(S.R. Patil)  
Joint C.J.J.D. & J.M.F.C.,  
Khed.

**Paper for workshop to be held in March 2015**

On the Subject :- Sex determination with reference to PCPNDT Act, 1994.

Presented by :-  
Mr. R. V. Nadagadalli,  
Civil Judge J. D., & J. M. F.C.,  
Guhagar, On deputation at  
Chiplun.

**Introduction :-**

Equality is the base of constitution. Equality in gender is also an implication in Indian Constitution, but till today considering the Indian culture and other social aspect we find inequalities in gender. Today, the declining child sex ratio is an important aspect of consideration, thinking and acting to overcome this aspect. The statistical data shows that the number of female child are declining compare to number of male child.

The technical, scientific development of human being helped much for well being of human being, but the same thing also causes misuse of the technical and scientific development. The various techniques like sonography, endoscopy etc. are helpful as well as the misuse of such techniques are injurious to human being. The trend has been developed to misuse the medical developments for determination of sex when the women is pregnant and it is found that, if they found the women is carrying the female foetus then that is aborted. This fact itself shows the gender inequality in State. There is discrimination in male and female at every stage of the life.

The legislature found it is necessary to frame an Act to overcome the situation and to regulate and prevent the use of technology for determination of sex. The Maharashtra is the first State pioneering this Act. Thereafter, the Central Government has framed the Act in the year, 1994 which is as under :-

THE PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES  
(PROHIBITION OF SEX SELECTION) ACT, 1994.

This act provides for prohibition of sex selection, before or after conception and for regulation of pre-natal diagnostics 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 and for matters connected their with or incidental thereto.

This act basically do not prohibite entirely the use of advance technology for the purposes of pre-natal diagnostics, but it provides for certain rules and regulation for using of prenatal diagnostic techniques. The act provides for :-

- i) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;
- ii) prohibition of advertisement of pre-natal diagnostics techniques for detection or determination of sex;
- iii) permission and regulation of the use of pre-natal diagnostics techniques for the purpose of detection of specific genetic abnormalities or disorders;
- iv) permitting the use of such techniques only under certain conditions by the registered institutions; and
- v) punishment for violation of the provisions of the provisions of the Act.

It is found that the implementation of the provisions of the Act was not properly done. There were various lacuna's while implementing the Act, hence in the year 2003, the act has been amended. The act prohibites pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. The techniques like amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. Techniques are also being developed to select the sex of child before conception.

These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.

Sec. 2 of the Act provides for various definition like Appropriate Authority, Board, Conceptus, Embryo, Foetus, Genetic Counseling Centre, Genetic Clinic, Gynaecologist, Prenatal diagnostic procedure, Pre-natal diagnostics techniques, Pre-natal diagnostic test, Sex selection etc. Sec. 3 of the Act provides for Regulation of Genetic Counseling Center, Genetic Laboratories and Genetic Clinic.

The act provides that pre-natal diagnostic techniques can be used by such center or laboratory or clinic only after registration. The act provides for registration of such laboratory. No technology be used except at the places which are registered under this Act.

Following are important provisions of the Act. The definition of sex selection is given in Sec. 2(O) :-

Sex selection includes any procedure, technique, test or administration or prescription of provision of anything for the purpose of ensuring or increasing the probabilities that an embryo will be of a particular sex.

Sec. 3-A :- Prohibition of sex selection - No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.

Sec. 3-B :- Prohibition on sale of ultrasound machine, etc., to persons, laboratories, clinics, etc., not registered under the Act -

No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.

Sec. 4 of the Act regulate pre-natal diagnostic techniques - On and from the commencement of this Act, (1) no place including a registered Genetic Counselling Centre 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 the purposes of detection of any of the following abnormalities, namely -

- (i) chromosomal abnormalities;
- (ii) genetic metabolic diseases;
- (iii) haemoglobinopathies;
- (iv) sex-linked genetic diseases;
- (v) congenital anomalies;
- (vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board;

(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 the 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 sexselection techniques on her or him or both.

Sec. 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 after 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.

(2) No person including the person conducting pre-natal diagnostic shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs, or in any manner.

Sec. 6 - Determination of sex prohibited.- On and from the commencement of this Act, -

(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;

- (b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus;
- (c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception. The act also provides for machinery for proper implementation of the act and accordingly provides for constitution of central supervisory board.

Sec. 16A provides for Constitution of State Supervisory Board and Union Territory Supervisory Board. Detail provisions about terms of office members, meetings of board, appointment of officer, qualification of members and function of board are also made. Sec. 17 of the Act provides for Appropriate Authority and Advisory Committee.

Chapter VI of the Act provides for Registration of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.

Chapter VII which is important about offences and penalties.

The Sec. 22 provides for prohibition for advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention. It provides punishment of imprisonment for a term which may extend to 3 years and with fine which may extend to 10 thousand rupees.

Sec. 23(1) provides for punishment for contravention of provisions of the Act. It provides for imprisonment for a term which may extend to 3 years and fine which may extend to 10 thousand rupees for the first time and on any subsequent conviction with imprisonment which may extend to 5 years and fine which may extend to 50 thousand rupees.

Sec. 23(2) provides that on report of Appropriate Authority to the State Medical Council for taking necessary action including suspension of registration if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of council for a period of 5 years for the first offence

and permanently for the subsequent offence.

Sec. 23(3) provides that any person who seeks the aid of Genetic Counselling Centre, Laboratory, Clinic or Ultrasound Clinic or Imaging Clinic for sex selection or for conducting pre-natal diagnostic techniques on any pregnant woman for the purposes other than those specified in Sub Section 2 of Section 4, he shall be punishable with imprisonment for a term which may extend to 3 year or with fine, which may extend to 50 thousand rupees for first offence and for any subsequent offence with imprisonment which may extend to 5 years and fine which may extend to 1 lakh rupees.

The woman who was compelled to undergo such a diagnostics techniques or such selection is exempted from application of sub section 3.

Sec. 24 provides for presumption in case of conduct of pre-natal diagnostic techniques, it provides that court shall presume unless the contrary is proved that the woman was compelled by her husband or any other relative as the case may be, to undergo pre-natal diagnostic techniques for the purposes other than those specified in Sub Section 2 of Section 4 and such person shall be liable for abetment of the offence Sub Section 3 of Section 23 and shall be punishable for the offences punishable that section.

The amendment in the said act has been made after the directions of Hon'ble Supreme Court of India in the case of *Centre of Enquiry Health & Allied Themes (Cehat) and others versus Union of India and others, reported in (2001) 5 Supreme Court Cases 577*.

Hon'ble Supreme Court has given various directions to Central Government, Central Supervisory Board, State government/Union Territory Administration and also directions to Appropriate Authority.

The judiciary also plays an important role for implementing the law and application of the law. The decisions of Hon'ble Apex Court and Hon'ble High Court in country also have decided the matter in order to achieve the object of the Act and accordingly the issue about, sex selection, gender inequality, social awareness about foeticide are also seriously considered. The Act and the implementation of the Act

through Government Authorities, various NGO's and Judiciary certainly lead to gender equality.

Submitted with due respect.

Date :- 10-03-2015

Sd/-  
(R. V. Nadagadalli)  
Civil Judge J.D., & J. M. F. C.,  
Guhagar on deputation at  
Chiplun.

**Presented by  
S. S.Jadhav  
Civil Judge J.D. &  
J.M.F.C.Chiplun.**

**Paper for Workshop to be held in March 2015**

**Subject :-** SEX DETERMINATION WITH REFERENCE TO PCPNDT ACT 1994.

In 1988, the state of Maharashtra became the first in the country to ban prenatal sex determination through the enactment of the Maharashtra Regulation of Prenatal Diagnostics Techniques Act. At the national level the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (PNDT Act) was enacted on September 20, 1994.

The 1994 Act provided for the "regulation of the use of prenatal diagnostic techniques for the purpose of detecting genetic or metabolic disorders, chromosomal abnormalities or certain congenital malformations or sexlinked disorders and for the prevention of misuse of such techniques for the purpose of prenatal sex determination leading to female foeticide and for matters connected therewith or incidental thereto." Except under certain specific conditions, no individual or genetic counseling center or genetic laboratory or genetic clinic shall conduct or allow the conduct in its facility of, prenatal diagnostic techniques including ultrasonography for the purpose of determining the sex of the fetus; and "no person conducting prenatal diagnostic procedures shall communicate to the pregnant women concerned or her relatives the sex of the foetus by words, signs or in any other manner." The Act provides for the constitution of a Central Supervisory Board (CSB) whose function is mainly advisory and for the

appointment of an Appropriate Authorities (AAs) in States and Union Territories to enforce the law and penalize defaulters and Advisory Committee/s (ACs) to aid and advise the AAs.

The law was amended in 2003 following a Public interest Litigation (PIL) filed in 2000 to improve regulation of technology capable of sex selection and to arrest the startling decline in the child sex ratio as revealed by the Census 2001. The amended Act now called "The PreConception and PreNatal Diagnostic Techniques (Prohibition of Sex Selection) Act" not only prohibits determination and disclosure of the sex of the foetus but also bans advertisements related to preconception and prenatal determination of sex. All the technologies of sex determination, including the new chromosome separation techniques have come under the ambit of the Act. The Act has also made mandatory in all ultrasonography units, the prominent display of a signboard that clearly indicates that detection/revelation of the sex of the foetus is illegal. Further, all ultrasound scanning machines have to be registered and the manufacturers are required to furnish information about the clinics and practitioners to whom the ultrasound machinery has been sold.

Section 3 of this Act states regulation of genetic counseling centres, genetic laboratories and genetic clinics. Section 4 of the Act States about regulation of prenatal diagnostics techniques.

### **Offences And Penalties Under PCPNDT Act i)**

i) Under this Act there is prohibition of advertisement relating to preconception prenatal determination of sex. For contravention of provision of Section 22 sub Section 1 and 2 punishment of imprisonment which may extend to 3 years and fine which may extend to Rs.10,000/.

ii) Medical professional as mentioned in Section 23 of this Act who contravenes any of the provision of this Act or rules made thereunder shall be punishable with imprisonment which may extend to 3 years and fine which may extend to Rs.10,000/

iii) Any person who seeking to know the sex of the foetus is liable for imprisonment for a term which may extend to 3 year and fine which may extend to Rs.50,000/ for the first offence and for any subsequent offence imprisonment which may extend to 5 years and fine which may extend to Rs.1,00,000/.

As per Section 24 Court shall presume unless contrary is proved that the pregnant woman was compelled by her husband or other relative, as the case may be, to undergo prenatal diagnostic techniques 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 offence specified under that section.

As per Section 27 of the Act every offence of this Act shall be cognizable, nonbailable and noncompoundable.

### **Case Laws**

1. Radiological and Imagination Association vs. Union of India and ors. AIR 2006 Utr 78, MANU/MH/1050 2011 The appropriate authority shall not allow access to such data stored in a silent observer to a nonmedical officer except himself and senior officers not below the rank of Deputy Collector and that No. access shall be given to such images in silent observer to any lower officer of the Revenue Department or to any officer in the Police Department below the rank of Deputy Superintendent of Police, except when such information is

required in connection with or, for the purpose of registration of an offence. As regards medical personnel, only medical officers of the rank of Civil Surgeon or Deans of medical college or officers incharge of the Primary Health Centre shall be given access to the images in the silent observer.

**S. S.Jadhav**  
**Civil Judge J.D. &**  
**J.M.F.C.Chiplun.**

[ R.S.Dhadake ]  
Joint Civil Judge (J.D.)  
and J.M.F.C. Dapoli.

### **SEX DETERMINATION WITH REFERENCE TO PCPNDT Act, 1994**

As per medical law, the term sex determination means "the process of identifying sex of an individual by following different techniques like amniocentesis (by amniotic fluid), etc." With the development of technology, several techniques have been evolved for the purpose of observation of foetus in mother's womb. These techniques includes sonography test, amniocentesis, foetoscopy, chorionic villi biospy, placental tissue samplingm, etc. Out of these, the most commonly used sex determination test is sonography and amniocentesis. These pre-natal diagnostic techniques were meant to be used for the detection of genetic or chromosomal disordersr congenital malformations or sex linked disorders. But these are, now a days, used for determination of sex of the child.

India is male dominated country and birth of boy is considered as joyous occasions, on the contrary, the girl is considered as burden on the family. Hence, to kill such child these pre-natal diagnostic techniques are videly used in the Indian Society. The study has clearly showed that these techniques are used by the educated class of the society, mostly in urban areas. Hence, to curb such problem, the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 was enacted and with the passage of time several amendments were introduced in this Act to meet requirements of changing society and techniques.

#### **Female foeticide :-**

Foeticide is distruction of a fetus. The term 'female foeticide' means the eliminaion of a female foetus. It is also defined as a process of aborting a foetus, after undergoing sex determination

tests or pre-natal diagnostics tests after revealing its sex as a female. The most reasons for high rate of female foeticide in India includes:

Woman's status in the society is secondary. It is generally expected that sons would carry the family lineage forward, provide security and care to old parents.

ii. Certain communities want to get rid of female child due to unemployment, poverty, etc.

iii. Dowry is also one of the factor for increase in female foeticide.

iv. It is religious belief that a son continues family lineage (Vansh).

To curb these problems the Indian Penal Code, 1860 several penal provisions have been provided. Under section 312, 313 and 314, causing miscarriage is severally punishable with imprisonment. However, due to development in technology and its misuse by several persons, there was need to enact a special law dealing with aspect of sex determination, etc.

### **The Preconception and prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994-**

In 1986, a social action group in Mumbai namely the Forum against Sex Determination and Sex Pre-selection initiated a campaign against sex-determination. The Maharashtra Government enacted the Maharashtra Regulation of Pre-natal Diagnostic Techniques Act, 1988, which was first Act for controlling sex determination. This was followed by a similar Act in Punjab in 1994. However, these two Acts were repealed by the Parliament by enacting a central legislation i.e. the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 with effect from 01-01-1996. This Act was renamed in 2002 amendment, as the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 (hereinafter for sake of brevity called as 'PCPNDT Act'), which came to effect from 14-02-2003.

- I. The PCPNDT Act chiefly provides for prohibition of sex selection, before and after conception,
  - ii. regulation of prenatal diagnostic techniques,
  - iii. prevention of misuse of such techniques for sex selection before or after conception,
  - iv. prohibition of advertisement of any such techniques,
  - v. punishment for violation of the provisions of the Act, etc.

II. Constitutional validity of PCPNDT Act :- In **Vinod Sony v/s. Union of India**, a married couple challenged the constitutional validity of PCPNDT Act, the Hon'ble Bombay High Court held that -

“the enactment does not bring about total prohibition of any such tests. It intends to thus prohibit user and indiscriminate user of such tests to determine the sex at preconception stage or post-conception stage. The right to life or personal liberty cannot be expanded to mean that the right of personal liberty includes the personal liberty to determine the sex of a child which may come into existence. .... claiming right to choose the sex of a child which is come into existence as a right to do or not to do something which cannot be called a right. The right to personal liberty cannot expand by any stretch of imagination, to liberty to prohibit coming into existence of a female foetus or male foetus which shall be for the Nature to decide. To claim a right to determine the existence of such foetus or possibility of such foetus come into existence, is a claim of right which may never exist. 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. In our opinion, therefore, the petition does not make even a prima facie case for violation of Article 21 of the Constitution of india.”

III. As per section 3 (1), no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques. Thus, the registration is compulsory for conducting activities relating to pre-natal diagnostic techniques.

Further, as per Section 3B, no person shall sale any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.

IV. The Section 4 of the Act provides provisions relating to regulation of Pre- Natal Diagnostic Techniques. Under this section, these techniques shall be conducted only for the purposes of detection of any of the following abnormalities, namely -

- (i) Chromosomal abnormalities;
- (ii) Genetic metabolic diseases;
- (iii) Haemoglobinopathies;
- (iv) Sex-linked genetic diseases;
- (v) Congenital anomalies;
- (vi) Any other abnormalities or diseases as may be specified by the Central Supervisory Board;

The place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques for the abovesaid purposes. Further, such restrictions are extended for use of techniques on satisfaction of the person qualified. These conditions are-

- (i) Age of the pregnant woman is above thirty-five years;
- (ii) The pregnant woman has undergone of 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 Central Supervisory Board;

Such person is bound to record his reasons for conducting such technique. Also, 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. Under Rule 9 of the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996, it is mandatory to maintain a register showing, in serial order, the names and addresses of the men or women given genetic counseling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouses or fathers and the date on which they first reported for such counseling, procedure or test. The specific forms viz. Form- D, Form-E, Form-F, etc. are given.

**In Sujit Govind Dange (Dr.) and another v/s. State of Maharashtra and others. 2013 2 BCR 351**, the Hon'ble Bombay High Court held that-

“Considering the object of the Act, the maintenance and preservation of records as per rule 9 is an important statutory duty cast upon the person (Doctor) conducting ultra sonography on a pregnant woman ..... deficiency and inaccuracy in keeping and maintaining the record including form 'F' has resulted in contravention of the provisions contained in section 5 or 6 and, therefore, would amount to an offence and can be treated to be sufficient reason for the Appropriate Authority to invoke the provisions of subsection (3) of section 20 of the Act, in the larger public interest...”

IV. As per Section 5(2) of the Act, no person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner. The said prohibition was incorporated with a view to protect secrecy as to sex of

the foetus.

Even such prohibition also prevents a person including a relative or husband of the pregnant woman from seeking or encouraging the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in the Act.

V. The section 6 of the Act is most important section. Under this section determination of sex is prohibited. It is required that, no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus. This prohibition is also applicable to a person and he shall not conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

VI. Under Section 7 of the Act the **Central Supervisory Board** was constituted and its function is to advise the Central Government on policy matters relating to use of pre-natal diagnostic techniques, sex selection techniques and against their misuse, to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide and to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics. Accordingly, as per Section 16A the State Advisory Committee is also constituted.

VII. As per Section 17 (2), 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 having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide. Such Appropriate Authority shall investigate complaints of breach of the provisions of this Act or the rules made there-under and take immediate action, and create

public awareness against the practice of sex selection or prenatal determination of sex. Even after investigation and after considering act, the Authority has power to suspend or cancel the registration of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic. As per Section 17A of the Act such Appropriate Authority is vested with certain powers of the Court like, summoning any person, etc. An appeal from order of such Appropriate Authority shall lie to the State Government or Central Government.

#### **VIII. Offences and Penalties**

1. Section 22 of the Act prohibits advertisement relating to pre-natal determination of sex and punishment for its contravention. It provides that, no person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or center having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such center, laboratory, clinic or at any other place.

It also provides that, no person or organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding prenatal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise.

Any contravention of above said provisions is punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

2. As per section 23(1) any medical geneticist, gynaecologist, etc. who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment

which may extend to five years and with fine which may extend to fifty thousand rupees.

The Appropriate Authority shall report the name of such registered medical practitioner against whom a charge is framed by the Court, to the State Medical Council for taking necessary action including suspension of the registration till disposal of the case and if he is convicted, for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

3. As per Section 23(3), any person who takes, seeks aid of a Genetic Counselling Centre, etc. for conducting pre-natal diagnostic techniques on any pregnant women for the purposes other than those specified in subsection (2) of section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one Lakh rupees.

4. **Exemption to Woman-**

The provisions of Section 23(3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection. Even 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 prenatal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4.

5. **Abetment**

A person who compels a woman to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4, 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.

As per section 17A (c), an Appropriate Authority has power of issuing search warrant for any place suspected to be indulging in sex

selection techniques or prenatal sex determination.

6. The Section 25 is like a residue clause under which if anyone contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

7. The section 26 is in respect offences by companies. If the offences are committed by a company, every person who, at the time commission of the offence was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence such person can not be held liable for such punishment.

If the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. As per this section "Company" means anybody corporate and includes a firm or other association of individuals, and "director", in relation to a firm, means a partner in the firm.

#### **IX. Cognizance of offences:-**

Every offence under this Act shall be cognizable, non-bailable and noncompoundable. Section 28 provides that the court shall take cognizance of an offence under this Act only on a complaint made by--

(a) the Appropriate Authority concerned, or any officer

authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court. The term "person" includes a social organisation. Under such complaint, the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person. Further a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

### **Conclusion -**

The PCPNDT Act was enacted with intent to control use of technology and to prevent its misuse. However, it is observed that these techniques are still misused for purpose of female foeticide. The reasons are, ofcourse, the beliefs of the people in the Society. However, several complaints are filed under this Act. After, taking into consideration of pendency of Criminal matters relating to PCPNDT, the Hon'ble Chief Justice of Bombay High Court in **Dr. Suhasini Umesh Karanjkar v/s. Kolhapur Municipal Corporation**, gave direction to Judicial Magistrates First Class to take cases under PCPNDT on top priority basis. The issue is so much important that, there is need to control misuse at all levels.

**Prepared by**

Sd/xxx

**( Rahul S. Dhadake )  
Joint Civil Judge ( J.D. ) &  
J.M.F.C., DAPOLI.**