

Training Module and
Handbook for Judicial Officers
on

SEX SELECTION AND PCPNDT ACT

2014



United Nations Population Fund – India

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For further information contact



Maharashtra Judicial Academy

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United Nations Population Fund – India

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MESSAGE

Gender biased Sex Selection is a complex issue emanating from a web of factors which include: preference for sons and deep rooted prejudices towards women; wide access and availability of technology and its misuse and the desire of couples to have smaller families but not without sons. This practice has existed in India for decades but has now assumed alarming proportions; this could be because there are no major immediate consequences of this phenomenon and people fail to understand the repercussions that the practice of sex selection would have over generations and across geographical locations. Instances of bride buying, trafficking, polyandry are already being reported from States not having adequate number of women of marriageable age. It is hence a matter of grave concern for the Country that the Child Sex Ratio (number of girls per 1000 boys in the 0-6 years age group) has declined from 976 in 1961 to 919 in 2011.

The State of Maharashtra was the pioneer in enacting the law (The Maharashtra Regulation of Use of Prenatal Diagnostic Technique Act, 1987) to address the practice of sex selection. It was this Act that paved the way for the enactment of the National legislation, the Prenatal Diagnostic Techniques (Prevention of Misuse) Act in 1994. The State has also played a pioneering role in capacity building of Judicial Officers on gender and law with special emphasis being given to the issue of sex selection. The training and sensitization of Judicial Officers on these issues has helped to create a deeper understanding of the issue of sex selection and its social implications thereby enabling them to appreciate the subject in proper perspective. It has also helped them understand the root causes of discrimination against women and girls and hence apply principles of equality in their role as Judicial Officers. I believe that well informed, trained and sensitive Judges, Public Prosecutors, Police Officers and medical professionals can play an important role in curbing this inhuman practice.

The Maharashtra Judicial Academy has been at the forefront of making conscious endeavours to integrate issues of social relevance into all training programs for Judicial Officers and Prosecutors and it is in the fitness of things that they have undertaken the prestigious project of

Mohit S. Shah
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preparing the Handbook and Training Module for sensitization of Judicial Officers on the issue of sex selection and PCPNDT Act.

I would like to congratulate the United Nations Population Fund for providing not only the necessary financial support but also technical support to undertake this project through Maharashtra Judicial Academy. I would also like to congratulate Dr. (Mrs.) Shalini Phansalkar Joshi, Former Joint Director of Maharashtra Judicial Academy for having painstakingly completed this project in spite of her new assignment as the Principal Judge City Civil and Sessions Court, Mumbai. I am sure that this module will be extensively used by the National Judicial Academy and other State Academies.

17 February 2014


(Mohit S. Shah)

Justice V. M. Kanade
Judge
High Court at Bombay



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Message

The Indian Constitution guarantees equal rights and opportunities to all its citizens irrespective of cast, class, creed and gender. In spite of this, gender inequalities have persisted in India for centuries placing women and girls at a disadvantage during every stage of their life cycle. In recent years this discrimination has taken the form of pre birth elimination of female foetuses or sex selection leading to a decline in the female- male sex ratio and masculinization for the country's population which is found reflected in 2011 census, according to which, the CSR in India is 919 girls per 1000 boys in the 0-6 years age group).

Sex selection is a reflection of the low status of women in society and the patriarchal mindset which prefers sons over daughters. The issue of survival of the girl child needs to be addressed systematically by different stakeholders. The Judiciary is an important stakeholder in addressing this evil social practice. I am happy that the Maharashtra Judicial Academy has taken the lead in training Judicial officers and Prosecutors on this important issue. I am also happy that the Academy is bringing out a Training Module and Handbook for training of Judicial officers on this relevant social issue.

I would like to congratulate Dr.Mrs.Shalini S. Phansalkar-Joshi, the then Jt.Director of Maharashtra Judicial Academy and all those who were involved in bringing out this module. I am sure it would prove to be a useful training tool for all State Judicial Academies and Training Institutes.

JUSTICE V.M. KANADE
Director,
Maharashtra Judicial Academy

Foreword

Son preference and discrimination against girls is not a new phenomenon in India, it has existed for centuries. In the past, discrimination manifested itself in forms such as infanticide or unequal access to nutrition, health care, educational opportunities, etc. However, the availability of technology and its misuse to detect the sex of the foetus has changed the manner in which discrimination is practiced. The impact of this discrimination is visible in the declining Child Sex Ratio (number of girls per 1000 boys in the 0-6 years age group) in the country. Census data reveal that the Child Sex Ratio has been steadily declining from 962 in 1981 to 945 in 1991. It further declined from 927 in 2001 to 919 in 2011.

I am happy that the Maharashtra Judicial Academy, which has been a pioneer in integrating issues of social relevance as part of all its induction and refresher programmes for Judicial Officers, has also taken the lead in capacity building of the Judicial Officers on the issue of sex selection and PCPNDT Act. The capacity building has resulted in some path-breaking judgements upholding the true letter and spirit of the Act. It has also reaffirmed our conviction that various stakeholders who can play an important role in effective implementation of the Act need to be provided with comprehensive information on the issue of sex selection and its societal consequences. This helps them to view the issue from a broader perspective and understand how the long-term implications of sex selection can impact the very social and cultural fabric of the country.

I am also happy that the Maharashtra Judicial Academy has, in collaboration with UNFPA, put together this excellent training tool containing the latest case laws on the subject and providing practical guidance to Judicial Officers on how to deal with cases under this Act. I would like to congratulate all members of the Advisory Committee and the Technical Committee who gave their valuable inputs for bringing out this module. I am confident that Judicial Training Institutions will find it useful in training judges on this important subject.

I would particularly like to thank Dr. Mrs. Shalini Phansalkar Joshi, the former Joint Director of the Academy and Mr. P.R. Bora and Ms. Pushpa Ganediwala, the current Joint Directors of the Academy in bringing out this module and handbook.

Dr. Justice D.Y. Chandrachud

Chief Justice, Allahabad High Court

Former Director, Maharashtra Judicial Academy

Acknowledgements

“One sensitized Judge is a far better armour against gender outrage than the long clauses of sections with all protection writ into it”.

Justice Krishna Iyer

Krishan Lal vs. State of Haryana
AIR 1980 SC 1252.

Developing a Training Module and Handbook for Judicial Officers on the issue of gender biased sex selection and the PCPNDT Act has been an enriching learning experience. The Training Module and Handbook was prepared with the broad objective of sensitizing the Judicial Officers on the issue of sex selection as being closely related to discrimination against women and its impact on the social and cultural fabric of our country. It also aims to enable Judicial Officers apply principles of equality in their judicial role and strengthen their capacities on trial and procedural issues related to crime under the Act.

I would like to take this opportunity to thank all those individuals who were instrumental in helping complete the module.

At the outset I would like to thank UNFPA and the Ministry of Health and Family Welfare, Government of India, for having entrusted the Maharashtra Judicial Academy with the task of preparing the Training Module and Handbook.

My heartfelt thanks are due to Ms. Anuja Gulati, State Programme Officer, UNFPA, without whose active support in every way, this Training Module and Handbook would not have seen the light of day.

I would like to express my sincere gratitude to our Chief Justice. Shri. Mohit S. Shah for permitting the Maharashtra Judicial Academy to undertake this endeavour and also for agreeing to release the module.

I would like to express my heartfelt gratitude to Dr. Justice D.Y. Chandrachud, former Director of the Maharashtra Judicial Academy, who has been a constant source of inspiration for all work undertaken at the Academy. I would also like to place on record the valuable guidance provided by him as the Chairperson of the Advisory Committee for preparation of this module.

My sincere thanks to Justice V.M. Kanade, Director of the Maharashtra Judicial Academy, for his support in taking this project forward to completion.

I am grateful to Mr. Vikas Kharage, Former Mission Director, National Rural Health Mission, for his guidance as a member of the Advisory Committee for preparation of this module.

I am particularly grateful to Mr. P.R. Bora and Ms. Pushapa Ganediwala, the current Joint Directors of the Maharashtra Judicial Academy for assisting in the administrative tasks related to completion of the module.

The support of my colleagues at the Maharashtra Judicial Academy, especially Mr. Atul Kurhekar, Former Additional Director, are gratefully acknowledged for assisting me in every possible way in preparation of the module and handbook.

I would like to place on record my thanks for the inputs provided by the members of the Technical Committee, Ms. Anuja Gulati, State Programme Officer, UNFPA, Advocate Varsha Deshpande, Secretary, Dalit Mahila Vikas Mandal, Advocate Uday Warunjikar, Advocate High Court, and Dr. Asaram Khade, Consultant, PCPNDT, Government of Maharashtra.

Special thanks to Dr. D.K. Mangal, State Programme Coordinator for having reviewed the document.

A special thank you to Ms. Anju Uppal for having coordinated the preparation and compilation of the module.

I am sure the module will be extensively used by the State Judicial Academies for training of Judicial Officers on the critical issue of gender biased sex selection.

Dr. Shalini Phansalkar Joshi

Principal Judge, City Civil and Sessions Court
and

Former Jt. Director

Maharashtra Judicial Academy

Uttan, Mumbai

Maharashtra

List of Abbreviations

AA	–	Appropriate Authority
AIIMS	–	All India Institute of Medical Sciences
CEDAW	–	Convention on Elimination of all Forms of Discrimination Against Women
CEHAT	–	Centre for Enquiry into Health and Allied Themes
CSB	–	Central Supervisory Board
CSR	–	Child Sex Ratio
CVB	–	Chorionic Villi Biopsy
CWDS	–	Centre for Women's Development Studies
DASDSP	–	Doctors against Sex Determination and Sex Pre-selection
FASDSP	–	Forum Against Sex Determination and Sex Pre-selection
FINRRAGE	–	Feminist International Network of Resistance to Reproductive and Genetic Engineering
FNGO	–	Field Non-Government Organization
FOGSI	–	Federation of Obstetrics and Gynaecological Societies of India
IMA	–	Indian Medical Association
JOTI	–	Judicial Officers Training Institute
MALSA	–	Maharashtra State Legal Services Authority
MASUM	–	Mahila Sarvangeen Utkarsh Mandal
MAVIM	–	Mahila Arthik Vikas Mahamandal
MJA	–	Maharashtra Judicial Academy
MLA	–	Member of the Legislative Assembly
MMC	–	Maharashtra Medical Council
MNGO	–	Mother Non-Government Organization
MTP	–	Medical Termination of Pregnancy
PCPNDT	–	Pre-Conception and Pre-Natal Diagnostic Techniques
PIL	–	Public Interest Litigation
SHSRC	–	State Health System Resource Centre
SRB	–	Sex Ratio at Birth
SSB	–	State Supervisory Board
UNFPA	–	United Nations Population Fund

Contents

Foreword	vi
Acknowledgements	vii
List of Abbreviations	ix

Part I: Introduction to the Training Module and Handbook

Background	3
The objectives of the Training Module and Handbook	5
The methodology of preparation of the Training Module and Handbook	5
Structure of the Training Module and Handbook	6
Social context judging	7
Note on terminology use	7

Part II: The Training Module

Introduction to the Training Module	11
Methodology of the training	12
The schedule	12
The session plan	13

Part III: The Handbook

Chapter 1: Sex Selection: The issue and practice	25
Introduction	25
Trends in declining sex ratio	26
Magnitude of the problem	28
Root causes of declining sex ratios	29
Consequences of sex selection	35
Interconnectedness of sex selection with other gender related laws	37
Myths related to sex selection	38
Constitutional provisions related to gender equity and equality	39
International conventions addressing the practice of sex selection	41
Sex selection and medical termination of pregnancy – unpacking the nuances	42
Chapter 2: Demystifying the PCPNDT Act	43
Important milestones in enactment of the PCPNDT Act and its enforcement	43
Introduction	47

Preamble of the PCPNDT Act	47
Statement of objects and reasons of the PCPNDT Act	47
Scheme of the PCPNDT Act	48
Landmark decisions on constitutional validity of the Act	48
Landmark decisions on effective implementation of the PNDT Act	50
Key provisions of the Act	55
Structures and Implementing Authorities under the Act	64
Presumptions under the Act	72
Chapter 3: Procedural Issues under the Act	73
Who can file a complaint?	73
Who can take cognisance?	74
Who can be an offender under the Act?	75
Why no role of police under the Act?	75
What are the key provisions relating to bail?	76
What are the procedures for conduct of trial under the Act?	76
What is the nature of evidence under the Act?	77
How to appreciate evidence?	77
How to pass final order?	77
Expeditious Hearing of the Case	79
Recent Amendments to Rules	79
Chapter 4: Government and NGO Efforts in Effective Implementation of the Act and the Critical Role of Prosecutors	83
Role of the Government – A Case Study of Maharashtra	83
Role of NGOs	87
Role of Public Prosecutors	89
Part IV: Annexures	
1. Energisers & Warm-Ups	93
2. Difference between Teaching and Facilitation	95
3. Principles of Effective Adult Learning	96
4. Problem Tree	97
5. Statements Related to Sex and Gender	98
6. Pre- and Post-Test Questionnaire for Self-assessment	99
7. Feedback Form	100
References	101

Part I

Introduction to the Training Module and Handbook

“Facilitation is an art
not of putting ideas
into people’s head but
drawing out ideas”

- Anon

Introduction to the Training Module and Handbook

Background

Son preference and discrimination against the girl child is almost universal in India and manifest in many ways, including pre-birth elimination of female fetuses. This practice of selective pre-birth elimination of the female foetus has led to a decline in the Child Sex Ratio (CSR)¹ in most parts of India. The CSR, which is the number of girls per 1000 boys in the age group 0-6 years, has declined at the national level from 976 in 1961 to 919 in 2011. The declining trend in the CSR is particularly worrisome, as it points to the increased incidence of gender biased sex selection, which is a result of a complex web of socio-economic and cultural factors including patriarchal mindsets steeped in son preference, desire for smaller families but not without a boy and the widespread misuse of modern technology for pre-conception and pre-birth sex selection. It is estimated that in India the practice of sex selection has resulted in the loss of approximately 5.7 lakh girls annually during the period 2001-2008. This means that an estimated 45 lakh girls have gone missing over this eight-year period (2001-08). Contrary to what many believe, fewer girls in a society will not enhance their status. Instead, as evidence from states with sex ratio imbalance demonstrates, it could lead to increased violence against women, rape, abduction, trafficking and a resurgence of practices such as polyandry (more than one man marrying one woman). In some parts of the country, women are already being 'bought' as brides, making commodification of women a real threat.²

The issue of survival of the girl child is hence a critical one and needs to be addressed systematically with different stakeholder groups. While the real need is to bring about a change in the mindset of the people to enable them to welcome the birth of girls and provide them with all

¹ CSR reflects both pre-birth and post-birth discrimination against girls. Therefore, the Sex Ratio at Birth (SRB) is considered a more accurate and a refined indicator of the extent of sex selection. The SRB is the number of girls born for every 1000 boys and hence is not influenced by post-birth factors such as mortality or neglect. The SRB for India for 2009-2011 is estimated at 906. This data is available as a three year moving average from the Sample Registration System. Though SRB is a better indicator of the practice of gender biased sex selection, the CSR is still most widely quoted because of its easy availability at the district level and throughout the country

² UNFPA, *Trends in Sex Ratio at Birth and Estimates of Girls Missing at Birth in India* (2001-2008)

possible opportunities for holistic growth and development, it is equally important to strengthen the implementation of the Law – The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act), 1994 – amended in 2003 – which was enacted by the Government of India, to address the issue of the declining sex ratio. However, it has been difficult to implement the Act in letter or spirit because sex selection happens within the confines of the doctor-client relationship. As a result, the number of cases both registered and convicted under the Act continues to be low across all states.

Hence it is recognised that it would be important to reach out to the Judicial Officers who play a crucial role in implementation of the Act. Further, it is felt that Judicial Officers could play a pivotal role in bringing about social change by drawing from the Directive Principles and upholding the Fundamental Rights guaranteed by the Constitution. To quote the former Chief Justice³ of Bombay High Court, “Judiciary has a definite role to play in addressing social evils like discrimination and dowry...” He further added, “While a case may be viewed from different angles, the legislative intent should be absolute protection of the girl child, and all processes should lead to this end. Within its limitations there is a great scope to convey the spirit of the law. Objectivity and language of equality in judicial systems would create proper precedents in the society.”

Looking at the gravity of the problem and the important role played by the Judicial Officers in addressing this critical issue, in the State of Maharashtra the Public Health Department, State Health System Resource Centre (SHSRC), Bombay High Court, Maharashtra State Legal Services Authority (MALSA) and the United Nations Population Fund (UNFPA) undertook the organization of Judicial Colloquia in the year 2007. The colloquia aimed to sensitize judges on the causes and implications of gender biased sex selection, provide information about the PCPNDT Act and to seek their support for speedy redressal of cases registered under the Act. The process began with the organization of a state level colloquium in December 2007 under the chairpersonship of the Hon. Chief Justice of Bombay High Court. The state colloquium recommended the urgent need for organization of district level colloquia and also for integration of the issue as part of all induction training programmes conducted at the Maharashtra Judicial Academy (MJA).

Between June 2009 and March 2011, 28 Judicial Colloquia covering all 33 districts of Maharashtra were organized and were attended by a total of 1192 Judicial Officers and 425 Prosecutors. Hon. Judges of Bombay High Court attended 60 per cent of colloquia organized at the district level to emphasize the importance of the issue. It was decided by the MJA to incorporate the issue of gender biased sex selection in induction programmes and integrate it as part of all specialized programmes on gender and law conducted by MJA. The MJA and Judicial Officers’ Training Institute (JOTI), Nagpur also initiated specialised programmes for prosecutors on the issue.

Prior to the organisation of the district first colloquium in June 2009, the state had registered approximately 100 cases with only 17 convictions involving monetary penalties. Orientation of the Judiciary on the issue and its social consequences has resulted in some tangible and path-breaking convictions involving both imprisonment and monetary penalties, thus upholding the true letter and spirit of the law. As on December 31, 2013, the number of cases registered under the Act in Maharashtra is 477 and the number of convictions is 50 (as per records of PCPNDT Cell, State Family Welfare Bureau, Government of Maharashtra).

³ Presidential Address by Justice Swatanter Kumar on the occasion of the State Judicial colloquium on sex selection and PCPNDT organized by UNFPA, Department of Public Health and Maharashtra State Legal Services Authority on December 9, 2007

Recognising the important role which training played in successful implementation of the law by Judicial Officers in Maharashtra, the Government of India took initiatives to build capacities of Judicial Officers in other states by inviting the team of resource persons from Maharashtra to conduct training programmes for Judges and other stakeholders through State Judicial Academies and State Legal Services Authorities. At this stage, a need was felt to develop a training module and handbook to build capacities of trainers from State Judicial Academies to, in turn, sensitize and train Judicial Officers.

The *Training Module and Handbook for Judicial Officers on Sex Selection and PCPNDT Act* has been developed as a facilitator's guide for trainers and is intended to be used as a tool by all Judicial Academies and Judicial Officers' Training Institutes for planning and conducting training of Judicial Officers on the issue.

The objectives of the Training Module and Handbook

The main objective of the Training Module and Handbook is to provide Judicial Officers with a perspective on gender and sex selection so that they can effectively interpret and implement the law.

In particular, the Training Module and Handbook aims to:

- Create awareness and sensitise Judicial Officers on the issue of sex selection from a gender perspective.
- Enable Judicial Officers to understand the interconnectedness of sex selection with other gender related laws, such as MTP Act, Dowry Prohibition Act, laws related to inheritance, etc.
- Strengthen technical capacities and skills of Judicial Officers in trial of cases under PCPNDT Act.
- Share information and promote good practices by referring to landmark Judgements under the Act.

The methodology of preparation of the Training Module and Handbook

The development of the Training Module and Handbook was undertaken by the Maharashtra Judicial Academy with technical and financial support from UNFPA. The process of module preparation involved constitution of an Advisory and Technical Committee. The Advisory Committee⁴ consisted of three members who guided the process of module development. The Technical Committee⁵ on the other hand, was a multi-disciplinary committee consisting of a social sciences expert, representatives from the Public Health Department, a civil

⁴ The members of the Advisory Committee were Dr. Justice D.Y. Chandrachud, Director, Maharashtra Judicial Academy and a Judge of the Mumbai Bench of the Bombay High Court; Shri Vikas Kharge, I.A.S., Commissioner Family Welfare and Mission Director, National Rural Health Mission, Public Health Department, Government of Maharashtra and District and Sessions Judge Dr. Mrs. Shalini S. Phansalkar Joshi, Joint Director of the Maharashtra Judicial Academy

⁵ The Technical Committee consisted of Ms Anuja Gulati, State Programme Officer, UNFPA; Dr. Asaram Khade, PCPNDT Consultant, Government of Maharashtra; Adv. Uday Warunjikar, Advocate in Bombay High Court and Adv. Varsha Deshpande, Secretary, Dalit Mahila Vikas Mandal

society representative and a practicing advocate. The Technical Committee had a total of four members who were responsible for collating the content and drawing up methodologies for delivery of the content. A coordinator⁶ was also appointed to assist the Technical Committee to draft the module.

The process of module development began with a planning meeting to establish an interface between the Technical Committee and the coordinator, allocate areas for providing inputs between members of the Technical Committee and to fix timelines. The contents of the Training Module and Handbook were presented at regular intervals to the members of the Advisory Committee for their review and suggestions.

The first draft of the Module was pre-tested in a workshop with Judicial Officers. Based on the feedback received and the outcome of the pre-testing workshop, the Training Module and Handbook were revised by the Technical Committee, under the able guidance of the Advisory Committee.

Structure of the Training Module and Handbook

The *Training Module and Handbook for Judicial Officers on Sex Selection and PCPNDT Act* is divided into three parts:

- The first part, *Introduction to the Training Module and Handbook*, provides a brief background of the issue of sex selection, the purpose of developing the module, and the objectives and methodology used for developing the Training Module and Handbook. This section also briefly touches upon use of terminology that would be sensitive to the nuances of the issue and not compromise women's access to safe and legal abortion.
- The second part, *The Training Module*, has a detailed session plan. The training module suggests two possible ways of conducting the training – a half-day programme schedule is suggested for an integrated programme and a one-day schedule could be used as an integrated or a stand-alone programme. The module would help the facilitators to plan the sessions keeping in mind principles of adult learning and effective facilitation.
- The third part, *The Handbook*, provides detailed information on each session to help the facilitator understand the topic in detail, prepare for the session and facilitate the same. Annexures giving details of energizers, pre- and post-training questionnaires, evaluation form etc are also included. The contents and reference material provided in the chapters are indicative and not exhaustive. Facilitators assigned specific topics/sessions may certainly utilise additional reference material, case studies, case laws and personal experiences to comprehensively cover the subject.
- The Training Module and Handbook includes a compact disc with a soft copy of the Medical Termination of Pregnancy Act (MTP), 1971 and The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT), 1994, a compilation and analysis of relevant case laws, relevant short films, articles and data that could be used by the facilitator.

⁶ Ms Anju Uppal, a gender specialist with expertise in designing and facilitating capacity building workshops, was appointed as the coordinator

Social context judging

This module is based on the concept of social context judging. In recent years, the concept of social context judging has gained significance. It implies judging an issue not just from a legal or technical perspective but from a broader social context, keeping in mind the realities in which individuals make certain decisions. This concept would enable Judicial Officers understand the context in which individuals decide to opt for sex selection and assumes importance in the context of the PCPNDT Act, which is a social legislation.

It has been found that there is generally a gap between societal mindsets and the laws which are passed to curb evil social practices like *sati*, domestic violence, honour killing, sex selection etc. It is the job of the Judiciary to bridge this gap, by progressive and realistic interpretation of laws which will help to achieve the object of the law.

As observed by the Apex Court in *Kundulubala Subramanyam vs. State of Andhra Pradesh* (1993) 2 SCC 684, while speaking on the social evil of dowry deaths, *“If the laws are not enough to combat this social evil, the role of Courts assumes greater importance and it is expected that the Courts should deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunae in the evidence.”*

It has been held time and again that no judicial system can work in isolation. It is basically a part of the social structure. Hence, it cannot overlook present social realities. As observed by Apex Court in *Jaikumar vs. State of Madhya Pradesh* (1999) 5 SCC 1, *“Law Courts exists for society and ought to rise up to the occasion to do needful in the matter and as such ought to act in the matter so as to sub-serve the basic requirements of the society.”*

In the *Hardwara Bhoginbhai Hirjibhai vs. State of Gujarat* (1983) 3 SCC 1073, in the context of the cases of child sexual abuse, the Apex Court has held that, *“Human goodness has limits. Human depravity has none. However, the need of the hour is not exasperation or helplessness but to evolve the law so as to make it more sensitive and responsive to the demands of time in order to resolve the basic problems”*.

It is this sensitive application of law in the context of social context judging which prevents justice from becoming a casualty because of technicalities and makes the justice delivery system more humane, equitable and acceptable to the society.

This concept of social context judging is required to be kept in mind while interpreting the provisions of the PCPNDT Act for giving purposive construction to its provisions, to make it more relevant and meaningful to the society at large so as to eradicate the inhuman practice of sex selection and sex determination.

Note on terminology use

The terms ‘female foeticide’ and ‘sex selective’ abortion have generated much debate in the context of the MTP Act, 1971. According to the MTP Act, in India abortion is legal under certain circumstances like: danger to the mother’s life, foetal abnormalities, rape or contraceptive failure. Abortion up to 12 weeks of gestation has to be certified by one registered medical practitioner

and between 12 and 20 weeks by two registered medical practitioners. However, the law does not permit abortion for the reason of sex selection. It is important to recognize this fact and not consider abortion *per se* as either legal or illegal. The use of terminologies such as ‘foeticide’, ‘sex selective abortion’ and ‘*bhrunhatya*’ further add to this confusion. As permitted by the law, many women seek abortion services for legally valid reasons. Therefore, curbing access to legal abortion services is ineffective in preventing misuse of medical technology, which is the primary concern in the context of sex selection. From a gender equality perspective, sex selection is a reflection of discrimination against girls and subordination of women as a group. Not providing women access to safe abortion services for legally valid reasons increases this subordination. Hence, although in the preamble, object and reasons of the PCPNDT Act, the term ‘female foeticide’ has been used twice, it is advisable that an appropriate term to describe discrimination on the basis of sex selection could be ‘gender biased sex selection’ or ‘sex selection’ and these terms should be preferably used.⁷

⁷ World Health Organization, *Preventing gender-biased sex selection: An interagency statement of OHCHR, UNFPA, UNICEF, UN Women, WHO*

Part II

The Training Module

“If you want to teach people a new way of thinking, don't bother trying to teach them. Instead, give them a tool, the use of which will lead to new ways of thinking.”

- Richard Fuller

The Training Module

Introduction to the Training Module

The training module on Sex Selection and the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) has been designed for trainers of Judicial Officers from Judicial Academies and Judicial Officers' Training Institutes from across the country.

The purpose of the module is to enable the participants in the training programme, the Judicial Officers, understand the issue of sex selection, not just as declining numbers of girls but also its gender dimension and impact on the society. The module further aims at assisting the Judicial Officers to better understand the scope, provisions and possible interpretations of the PCPNDT Act and to accord due priority to registered cases of violations and re-examine leniencies.

The training module contains two separate session plans for Judicial Officers, both newly recruited and in-service. The two options are (i) a half-day and (ii) a one-day training schedule. The module contains a detailed plan that covers the following topics:

- Melting the Ice and Introductions
- Sex Selection – the issue, practice and gender perspective
- Demystifying the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
- Court Trial and Procedural Issues
- Panel Discussion on Efforts for Effective Implementation of the Act
- Closing and Wrap-up

The module suggests exercises and pedagogy for each of the sessions. A few energisers and warm-ups⁸ are also included to be used between sessions, especially after lunch, to recharge the learning environment and energise the participants.

⁸ Please refer Annexure 1 for energisers and warm-ups.

The handbook provides detailed information on each of the topics covered in the module. The facilitator may use information from the handbook to prepare for the sessions, make presentations, prepare handouts and/or design session plan, if required.

A multi-disciplinary resource team comprising Judicial Officers, government representatives, practising advocates and representatives from civil society organisations, should facilitate the training.

Training needs to be a collective effort rather than the responsibility of any single person. Hence it is advisable that the resource team and the coordinator meet prior to the training to discuss the design, plan sessions, share responsibilities, avoid overlaps and expression of conflicting views and be alert enough to support each other during the training process.

One of the most important aspects of any effective training is able facilitation. Facilitation⁹ is very different from teaching and requires:

- Being well prepared on the subject/issue whilst remaining flexible
- Being equipped to deal with sensitive issues and manage people's feelings
- Encouraging humour and respect
- Thinking and acting creatively
- Negotiating with and influencing others
- Keeping to time without being driven by it

Methodology of the training

The training methodology will be based on the principles of adult learning.¹⁰ The principles include knowing the purpose of the training, understanding the problem, relating it to real life situations, suggesting options to perform more effectively and most importantly, creating an urge or motivating the participants to know more about the issue.

While defining the methodology of the training, it is important for the resource team to recognise the profile and experience of the Judicial Officers as professionals, conscious of self-image and having capacity and skills to interpret and execute laws in letter and spirit.

The facilitators should avoid long lectures and instead use a wide range of tools and methods like PowerPoint presentations, short films, video clips, reference reading, discussions, exercises and group activities, case studies to encourage reflection, sharing and learning from each other along with providing participants with updated information on the issue.

The schedule

There are two options for the schedule of the training – half-day in case it is an integrated training and full day in case of a stand-alone or integrated training. In case of integrated training, the

⁹ Please refer Annexure 2 for difference between teaching and facilitation.

¹⁰ Please refer Annexure 3 for brief note on principles of adult learning

facilitators need not plan for inauguration, welcome, ice-breakers, introductions, closing and wrap-up as suggested in the one-day training.

It is suggested that the full-day training could begin at 9 am and continue till 5.30 pm with two breaks for tea and one break for lunch. In case of half-day training one could begin at 9 am and continue till 1.30 pm with a tea break. It could also be organised post-lunch between 2 pm and 6.30 pm.

The facilitator needs to be alert enough to introduce a quick energiser¹¹ to recharge the learning environment especially after lunch.

Schedule I: Half-day

No.	Duration (mins.)	Session
1	60	Sex Selection – Issue, Practice and Gender Perspective
	15	Tea Break
2	45	Demystifying the PCPNDT Act
3	45	Court Trial and Procedural Issues
4	45	Panel Discussion on Efforts for Effective Implementation of the Act

Schedule II: Full day

No.	Duration (mins.)	Session
1	20	Inauguration and Welcome
2	30	Melt the Ice and Introductions
3	90	Sex Selection – Issue, Practice and Gender Perspective
	15	Tea Break
4	75	Demystifying the PCPNDT Act
	60	Lunch Break
5	90	Court Trial and Procedural Issues
6	60	Panel Discussion on Efforts for Effective Implementation of the Act
7	30	Closing and Wrap-up

The session plan

This section provides a detailed plan for each of the sessions.

The facilitator needs to prepare for the session based on the plan and after reading the supporting/ detailed information provided in the handbook for the each of the topics.

Before the training begins, the facilitator needs to ensure that all learning aids required for the training like projector, laptop and sound system are in place.

Session 1: Inauguration and Welcome

Begin the training with a warm welcome to all. Invite the chief guest, dignitaries and resource team on the dais. Introduce all the dignitaries to the participants and request the chief guest to inaugurate the training.

¹¹ Please refer Annexure 1 for energisers

As part of this session invite a few participants to express their expectations and match it with the objectives of the training, provide information about the resource material provided to each of the participants (kit, notebook, pen, etc.) share the plan for the day and request the participants to fill up the pre-test form for self-assessment on the topics to be covered as part of the training. Also, remember to request participants to keep the pre-test form safely with them to be answered again during the concluding session.

Along with participants, prepare ground rules for the training like switching off the mobile, respecting opinions of fellow participants, listening to others, speaking when other has finished, active participation, beginning on time...

Session 2: Melt the Ice and Introductions

The session suggests three options for exercises to choose from with the objective of melting the ice and introductions. This is an important component of the training as it allows participants to open up, share their experiences, work in groups, express their doubts and seek clarifications. Also, it provides an opportunity for the participants to introduce themselves in an unconventional manner.

Session 2	Option 1: Judicious Judge
Objective	<ul style="list-style-type: none"> Initiate a process of self reflection among participants Create an opportunity to share about self with the larger group in an unconventional manner Get introduced to each other in an informal way to encourage cohesion and an open environment for discussions
Duration	30 minutes
Process	<ul style="list-style-type: none"> Ask participants to think about a quality that best represents them in their profession Each person says his/her name and a positive word to describe themselves as a Judicial Officer A variation to this could be for people to say their name and their hobby that is not known to their colleagues Allow time for all the participants to introduce themselves in this manner
Session 2	Option 2: Our Poem
Objective	<ul style="list-style-type: none"> Initiate a process of self reflection among participants Create opportunity to share about self with the larger group in an unconventional manner Get introduced to each other in an informal way to encourage cohesion and an open environment for discussions
Duration	30 minutes
Learning aids	<ul style="list-style-type: none"> A4 sheets Sketch pens/markers

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Session 2	Option 2: Our Poem
Process	<ul style="list-style-type: none"> • Invite participants to form groups of four • Tell them that each group has to make a poem of four lines and recite it for the rest of the members • The poem should include names of each of the members in the group and highlight one quality of theirs (each member of the group) • Allow groups to work for 15 minutes • Invite each group to share their poems • Close the session with a round of clapping in appreciation
Session 2	Option 3: About Me
Objective	<ul style="list-style-type: none"> • Initiate a process of self reflection among participants • Create opportunity to share about self with the larger group in an unconventional manner • Get introduced to each other in an informal way to encourage cohesion and an open environment for discussions
Duration	30 minutes
Learning aids	<ul style="list-style-type: none"> • Notepad • Pen
Process	<ul style="list-style-type: none"> • Form groups of six • Let members introduce themselves in the group • Ask one member to volunteer as a Reporter and take down all the points • Invite Reporters to introduce members of the group • End with a round of applause for all

Session 3: Sex Selection – Issues, Practice and Gender Perspective

This session will cover the following topics:

- Key definitions of population sex ratio, Child Sex Ratio and Sex Ratio at Birth
- Trends in declining Child Sex Ratio in India and the state
- Estimates of girls missing at birth and conditional sex ratios
- Root causes of discrimination leading to sex selection and its implications
- Interconnectedness of sex selection with other gender related laws
- Constitutional provisions relating to gender equity and equality
- International Conventions and Treaties addressing the practice of sex selection
- Use of terminology that is nuanced and does not compromise on women's access to safe and legal abortion

Session 3	Sex Selection – Issue, Practice and Gender Perspective
Objectives	<ul style="list-style-type: none"> • Understand the issue of sex selection, its causes and implications • Get introduced to the international conventions, treaties and Constitutional provisions related to equality • Be aware of the nuances with the use of terminology that does not compromise women's right to safe and legal abortion
Duration	90 minutes
Learning aids	<ul style="list-style-type: none"> • PowerPoint presentation • Laptop and projector for presentation • Statements related to sex and gender • Myths and facts related to sex selection
Process	<ul style="list-style-type: none"> • The facilitator could begin the session with a PowerPoint presentation of about 40 minutes depicting the issue and practice of sex selection, key definitions of population sex ratio, Child Sex Ratio (CSR) and Sex Ratio at Birth (SRB), trends in declining sex ratio in India and the state, estimates of girls missing at birth and conditional sex ratios. While elaborating on the presentation clarify that the estimates related to girls missing due to the practice of sex selection are best calculated based on estimates of SRB as it is not influenced by post-birth factors such as differential or gender biased mortality or neglect. Hence SRB is a more accurate and refined indicator to know the extent of sex selection. However, figures of CSR are more widely quoted because they are easily available from census for different geographic levels. Discuss limitations of available data for understanding the problem of declining sex ratio. • During the next 10 minutes, introduce the problem tree exercise¹² and ask participants to share the root causes of sex selection and its implications. In order to discuss root causes touch upon the social and cultural factors that lead to low status of women in society and a patriarchal mindset steeped in son preference. This can be elaborated upon by asking a few statements related to sex and gender¹³ and further explaining the differences between sex and gender and how gender is a social construct,¹⁴ economic factors due to which girls are considered a liability, the desire for small families but not without sons and misuse of technology. For discussion on the implications of sex selection, the facilitator should highlight how it has led to an increase in violence against women and denial of their rights.¹⁵ • The facilitator could allot 10 minutes to discuss how various socio-economic factors such as practice of dowry, marriage practices, patrilineal system of inheritance, etc. are related to son preference and hence sex selection.¹⁶ • The facilitator can sum up this part by discussing the common myths related to sex selection for another 10 minutes.¹⁷

Contd...

¹² Please refer Annexure 4 for the Problem Tree exercise

¹³ Please refer Annexure 5 for statements related to sex and gender

¹⁴ Please refer page no. 29 for information on difference between sex and gender

¹⁵ Facilitator should reiterate that sex selection does not imply violence against the foetus but violence against women because of the consequences and implications. It goes against a woman's right to live a life free of violence and discrimination. The facilitator should discuss how the issue impinges upon a woman's sexual rights

¹⁶ Please refer page no 37 for interconnectedness of sex selection with other gender related laws

¹⁷ Please refer page no. 38 for myths related to sex selection

Session 3	Sex Selection – Issue, Practice and Gender Perspective
	<ul style="list-style-type: none"> During the next 10 minutes the facilitator should highlight the provisions of the Constitution of India¹⁸ related to equality – Preamble, Articles 14, 21, 39, 51 (a) (e). The facilitator should also touch upon various international conventions and treaties that refer to discrimination against girls as reflected in sex selection.¹⁹ The facilitator will sum up the session in another 10 minutes by very briefly touching upon the MTP Act, 1971 which makes abortion legal under certain circumstances but not for the purpose of sex selection. An attempt should be made for the participants to understand the importance of use of nuanced and correct terminology related to the issue of sex selection that does not compromise women's access to safe and legal abortion.
Remember	<ul style="list-style-type: none"> Do read the chapter 'Sex Selection: The Issue and Practice' from the Handbook for detailed information.

Session 4: Demystifying PCPNDT Act

This session will cover the following topics:

- Brief history, preamble, objects of the PCPNDT Act
- Scheme of the Act
- Landmark judgements related to Constitutional validity of the Act
- Landmark judgements related to effective implementation of the Act
- Key provisions of the Act
- Implementing authorities and structures under the Act
- Presumptions under the Act

Session 4	Demystifying the PCPNDT Act
Objectives	<ul style="list-style-type: none"> Share a brief history of the enactment of the PCPNDT Act Familiarise the participants with the objects and reasons of the Act Introduce various sections and rules under the Act
Duration	75 minutes
Learning aids	<ul style="list-style-type: none"> Copy of the Bare Act Copy of the relevant case laws
Process	<ul style="list-style-type: none"> The facilitator connects to the previous session by sharing briefly about the history of the Act. The facilitator then spends about five minutes to read out the preamble, reasons and object of the Act and points out that the Act has three kinds of provisions – prohibitory, regulatory and preventive.

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¹⁸ Please refer to page no. 39 for constitutional provisions related to equality

¹⁹ Please refer page no. 41 for various international conventions and treaties that refer to discrimination against girls as reflected in sex selection

Session 4	Demystifying the PCPNDT Act
	<ul style="list-style-type: none"> It is important that the facilitator briefs the participants that the Constitutional validity of the Act was challenged on two occasions: once on the grounds that it violates Article 14 as being discriminatory against the male child, and on the second occasion that it violates Article 21 as it restricts a couple's right to personal liberty and in that to have a family of their choice. In both cases the Bombay High Court upheld the Constitutional validity of the Act.²⁰ Approximately five minutes could be allocated to this topic. Next the facilitator would spend 10 minutes to highlight the fact that the primary credit for the implementation of the PNDT Act goes to the Judiciary because although the Act came into operation in the year 1996, neither the Central nor State Governments had taken any action for its implementation. To illustrate this, the facilitator can discuss the various orders and directions passed by the Supreme Court from time to time for proper and effective implementation of the Act.²¹ The facilitator would also highlight how the <i>CEHAT vs. Union of India</i> case lead to the amendment of the Act in view of emerging technology. The facilitator highlights that the Act is divided into eight chapters consisting of 34 sections and 19 rules. Taking this forward the facilitator can divide the participants into five groups and ask three groups to enlist the sections/rules relating to prohibition, regulation, and penal orders. The fourth group can discuss and make a presentation on the implementing authorities under the Act, their roles, powers and duties. The fifth group can discuss the structures under the Act and how they relate to the Judiciary. Let each group identify a rapporteur to present the group work. A total of 50 minutes could be allocated for this topic. The facilitator concludes the session in 5 minutes by mentioning that the Act is a progressive piece of legislation as it makes a presumption that a pregnant woman would be exempt from punishment unless the contrary is proved. It also makes a presumption that any deficiency or inaccuracy found in maintenance of records as prescribed under the Act shall amount to contravention of the provisions of Section 5 or 6 unless the person conducting ultrasonography proves the contrary. The facilitator could highlight that the purpose of the session is to realise that though cases of sex selection that come up for judicial recourse may be few in number, landmark judgements delivered in these cases uphold the letter and spirit of the Act and could go a long way in addressing the gender bias that exists in society at many levels.
Remember	<ul style="list-style-type: none"> Do read chapter 'Demystifying the PCPNDT Act' from the Handbook for detailed information. Do keep a copy of the Bare Act handy for ready reference. Please carry relevant case laws and case summary for reference.

²⁰ The facilitator to discuss the following cases (1) In the High Court of Bombay Criminal Writ Petition no.945 of 2005 and criminal application no. 3647 of 2005 *Vinod Soni and Anr. vs. Union of India* (2) In the High Court of Bombay Writ Petition no.2777 of 2005 *Vijay Sharma and Others vs. Union of India*. Please refer page no. 49 and 56 respectively for further information

²¹ In the Supreme Court of India Writ petition (Civil) no.301 of 2000 *Centre for Enquiry into Health and Allied Themes (CEHAT) and Others vs. Union of India and Others* dated 04/05/2001 to 10/09/2003. Please refer page no. 50 for information

Session 5: Court Trial and Procedural issues

This session will cover the following topics:

- Who can file a complaint under the Act?
- Who can take cognisance under the Act?
- Who can be an offender under the Act?
- Why no role of police under the Act?
- Provisions relating to bail
- Procedures for conduct of trial
- Nature of evidence
- How to appreciate evidence
- How to pass final order
- Expeditious hearing of cases

Session 5	Court Trial and Procedural Issues
Objectives	<ul style="list-style-type: none"> • Introduce participants to procedural issues under the Act and how trial should be conducted
Duration	90 minutes
Learning aids	<ul style="list-style-type: none"> • Copy of the Bare Act • Important case laws
Process	<ul style="list-style-type: none"> • The facilitator explains Section 28(1) of the Act using case laws and informs the participants that under the Act, complaint can be made either by (1) the Appropriate Authority (AA) concerned or any officer authorised on his behalf by the Central or State Government or the AA himself (2) A person, who has given notice of not less than 15 days in a prescribed manner to the AA (10 minutes). • Further, the facilitator explains Section 28(2) of the Act and informs participants that cognisance under this Act can be taken either by a court of the Metropolitan Magistrate or a Judicial Magistrate First Class (10 minutes). • The facilitator continues, making reference to case laws, that every person who conducts pre-conception and pre-natal diagnostic techniques against the provisions of the Act can be an offender. Also any person seeking or promoting or encouraging sex selection in any way is liable for prosecution, including the owner of a genetic counselling centre, genetic laboratory or genetic clinic and/or any persons employed therein. However, as regards the pregnant woman in view of the presumption laid down in Section 24 of the Act, unless the contrary is proved, she will not be liable for prosecution (25 minutes). • Another important aspect of the Act is that although all offences under the Act are cognisable, 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 relation to 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 (15 minutes).

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Session 5	Court Trial and Procedural Issues
	<ul style="list-style-type: none"> The facilitator needs to elaborate on the procedures for conduct of the trial under the Act and nature of evidence under the Act that includes oral and documentary evidence (15 minutes). As regards appreciating evidence and passing final order, the facilitator would inform Judicial Officers of the need to keep in mind the objective and reasons of the Act and the peculiar nature of offence. The participants are also to be informed that the Act does not make any distinction in punishment for conducting sex selection, disclosure of sex of foetus, non-maintenance of records and advertisement. The Act provides that contravention of any provision is liable for punishment with imprisonment and fine (15 minutes).
Remember	<ul style="list-style-type: none"> Do read chapter 'Court Trial and Procedural Issues' from the Handbook for detailed information. Do keep case laws and case summary handy for reference.

Session 6: Panel Discussion on Efforts for Effective Implementation of the Act

The session planned as a panel discussion will cover experiences and challenges with regard to implementation of the PCPNDT Act by:

- Representative from Public Health Department, either the state Appropriate Authority or Nodal Officer In-charge for implementation of PCPNDT Act
- Representative of NGO which has done credible work in relation to sex selection and implementation of PCPNDT Act
- Director of Prosecution

Session 6	Panel Discussion on Efforts for Effective Implementation of the Act
Objectives	<ul style="list-style-type: none"> Introduce participants to the initiatives undertaken by the government health department under the PCPNDT Act Share experiences of NGOs with regard to implementation of the Act Provide a platform for Prosecutors to elaborate on the challenges related to conduct and prosecution of cases
Duration	60 minutes
Learning aids	<ul style="list-style-type: none"> As required by the panellists
Process	<ul style="list-style-type: none"> Introduce each of the panellists and invite them to share experiences related to cases and their trials at different levels. Allot 15 minutes to each panellist to share and/or make presentation. Representative from the Public Health Department to speak about the initiatives undertaken for effective implementation of the Act, like appointment and Gazette Notification of the Appropriate Authorities (AA), formation and regular meetings of the structures envisaged under the Act, regular monitoring of facilities registered under the Act and other innovative activities undertaken as part of implementation of the Act. They could also share about communication and behaviour change activities undertaken to change mindsets.

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Session 6	Panel Discussion on Efforts for Effective Implementation of the Act
	<ul style="list-style-type: none"> The NGO representative to narrate their experiences with regard to their initiatives on bringing about mindset change and/or implementation of the Act, for example their experiences of being members of Advisory Committees, or having conducted decoy cases, including preparation and follow-up The Directorate of Prosecution to share the challenges related to conduct and prosecution of cases Invite questions and clarifications after all the presentations are done Allow 10 minutes for a question and answer session among participants and the panellists End the session by thanking the panellists for their valuable inputs (5 minutes)
Remember	<ul style="list-style-type: none"> Do read the chapter 'Role of Government and NGOs for Effective Implementation of the Act' from the Handbook for detailed information and case studies from Maharashtra.

Session 7: Closing and Wrap Up

The closing session will be an opportunity for the facilitators to briefly sum up the topics covered and key learnings from each of the sessions. The facilitator could then invite feedback from the participants and ask them to fill in the post-test forms. Invite a few participants to share the shift in their knowledge and attitude/perspective as compared to pre-test. Request them to fill up the feedback and evaluation form, giving their candid opinion and inviting positive/constructive suggestions to make the session more beneficial. End the training with a vote of thanks to all the participants, panellists and the organising team. Remember to seek commitment of the participants to relate learning from the training to their court work.

Session 7	Closing and Wrap Up
Objectives	<ul style="list-style-type: none"> Sum up key learnings from the various sessions of the training Assess the shift in knowledge and attitude of the participants related to sex selection and the PCPNDT Act Seek commitment of the participants to relate the learning with day-to-day court work
Duration	30 minutes
Learning aids	<ul style="list-style-type: none"> Post-test forms Feedback forms
Process	<ul style="list-style-type: none"> The facilitator informs participants that they are at the end of the training and sums up the key learnings from the sessions. She/he then invites a few participants to share their key feedback about the training. Request participants to fill in the post-test forms and share the shift in knowledge and attitude that they have experienced by the end of the day. Distribute feedback forms to all the participants and ask them to fill them up and submit them before leaving the room. Also seek their commitment to relating the learning from the training to their day-to-day court work.

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Session 7	Closing and Wrap Up
	<ul style="list-style-type: none">• Conclude the training by asking a few participants to share their learning. Also make an effort to match expectations to the objectives to ensure that nothing has been left out. Also share contact numbers of the facilitators and resource team with the participants for further guidance and support, if required.• End the training with a vote of thanks to all the participants, panellists, organising team, supporters and all others who may have been involved.

Part III

The Handbook

“ *Self-education is,
I firmly believe,
the only kind of
education there is* ”

- Isaac Asimov

Sex Selection: The issue and practice

Introduction

India is a country of paradoxes. While on the one hand we are one of the fastest growing economies of the world, both as a knowledge economy and in terms of economic growth rate, we as people continue to indulge in age-old practices that promote discrimination based on caste, class and gender.

Son preference and discrimination against the girl child is almost universal in India and it has existed for centuries. Earlier, the preference for boys resulted in practices such as female infanticide, neglect of girl children practiced through deliberate deprivation of food, nutrition, educational opportunities and other entitlements. However, the recent availability of technology and its misuse to detect the sex of the foetus has radically changed the manner in which discrimination is practiced, as it has led to gender biased sex selection and elimination, which has resulted in sex ratios skewed in favour of boys.

Sex Ratio*: Definitions

Sex Ratio at Birth** (SRB): In India this is defined as the number of girls per 1000 boys at birth

Child Sex Ratio (CSR): In India this is defined as the number of girls per 1000 boys in the 0-6 years age group

Population Sex Ratio: In India this is defined as the number of females per 1000 males in the general population

* In international terms, sex ratio is calculated as the number of boys per 100 girls

** The natural Sex Ratio at Birth is around 952 girls per 1000 boys

Trends in declining sex ratio

Child Sex Ratio in India

The Child Sex Ratio (CSR) is a powerful indicator of the social health of any society. Calculated as number of girls per 1000 boys in the 0-6 years age group, the ratio has shown a sharp decline from 976 girls per 1000 boys in 1961 to 919 as per the results of the 2011 Census. According to global trends, the natural sex ratio at birth should be around 952. However, in certain parts of our country like Punjab, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra and even Delhi, there are less than 850 girls for every 1000 boys.²² CSR reflects both pre-birth and post-birth discrimination against girls. Therefore, the Sex Ratio at Birth (SRB) is considered a more accurate and refined indicator of the extent of sex selection.

The trends in declining CSR between the 2001 and 2011 Censuses for various states of India are shown in Figure 1.1 and Table 1.1.

Figure 1.1: Trends in Declining Child Sex Ratio in India²³

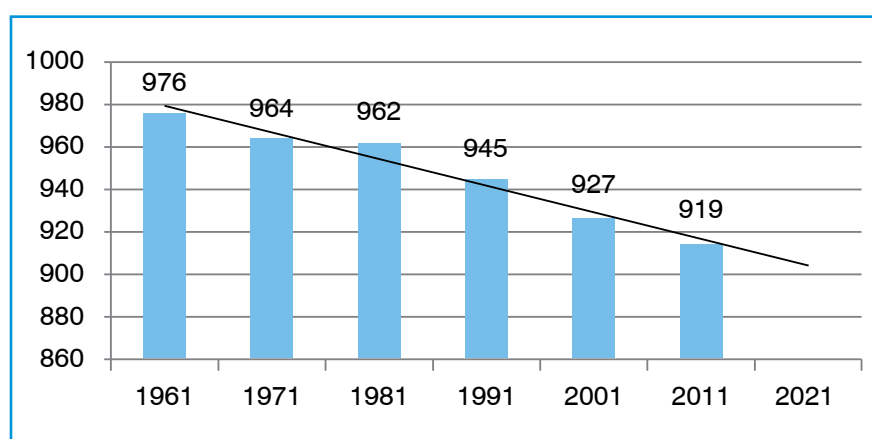


Table 1.1: Trends in Child Sex Ratio
India and States, 2001 and 2011²⁴

	2001	2011	Absolute Change
INDIA	927	919	-8
Haryana	819	834	15
Punjab	798	846	48
Jammu and Kashmir	941	862	-79
Delhi	868	866	-2
Chandigarh	845	867	22
Rajasthan	909	888	-21
Maharashtra	913	894	-19
Gujarat	883	890	7

Contd...

²² Source: Census 2011

²³ Source: Census 2011

²⁴ Source: Census 2011

	2001	2011	Absolute Change
Uttaranchal	908	890	-18
Uttar Pradesh	916	902	-14
Himachal Pradesh	896	909	13
Lakshadweep	959	908	-51
Daman and Diu	926	909	-17
Madhya Pradesh	932	918	-14
Goa	938	942	4
Dadra and Nagar Haveli	979	926	-53
Bihar	942	935	-7
Orissa	953	941	-12
Manipur	957	936	-21
Karnataka	946	948	2
Andhra Pradesh	961	939	-22
Jharkhand	965	948	-17
Sikkim	963	957	-6
Nagaland	964	943	-21
Tamil Nadu	942	943	1
West Bengal	960	956	-4
Tripura	966	957	-9
Assam	965	962	-3
Kerala	960	964	4
Arunachal Pradesh	964	972	8
Chhattisgarh	975	969	-6
Pondicherry	967	965	-2
Andaman and Nicobar Islands	957	966	9
Meghalaya	973	970	-3
Mizoram	964	970	6

Sex Ratio at Birth

Sex Ratio at Birth (SRB) is the number of girls born for every 1000 boys and hence this ratio is not influenced by post-birth factors such as mortality or neglect. The SRB for the country for 2007-2009 is estimated at 906 girls born for every 1000 boys. This data is available as a three year moving average from the Sample Registration System. The trends and levels of SRB vary. Some are close to the normal SRB while others are somewhat below normal. Quite a few states have very low SRB despite greater attention given to the issue following the 2001 Census. Table 1.2 shows the SRB for selected states for the periods 2001-03 2006-08 and 2007-09.

Table 1.2: Sex Ratio at Birth in India and Large States²⁵

Sex Ratio at Birth			
State	2007-09	2006-08	2001-03
Punjab	836	836	776
Haryana	849	847	807
Jammu and Kashmir	870	862	816**
Rajasthan	875	870	855
Delhi	882	877	835**
Uttar Pradesh	874	877	853*
Maharashtra	896	884	887
Gujarat	904	898	862
Bihar	917	914	861 [@]
Andhra Pradesh	919	917	932
Madhya Pradesh	926	919	922 [#]
Jharkhand	921	922	865**
Assam	931	933	904
Karnataka	944	935	943
Tamil Nadu	929	936	953
Orissa	941	937	934
Himachal Pradesh	944	938	803
West Bengal	944	941	937
Kerala	968	964	892
Chhattisgarh	980	975	964**
INDIA	906	904	883

**This value refers to the period 2002-04; *Uttar Pradesh and Uttarakhand combined,

[@]Bihar and Jharkhand combined; [#]Madhya Pradesh and Chhattisgarh combined

Though SRB is a better indicator of the practice of gender biased sex selection, the CSR is still most widely quoted because of its easy availability at the district level and throughout the country.

Magnitude of the problem

It is estimated that in India the practice of sex selection has resulted in the loss of approximately 5.7 lakh girls annually during the period 2001–2008.²⁶ This has resulted in an estimated 45 lakh ‘missing’ girls over an eight year period from 2001–2008.

In 1990, economist Amartya Sen published an essay in The New York Review of Books titled, ‘More than 100 million women are missing’. His article dealt with sex ratios in India, China and elsewhere in the developing world. To explain the numbers, Sen invoked the ‘neglect’ of Third World women, citing disparities in health care, nutrition and education. He also noted that under China’s one-child policy, “some evidence exists of female infanticide.”

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²⁵ Source - SRS Annual Reports

²⁶ Trends in sex ratio at birth and estimates of girls missing at birth in India (2001-2008), United Nations Population Fund, India

Twenty years later, the number of ‘missing’ women has risen to more than 160 million, and a journalist named Mara Hvistendahl argues that most of the missing females were not victims of neglect. They were selected out of existence, by ultrasound technology and second-trimester abortion. The spread of sex selective abortion is often framed as a simple case of modern science being abused by patriarchal, misogynistic cultures.²⁷

Root causes of declining sex ratios

The recent dramatic decrease in SRBs is a result of the convergence of three factors: preference for boys and discrimination against women and girls, decreasing ideal family size, and the rapid spread and misuse of technology.

Sex selection is a reflection of the low status of women in the society and a patriarchal mindset steeped in son preference. This is because gender is a social construct and women have less access than men to productive resources, assets, decision-making and mobility. Because of the differences in roles expected from boys and girls, different opportunities are provided to them. For example, men are encouraged to go out and work, women are supposed to work within the house and look after the children; boys are strong, girls are weak; most productive tasks are to be done by men, women are assigned unproductive and repetitive tasks. These differences are not biological, but are constructed through a process of socialization.

Sex	Gender
‘Sex’ refers to the biological and physiological characteristics that define men and women. e.g. A child forms in the body of the woman, and she gives birth to and breastfeeds the child.	‘Gender’ refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women.
Only sexual and reproductive organs of boys and girls are different. Other than these there are more similarities than differences.	The differences between boys and girls like clothes, behaviour, education, the attitude of society towards them are social or cultural differences, not natural differences.
These biological or physical differences are created by nature and these differences are the same in every family, community or country.	These social or cultural differences are not the same in every family and every society. It is gender that creates inequalities between girls and boys, women and men.

Actually, there is a man and a woman in each one of us, but the society does not allow the man in a girl and woman in a boy to grow.²⁸

This process of socialization prepares men and women to perform different roles. These roles are assigned to them based on the notions of masculinity and femininity in the community and have nothing to do with biology.

²⁷ Source: Ross Douthat, *New York Times*, June 2011

²⁸ Please refer to the book *What is a Girl? What is a Boy?* by Kamla Bhasin for more information

Understanding masculinity and femininity

According to the Oxford English Dictionary:

‘Masculine means “having qualities or appearance traditionally associated with men: *he is outstandingly handsome and robust, very masculine.*”’

‘Feminine means “having qualities or an appearance traditionally associated with women, especially delicacy and prettiness: *the snowdrops gave a feminine touch to the table.*”’

This means that masculinity and femininity have to do with particular traits and qualities rather than with biology.

Collins’ Thesaurus has the following equivalents:

‘Masculine: male, manful, manlike, manly, mannish, virile, bold, brave, butch, gallant, hardy, macho, muscular, powerful, red-blooded, resolute, robust, stout-hearted, strapping, strong, vigorous, well-built.’

‘Feminine: womanly, pretty, soft, gentle, tender, modest, delicate, graceful, girly, ladylike, ideal of feminine beauty.’

The list tells us much about what societies think of men and women.

‘Masculinity’ and ‘femininity’ are the social definition given to men and women by societies; like gender, it is a social construct. Nature makes us male or female, it gives us our biological definition, but it is society that makes us masculine or feminine. It defines how men and women should behave, dress, appear, what attitudes and qualities they should have, how they should be treated, etc. Hence, these terms are neither universal nor static. They are constantly reconstructed and continue to change in response to economic patterns, natural or man-made disasters, war or migration.

In a way, femininity is negative masculinity: a woman is what a man is not. In most societies, masculinity and femininity are mirror images of each other – if men are expected to dominate and control, women must be submissive; if men are supposed to order, women have to take orders; if men are allowed to be hot-tempered, women have to be patient, and so on. One without the other will not work – if men dominate but women refuse to submit, ‘peace’ and ‘harmony’ will be disturbed; ‘peaceful’ families will splinter. However, men’s image, status and qualities remain the norm.

Even though masculinity may differ over time and from community to community, almost everywhere it is synonymous with strength, power, independence, ambition, control, aggression and authoritarianism. Notions of masculinity may change, men may dress differently, the “breadwinner ethic” may collapse, but it does not change male power as such. It is only the form, presentation or packaging of masculinity that changes. “Masculinity is always local and subject to change. What does not change,” says Arthur Brittain “is the justification and naturalization of male power or masculine ideology.”

Anyone, male or female, who has the so-called masculine or feminine traits, is called masculine or feminine. Men who are gentle are derisively called ‘feminine’; on the other hand, women who are strong and in control are called ‘manly’ or ‘masculine’. Masculinity and femininity, thus, are not biological categories, even though in most cases they may be connected to biological women and men.

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We imbibe attitude, behaviours and traits through socialization and gendering that take place within the family, in schools, religious institutions, etc. Because socialization and gendering begins as soon as we are born, it seems as though feminine and masculine qualities are inborn and natural. If that was so, no man would be gentle and caring, and no woman aggressive and domineering. Yet such men and women exist. What is important is that these differences among men and women exist in spite of all the gendering that is done. One can imagine how much more diversity there would be if ideological and material pressures were not pushing girls and boys, men and women into prefabricated behaviour and roles.

Economic, social, and/or religious and cultural factors also motivate son preference. Within the strict patrilineal systems that characterize the regions most affected by sex selection, sons may be viewed as not only desirable but also as an economic necessity, who would provide parents support in old age. In addition to economic motivations, sons are considered to enhance a family's status, carry forward the family name and play a crucial role in religious customs and rites. For example, it is often believed that salvation can be attained only if the son performs the last rites. Existing gender norms that enforce divisions of labour and power also position boys to assume public roles and responsibilities not often permitted to women.

Sex selection also occurs because of the perceived financial cost of having a girl child, which includes paying for her education with little or no expected returns in the form of financial support from her, as well as the expenses involved in her marriage and meeting the dowry demands. In general, this perception combined with the attitude that the girl is *paraya dhan*, one who leaves her parents' home and lives with her husband's family after marriage, creates a mindset that girls are indeed a liability.

The deep roots of discrimination against women and male domination can be attributed to a social system known as *patriarchy*. The word 'patriarchy' literally means 'the rule of the father' and was originally used to describe a specific type of male dominated family. Today it is used more generally to refer to the power relationships by which men dominate women, and to characterize a system by which women are kept subordinate in many ways.

Understanding patriarchy

Patriarchy in simple terms means 'absolute rule of the father or the eldest male member over all women in the family and also over younger socially and economically subordinate males of a social unit like family or tribe'. A patriarch has legitimate power over others in the social unit.

According to Marx and Engels, "the relational basis for women's subordination lies in the family, an institution aptly named from the Latin word for servant, because the family as it exists in complex societies is overwhelmingly a system of dominant and subordinate roles. Key features of the family in Western societies are that it centres on a mating pair and its offspring, typically located within a single household; it is patrilineal, with descent and property passing through the male line, patriarchal, with authority invested in the male household head, and monogamous at least in the enforcement of the rule that the wife has sexual relations only with her husband. The double standard allows men for greater sexual

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freedom. Within such an institution, particularly when, as in the middle class family, the woman has no job outside the house nor any economic independence, women are in fact the chattels or possessions of their husbands” (Ritze, 1992:467).²⁹

The writings of Anglo-American anthropologists in the nineteenth century used the term ‘patriarchy’ for a social system where men were heads of the family, descent was through the father. Only men could be priests, and elder men of the community dictated all laws and norms. They possessed decisive power, exercised political authority and control over social relationships and everyday life.

Since the early twentieth century, feminist writers have used the term ‘patriarchy’ as a concept to refer to the social system of male authority, power and domination over women in any social system. Patriarchy automatically privileges men over women such that women have little or no claim to the material, sexual and intellectual resources of the society. Thus, in a patriarchal society women have to struggle to be educated, to own property or to make choices regarding marriage and other aspects of life. For men, these resources are a matter of right and they can make choices that affect their lives.³⁰

One can find any number of examples in the present day society to show that patriarchy is present in our daily life. Men can refuse to listen to the viewpoint of women and girls in the family. Girls and women have to obey the orders of the men and not utter a single word that disrespects the position and authority of the men of the family. In case a woman complains about harassment by her husband, either she is not believed or she is made to understand that ‘adjustment’ is the best option available to her. She is made to believe that the world outside the matrimonial home is far more unsafe, with many more men who will “eye” her on being single.

These situations explain the many subtle and different ways through which patriarchy is expressed in our society.

The patriarchal system restricts the social roles of women to mothers and wives. Both wifehood and motherhood become glorified in the patriarchal system. It amply rewards all those women who learn to passively perform their defined roles. These roles are highly praised and idolized in folklore, literature, and religion so that women actively engage in playing their social roles and thereby contribute to and perpetuate the patriarchal social order. If any woman dares to challenge the social norm by remaining single, refusing to marry, or not bearing a child, she is ridiculed, criticised for being stubborn and this is even regarded as unnatural to her basic biology.

Marx and Engels have tried to explain that in primitive hunting and gathering societies there were no classical structures in society. A very simple division of labour was gender division, but not by domination of men against women. All inequalities, classifications, exploitations and basically all kinds of oppression are the result of the emergence of private property. The concept of private property is the central concept used to explain women’s inferiority in history. The major concern of Marx and Engels was social class oppression, but they frequently turned their attention to gender oppression. Their most famous exploration of this issue is presented in *The Origins of the Family, Private Property and the State*, written and published by Engels in 1884 from extensive notes made by Marx in the years immediately preceding his death in 1883 (Barrett, 1985; Ritze, 1992; 467).³¹

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²⁹ A Historical Approach to Patriarchy by Sayed Hasan Alavi (Vira)

³⁰ Basic Concepts: Sex and Gender, Masculinity and Femininity, Patriarchy, <http://www.mu.ac.in/>

³¹ A Historical Approach to Patriarchy by Sayed Hasan Alavi (Vira)

The major arguments of the book are, “Woman’s subordination results not from her biology, which is presumably immutable, but from social arrangements that have a clear and traceable history, arrangements that presumably may be changed.”

Patriarchy is more than just the subordination of women. It is about differential treatment wherein women are denied access to resources and positions of power and authority both in the family and the society.

What do men control in the patriarchal system?³²

Women’s productive or labour power

All kinds of services that women provide to husband, children and other members of the family are not considered as work and definitely not as ‘productive’ work. As a result, the women become dependent on their husband or male members of the family. Feminist writer Sylvia Walby calls this the “patriarchal mode of production” where men of the family expropriate all the labour of the women.

Men also control women’s labour outside the home. They may make women sell their labour or they may prevent women from working. They may appropriate what women earn – and as a result often women are excluded from better-paid work. Women are usually working in jobs with low wages or work within the home in what is called home-based production, which is itself an exploitative system. This control over and exploitation of women’s labour means that men benefit materially from patriarchy. They benefit economically from the subordination of women. This is the material or economic basis of patriarchy.

Women’s reproduction

In many societies women have no control over their reproduction capacities. They cannot decide how many children they want, whether to use contraceptives, or decide to terminate a pregnancy. In addition, men control social institutions like religion and politics, laying down rules regarding women’s reproduction capacity which further institutionalizes control. For example, in the Catholic Church, the male religious hierarchy decides whether men and women can use contraceptives. In modern times, the patriarchal state tries to control women’s reproduction through its family planning programmes. The state decides the optimum size of the country’s population. In India for example, the family planning programme limits the family size and discourages women from having more than two children. On the other hand, in Europe, where birth rates are low, women are lured through various incentives to have more children. They are given long paid maternity leave, childcare facilities and opportunities for part-time jobs.

Patriarchy idealises motherhood and thereby forces women to be mothers. This ideology of motherhood is considered one of the bases of women’s oppression. It also creates feminine and masculine character types and perpetuates patriarchy.

Women’s sexuality

Women are obliged to provide sexual services to their husbands according to their needs and desires. Moral and legal regulations exist to restrict the expression of women’s sexuality outside marriage in every society, while male promiscuity is often condoned. Another example of exercising control over women’s sexuality is when men force their wives, daughters or

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³² Basic Concepts: Sex and Gender, Masculinity and Femininity, Patriarchy <http://www.mu.ac.in/>

other women in their control into prostitution. Rape and threat of rape is another way in which women's sexuality is controlled through notions of 'shame' and 'honour', family honour. Lastly, women's sexuality is controlled through their dress, behaviour and mobility, which are carefully monitored by the family and through social, cultural and religious codes of behaviour.

Women's mobility

Besides control of women's sexuality, production and reproduction, men also control women's mobility. The imposition of purdah, restriction on leaving the house, and limit on interaction between the sexes are some of the ways by which the patriarchal society controls women's mobility and freedom of movement. Such restrictions are unique to women.

Property and other economic resources

Most property and other productive resources are controlled by men and are passed on from father to son. Even in societies where women have legal rights to inherit property, customary practices, social sanctions and emotional pressures prevent them from acquiring control over them. According to UN statistics, "Women do more than 60% of the hours of work done in the world, but they get 10% of the world's income and own one percent of the world's property".

Ironically, the other factor that has resulted in an increase in the practice of sex selection is the growing realization that smaller families bring improvements for families. Decreasing ideal family size and strict family planning policies often intensify the perceived imperative to have at least one son, since the chance of having a son decreases with fewer births. Many families may welcome the birth of a daughter as long as they also have at least one son.³³

From a sociological point of view, a study by Guilмото refers to the 'willing and able' framework on why people opt for sex selection. Drawing from the framework applied to understand motivation behind family planning, it was suggested that people would opt for family planning if it were seen as doable, advantageous and feasible. For sex selection, it is about the family being willing to opt for it and once willing, being able to access the services. The factor that 'enables' a family to opt for sex selection is the easy availability and accessibility of technology and its misuse for sex determination.³⁴

Technologies that can be used for sex determination are available and widely used in many countries, but not necessarily for the purposes of sex selection. For example, although ultrasound is generally available in Morocco, Great Britain, and the United States, these countries do not have sex ratios skewed in favour of boys as in China, India and a few other South East Asian Countries – perhaps further proof that while pre-natal sex selection has been facilitated by technology, it is driven by a deep-rooted cultural valuation of sons over daughters that even wealth, urbanization, and education do not diminish.

³³ <http://www.prb.org/pdf12/gender-bias-sex-selection.pdf>

³⁴ Guilмото Christophe (October 2007) 'Characteristics of sex ratio imbalance in India and future scenario', Paper presented at Fourth Asia-Pacific Conference on Reproductive and Sexual Health and Rights.

'Modernization' (read: economic development, growth driven capitalism) in patriarchal contexts is closely linked to both lowered fertility rates and increased use of sex selection. When discussing the demographic impact of recent economic changes in China, demographers Gu and Li (1994) explain that the 'early birds' who are gaining from economic reform have become increasingly concerned about who will inherit the property they have recently accumulated if they do not have sons. Whyte's (1993) research in Chengdu, the capital city of Sichuan Province, shows that the capitalist economic reforms have brought a resurgence of Confucian – patriarchal – family norms and strategies that increase the value of sons and decrease the value of daughters.

Consequences of sex selection

The declining CSR can severely impact the delicate equilibrium of nature and damage the moral and social fabric of a society.

Sex selection has been shown to increase violence against women and denial of rights. The obsession for a son often makes women undergo forced and frequent abortions following sex determination. Tremendous psychological pressure is exerted on women through threats of bigamy and desertion for their perceived inability to bear a male child, impacting their reproductive, mental and physical health. In a desperate attempt to have a son, many women turn to quacks for illegal abortions and as a consequence suffer from debilitating maternal morbidities.

Sex selection has been further shown to increase sex related crimes like rape, abduction, trafficking and a resurgence of practices such as polyandry (more than one man marrying one woman). In some parts of the country, women are already being 'bought' as brides, making 'commodification' of women a real threat.

The implications of son preference³⁵

Implications for women's lives and health

One notable consequence of the continued disproportionate importance given to boys is the huge pressure put upon women to produce sons.

In the context of declining family size, restrictive policies on reproduction and access to unregulated health services, this pressure can have particularly debilitating effects on the mental and physical health of women.

It is against the backdrop of this intense pressure from family members and broader social norms that women seek to discover the sex of a foetus. Currently, this is usually done around the 14th to 16th week of pregnancy when the most widely used sex detection technique (ultrasonography) becomes effective. In some circumstances, women may be forced by their family or community to have an abortion because they are carrying a female foetus (CESCR, 2005).

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³⁵ Extracted from 'Preventing gender-biased sex selection', an interagency statement OHCHR, UNFPA, UNICEF, UN Women and WHO

In situations where abortion is restricted for sex selection purposes, terminating a pregnancy for this reason is likely to involve an unsafe procedure carrying high risks. Even where abortion is legal, as in India, some health-care providers have reacted to sex selection by denying access to abortion – resulting in women seeking clandestine abortions with elevated risks to their health (Sen, 2009). The pressures to engage in sex selection in a gender discriminatory environment not only directly affect women's reproductive decisions (with implications for their health and survival), they also put women in a position where they must perpetuate the lower status of girls through son preference.

In addition, it is also women who have to bear the consequences of giving birth to an unwanted girl child. These consequences can include violence, abandonment, divorce (or being forced to live with an additional wife) or even death (Ganatra, Hirve and Rao, 2001; Li, 2007). They may have to continue with pregnancies until a boy child is born, thus putting their health and life at further risk.

Implications for surviving unwanted children

The neglect of girl children as a result of son preference has been well documented (Das Gupta, 1987; Li, 2007) and typically involves biased feeding practices, inadequate clothing during winter, and less and lower quality health care. A recent analysis of surveys in India found that rural girls with two or more older sisters had a significantly higher risk of severe stunting than other children (ICRW, 2009).

These childhood differentials are likely to carry over into adolescence and affect the nutritional status (including anaemia) of young pregnant women. The study also found that females were at a significant disadvantage in terms of receiving full immunization in 2005–06, even though immunization is free and provided through mass public campaigns. However, this phenomenon appears to be declining (ICRW, 2009).

Where families successfully achieve their desired sex ratio (one boy and one girl, or two boys and one girl) there is some evidence that girls receive better treatment (Das Gupta, 1987).

Implications for society

The significant over-representation of males in some populations resulting from an excess number of male births since the 1980s inevitably impacts entry into partnership or marriage by women and men. There is evidence of a possible increase in violence against women as the lack of women available for marriage in some areas leads to women from other regions being trafficked to be forcibly married – and of brides being shared among brothers (Guilmoto, 2007a). These women are often unable to speak the local language, are deprived of their family environment and are under intense pressure to produce male children. More in-depth research is needed to determine the impact of imbalanced sex ratios on men, women and whole societies.

Skewed sex ratios at birth could translate into an excess of adult men and a shortage of women resulting in a male marriage squeeze due to a shortage of potential spouses. The shortage of women in the marriage market is expected to result in a corresponding increase in the number of men who may remain unmarried against their will and therefore a reduction in male marriage rates. This shortage may also result in an increase in the age gap between spouses, with earlier marriage for women and delayed marriage for men.

Sex selection could also have consequences on marriage payments for example, in China the bride price has shot up because of the shortage of women of marriageable age. Trends are also visible in India where dowry is declining in certain parts.

It must be understood that most consequences mentioned above are impressionistic in nature and based on anecdotal data and hence there is need for further research.

Interconnectedness of sex selection with other gender related laws³⁶

Son preference and its manifestation in the form of discrimination against daughters is impacted by various socio-economic factors such as the practice of dowry, marriage practices, patrilineal system of inheritance, etc. It would hence be useful to adopt a comprehensive approach to address this issue and to draw linkages between sex selection and gender related laws such as the Dowry Prohibition Act, laws of inheritance, and laws enforcing the two-child norm. At times the lack of implementation of these laws or their discriminatory provisions accentuates the factors that create an environment wherein girls are unwanted.

Similarly, while the PCPNDT Act can play an important role in addressing the alarming decline in sex ratios, change in attitudes and perceptions to accept daughters as equally as sons, can be accelerated if brought about in a supportive legal and policy environment.

For example, dowry is widely considered to be both a cause and a consequence of son preference. The practice of dowry inevitably leads to discrimination against daughters in different areas and makes them vulnerable to various forms of violence. Many studies have also shown that dowry, customarily given by a girl's family to a boy's family, can be a major drain on the family's resources and is perceived as an oppressive burden by parents. It is the perception that dowry has to be given for a daughter to be married that leads to their unwantedness, and the birth of a daughter is viewed with great trepidation. Discrimination against daughters further increases with higher order births as the prospect of marrying and paying dowry fuels as an aversion for additional daughters. The non-implementation of the law relating to dowry in letter and spirit due to bias and policy inaction has resulted in low conviction rate apart from allowing dowry takers to function with impunity.

While the Indian Constitution stipulates that all citizens will be treated as equal before the law and have equal protection of the laws, and that there will be no discrimination on the ground of sex, these guarantees in the Fundamental Rights chapter have not helped Indian women secure equal property rights. The Hindu Succession Act, 1956 for the first time gave daughters, wives and mothers an equal right in a male Hindu's self-acquired property along with the sons if he died without making a will. However, the states of Delhi, Uttar Pradesh, Punjab, Haryana, Himachal Pradesh and Jammu and Kashmir have special laws which deny women equal rights of succession in tenancy rights, including the rights of a tenure holder (owned). Such a provision is likely to inadvertently propagate son preference.

³⁶ *Laws and Son Preference in India: A Reality Check*, United Nations Population Fund, 2013

Similarly, certain states in India in pursuit of a small family norm have adopted coercive legislations prohibiting persons with more than two children from holding posts in *panchayats*, urban local bodies, and agriculture produce markets and also from entry and promotion in public services and from eligibility for government's welfare programmes and services. The two-child norm and the laws and measures to effectuate it have widely been recognised to be against basic human rights and the rights of the most vulnerable, including women. It has also been widely reported by social activists and studies that the two-child norm advances son preference and daughter aversion as most people, if they are forced to have a small family, automatically prefer sons to daughters. In one study it was found that a significant number of respondents resorted to sex selection to adhere to the two-child norm.³⁷

The above discussion shows that since various socio-economic and cultural reasons propagate son preference, any strategy to end this practice would have to be multi-pronged.³⁸ Hence, apart from implementation of the PCPNDT Act, other laws which have a direct or indirect impact on sex selection also need to be examined as part of a multi-pronged approach to address factors linked to son preference and sex selection.

Myths related to sex selection

- Less girls, more demand; their status will improve: This is based on the demand-supply logic. A society that is responsible for the subordination of women will not treat them in a more humane way simply because they are in scarce supply. Fewer girls in a society will not enhance their status. Instead, in places where sex selection is rampant, there can be an increase in violence against women – rape, abduction, trafficking and onset of practices such as polyandry.
- Sex selection is justified if you have two or more daughters: The notion that only couples with two or more daughters are going in for sex selection and therefore it does not affect the overall child sex ratio is misleading. In fact, data indicates that even for the first-born, there is a preference for a male child. This trend is even more noticeable where the first-born is a girl.
- If dowry exists, sex selection cannot be stopped: Sex selection is not a solution to dowry – the system of dowry will continue as long as people look upon daughters as a liability. What is important is to address the root cause for the subordinate status of women in society.
- Better to eliminate daughters than to let them suffer life long discrimination: The thought that it is more humane to eliminate a female foetus than subjugate her to a life of discrimination does not hold water. By the same logic, it would be justifiable to eliminate poor people rather than let them suffer a life of poverty and deprivation. The girl child is not the problem, the practice of sex selection is.
- A mother has the right to choose the sex of her child: This is yet another misleading notion – that banning sex selection amounts to denying a mother her unalienable right to choose the sex of her child. Choice in the absence of autonomy is no choice. Fear of violence and rejection/desertion and also the desire to establish one's value in the family often pressurize women into opting for sex selection.

³⁷ Nirmala Buch, 'Law of Two child norm in Panchayats: Implications, Consequences and Experiences', *Economic and Political Weekly*, 40(24) 11-17 June 2005

³⁸ Mary E. John, Ravinder Kaur, Rajni Palriwala and Saraswati Raju, 'Dispensing with Daughters: Technology, Society, Economy in North India', *Economic and Political Weekly*, 44(15), April 11, 2009

- Sex selection helps to control population: The argument that sex selection is an effective tool for controlling population is misplaced. We want population stabilization for improving quality of life. This is the ultimate goal. If along the way we resort to practices that damage the quality of life it would not be desirable.
- Sex selection is a question of economics, not discrimination: Traditionally, women are not expected to work outside home. Economic dependence renders them vulnerable on the one hand, while on the other, being considered as a liability further adds to their subordination. They are considered as '*paraya dhan*' requiring dowry to be married and sent away. The factors that lead to women being perceived as an economic liability can be changed and women and girls too can be as independent as men provided the family and society invests in their education and skills.
- Not allowing sex selection for family balancing is unethical: There is no right to a "balanced family". It is not a natural right nor has it been bestowed on citizens by the political set up. Using diagnostic techniques for sex selection is discriminatory and violates the fundamental right to equality, apart from violating the PCPNDT Act. (This has been upheld by the Mumbai High Court in the context of the case of *Mr. and Mrs. Soni vs. Union of India*. The judgement states that "the right to life or personal liberty cannot be expanded to include the personal liberty to determine the sex of the child which may come into existence. Right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself be a right.")

Constitutional provisions related to gender equity and equality

Introduction

In this section, we will try to understand the specific laws concerning women and get a firsthand knowledge of the provisions concerning women in the Constitution of India. The Constitution recognizes the gender imbalance and prevalence of social evils linked to patriarchy which pushes women and girls to an unequal status and thus provides for special provisions for the protection and welfare of women.

Background

The Constitution of India operates as a fundamental law. All organs of the governments at state and centre, the Judiciary and other authorities, draw their power and authority from the Constitution, including the law-making parliament. The Preamble of the Constitution emphasises the concepts of equality of status and of opportunity along with social, economic and political justice to all its citizens. Further, Part III, IV and IV-A which deal with Fundamental Rights, Directive Principles and Fundamental Duties all contain provisions concerning women. All other gender laws in the country draw their origin and power from the Constitution in their attempt to provide women a life of dignity and respect.

Fundamental Rights

Part III of the Constitution provides for every citizen, including women, certain rights that cannot be taken away by the state, except in special circumstances, and are enforceable in a court of law. The Fundamental Rights of citizens include freedom of speech and expression, of assembly, to form associations, of movement, to reside and to settle and of profession, occupation, trade or business.

Further, the Constitution guarantees all its citizens protection of life and personal liberty, equality before law, prohibition of discrimination on grounds of sex, gender, religion, etc. and equality of opportunity.

Equality before law and protection against discrimination

Article 14 of the Constitution ensures to every person within the territory of India, be it citizen or otherwise, 'equality before law' and 'equal protection of law'. While equality before law implies absence of special privileges in favour of any person, equal protection of law means the right to equal treatment in similar circumstances.

Special provisions

While Article 15 prohibits discrimination on any basis, including on the basis of sex it does not come in the way of the State making special provisions for women and children. The Constitution permits special provisions for women and children through special measures in legislation or executive orders favouring women. Courts have upheld such measures particularly in the criminal law or in the procedural law discriminating in favour of women.

The Constitution, under Part IX and IX-A, provides for reservation of seats in *Panchayats* and Municipalities for women. There are numerous government provisions, schemes, policies and laws which specifically attempt to benefit children and women through special provisions.

Things to remember

- The Constitution guarantees women Fundamental Rights that protect them from discrimination and provide protection from various forms of social and economic disabilities.
- While the Directive Principles and Fundamental Duties cannot be enforced in a court of law, they form part of the basic structure and are used to interpret vague legal provisions.
- Many of the ideals enshrined as part of the Directive Principles have been converted into legal rights through proper legislations.
- Understanding concepts such as Rights, Duties, State Accountability and Legal Remedies are prerequisites for a vigilant citizen and a vibrant democracy.

Directive Principles of State Policy

The Directive Principles of State Policy provide directions to the State while formulating policies and laws. The Directive Principles are the larger goals to be achieved by a welfare state. These are supplementary to the Fundamental Rights and should be harmoniously construed. While the Directive Principles are themselves non-enforceable rights, various provisions have already taken the form of legal and Constitutional rights through appropriate legislations, such as equal pay for equal work for both men and women, and free legal aid ensuring justice is not denied to any citizen by reasons of economic or other disabilities.

Fundamental Duties

The Constitution of India lists a set of actions and prohibits certain actions as a Fundamental Duty of every citizen of India. Fundamental Duties are envisaged to strive towards a better society and one of the duties mentioned is renouncing all practices that are derogatory to the dignity of women. While Fundamental Duties cannot be enforced through writs they are used to interpret ambiguous statutes.

Summary

The Constitution of India recognized the special position of women in the society for their contribution to family and society. Their contribution to childbearing and nurturing should be protected and guarded by all as a service to the society. Further, the historical injustice and discrimination towards them has to be rectified. The Constitution thus provides several kinds of safeguards against discrimination and arbitrary actions and guarantees protection and empowerment of women through special provisions.

International conventions addressing the practice of sex selection

A number of international conventions and treaties refer to discrimination against girls as reflected in certain harmful practices such as sex selection. These conventions and commitments to action made at key conferences reinforce the urgent need to address gender discrimination and ensure a life of equal opportunity to all. Amongst the conventions, notably the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Beijing Platform for Action and the International Conference on Population and Development (ICPD) Programme of Action refer to the harmful practice of pre-natal sex selection.

Article 5 of **CEDAW** makes it incumbent on States to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

The 1994 **ICPD Programme of Action** calls on governments to “eliminate all forms of discrimination against the girl child and the root causes of son preference, which results in harmful and unethical practices regarding female infanticide and pre-natal sex selection.” (Chapter IV of the Program of Action and para 48 of the key actions for implementation of the Program of Action).

The 1995 **Beijing Platform for Action** expanded on the definition of violence as acts of physical, sexual, and psychological violence, to include violations of the rights of women in situations of armed conflict, including systematic rape, sexual slavery and forced pregnancy; forced sterilization, forced abortion, coerced or forced use of contraceptives; pre-natal sex selection and female infanticide (paras 115 and 116).

Sex selection and medical termination of pregnancy – unpacking the nuances

The Medical Termination of Pregnancy Act, 1971 has made abortion legal in India under certain circumstances. These include danger to safety of the mother, foetal abnormalities, and pregnancy being the result of contraceptive failure or rape. Abortion up to 12 weeks of gestation has to be certified by one registered medical practitioner and between 12 and 20 weeks by two registered medical practitioners. The law however does not permit abortion for the reason of sex selection. On various occasions the practice of sex selection has been linked to access to legal abortion. It should be kept in mind that while trying to address the practice of sex selection, which has its roots in discrimination against women and girls, women's conditional right and access to safe and legal abortion does not get compromised. This can be understood by keeping in mind the main object of the MTP Act which is to prevent unsafe abortions that result in maternal mortality (around 8-13% of maternal mortality is a result of unsafe abortions conducted by unregistered, untrained providers in unsafe conditions).

Further, the use of terminologies like foeticide, *bhrunhatya*, killing of unborn girls, and genocide adds to the confusion as these terms indicate abortion and the general reaction is to restrict women's access to safe and legal abortion.

From a gender equality perspective, not providing women access to safe abortion for reasons that are legally valid is also a form of discrimination and further leads to their subordination. In addition, if access to legal abortion is curbed, more and more women are forced to resort to illegal and unsafe abortion defeating the very purpose of the MTP Act. Hence it should be clearly understood that the practice of sex selection and discrimination are what need to be curbed; abortion is the consequence and not the cause and should be accessible as per the law.

Demystifying the PCPNDT Act

Important milestones in enactment of the PCPNDT Act and its enforcement³⁹

The Census data reveals that the CSR in the age group 0–6 years has been declining steadily from 971 in 1981 to 945 in 1991 to 927 in 2001 to 919 in 2011. This deplorable scenario is the result of the widespread use of sex determination and sex pre-selection tests throughout the country. Advances in medical science resulted in sex determination and sex pre-selection techniques such as foetoscopy, needling, chorionic villi biopsy (CVB), amniocentesis and ultrasound. These tests were well known not only in urban India but also in the villages. The metros were the major centres for sex determination and sex pre-selection tests with sophisticated laboratories. However, amniocentesis and ultrasound were used even in the clinics of small towns and cities of Gujarat, Maharashtra, Karnataka, Uttar Pradesh, Bihar, Madhya Pradesh, Punjab, West Bengal, Tamil Nadu and Rajasthan in the late 1970s.

In 1975, the All India Institute of Medical Sciences (AIIMS) conducted a sample survey of amniocentesis to find out about foetal genetic conditions and easily managed to enrol 11,000 pregnant women as volunteers for its research.⁴⁰ The research team found that the main interest of these volunteers was to know the sex of the foetus. Once they learnt the sex of the foetus, the women carrying female foetuses demanded an abortion.⁴¹ The newly formed Centre for Women's Development Studies (CWDS) led by Veena Mazumdar met the health minister and demanded an immediate ban on the use of sex determination tests for abortion of female foetuses. But during the Emergency (1975-77), the State was interested in population control and saw sex determination tests as effective tools to attain population stabilization.⁴²

³⁹ This is based on the article 'A Long Battle for the Girl Child' by Dr. Vibhuti Patel, May 21, 2011; Vol xvi no. 21; *Economic and Political Weekly*

⁴⁰ Veena Mazumdar (1994), "Amniocentesis and Sex Selection", Centre for Women's Development Studies, Delhi, Occasional Paper Series No. 21

⁴¹ Amrita Chhachhi and C Stayamala (1983), "Sex- determination Tests: A Technology Which Will Eliminate Women", *Medico Friend Circle Bulletin*, India, November, No 95, 3-5

⁴² Tulsi Patel (2006), *Sex Selective Abortions in India* (Delhi: Sage Publications), p 361

In the post-Emergency period, when scholars of women's studies connected sex selective abortions with the continuous trend of declining sex ratio as revealed by the census, the Union Health Minister, Mr. Raj Narain, decided to ban sex determination tests for sex selection in all government-run hospitals in 1978. However, this did not stop private health facilities that were rapidly expanding in the early 1980s from offering amniocentesis and other sex selection tests. The justification for this was aptly put forward by a team of doctors from Mumbai's Harkisandas Narottamdas Hospital (a pioneer in this trade). In their words, "...in developing countries like India, as parents are encouraged to limit their family to two offspring, they will have a right to quality in these two as far as can be assured. Amniocentesis provides help in this direction".⁴³

Various women's organizations, doctors, democratic rights groups and the People's Science Movement got together to form the Forum Against Sex Determination and Sex Pre-selection (FASDSP) in 1986 to focus on the issue.⁴⁴ The Forum began its campaign in Mumbai against the practice of sex selection in April 1986. Its first action was a demonstration in front of a reputed hospital that boasted of performing 8,000 amniocentesis (sex selection) tests on pregnant women. The hospital claimed that only one pregnant woman with three sons wanted a daughter and 7,999 pregnant women wanted only sons. As the hospital was against abortion, it advised the women whose tests had shown a female foetus to go for abortion elsewhere.

During the 1980s, in other countries, sex determination tests were very expensive and under strict government control, while in India the test could be done for between Rs. 70 and Rs. 500. Hence, people across economic classes could avail this facility. A survey of several slums in Bombay (Mumbai) showed that many women had undergone the test and, after learning that the foetus was female, had got an abortion done in the 18th or 19th week of pregnancy. Their argument was that it was better to spend Rs. 200 or even Rs. 800 than to give birth to a female child and spend thousands of rupees on her marriage later.

Initially the government refused to take any action commenting that all this was anecdotal information. They began to listen only when they saw results of the research supported by trade unions, the Medico Friends Circle, People's Science Movements and the Association of Nurses and papers presented by FASDSP members at the Indian Association of Women's Studies (1981), International Sociological Association (1984), International Anthropological Association, Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE), 1985 and National Conferences of Women's Movements (1985, 1988, 1990).

A sociological research project in Punjab in the year 1982 selected a sample comprising 50 per cent men and 50 per cent women as respondents for their questionnaire to gather the opinion of men and women regarding sex determination tests. Among the male respondents were businessmen and white-collar employees in the income group Rs. 1,000 to Rs. 3,500 per month, while the female respondents were mainly housewives. All of them knew about the test and found it useful.⁴⁵ Punjab was the first state to start the commercial use of this test as early as 1979. Advertisements in newspapers regarding the Bhandari Ante-Natal Sex Determination Clinic in Amritsar first persuaded the press and women's groups to denounce the practice.

⁴³ M.H. Patanki, D.D. Banker, K.V. Kulkarni and K.P. Patil (1979), "Prenatal Sex-prediction by Amniocentesis – Our Experience of 600 Cases", paper presented at the First Asian Congress of Induced Abortion and Voluntary Sterilisation, March, Bombay

⁴⁴ *Campaign Against Pre-Birth Sex Selection Four Decades of Activism* by Dr. Vibhuti Patel; Quarterly publication of the RCUES of AILSG, Mumbai, Vol. 4 No.3

⁴⁵ Gurmeet Singh and Sunita Jain (1983), "Opinion of Men and Women Regarding Amniocentesis", College of Home Science, Punjab Agricultural University, Ludhiana, India

Roger Jeffery, a medical anthropologist from Edinburgh University, United Kingdom, attended FASDSP meetings in Mumbai. Micro research in Bijnor District of Uttar Pradesh by his team revealed that clinics offering amniocentesis had been in existence in the region since 1974.⁴⁶ According to the 1981 Census, the CSRs of Uttar Pradesh and Bijnor District respectively, were 886 and 863 girls per 1,000 boys. They also discovered that until 1900, female infanticide in Bijnor District had been limited to *Rajputs* and *Jats* who considered the birth of a daughter as a loss of prestige. By contrast, the abuse of amniocentesis for the purpose of sex selection was prevalent in all communities in Bijnor District in 1983.

Doctors against Sex Determination and Sex Pre-selection (DASDSP) was formed in Mumbai on the initiative of members of FASDSP.⁴⁷ However, they were clear that the ban on sex selection should not curb abortions that are permitted under the MTP Act, 1971.⁴⁸ The DASDSP focused on medical malpractices and the ethical dimensions of sex determination and sex pre-selection.

In March 1987, the Maharashtra Government appointed an expert committee to propose comprehensive legal provisions to restrict sex determination tests to identifying genetic conditions. The committee was appointed in response to a private bill introduced in the assembly by a Member of the Legislative Assembly (MLA) who was persuaded by the FASDSP to do so. In fact, the Forum approached several MLAs and MPs to introduce such a bill. Based on the findings of the committee, in April 1988, the Maharashtra Government introduced a bill to provide for the regulation of the use of medical or scientific techniques solely for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital anomalies or sex-linked conditions and for the prevention of the misuse of pre-natal sex determination leading to sex selection and for matters connected therewith or incidental thereto (LC Bill No VIII of 1988). In June 1988 the bill became an Act. Its purview was limited only to sex determination tests; it did not say anything about the sex pre-selection techniques. It admitted that doctors could misuse medical technology and banning of sex determination tests had taken away the respectability of these tests. In the eyes of law, both the clients and the practitioners of the sex determination tests were guilty and the Act forbade the advertising of these tests.

By 1990, private members' bills to regulate pre-natal sex selection tests were introduced in Karnataka, Goa, Gujarat, Tamil Nadu and Rajasthan. By 1991, FASDSP was active nationally. The Central Government formed a committee in 1991 to formulate a central law on this issue. In pursuance of it, The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted in 1994 by the Central Government but was not implemented in letter and spirit.

In 1997, Sabu George, a civil society member, Centre for Enquiry into Health and Allied Themes (CEHAT), Mumbai and Mahila Sarvangeen Utkarsh Mandal (MASUM), Pune filed a Public Interest Litigation (PIL) in the Supreme Court under Article 32 of the Constitution of India that was fought on their behalf by the Lawyers Collective.⁴⁹ The PIL⁵⁰ brought to the attention of the Court that

⁴⁶ Roger Jeffery and Patricia Jeffery and Andrew Lyon (1984), "Female Infanticide and Amniocentesis", *Social Science and Medicine* (UK) 19(11), 1207-12

⁴⁷ Amar Jesani (1988), "Banning Pre-natal Sex De-termination II: Scope and Limits of Maharashtra Legislation", *Radical Journal of Health*, 2(2)

⁴⁸ Amar Jesani (1988), "Hands Off the MTP Act!" A Response to Nilima Dutta's Comment on the Law Relating to Pre-natal Diagnosis in *The Lawyers*, October, pp 22-3, (Response)

⁴⁹ Asmita Basu (2003), "Sex Selective Abortions", *Lawyers Collective*, Vol 18, No 11, November, pp 20-23

⁵⁰ Equivalent Citations: (2003) 8 Supreme Court Cases 398, AIR 2003 SC 3309, 2003(7) SCALE 345, (2003) Supp 3 SCR 593; In the Supreme Court of India; Writ Petition (Civil) 301 of 2000; Decided on September 10, 2003; *CEHAT and Others vs. Union of India*; Hon'ble Judges: M.B. Shah and Ashok Bhan, JJ.

although the Act prohibiting sex determination was passed by the Central Government in 1994 and rules framed in 1996, no steps were taken for its effective implementation either by the Central or the State Governments. In this petition several State Governments took nearly a year to file their affidavits. After hearing them the Supreme Court issued a number of Directions from time to time for proper implementation of the Act. The first set of Directions was issued on May 4, 2001 when the Central and State Governments were directed to create public awareness against the practice of pre-natal sex determination and sex selection and to implement the Act in letter and spirit. The Central Supervisory Board was also directed to review and monitor the implementation of the Act and to examine the necessity to amend the Act in view of emerging technology of pre-conception sex selection and difficulties encountered in implementation of the Act.

In 2003, in conformity with the directions issued by the Supreme Court, the Act was amended to bring within its purview misuse of pre-conception techniques and titled 'Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act'.

Around the same time, data from the 2001 Census revealed that the CSR had declined dramatically in almost all states and was very low in north-western India especially in the states of Punjab, Haryana, Gujarat and Himachal Pradesh. Through a series of campaigns and media advocacy, civil society organizations attempted to create awareness and change mindsets. They also tried to build alliances with a wide range of opinion leaders to help address the issue. In spite of this there was denial in accepting the issue of sex selection as being critical. In order to address the denial UNFPA brought out a booklet in the year 2005 titled *Missing...*, mapping the CSRs in states, which clearly established sex selection as an issue of concern and proved to be an important advocacy tool.

Several State Governments took various steps to address the issue and take action, for example, training of medical authorities responsible for implementation of the Act, initiating conditional financial incentives to couples who gave birth to girls, capacity building of Judiciary, and training of media persons.

Civil society organizations also initiated decoy operations in some states to catch erring doctors. A lot of research was initiated on the causes and consequences of sex selection which helped sharpen the understanding of activists and the Government on the issue. As a result of all the above, several erring doctors were punished and newer ways of monitoring implementation of the Act were devised. The release of the 2011 Census results revealed that sex selection, which began as a phenomenon of the urban socio-economically well-off classes had spread to rural and tribal areas. The Census also revealed that the practice of sex selection had spread from the northern and western states to the southern and eastern states of the country.

As information about the implementation of the Act became available, the need to amend certain provisions to bring them in tune with the times became apparent. Accordingly, the rules to the Act were amended in 2011 and 2012.

Introduction

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 fetuses. 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.

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.]⁵¹

Statement of objects and reasons of the PCPNDT Act

“The main object of the Act is to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide as such abuse of techniques 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.

The Act, *inter alia*, provides for:

- Prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;
- Prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex;
- Permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;
- Permitting the use of such techniques only under certain conditions by the registered institutions; and
- Punishment for violation of the provisions of the proposed legislation.

In 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”.⁵²

⁵¹ Substituted by Act 14 of 2003, S.2, for long title (w.e.f. 14.02.2003). Prior to its substitution, long title read as under: “An 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 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.”

⁵² The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994 – Bare Act 2013

Scheme of the PCPNDT Act

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 important 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.

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 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.

Thus the provisions of the Act can be divided into two categories – those dealing with establishment of implementing bodies and those providing for regulation and prohibition of the use of technology for the purpose of sex selection and sex determination and by prescribing penalties and punishments for violation of these provisions.

The entire scheme of the Act makes it clear that it is for the AA to consider whether to grant registration, cancel or suspend it. These are quasi-judicial administrative functions of the AA. If the AA does not carry out its functions effectively then there is provision of appeal in Section 21 and Rule 19. The function of the Judicial Officer begins only when the implementing machinery, that is the AA, brings to its notice violation of the provisions of the Act.

Landmark decisions on constitutional validity of the Act

The object behind enactment of the PCPNDT Act was to ban the use of pre-conception sex selection techniques and misuse of pre-natal diagnostic techniques for sex selection. It was found necessary by the State to intervene in the matter by restricting the individual right of a

couple to have a child of the sex of their choice in order to prevent a severe imbalance in the male-female ratio, which is against the order of nature. This law was therefore enacted by the State in discharge of its duty of upholding the human dignity and the welfare of the society, especially of women and children, in accordance with the principles enshrined in Article 15(3) of the Constitution of India. However, when it comes to deep rooted preference for sons over daughters entrenched in the mindset of Indian society, new ways were sought to challenge the Constitutional validity of the Act itself, either on the ground that it violates Article 14 as being discriminatory against the male child or on the ground that it violates Article 21 of the Constitution as it restricts a couple's right to have a family of their choice. As on date there are two decisions, both of the Bombay High Court, in which the Constitutional validity of the Act was challenged but upheld. Both decisions are landmark in the way they deal with this most sensitive and socially relevant issue. A brief summary of the case of *Vinod Soni and Anr. vs. Union of India*⁵³ is provided below. Also refer page 56 for case of *Vijay Sharma and Others vs. Union of India* in the High Court of Bombay

Case summary

Vinod Soni and Anr. vs. Union of India

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 via Article 14 was not pressed into submission.

A very interesting argument was advanced in this case by the petitioners by submitting that the right to life guaranteed under Article 21 of the Constitution has been gradually expanded to cover several facets of human life and personal liberties, which an individual has as a matter of Fundamental Rights. Reliance was placed on several Judgements of the Supreme Court to submit that the right to life includes right to personal liberty, which in turn includes the liberty of choosing the sex of the offspring, and to determine the nature of the family. Thus it was contended that a couple is entitled to undertake any such medical procedure that provides for determination or selection of sex, so that they can exercise the right of deciding nature of their family.

The High Court however exposed the fallacy of this argument by observing that, “right to personal liberty cannot be expanded by any stretch of imagination to liberty to choose the sex of the child and prohibit to coming into existence of a female foetus”. 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 pre-conception or post-conception, which shall be for the nature to decide. As per the High Court, right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself be a right”. Accordingly, the High Court dismissed the petition holding that it does not even make a *prima facie* case for violation of Article 21 of the Constitution.

⁵³ In the High Court of Bombay Criminal Writ Petition No. 945 of 2005 and Criminal Application No. 3647 of 2005. Decided on 13/06/2005. Equivalent citation 2005 CriLJ 3408, 2005 (3) MhLJ 11310

Landmark decisions on effective implementation of the PNDT Act

It is normally the function of the government to implement laws but when the government fails to do so, resort is taken to the Judiciary. The primary credit for implementation of the PNDT Act goes to the Judiciary. The PNDT Act was enacted by parliament in 1994. However it came into operation after two years on January 1, 1996. However, even after a lapse of five years neither the Central Government nor the State Governments had taken any action for its implementation. Hence the Judiciary had to take upon itself the task of giving effect to the Act. There are a series of petitions filed either *suo moto* or being moved by NGOs in which the Supreme Court and the High Courts have issued various directions and pronounced orders to the Central and State Governments for effective implementation of the Act. Some of these cases are given below.

Case summary⁵⁴

CEHAT and Others vs. Union of India

A path breaking order with regard to the implementation of the PCPNDT Act is the Writ Petition (C) No. 301/2000. It was a Public Interest Litigation, filed under the Article 32 of the Constitution of India, by Centre for Enquiry into Health and Allied Themes (CEHAT), a research organisation, Mahila Sarvangin Utkarsh Mandal (MASUM), a non-governmental organisation and Dr. Sabu George, a civil society member. In this petition it took nearly one year for various states to file their affidavits in reply/written submissions and after hearing them, from time to time the Supreme Court had issued a number of directions to the Central and State Governments, the CSB and AAs established under the Act, for its proper implementation with all vigour and zeal.

The first set of directions were issued on May 4, 2001 whereby both the State and Central Governments were directed to create public awareness against the practice of pre-natal sex determination and sex selection and to implement the Act in earnest interest. The CSB was directed to review and monitor the implementation of the Act and at the same time examine the necessity to amend the Act in view of the emerging technology of pre-conception sex selection and the difficulties encountered in implementation of the Act. State Governments were directed to immediately appoint fully empowered AAs and the AAs were further directed to take appropriate criminal action in case of violation of the provisions of the Act (Para 3). Being aware of the lackadaisical manner in which the Governments were functioning, the Supreme Court did not stop merely by issuing directions but called for the compliance reports and kept the matter pending for further directions on August 6, 2001.

In spite of these directions by the Supreme Court, certain states did not file compliance affidavits, so the matter had to be adjourned from time to time and on September 19, 2001 the Supreme Court recorded with anguish that directions were not complied with and there

Contd...

⁵⁴ Equivalent Citations: (2003) 8 Supreme Court Cases 398, AIR 2003 SC 3309, 2003(7) SCALE 345, (2003) Supp 3 SCR 593; In the Supreme Court of India; Writ Petition (Civil) 301 of 2000; Decided on September 10, 2003; *CEHAT and Others vs. Union of India*; Hon'ble Judges: M.B. Shah and Ashok Bhan, JJ.

was a total disregard on the part of the administration in implementation of the Act. The Supreme Court issued further directions for taking appropriate criminal action against the medical officers and the clinics violating the provisions of the Act.

On November 7, 2001 in the same Writ Petition, on the suggestion of the Central Government, Supreme Court ordered the setting up of National Inspection and Monitoring Committee for the implementation of the Act (Para 3). In the year 2003, in conformity with the several directions issued by the Supreme Court, the Act was amended to bring within its purview the misuse of pre-conception and pre-natal diagnostic techniques and was titled *The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act*. On March 31, 2003 and September 10, 2003 after giving some further directions for creating public awareness and for effective implementation of the amended Act, the Supreme Court finally disposed of the petition on September 10, 2003.

The perusal of these directions in the form of a total of six orders is sufficient to reflect that the Supreme Court has to, in this matter, literally legislate on how the Act should be implemented. This decision hence constitutes a landmark in its impact. It exhibits the deep concern and the anguish felt by the Apex Court towards the social evil of sex selection followed by elimination of the foetus if found to be female. The Supreme Court was equally concerned with the apathy on the part of the Government in implementation of the law, which aims at preventing such a social evil. As per the Supreme Court, “it was unfortunate that for implementation of the law, which was the urgent need of the hour, NGOs had to approach the Court”. The significance given by the Supreme Court to this issue is bound to have a positive effect for advancing the cause.

As the Judgements and Orders of Supreme Court are binding on all in view of Article 141 of the Constitution of India and as non obedience and non compliance with the directions issued by the Supreme Court amounts to contempt of court, it appears that only with a view to avoid facing the action of contempt of Supreme Court, the Government and Authorities have at least made some efforts towards implementation of this Act. This decision is in that respect epoch making.

It must be stated that but for the initiative taken by the NGOs and the constant monitoring by the Apex Court, virtually laying down the entire framework for implementation, this Act would have remained on paper only.

All the six Orders passed in this Writ Petition are worth reading in entirety, especially the opening paras of the Supreme Court’s first order dated May 4, 2001 and the last order dated September 10, 2003, highlighting the plight of the female child and the inhuman practice of sex selection.

Despite detailed directions issued by the Supreme Court since 2001 in the landmark decision of *CEHAT vs. Union of India* reproduced above, several states did not take any steps for effective implementation of the Act. Hence several PILs were filed in various High Courts regarding effective implementation of the Act. Two case summaries have been reproduced on the following pages.

Case summary⁵⁵**Hemanta Rath vs. Union of India and Ors.**

In the State of Orissa, hundreds of skeletons, skulls and body parts of infants were recovered, which shocked the common man. As these body parts were found in an area close to various nursing homes and clinics, there was a strong allegation that the practice of sex selection and pre-natal sex determination was still rampant. After coming across a series of news items in the print and electronic media to this effect, one Mr. Hemanta Rath, a social activist, filed this Public Interest Litigation under Article 226 of the Constitution of India in the High Court of Orissa seeking directions for effective implementation of the PCPNDT Act in the state.

The contention raised in this petition was that there was total inaction on the part of both the Central and State Government in implementing the provisions of the Act. Neither had the appointment of AAs as contemplated u/s 17(1) of the Act been made nor had the State Advisory Committee as per Section 17(5) of the Act been constituted. It was urged that without constitution of such AA and Advisory Committee, provisions of Section 28 became nugatory as under Section 28, a court can take cognizance of the offence only on a complaint made by the AA.

In reply, the Central Government tried to justify its stand by stating that it was for the State of Orissa to take steps for appointment of AA and for constitution of Advisory Committee as per Section 17(1) and 17(5) of the Act.

The State of Orissa in its reply stated that it has already taken immediate steps by lodging criminal cases against the guilty and the investigation of the cases had been handed over to the State Crime Branch as a result of which the doctors and some of the staff of the nursing home and ultrasound clinic were arrested. It was also informed that the government had formed a State Task Force Committee to monitor the working of ultrasound clinics and nursing homes. The State Government also listed various measures taken by it for awareness generation and sensitization about provisions of the Act and further stated that in the State of Orissa the sex ratio is better than in any other part of the country. The High Court was, however, not convinced and emphasized implementation of the provisions of the Act.

After referring to the object of the Act and Constitutional Principles, the High Court stressed on both the Statutory and Constitutional obligation of the state to implement the provisions of the Act. The High Court also took note of the delayed response of the state for formation of the State Advisory Committee that was constituted only in 2007. This also was not in accordance with the provisions of the Act.

The High Court gave explicit directions to the State Government to appoint AAs and Advisory Committees within six weeks and further directed the Committees to take strict measures to implement the provisions of the Act. The Court observed that the Act had come into existence in order to protect an appropriate male and female ratio in the society so that there would be no social imbalance. Apart from that, the Act has a broader human rights perspective inasmuch as it has been enacted to prevent the killing of a foetus on a gender bias, which is against the essence of our Constitutional Principles. In the words of High Court “the Act has been enacted to serve public purpose and the Constitutional end as is clear from the Object of the Act. Therefore, the State is under both a Statutory and Constitutional obligation to implement the provisions of the Act.”

⁵⁵ Equivalent Citations: AIR 2008 Ori 71, MANU/OR/0093/2008, 2008(II) OLR 916; In the High Court of Orissa; Writ Petition (Civil) No. 9596 of 2007; Decided on 14/02/2008; *Hemanta Rath vs. Union of India and Ors.*; Hon'ble Judges: A. Ganguly CJ and B. Mahapatra, J.

Case summary⁵⁶

Gaurav Goyal vs. State of Haryana

This was a Public Interest Petition filed by a social activist, Mr. Gaurav Goyal, with a prayer for a mandamus directing the State Government to conduct an inquiry into illegal elimination of 250 female fetuses leading to recovery of large quantity of foetal remains from a 20 foot deep septic tank at Buala Nursing Home, Pataudi, District Gurgaon in Haryana. The petitioner had also prayed for mandamus directing the Government to take action against those guilty of negligence in discharge of their official functions.

Finding merit in the petition the Court directed the Divisional Commissioner, Gurgaon to hold an administrative inquiry into the illegal elimination of 250 female fetuses and also further directed to examine the role of officers responsible for implementation of the PCPNDT Act and to suggest remedial measures to prevent such incident in future.

In compliance with the directions of the Court, the inquiry was held in which four medical officers were found guilty. The State Government however dragged its feet in taking appropriate action against those officers. Hence the Court directed the State Government to expedite the proceedings, to complete the same within six months and to take appropriate action against all those found to be guilty.

It was also pointed out to the High Court that, though a statutory notification was issued on October 24, 1997 appointing the Civil Surgeon of the district as AA under the Act, it was not published in the Official Gazette, which led to many doctors escaping action against them. Therefore, the High Court had to observe that non-publication of an important Statutory Notification in the Official Gazette, adversely reflected upon the official machinery of the State Government charged with the responsibility of implementing an important legislation like the PCPNDT Act. The High Court found it regrettable that for a period of over 12 years non-publication of the Notification had not come to the notice of the concerned authorities. As it was pointed out on behalf of the State that most of the steps that needed to be taken in terms of the provisions of the Act had already been taken and a Notification nominating a multi-member State AA had been duly issued and published in the Official Gazette and a State Supervisory Board constituted apart from the State and District Advisory Committees, the High Court disposed of the petition holding that in the circumstances, nothing further remained to be done or survived for consideration.

Despite the fact that as early as 2001 and 2003 the Supreme Court had in the case of *CEHAT vs. Union of India* issued several directions for proper implementation of the Act, these directions were not complied with by various states. Hence, another Writ Petition was filed in the year 2006, which came up for hearing before the Apex Court on March 4, 2013.

⁵⁶ In the High Court of Punjab and Haryana at Chandigarh; Civil Writ Petition No. 15152 of 2007; Decided on 07/07/2009; *Gaurav Goyal vs. State of Haryana*; Hon'ble Judges: T.S. Thakur and Kanwaljit Singh Ahluwalia, J.J

Case summary⁵⁷

Voluntary Health Association of Punjab vs. Union of India

In this Writ Petition the Apex Court had to express its concern about Indian society's discrimination against the female child because of various reasons that have their roots in the social behaviour and the prejudices against the female child, and due to the evils of the dowry system still prevailing in India. The Apex Court had to take note of the decline in CSR all over the country leading to the irrefutable conclusion that the practice of eliminating the female foetus through the use of pre-natal diagnostic techniques is widely prevalent in the country and the Act meant to prevent it was not being implemented properly.

In this petition, therefore, the personal attendance of the Health Secretaries of the States of Punjab, Haryana, NCT of Delhi, Rajasthan, Uttar Pradesh, Bihar and Maharashtra was secured to examine what steps they had taken for the proper and effective implementation of the provisions of the Act as well as of the various directions issued by the Supreme Court in its earlier decisions. It was noticed by the Court on the basis of the data furnished by them that though the Union of India has constituted the Central Advisory Board and most of the states and Union Territories have constituted SSBs, AAs, Advisory Committees, etc., their functioning is far from satisfactory as is evident from the Census figure of 2011 showing decline in CSR. The Court took notice that all the states, with the exception of Maharashtra, are not implementing the provisions of the Act properly and effectively. The reasons for the same were found to be the lack of proper supervision and monitoring of the mushrooming growth of sonography centres. It was also found that the ultrasonography machines used for sex determination were seldom seized and even if seized, they were being released to the violators of the law, only to repeat the crimes. Moreover, in many courts very few cases were ending in conviction and were pending disposal for several years. The records required to be maintained as per the Rules in respect of the pregnant women were also not being maintained. Many of the clinics were also totally unaware of amendments in the Act and Rules. The Supreme Court, therefore, in this petition again issued various directions as follows:

- Central and State Supervisory Boards should meet at least once in six months to supervise the effective implementation of the Act.
- The State and District Advisory Committees to gather information relating to the breach of provisions of the Act and the Rules and to take steps to seize records, seal machines and institute legal proceedings in case they notice violation of the provisions of the Act.
- The said Committees to report the details of the charges framed and the conviction of the persons under the Act to the State Medical Council for taking proper action, including suspension of registration and cancellation of licence to practice.
- They should ensure that all the records and forms in accordance with Rule 9(8) are maintained.
- They should further ensure that all the manufacturers and sellers of ultrasonography machines do not sell any machines to an unregistered centre and disclose on a quarterly basis a list of persons to whom machines have been sold.

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⁵⁷ In the Supreme Court of India, *Voluntary Health Association of Punjab vs. Union of India* writ petition (civil) no. 349 of 2006 decided on March 4, 2013 equivalent citation AIR 2013 SC 1571 (2013) 4SCC1

- Steps should be taken for mapping of all registered and unregistered clinics within three months.
- Special Cell to be constituted by the State Governments and Union Territories to monitor the progress of various cases pending in the Court and take steps for their early disposal.
- To seize and if necessary to confiscate and sell the machines which are used illegally and contrary to the provisions of the Act.
- Various courts in the country to take steps to dispose of all pending cases within six months.
- To communicate this Order to the Registrars of various courts to take follow-up action with due intimation to the concerned courts.
- The most important direction given in the decision is to take steps to educate the people of the necessity of implementing the provisions of the Act by conducting workshops as well as awareness camps at the state and district levels.

It was felt by the Apex Court that the reason for non-implementation of the provisions of the Act was the failure on the part of the authorities to give accent on social, cultural, psychological and legal awareness that a female foetus is not to be eliminated for any reason, apart from command of the law. According to the Court, in addition to awareness of the legal provisions, what is necessary is awareness in other spheres, like the need for women's empowerment, for which a change in mindset would be important. In the words of the Court, women play a seminal role in the society and it is the requisite of the present day that people are made aware that it is obligatory to treat the women with respect and dignity. Hence the Court directed that a cosmetic awareness campaign would never serve the purpose. The people involved in the camps must take it up as a service, a crusade. They have to equip themselves with Constitutional concepts, culture, philosophy, religion, scriptural commands and injunctions, and the mandate of the Law as engrafted under the Act. They should have boldness and courage to change the mindset of the people. They should clearly spell out that elimination of the female foetus is the worse type of dehumanization of the human race. Only then, as per the Apex Court, the object of conducting workshops and awareness camps can be achieved to realize the ultimate aim of having gender equality as mandated by the Constitution.

Key provisions of the Act

The Act prohibits the use of pre-natal diagnostic techniques, procedures and tests for sex selection. The Act clearly defines pre-natal diagnostic techniques in Section 2(j); pre-natal diagnostic procedures in 2(i) and pre-natal diagnostic tests in 2(k). Even a cursory glance at these definitions makes it clear that they are quite wide in import and inclusive leaving no scope for any doubt or interpretation. They do not exclude any technique, procedure or tests which may aid in sex selection or sex determination.

Section 3A of the Act puts a specific ban on sex selection and Section 23 prescribes punishment for anyone who conducts such pre-natal diagnostic techniques. The term 'sex selection' has been defined in Section 2(o). It includes any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex.

It is pertinent to note that the Act nowhere uses the terms ‘abortion’ or ‘female foeticide’; it only uses the term ‘sex selection’ that is defined at length as stated above. While applying or interpreting the provisions of the Act it is therefore important for Judicial Officers to bear in mind this aspect and consciously avoid the use of the terms ‘female foeticide’ and ‘abortion’. The reason is that while bringing this Act on the statute board, the legislature was aware of the existing MTP Act which permits abortion under certain conditions. The legislature did not intend the provisions of the PCPNDT Act to come in conflict with the provisions of the MTP Act. The object, import and effect of both the Acts are totally different as explained well in the case of *Vijay Sharma and Others vs. Union of India*.⁵⁸ The summary of the case is given below.

Case summary

Vijay Sharma and Others vs. Union of India

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 petitioners were a married couple having two female children who were desirous of having a male child. According to them, by doing so, they could then enjoy the love and affection of both sons and daughters and their daughters could enjoy the company of their own brother while growing up. According to them, couples who already have children of one sex should be allowed to make use of the pre-natal diagnostic techniques at pre-conception stage to have the child of opposite sex. It was further argued that under the provisions of the MTP Act, 1972, termination of pregnancy is allowed under certain circumstances hence there is no reason to impose a blanket ban on determination of sex at pre-conception stage. An innovative plea was raised to the effect that, if anguish caused by unwanted pregnancy is recognized as ground for termination of the pregnancy under the MTP Act, why under the PCPNDT Act is anguish caused to a mother who conceives a female or male child for the second or third time not considered? Thus there is discrimination between two women in a similar position and hence the Act violates Article 14 of the Constitution.

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 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).

The High Court had in this case taken note of the frightening figure showing imbalance in sex ratio in various parts of India and expressed its concern. The High Court was also aghast at the shocking arguments in the petition claiming that if the country is economically and socially backward, it is better that female children are not born. The Court has, in strong and harsh words held that, “such tendency affects the dignity of women. It undermines their importance. It insults and humiliates womanhood. It violates women’s right to life. Sex selection is therefore against the spirit of the law and Constitution”. Thus rejecting all the challenges raised about the Constitutional validity of the Act, the Court dismissed the petition and directed the State to take all expeditious steps to prevent misuse of diagnostic techniques (Para 19 and 20).

⁵⁸ In the High Court of Bombay, writ petition No. 2777 of 2005. Decided on 06/09/2007. Equivalent Citations: 2007 (9) LJSOFT (URC) 2, AIR 2008 Bom 29, 2007(5) Bom CR 710, 2007(6) ALL MR 336, MANU/MH/0668/2007

The PCPNDT Act is aimed at prohibiting sex selection and not at putting any ban on abortion or medical termination of pregnancy as it is legally recognised under certain circumstances. The object of the Act is to uphold the dignity of woman by prohibiting discriminatory practices such as sex selection. The statement of Object and Reasons of the Act is very clear to that effect. Hence while interpreting provisions of the Act Judicial Officers should invariably resort to the statement of Object and Reasons.

The Act not only prohibits conduct of any pre-conception and pre-natal diagnostic techniques for the purpose of sex selection but it also prohibits communication of the sex of foetus to the pregnant woman or her relatives or any other person in any way – by word or sign or any other manner. This provision is contained in Section 5 sub-clause 2 of the Act as the Act permits the use of this technique for other medical purposes like detecting abnormalities and anomalies of the foetus. Considering this eventuality, Section 5(1) provides that even for the purpose of detecting abnormalities, if such diagnostic procedures are conducted on any pregnant woman it must be after fulfilling certain conditions like explaining to her all known side and after effects, obtaining her written consent in the prescribed proforma in a language she understands, and giving her a copy of the said consent. As per the mandate of the Act, if during conduct of such procedure the person, that is the doctor or radiologist, comes to know the sex of the foetus there is total prohibition on disclosure or communication of this information. Violation of this provision is also punishable under the Act.

The Act also takes care to see that no genetic counselling centre, genetic laboratory or genetic clinic shall conduct or cause to be conducted any pre-natal diagnostic technique including ultrasonography for the purpose of determining the sex of the foetus. Section 6(c) further provides that no person shall by whatever means cause or allow to be caused selection of sex before or after conception. The breach of this provision is also punishable under Section 23 of the Act with imprisonment and fine.

The Act has also put a total ban on any advertisement by whatever means relating to pre-conception and pre-natal determination of sex. The definition of advertisement as given in Section 22 is very comprehensive and includes circulars, labels, wrappers or any other document through internet or any other electronic or print media and even visible representation by means of any hoarding, wall painting, signal, light etc. Any person contravening this provision is liable for punishment with imprisonment and fine as in the case of *Satya Trilok Kesari @ Satyanarayan s/o Trilokchand Lohia vs. State of Maharashtra and Another*.⁵⁹ The case summary is given below.

Case summary

Satya Trilok Kesari @ Satyanarayan s/o Trilokchand Lohia vs. State of Maharashtra and Another

The applicant had published an article in the daily local newspaper *Hindustan of Amravati* on how to conceive only male child by naturopathy. Submission made was that, it was a research paper of the applicant and that it in no way offends the provisions of Section 22 of the PCPNDT Act. As against it, the submission of the Additional Public Prosecutor was

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⁵⁹ In the High Court of Bombay (Nagpur Bench) Criminal Application (APL) NO.178 of 2011. Decided on February 14, 2012. Equivalent citation: 2012 (6) LJSOFT 389)

that the title of the so called research paper indicated that the applicant had published the article or issued an advertisement in the garb of an article, to invite people and to teach them how they could conceive only a male child, therefore, it clearly falls within the purview of the definition of mischief as defined u/s 22 of the Act, hence, prosecution initiated against the applicant was proper.

After going through the whole text of the article, the High Court opined that it was written very skilfully with an intention to evade the provisions of Section 22 of the Act. However, the intention of the applicant could be read between the lines. Some of the paragraphs were very explicit. The article was purposely written in small letters and some paragraphs also contained selected words to evade Section 22(1) (2) of the Act. In the last paragraph of the so called article it was also stated that one can conceive a male child by Naturopathy. The High Court held that it *prima facie* amounts to violation of sub-section (1) and (2) of Section 22 of the Act. Hence the application for quashing the prosecution was dismissed by the High Court.

Section 3(b) of the Act prohibits sale of ultrasound machine or any other imaging machine or equipment capable of detecting the sex of a foetus to any person, laboratory or clinic that has not been registered under the Act.

As per Rule 4 of the Act, all places using pre-conception and sex selection techniques/procedures and any place having equipment capable of detecting sex of the foetus and those related to genetic counselling have to be registered. The procedure for obtaining registration is also laid down in Rule 4. To qualify for registration the applicant organisation must fulfil the requirements of space, equipment, qualified employees and standards to be maintained as specified in Rule 3 of the Act. The list of equipment and details of qualified persons are to be included in the registration certificate. Any change of employee, place, equipment or address needs to be intimated to the AA 30 days prior to such change. In the case of mobile genetic clinic the jurisdiction of the operation of the vehicle registered as a genetic clinic is confined to the area of jurisdiction of the AA with which the vehicle is registered.

Even a non-functioning sonography machine must be registered and its condition has to be documented and reported to the AA. Further, if this machine or any obsolete machine is to be exchanged for a new one or the old one is to be disposed of as scrap the AA has to be informed accordingly. The overall objective of these rules is to be able to trace and track the condition of every sonography machine from its manufacture to disposal so as to prevent its misuse.

This registration is binding on government and semi government institutions, whether privately or publicly owned. There is no exemption for any institution on the grounds of it being under Central or State or Local Government or on the basis of it being a charitable or cooperative organization or any other grounds. Similarly, all facilities having ultrasonography for the purpose of pre-natal diagnosis or for any other purpose also come under the purview of the Act and have to be registered with the AA. At the same time the AA is fully competent to inspect, investigate and take action against any centre where the ultrasonography machine is available irrespective of whether it is used for pre-natal diagnosis or otherwise.

As held by the Kerala High Court in the case of *Qualified Private Medical Practitioners and Hospitals Association vs. State of Kerala*⁶⁰ the AAs are fully competent to ensure due compliance with the Act by all persons at all places and in all institutions whether registered or unregistered (Refer to case summary below).

Case summary

Qualified Private Medical Practitioners and Hospitals Association vs. State of Kerala

In this case seven hospitals situated in different parts of Kerala had sought declaration that laboratories and clinics which do not conduct pre-natal diagnostic tests using ultrasonography will not come within the purview of the Act and the Authorities under the Act should not insist on registration of all ultrasound scanning centres irrespective of the fact as to whether they are conducting ultrasonography or not. The Court accepted their submission that registration under the Act will be compulsory only for genetic counselling centres, genetic clinics and genetic laboratories which are used for conducting any pre-natal diagnostic procedure or pre-diagnostic steps. The Court however rejected the contention that such clinics do not come within the purview of the provisions of the Act. Considering the provisions of Section 4(1) and Section 22 of the Act and keeping in mind the object of the Act to prevent misuse of any pre-natal diagnostic techniques it was held that authorities will be free to conduct inquiries or inspection at any place where such device is available and to take action under the Act in case any person or institution is indulging in activities contrary to the provisions of the Act, irrespective of whether such an institute is registered or not under the Act. (Para 14). This judgement thus takes a positive view by holding that AAs are fully competent to ensure due compliance of the Act from all persons, at all places and in all institutions, whether registered or unregistered, and thereby empowering AAs to take action even against any unregistered institute.

The provisions of the Act also envisage and emphasise the maintenance and preservation of records. Proviso to Section 4 of the Act mandates that the person conducting ultrasonography on a pregnant woman shall keep complete records thereof in the clinic in such manner as is prescribed in Rule 9. As per Rule 9, all genetic counselling centres, genetic laboratories and genetic clinics are bound to maintain a register showing in serial order the name and address of clients given genetic counselling, subject to pre-natal diagnostic procedures or tests. Any deficiency or inaccuracy found in the maintenance of records shall amount to contravention of provisions of Section 5 or 6 unless the person conducting such sonography proves to the contrary. In the case of *suo moto vs. State of Gujarat*⁶¹ it was held by the Full Bench that the rules are made and the forms are prescribed in aid of implementation of the Act to plug the possible loopholes in strict compliance of the Act and hence they are very important (Refer next case summary).

⁶⁰ In the High Court of Kerala O.P. No. 39084 of 2001 and connected cases. Decided On 01.08.2006. Equivalent Citation 2006 (4) Kar LJ 81)

⁶¹ In the High Court of Gujarat (FULL BENCH) Cri. Reference Nos. 4 and 3 of 2008 Decided on 30/09/2008, Equivalent Citation 2009 CRI.L.J. 721

Case summary

Suo Moto vs. State of Gujarat

This Full Bench decision of Gujarat High Court is a path breaking decision, wherein the Court has taken a progressive view in tune with the provisions of the Act. In this case the Full Bench of the Gujarat High Court was deciding the reference made by a single Judge in the case of *Hitesh D. Shaha vs. State of Gujarat* on several important legal issues namely, whether the provisions of the proviso to sub-section (3) of Section 4 of the Act require that the complaint should contain specific allegations regarding the contravention of the provisions of Sections 5 and 6 of the Act; whether the burden lies on the Authorities to prove that there was contravention of the provisions of Section 5 or 6 of the Act and whether any deficiency or inaccuracy in filling Form 'F' as required under the statutory provisions is merely a procedural lapse. The genesis of the reference was the decision of Single Bench in the case of *Dr. Manish C. Dave vs. State of Gujarat*, (2008) 1 GLR 239. By this decision a bunch of petitions for quashing criminal complaints filed against petitioners for the offence punishable u/s 4 and 5 of the Act were allowed. The petitioners were radiologists using sonography machines for the purpose of diagnosis. The only allegation made against them was that they had failed to fill up Form 'F' as required u/s 4(3) of the Act, which according to prosecution, amounted to contravention of the provisions of Sections 5 and 6 of the Act. However in the absence of any specific allegation in the complaint that the petitioners had conducted the tests for sex determination or communicated the sex of the foetus to any one, it was held by the Single Bench that deficiency in filling up Form 'F' does not amount to contravention of the provisions of Sections 5 and 6 of the Act. Accordingly it was further held that the complaints themselves were not maintainable.

This observation made by High Court in the case of *Manish C. Dave* that "Deficiency or inaccuracy in filling up of Form 'F' is merely a procedural lapse which does not in any manner amount to contravention of the provisions of Section 5 and 6 of the Act" was bound to prove fatal to prosecution, leading to setting aside of several such criminal cases.

Fortunately for the prosecution, the same High Court had in the case of *Jagruti R. Sanghvi vs. State of Gujarat*, Misc. Application No. 4996/2008 expressed disagreement with the view taken by the single Judge Bench in the case of *Manish C. Dave*. Hence, faced with these conflicting views, in the case of *Hitesh D. Shaha vs. State of Gujarat* it was felt necessary by another Single Bench to make reference to a Larger Bench.

Accordingly, in this reference, while answering these legal issues, it was held by the Full Bench that the Rules are made and the Forms are prescribed in aid of implementation of the Act to plug the possible loopholes in strict compliance with the Act and hence they are very important for implementation of the Act and for the prosecution of the offender that any improper maintenance of such record is itself made by the Act equivalent to violation of the proviso to Sections 5 and 6 by virtue of the proviso to sub-section (3) of Section 4 of the Act. It was further held that improper maintenance of records also has consequences other than prosecution for the deemed violation of Section 5 or 6 because Section 20 provides for cancellation or suspension of registration of genetic counselling centre, genetic laboratory or

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genetic clinic in case of breach of the provisions of the Act or the Rules framed thereunder. It was held that by virtue of the deeming provision of the proviso to sub-section (3) of Section 4, contravention of the provisions of Section 5 or 6 is legally to be presumed. Hence proviso to sub-section (3) of Section 4 of the Act does not require that the complaint alleging the inaccuracy or deficiency in maintaining records in the prescribed manner should also contain allegation of contravention of the provisions of Section 5 or 6 of the Act. It was further held that the burden to prove that there was contravention of these provisions does not lie with the prosecution. It was accordingly held that, deficiency or inaccuracy in filling Form 'F' prescribed under Rule 9 of the Rules made under the PCPNDT Act, being a deficiency or inaccuracy in keeping record in the prescribed manner, is not a procedural lapse but an independent offence amounting to contravention of the provisions of Section 5 or 6 of the PCPNDT Act and has to be treated and tried accordingly (Para 7, 8, 9).

This judgement of the Full Bench is really welcome because of the progressive interpretation given to these provisions. Otherwise the provisions of Section 4 (3) of the Act would have been illusory or nugatory. This judgement is important in more than one area as it has held that not only the AA but any officer on whom the powers are conferred by the Central Government, the State Government or the AA itself can institute a complaint under the provisions of the Act and the court can take cognizance on a complaint made by any officer authorized in that behalf. Thus in this case the Court has widened the scope of the term 'Appropriate Authority' and recognized the *locus standi* of any officer authorized by such AA to file a complaint and set the law in motion in case of violation of the provisions of the Act (para 6).

The Act places a duty on every genetic counselling centre, genetic laboratory and genetic clinic to prominently display on its premises a notice in English and in the local language for the information of the public to the effect that the disclosure of the sex of foetus is prohibited under the Act. Rule 17(2) of the Act further provides that at least one copy each of the Act and the Rules shall be available in the premises of every clinic and be provided to clients for perusal on demand. The registration certificate of the clinic clearly mentioning the number of machines should also be displayed in the premises at a prominent place as per Rule 6 sub-clause 2 – A.

For ensuring strict compliance with the provisions of the Act, Section 30 gives full authority and power to AAs to enter and search any premises where they have reason to believe that a breach of any of the provisions of the Act has been or is being committed. Appropriate Authorities are further authorised under this Section to seize and seal any record, register, document, book, pamphlet, advertisement or any other material object found therein if AA has a reason to believe that it may furnish evidence of the commission of an offence punishable under the Act. Rule 12 lays down the procedure for such search and seizure. The issue whether AA has the authority to seize the sonography machine under this provision was raised for consideration before the High Court of Bombay in its Full Bench decision of *Suhasini Umesh Karanjkar vs. Kolhapur Municipal Corporation and Others*.⁶² In this case, it was categorically held that in view of explanation to Rule 12, 'material object' includes records, machines and equipment and therefore AA has the power to seize and seal sonography machines (Refer next case summary).

⁶² Writ Petition No. 7896 of 2010 along with civil application No. 512 of 2011 decided On June 6th 2011. Equivalent Citation 2011 (7) LJSOFT 6 , MANU/MH/0694/2011, 2011(4) AIR Bom R 326, 2011(4) Mh.LJ 21, 2011(4) Bom.C.R. 293.Writ Petition No. 7896 of 2010)

Case summary

Suhasini Umesh Karanjkar vs. Kolhapur Municipal Corporation and Others

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 Writ Petition No. 1587 of 2009 filed by Dr. Dadasheb Popatrao Tarte against State of Maharashtra through the Minister for Health and Family Welfare and decided on August 14, 2009. In that writ petition, seizure of an ultrasonography machine was challenged on the ground that Section 30 of the Act does not empower AA to seize such machine used in a genetic clinic. The High Court had accepted the said contention holding that reading of Section 30 and Rule 12 of the Act do not empower the AA to seize the ultrasonography machine used in a genetic clinic. The High Court had therefore set aside the seizure of the ultrasonography machine and directed its return to the petitioner. However it was clear that while arriving at this conclusion, Explanation(2) of Rule 12 which defines material object to include machines and Explanation(3) which states that “seize” and “seizure” would include “seal” and “sealing” respectively, were not brought to the notice of High Court.

The result of the said decision was however to the effect that the AA could not seize ultrasonography machines and because of this decision, already seized machines had to be released and returned.

Fortunately for the prosecution, when this anomalous position was brought to the notice of the High Court in Writ Petition No.7896 of 2010 filed by Dr. Mrs. Suhasini Umesh Karanjkar against Kolhapur Municipal Corporation and Others, dated December 23, 2010, it was held that this part of the decision requires reconsideration and the matter deserves to be heard by a larger Bench.

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 (Para 27, 33).

In this case, before parting with the matter, the High Court also made a reference to the disturbing figures of the declining national CSR over the last five decades, to which its attention was sought by the learned Additional Government Pleader, reflecting that in the Census of 2011 the national CSR has fallen to 914 whereas in Maharashtra it has fallen from 913 in 2001 to 883 in 2011 and has fallen as low as 801 in Beed District. In Kolhapur District, where the offence in question was registered, it is 839.

The 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.Cs 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(Para 41).

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The High Court further gave direction to circulate a copy of the Judgement to all the courts in Maharashtra for timely compliance of the above direction (Para 42). This judgement therefore goes a long way not only in clarifying the anomalous legal position but also paves the way for expeditious disposal of the cases filed under this Act so that the Act will achieve the object of curbing the misuse of sex determination and sex selection techniques. The results of this judgement are also visible in expeditious disposal of cases and recent decisions coming from trial courts.

Section 31 of the Act protects AA against any suit, prosecution or other legal proceeding for anything which is done in good faith or intended to be done in pursuance of the provisions of this Act.

The key provisions of the Act have been listed below and have been categorised as ‘prohibitory’, ‘regulatory’ and ‘penal’ provisions.

Prohibitory provisions under PCPNDT Act

Prohibitory provisions are related to prohibition of sex selection before or after conception, prohibition on communication of sex of foetus, prohibition on sale of machines and prohibition on advertisements relating to pre-conception and pre-natal determination of sex.

Section/Rule	Prohibitory Provisions
Section 3A	Prohibition of sex selection
Section 3B	Prohibition on sale of ultrasound machines to persons, laboratories, clinics etc. not registered under the Act
Section 5(2)	Prohibition on communication of sex of foetus by words, signs or in any other manner
Section 6	Prohibition of sex determination
Section 22	Prohibition of advertisement relating to pre-conception and pre-natal determination of sex

Regulatory provisions under the Act

Regulatory provisions are related to regulation of pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders. In trying to achieve the above object, the Act necessitates registration of centres, maintenance and preservation of records and regulation of portable machines.

Section/Rule	Regulatory Provisions
Section 4	Regulation of pre-natal diagnostic techniques
Section 5(1)	Written consent of pregnant woman
Section 9 and 9(4)	Maintenance and preservation of records
Section 18	Registration of genetic counselling centres, genetic laboratories and genetic clinics
Section 19	Certificate or registration
Section 20	Cancellation or suspension of registration

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Section/Rule	Regulatory Provisions
Section 29	Maintenance of records
Rule 10	Conditions for conducting pre-natal diagnostic procedures
Rule 3(B)	Regulation of portable sonography machines
Rule 8	Renewal of registration
Rule 4	Registration of genetic counselling centres, genetic laboratories, genetic clinics, ultrasound clinics and imaging centres
Rule 6(6)	Certificate of registration shall be non-transferable
Rule 17	Public information
Rule 13	Intimation of changes in employees, place or equipment

Penal provisions under the Act

Penal provisions deal with 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 1,00,000. Any person advertising about sex selection is liable for imprisonment up to three years and fine up to 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.

Section/Rule	Penal Provisions
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

Structures and Implementing Authorities under the Act

The PCPNDT Act envisages the constitution of certain structures for effective implementation of the Act. These include:

- Central Supervisory Board
- State/UT Supervisory Board
- State Appropriate Authority/State Advisory Committee
- District Appropriate Authority / District Advisory Committee

Central Supervisory Board (CSB)

Sections 7 to 16 of the PCPNDT Act deal with the constitution, term of office of members, meetings of the board, vacancies not to invalidate proceedings of the board, temporary association of persons with the board for a particular purpose, authentication of orders and other instruments of the board, disqualification for appointment as members, eligibility of members for reappointment and functions of the board. The CSB is required to meet once every six months. The composition of the CSB is as follows:

- Minister, Health and Family Welfare – Chairperson
- Secretary, Health and Family Welfare – Vice Chairperson
- Senior officer of Department of Health and Family Welfare – Member Secretary
- Representatives of Ministries of Women and Child Development, Law and Judiciary
- *Ex officio* women members from NGOs
- Elected representatives
- Specialists from legal and medical field

The key functions of the CSB include:

- To advise the Central Government on policy matters relating to use of pre-natal diagnostic techniques, sex selection techniques and against their misuse;
- To review and monitor implementation of the Act and rules made thereunder and recommend to the Central Government changes in the said Act and Rules;
- To create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to sex selection.
- To lay down the code of conduct to be observed by persons working at genetic counselling centres, genetic laboratories and genetic clinics;
- To oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation;
- Any other functions as may be prescribed under the Act.

State/UT Supervisory Board (SSB)

Section 16A of the Act deals with the constitution of the State and Union Territory Supervisory Boards. The functions and constitution of the SSB are the same as that of the CSB. The only difference in composition is that, at the State level, the Minister, Secretary and officer in the State Supervisory Board replace the Central Minister, the Secretary and senior official of Health and Family Welfare Department. The meetings of the SSB are held every four months.

Implementing Authorities under the Act

Section 17 of the PCPNDT Act makes it mandatory for the Central Government and the State Government to appoint, by notification in the Official Gazette, one or more AAs for each of the Union Territories and for whole or part of the States respectively, for the purpose of implementation of the Act.

Appropriate Authority (AA)

Appropriate Authorities play a vital role in the entire scheme of the Act. Section 17(1) and (2) of the Act states that the Central and State Governments should appoint AAs by a notification in the official Gazette. Section 17(3) enlists that the State Appropriate Authority would be a three member team consisting of an Officer of the rank of Joint Director or above of the Department of Health and Family Welfare, an eminent women representing an NGO, and an Officer of Law and Judiciary Department. At the District/Corporation level, the AA is a senior officer of the Department of Health – Civil Surgeon or Medical Officer.

Functions of AA

Section 17(4) enlists the functions of the AAs

- To grant, suspend or cancel registration of a genetic counselling Centre, genetic laboratory or genetic clinic;
- To enforce standards prescribed for the genetic counselling centre, genetic laboratory and genetic clinic;
- To investigate complaints of breach of provisions of this Act or the Rules made thereunder and take immediate action;
- To seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;
- To take appropriate legal action against the use of any sex selection technique by any person at any place, *suo motu* or brought to its notice and also to initiate independent investigations in such matter;
- To create public awareness against the practice of sex selection or pre-natal determination of sex;
- To supervise the implementation of the provisions of the Act and Rules;
- To recommend to the Board and State Boards modifications required in the Rules in accordance with changes in technology or social conditions.
- To take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

Powers of the Appropriate Authorities

The AA has been given the following powers as per Section 17A of the Act:

- Summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the Rules made thereunder;
- Production of any document or material object relating to clause (a);
- Issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and
- Any other matter that may be prescribed.

Duties of the Appropriate Authority

Section 28(a) of the PCPNDT Act states that no court shall take cognisance of an offence except on a complaint made by the AA. Section 30 of the Act gives the AA the power to search, seize or seal equipment or clinic and seize records at a genetic counselling centre, laboratory and clinic.

In the case of *Dr. Preetinder Kaur and Others vs. The State of Punjab and Others*, the Punjab and Haryana High Court has given a broad interpretation to Section 28 of the Act. It has held that Section 28 does not narrow down the class of persons who are implementing authorities and who can initiate action. The Judgement highlights that apart from the AA, an officer authorized by the Central or State Government or a person authorized by the AA can file a complaint.

Case summary⁶³

Dr. Preetinder Kaur and Others vs. The State of Punjab and Others

In this Civil Writ Petition, the competency of the authority that had initiated criminal prosecution against the petitioner for violation of Section 3 (a) punishable u/s 23 of the Act was challenged. It was contended that the Act contemplated the proceeding to be initiated in a particular fashion only on a complaint made by the AA but the said procedure had not been followed. It was submitted that the person who had filed the complaint was never authorized by the AA for taking any action, therefore the entire trial which was in progress before the Magistrate was vitiated.

The High Court, however, rejected this contention by giving a broader interpretation to Section 28 of the Act. It was held that Section 28 does not narrow down the class of persons who can initiate action. On the other hand, as any legislation intending to prevent a social evil, it allows for fairly large body of persons to set the law in motion. Apart from the AA, an officer authorized by the Central or State Government could also file a complaint. He can also be a person authorized by the AA itself. As per the Explanation contained u/s 28, the expression 'person' includes even a social organization. It was held that various categories of persons that are set out u/s 28 give authority to a wide range of persons who can initiate the action under the Act. In the words of the High Court, Section 28 must not be read as constituting a narrow class of persons who could initiate action. It must be given an extensive meaning to pave the way for easy access to set the law in motion by any socially conscious person. Hence the Section detailing the procedure for taking cognizance of an offence does not make the presence or the actual filing of the complaint by the AA itself sacrosanct.

In this case, as the complainant was the Project Officer of PCPNDT Cell, it was held that he was definitely a person who was not a stranger to the action but being a nodal officer for the PCPNDT Cell he was intimately connected with the enforcement of the Act. Even if he had not secured the sanction from AA at the time of lodging the complaint, the matter was surely ratified by the AA in the meeting held subsequently. Hence it was held that there was nothing illegal but it was only irregular and the subsequent discussion and recording of minutes by the AA constituted valid ratification. The High Court, therefore, having regard also to the fact that the case before the trial court has progressed for sufficient length of time, dismissed the petition.

⁶³ Equivalent Citations: 2011 Cri. L.J. 876, (2010) 158 PLR 63, MANU/PH/0449/2010; the High Court of Punjab and Haryana at Chandigarh; Civil Writ Petition No. 20635 of 2008; decided on 10/02/2010; *Dr. Preetinder Kaur and Others vs. The State of Punjab and Others*; Hon'ble Judge: K. Kannan J.

The Section 23(2) empowers the AA to report the name of the registered medical practitioner to the State Medical Council for necessary action including suspension of registration if the court frames the charges and till the case is disposed of. It also empowers the AA to report to the State Medical Council for removal of the name of the medical practitioner (on conviction) from the Register of the Council for a period of five years for the first offence and permanently for the subsequent offence. In the case of *Pradip Chandra Mohanlal vs. Maharashtra Medical Council* in the High Court Judicature at Bombay⁶⁴ the Court made it clear that immediately on framing of a charge against a medical practitioner, the AA should report his/her name to the State Medical Council for suspension of registration and on conviction for removal of name from the Register of the Council for a period of five years for the first offence and permanently for subsequent offences.

Case summary

Pradip Chandra Mohanlal vs. Maharashtra Medical Council

The issue raised before the High Court in this Writ Petition was whether the Maharashtra Medical Council is required to hold an inquiry before suspension or removal of the name of the concerned registered medical practitioner is effected, as laid down under Section 23(2) of the Act.

It was held that the Section is very clear inasmuch as there is a mandate to the AA to inform the State Medical Council concerned, the name of the registered medical practitioner against whom the charges are framed by the Court and who has been convicted. In the first case when the charges are framed, the State Medical Council must take action, including suspension of registration, till the case is decided but where there is conviction there should be removal of the name from the Register of the Council for a period of five years. As per High Court, there is absolutely no warrant for holding any inquiry so as to de-link the taking of action in terms of sub-section 2 of Section 23 of the Act. The Maharashtra Medical Council was directed accordingly to take immediate action against the petitioner under the said Section.

Section 20(1) of the Act states that the AA may *suo moto*, or on receipt of a complaint, issue a show cause notice to any centre registered under the Act asking why its registration should not be suspended or cancelled. Section 20(2) states that if after giving a reasonable opportunity of being heard to any centre registered under the Act and having taken the advice of the Advisory Committee, the AA is satisfied that there has been a breach of any provisions of the Act, the AA may suspend registration of the centre for a period as it may think fit or cancel registration. Section 20(3) says that notwithstanding anything contained in sub-section 1 and 2, if the AA is of the opinion that it is necessary in the public interest AA may, for reasons to be recorded in writing, suspend the registration of any centre without issuing any show cause notice. In the case of *M/s Malpani Infertility Clinic Pvt. Ltd. and Others vs. Appropriate Authority, PCPNDT Act and Others*, the order passed by AA suspending the registration of petitioner's

⁶⁴ Civil Appellate Jurisdiction, Writ Petition No. 6495 of 2012. Decided on 22/10/2012 Equivalent Citation: 2012(11) LJSoft 1.

diagnostic centre was challenged. The main contention raised was that Section 20(3) of the Act provides only for cancellation and not for suspension of the registration of the clinic. The High Court rejected this contention saying that such power has to be read into the Section, otherwise the provisions of a welfare enactment will be rendered nugatory.⁶⁵

Case summary

M/s Malpani Infertility Clinic Pvt. Ltd. and Others vs. Appropriate Authority, PCPNDT Act and Others

In the Writ Petition filed by M/s Malpani Infertility Clinic Pvt. Ltd. in the High Court of Bombay, the order passed by AA suspending the registration of the petitioner's diagnostic centre under the PCPNDT Act was challenged. The main contention was that a show cause notice, as contemplated u/s 20(1), an opportunity of hearing as contemplated u/s 20(2) and sufficient reasons as required u/s 20(3) of the Act, were not given to the petitioners before taking the action of suspending registration, hence the order was bad as per law.

However, considering peculiar facts of the case, the High Court rejected this contention. It was pointed out that petitioners had joined as Respondent No. 38 in Writ Petition (Civil) No. 301/2001 filed by CEHAT (Centre for Enquiry into Health and Allied Themes) before the Apex Court and also filed an affidavit therein defending the sex determination tests on the ground of 'family balancing'. Though subsequently the petitioners had filed another affidavit tendering apology, they knew that they were prosecuted for criminal offence under the provisions of the Act. It was held that, as AA has issued the order of suspension after referring to that criminal prosecution, there was sufficient notice to the petitioners and there was also sufficient mention of the reasons by the AA in the suspension order. It was further held that, "when the reasons are required to be given in writing it is not necessary that there ought to be a detailed discussion". As regards the contention that Section 20(3) provides only for cancellation and not for suspension of the registration, it was pointed out that such power has to be read into the Section, otherwise the provisions of welfare enactment will be rendered nugatory. In the words of the High Court, "where there is a conflict of private interest, to carry on a particular activity which the Public Authority considered as damaging to the social interest, surely the power under the Statute has to be read as an enabling power" (Para 7-8).

In a few other cases – *Dr. Sudha Samir vs. State of Haryana and Others*,⁶⁶ *Dr. Mrs Mahendra Ahuja vs. State of Haryana and Others*⁶⁷ and *Dr. RD Negi vs. State of Haryana and Others*⁶⁸ – the order of suspension of registration was challenged by the petitioners on the ground that AAs were not notified in the Official Gazette. In these cases the High Court validated the suspension of registrations. The joint summary of the cases is given on the next page:

⁶⁵ In the High Court of Bombay Writ Petition No. 5295 of 2003 decided on 17/09/2004. Equivalent citation : AIR 2005 Bom 26, 2005 (1) BomCR 595, (2005) 107, BOMLR 737

⁶⁶ Civil Writ Petition No. 18365 of 2009 decided on February 3, 2010

⁶⁷ Civil Writ Petition No. 19740 of 2009 decided on February 3, 2010

⁶⁸ Civil Writ Petition No. 19794 of 2009 decided on February 3, 2010

Case summary

Dr. Sudha Samir vs. State of Haryana and Others Dr. Mrs Mahendra Ahuja vs. State of Haryana and Others Dr. RD Negi vs. State of Haryana and Others

This batch of Writ Petitions challenges the Order of suspension of registration under the PCPNDT Act. The contention of the petitioners was that when the show cause notices were issued to them and the action for suspension of registration had been taken, the Gazette Notification of the AA had not been made and therefore, entire action under Section 20 of the Act ought to fail.

The response of the state to this contention was that the Government had issued an Ordinance to validate certain acts done by AA prior to the issuance of Gazette Notification. The said Ordinance was subsequently introduced as a Bill in the State Assembly and was brought as an enactment subsequently. The High Court therefore held that when subsequent enactment is not challenged, which validates the acts done by the AA prior to the Gazette publication, the petitioners' challenge to the show cause notices and the suspension orders issued by the Competent Authority cannot survive for adjudication. The High Court however observed that the petitioners can avail of independent remedy to challenge the validity of the Act itself.

In the case of *Dr. Sujit Govind Dange vs. State of Maharashtra and Others*⁶⁹ the petitioner challenged the legality and authority of the AA for having suspended the registration of his clinic without giving a show cause notice or opportunity of hearing to the petitioner hence this decision violated the principles of natural justice. The High Court held that Section 20(3) gives extraordinary power to the AA in the larger public interest to be used in exceptional circumstances when the AA is of the opinion that it is necessary to do so.

Case summary

Dr. Sujit Govind Dange vs. State of Maharashtra and Others

In this case the petitioner had challenged the legality and authority of the Order passed by the AA of suspension of the registration of his clinic on the ground that no show cause notice or an opportunity of hearing was given to the petitioner before taking such action. Hence there was violation of principles of natural justice. It was urged that, before drawing presumption of contravention of Section 5 or 6 of the Act, opportunity must be given to the doctor to disprove the said presumption. He is required to be given a chance to put forth his defence regarding maintenance of the record. If the AA is satisfied with his explanation, it may not be necessary to proceed against such doctor by initiating criminal proceedings or taking action of suspending of his license. It was submitted that the provisions of Section 20 (1)(2) expressly provide for issuance of Notice and of giving reasonable opportunity of being heard. Section 20(3) is an exception to this Rule, made so as to vest AA with the emergency powers, but it is subject to the condition that it is necessary or expedient to do so in the public interest and AA has to record reasons in writing for the same. It was contended that in the instant case AA has not given or recorded any reason before suspending the license, nor obtained the advice of the Advisory Committee.

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⁶⁹ In The High Court of Bombay Writ Petition No.11059 of 2011 Decided on August 16, 2012 Equivalent Citations: 2012 (10) LJSOFT 22

Further, it was submitted that the suspension of registration as expected under Section 20 of the Act can be only for a specific period and not for an indefinite period. If the period of suspension is not specified, it amounts to cancellation of the same, which is not permissible in law. It was further argued that since the license can be suspended only for a limited period, the ultrasonography machine can be seized for a specific period only. Moreover, when the machine was sealed and seized, no indication was given to the petitioner that a criminal case was likely to be filed against him, therefore, seizure of machine cannot be considered as a part of muddamal property and is required to be released.

The last submission advanced was that there is no nexus between the provisions of the Act and the object to be achieved by the Act. The object is to see that no professional should conduct sex determination test and therefore, harsh punishment like suspension, cancellation of license and/or conviction is provided, whereas for committing minor violation or error in filling of the form and maintaining of record, which is generally done by the subordinate staff, awarding of such punishment is unreasonable, arbitrary and therefore, violative of Article 14 of the Constitution.

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. The Court refused to accept the argument that non-maintenance of the record was a violation of a minor nature. It was held that neither the provisions of the Act nor that of Rules framed thereunder provide for or define minor or major deficiencies or inaccuracies. On the other hand, the Act requires strict compliance of every provision and provides strict punishment for breach of the same. Hence having regard to the object of the Act, it cannot be said that there is any arbitrariness so as to violate Article 14 of the Constitution. As regards the issuance of show cause notice and opportunity of hearing it was held that Section 20(3) gives an extraordinary power to the AA in the larger public interest, to be used in exceptional circumstances when the AA is of the opinion that it is necessary or expedient to do so, that too after recording reasons. Hence exercise of such power cannot be called arbitrary.

It was also not accepted that suspension of the license was for indefinite period as it was held that suspension has effect till the criminal prosecution launched against the petitioner comes to an end.

Thus all the contentions raised by the petitioner were rejected, holding that it will be now for the petitioner to prove before the Criminal Court that there was no deficiency or inaccuracy in maintaining or preserving complete record of the clinic. The petition was thus dismissed.

State and District Advisory Committee

Section 17(5-9) and Rule 15 deals with the constitution and functions of the Advisory Committee. Section 17(5) contemplates that the Central or State Government shall constitute an Advisory Committee for each AA to aid and advise the AA in the discharge of its functions and shall appoint one of the members of the Advisory Committee to be its Chairperson.

The Advisory Committee at both the state and district level consists of eight members. The composition of the committee is as follows:

- Medical professionals (3)
- Social workers (3)
- Legal expert
- Officer from Information and Publicity Department

The Advisory Committee advises the AA while granting, suspending or cancelling licenses. The Advisory Committee is required to meet once in two months, but may meet as and when it thinks fit or on the request of the AA for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon.

Presumptions under the Act

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.

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 and 6 unless contrary is proved by the person conducting such ultrasonography.

Procedural Issues under the Act

This chapter deals with certain procedural issues relating to trial of offences punishable under the Act.

Who can file a complaint?

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.

In the case of *Dr. Kavita Pramod Kamble (Londhe) vs. State of Maharashtra and Anr.*⁷⁰ the 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. A summary of the case is presented below.

Case summary

Dr. Kavita Pramod Kamble (Londhe) vs. State of Maharashtra and Anr.

This petition was filed under Section 482 of CrPC against the Order passed by the Judicial Magistrate First Class, Karmala, for framing of charge against the petitioner, a practicing doctor, for offences punishable under Sections 23 and 25 of PCPNDT Act. It was a decoy case. On the request of the social worker, the pregnant lady, Prerna Bhilare by name, offered to act as decoy. She gave an undertaking that she would not cause any harm to her foetus even after knowing its sex. The petitioner charged her an examination fee of Rs. 4000

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⁷⁰ Writ Petition No. 3509 of 2011 Decided on June 11, 2013. Equivalent Citation: Writ Petition No. 3509 of 2011: In the High Court Judicature at Bombay: Decided on 11th June 2013

and on examination, disclosed the sex of her foetus as male. The petitioner also gave the sonography report to the decoy client and confirmed the fact when asked by the companions of the pregnant lady. On the receipt of this information, the complaint was filed by the Medical Superintendent, Sub-District Hospital, Karmala.

Upon the issue of process, the trial court recorded the evidence of three witnesses, including the complainant and the pregnant lady and proceeded to pass the order of framing charge against the petitioner, mainly for the offence of conducting sex determination test and disclosing the sex of foetus. Other minor offences were in respect of breach of various other provisions of the PCPNDT Act.

Against this Order, the petitioner first preferred Revision before the Sessions Court, which came to be dismissed and hence this Writ Petition.

The first contention raised by the petitioner was that the complainant was not the AA and hence had no *locus standi* to file the complaint. This contention was, however, rejected by both the courts, by holding that u/s 17(2) of the Act the State Government is authorized to appoint AA for whole or part of the state as per the intensity of the problem of sex determination and as per Section 17(3)(b) of the Act, such AA could be any officer of any rank as the State Government may deem fit. In this case, it was held that, vide Notification dated October 16, 2007 published in the Official Gazette, Additional Collector or Sub Divisional Officer has been appointed as AA in view of Section 17(3)(b) of the Act. He was further authorized to appoint any other officer to initiate the complaint. The complainant in this case was the Medical Superintendent of the Sub-District Hospital. The Appropriate Authority, i.e., Sub Divisional Officer, District Solapur has authorized him to lodge the complaint vide authorization letter dated August 31, 2010. Hence it was held that the complaint filed by the complainant was correct as having been filed by the AA.

The second contention raised by petitioner was that the evidence produced by the complainant before the Trial Court was not sufficient for framing of charge. This contention was also rejected by both the courts holding that there was direct oral evidence of the decoy patient, supported by documentary evidence like prescription, the receipt of payment of examination fee of Rs. 4000, the sonography report and the undertaking of the decoy patient. It was held that the decoy patient was not cross-examined at all on these aspects of her evidence and therefore, for the purpose of framing of charge this evidence of the decoy patient, coupled with the evidence of AA and the other medical officer was sufficient. Accordingly, the High Court dismissed the Writ Petition, directing the Trial Court to proceed with the framing of charge.

Who can take cognisance?

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 cognisance of the offence under the Act. In the case of *Dr. Mrs. Kakoly Borthakuar 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. The case summary is given on the next page.

Case summary⁷¹

Dr. Mrs. Kakoly Borthakuar vs. Dr. Pramodkumar s/o G. Babar and Ors.

The only issue involved in this petition filed under Section 482 of CrPC related to territorial jurisdiction of the court which can entertain a complaint filed for the offences punishable under the PCPNDT Act. In this case, as per allegations, sonography test to find out the sex of the foetus was admittedly done at Vashi, Navi Mumbai whereas the complaint was lodged by AA at Nagpur on the ground that the child (a girl) was born at Nagpur. As per Applicant, the court at Nagpur cannot have territorial jurisdiction to entertain the complaint as the alleged offence has taken place at Vashi and not at Nagpur.

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 CrPC. 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.

Who can be an offender under the Act?

Any person who uses pre-conception and pre-natal diagnostic techniques for the purpose of sex selection or sex determination can be an offender under the Act. Similarly, any person seeking or encouraging the conduct of any sex selection technique is also liable for prosecution. In view of the presumption laid down in Section 24 of the Act, a pregnant woman cannot be an offender unless the contrary is proved and she will not be liable for prosecution as the court shall presume that she was compelled by her husband or other relatives to undergo such technique and the husband and/or relatives shall be liable for the abetment of the offence.

Any person contravening any provision of the Act is also liable to be prosecuted under Section 23.

The owner of genetic counselling centres, genetic laboratories and genetic clinics, any persons employed therein and rendering their professional or technical services whether on an honorary basis or otherwise, any medical geneticist, gynaecologist or registered medical practitioner who contravenes any of the provisions of the Act or Rules framed thereunder is also liable for prosecution.

Why no role of police under the Act?

Although all the offences punishable under the Act are cognisable, 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

⁷¹ In the High Court of Bombay (Nagpur Bench) Criminal Application No. 2281 of 2008, Decided on 3rd February 2010. Equivalent Citation: (2010) 8 LJSOFT (URC) 152:

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 key provisions relating to bail?

As per Section 27 of the Act every offence under this Act is non-bailable considering the fact that declining sex ratios can have grave implications on the socio-cultural fabric of the society. In the case of *Subhash Gupta vs. State*,⁷² the High Court held that having regard to the serious nature of offence under this Act, applicants are not entitled for relief of anticipatory bail.

Case summary Subhash Gupta vs. State

In the application for anticipatory bail serious allegations were made against the applicant of conducting the sex determination test on the pregnant woman against her will, at the instance of her husband and in-laws. Having regard to the probity of the allegations and the serious nature of the offence, it was held that applicants are not entitled for the relief of anticipatory bail. Their applications were dismissed accordingly.

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

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*⁷³ clarifies this issue.

Case summary Dr. Ravindra s/o Shivappa Karmudi vs. State of Maharashtra

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 and 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 CrPC specifically provided in Part B of the Chapter for cases instituted otherwise than on police report. As per the said procedure laid down in this part of the Chapter in Section 244, when the accused appears or is brought before the court, the Magistrate has to proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. As per Sections 245 and 246 of CrPC, the Magistrate thereafter may discharge the accused or frame the charge against him, as the case may be. Therefore, in trial of the offences under this Act the Court has to record evidence before charge and cannot frame the charge directly as in cases instituted on police report.

⁷² In the High Court of Delhi at New Delhi: Decided on 27/09/2010. Equivalent Citation: <http://www.indiankanoon.org/doc/1496227/>: Bail Application 1556/2010:

⁷³ In the High Court of Bombay (Aurangabad Bench) Criminal Application No 757 of 2012. Decided on 03/05/2012. Equivalent Citation: 2012(6) LJSOFT 138

What is the nature of evidence under the Act?

Cases under PCPNDT Act depend on both oral and documentary evidence. The oral evidence may consist of the testimony of the pregnant woman, the person accompanying her and in the case of a decoy, the evidence of the *panch* and the NGO representative or any other person who has conducted the decoy operation. The evidence of AA is also important, as he/she is the complainant *de facto*.

In the case of a decoy, the documentary evidence may consist of – receipt issued, Form ‘F’, consent letter, sonography report, prescription, clip of audio and/or video recording, etc.

How to appreciate evidence?

While appreciating evidence in cases under the PCPNDT Act, the Judicial Officer has to keep in mind the Object and Reasons of the Act. The peculiar nature of the offence, where direct evidence of pregnant woman may not be available at all times needs to be considered. Judicial Officers have to decide the case on the basis of circumstantial evidence. In cases under this Act, there is no aggrieved person as sex selection happens in the close confines of the doctor-client relationship. Hence appreciation of evidence in such offences should be sensitive and realistic, bearing these constraints in mind.

How to pass final order?

The Act provides that any contravention of any provision 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 for first and subsequent offence.

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 up to 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 for 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.

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*⁷⁴ the High Court did not permit the release of the machine even on indemnity bond during pendency of inquiry and trial (Refer to case summary on the next page).

⁷⁴ In the High Court Judicature at Bombay, Criminal Appellate Jurisdiction, Writ Petition No. 4399 of 2012, Decided on January 23, 2013. Equivalent citations : <http://www.radbazar.com/content/images/stories//04032013.pdf>

Case summary

Dr. Vandana Ramchandra Patil vs. State of Maharashtra

The petitioner herein was an AA. A case was filed by the petitioner against Respondent No. 2 (the doctor) for offences punishable under the provisions of the Act. Pending the criminal trial, the sonography machine used by Respondent No. 2 in his clinic had been sealed and his licence to do medical practice was also suspended. Respondent No. 2 applied before the Trial Court for opening the seal to use the sonography machine. The Trial Court allowed the said application. This Order of the Trial Court was challenged in this Writ Petition by the AA.

After hearing both the parties, the Court held that, as the offence under the PCPNDT Act is committed essentially with the use of sonography machine and as the machine is the most important component in the crime which is repetitive in nature, the prevention of the crime is best achieved by sealing the machine. If the seal is opened, the accused in the case is facilitated to repeat the crime. Once a case is made out, repetition of such crime has to be prevented. It cannot be allowed to proliferate. The Court compared the provision of sealing machines under the Act with the provisions of sealing the premises of a brothel in an offence committed under Section 18 of the Immoral Trafficking Prevention Act, 1986 and held that this power of the Magistrate is the most potent weapon in the case of prevention and further recurrence of the offence. This power, therefore, has to be used in the interest of the general public whom the State is bound to protect under the Law. The Court, therefore, held that the order for opening of the seal and release of the machine cannot be made mechanically, like release of any other property. The Court must consider the effect and impact of such an order. The Court further held that a machine sealed in any case registered under the Act cannot be directed to be opened. In fact it is the duty of the Investigating Officer, as also the Magistrate, to seal the machine and to see that it has been sealed properly.

The argument advanced on behalf of Respondent No. 2 - the accused - that the machine is an electronic instrument and has to be constantly maintained by use, was rejected out-right by the Court holding that citizens have no legal right to claim use of their machines if they are seen to have abused such equipment. It was further held that as the license of Respondent No. 2 was under suspension; otherwise also he cannot carry on business. Hence, there was no question of permitting him to use the machine. At most, the machine can be used by Mira Bhayandar Municipal Corporation, the complainant in the case, for proper and legitimate use, if it has to be maintained by continuous use. Accordingly, the Court ordered the machine to be shifted to the hospital of the Corporation and the seal to be retained till it is shifted or until the trial is over. The Court thus not only set aside the Order passed by the Magistrate of de-sealing and releasing the machine, but also directed the Registrar of the High Court to send copies of this Order to all the Courts of Magistrates and Sessions Judges in the State of Maharashtra.

Expeditious Hearing of the Case

The trial of these cases has to be conducted as expeditiously as possible, preferably within one year, as mandated by Bombay High Court in the case of *Suhasini Umesh Karanjkar vs. Kolhapur Municipal Corporation and Others*.

Case summary

Suhasini Umesh Karanjkar vs. Kolhapur Municipal Corporation and Others

In this Full Bench Judgement, the High Court expressed concern about the fact that a number of cases for trial of offences registered under the PCPNDT 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 for 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 Judicial Magistrates First Class 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 (Para 41).

Similarly, in the Supreme Court of India, *Voluntary Health Association of Punjab vs. Union of India* Writ Petition (Civil) No. 349 of 2006 decided on March 4, 2013 equivalent citation AIR 2013 SC 1571 (2013) 4SCC1, the Honourable Supreme Court ruled that various courts in the country should take steps to dispose of all pending cases within six months.

Considering the impact of such decisions on the doctor community and society at large every endeavour should be made to ensure speedy disposal of cases under the PCPNDT Act.

Recent Amendments to Rules

As the implementation of the Act gathered momentum, it was found necessary to amend certain provisions of the Act to bring them in tune with recent developments. Hence, in 2011 and 2012 certain Rules under the PCPNDT Act were amended. These have been shown in the table below.

Sr. No.	Old Provision	Amended Provision	Date of Amendment
1.	<p>Rule 11(2) 11. Facilities for inspection.-</p> <p>11(2) The Appropriate Authority or the officer authorized by it may seal and seize any ultrasound machine, scanner or any other equipment, capable of detecting sex of foetus, used by any organization if the organization has not got itself registered under the Act.</p> <p>These machines of the organizations may be released if such organization pays penalty equal to five times of the registration fee to the Appropriate Authority concerned and gives an undertaking that it shall not undertake detection of sex of foetus or selection of sex before or after conception.</p>	The machine of such organizations shall be confiscated and further action shall be taken as per the provision of the S. 23 of the Act.	31.02.2011

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Sr. No.	Old Provision	Amended Provision	Date of Amendment
2.	No rule regarding portable machine.	<p>Amendment in Rule 2, Clause g, h, were added and mobile medical unit and mobile genetic unit were defined.</p> <p>Rule 3B(1) added Regulation of portable machine</p> <p>This rule regulates that</p> <p>a) portable machines should be used within the premises of the centre where it has been registered or</p> <p>b) as part of a mobile medical unit offering a bouquet of other health and medical services.</p>	07.02.2012
3.	No rule regarding registration of a medical practitioner with a specified number of centres.	<p>Rule 3(3) has been added stating that:</p> <p>Each medical practitioner qualified under the Act to conduct ultrasonography in a genetic clinic ultrasound clinic/imaging centre shall be permitted to be registered with a maximum of two such clinics/centres within a district. The consulting hours for such medical practitioner, shall be clearly specified by each clinic/centre.</p>	05.06.2012
4.	<p>Rule 5. Application Fee.-</p> <p>1. Every application for registration under Rule 4 shall be accompanied by an application fee of:-</p> <p>a) Rs. 3000 for Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre.</p> <p>b) Rs. 4000 for an institute, hospital, nursing home, or any place providing jointly the service of a Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic, Ultrasound Clinic or Imaging Centre or any combination thereof.</p>	<p>a) Rs. 25,000 for Genetic counselling centre, Genetic laboratory, Genetic clinic, Ultrasound clinic or Imaging centre</p> <p>b) Rs. 35,000 for an institute, hospital, nursing home, or any place providing jointly the service of a Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic, Ultrasound Clinic or Imaging Centre or any combination thereof.</p>	05.06.2012

Sr. No.	Old Provision	Amended Provision	Date of Amendment
5.	<p>Rule 13:- Intimation of changes in employees, place or equipment.–</p> <p>Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall intimate every change of employee, place, address and equipment installed, to the Appropriate Authority within a period of thirty days of such change.</p>	<p>Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, Ultrasound Clinic and Imaging Centre shall intimate every change of employee, place, address and equipment installed, to the Appropriate Authority at least thirty days in advance of the expected date of such change and seek re-issuance of certificate of registration from AA with the changes duly incorporated.</p>	05.06.2012

In a recent Judgement of the Bombay High Court, in the case of *Radiological and Imaging Association (State Chapter) vs. Union of India & Ors.*, the Court ruled that sonography machines should not be taken out of the premises where they have been registered as this could lead to their misuse⁷⁵ (See case summary below).

Case Summary

Radiological & Imaging Association (State Chapter) vs. Union of India & Ors.

This petition was filed challenging the decision taken by the AA, Dahisar, restricting the movement or shifting of ultrasonography machines outside the hospitals or clinics and seeking further directions about the search or seizure of such machines. It was urged that when portable sonography machine is available in view of modern technology, and when patient's physical condition is serious and he is unable to travel immediately to the hospital, it is not open for the AA to restrict the portable sonography machine from being taken outside the clinic especially when its very purpose is for taking it from one place to another, like a laptop. It was argued that the restriction is based on an apprehension of misuse of such portable machine; such misuse is possible in the clinic itself. Hence, such restriction is not consistent with the provisions of the Act. It is without any authority of law and hence, liable to be set aside.

The petition was opposed by the Union of India and the State by submitting that if such movement or shifting of machine is permitted, there is every likelihood of such machine being misused for sex selection and it will not be possible for the AA to monitor the use of the machine if taken outside the clinic. It was argued that in the city of Mumbai the CSR has come down in last ten years and hence it is in the interest of society that sonography machine should not be allowed to be misused by taking it out of the clinic. The direction issued by the AA was therefore perfectly legal.

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⁷⁵ In the High Court of Bombay ordinary civil jurisdiction writ petition (L) No.1939 of 2011, Decided on 17/11/ 2011. Equivalent citations: 2011(12) LJSOFT 12, 2011(6) All.M.R.370, 2012(2) BOM.C.R.115, 2012(1) Mah. L.J.935, 2011(5) All.(BOM R) 731

After making reference to the various provisions of the Act, the Court also took note of the sorry state of affairs that even today in our country people undertake sex determination. The High Court expressed the view that no society can exist without a woman and for the growth of the human race and nation, both men and women are equally important. The only scientific way to reduce the possible misuse of modern diagnostic techniques used for determination of sex, is by enacting a law, rules and guidelines in that behalf. It was observed that the possibility of misuse cannot be ruled out if such machine is taken out of the institute. Till the society is made fully conscious and change in attitude takes place to forget the distinction between male and female, all remedial measures are required to be taken to curb the misuse of modern technology.

It was held that as the sonography machine does not provide any treatment to the patient, it is not required to be taken out for any emergency relief to the serious patient. As regards the argument that even in hospital or clinic misuse of sonography machine takes place, it was held that even if in the hospital or clinic a particular doctor is misusing the same, appropriate data is available in such a case which is not possible if the machine is taken out of the hospital. Considering these aspects it was held that the direction issued by AA restricting its movement or shifting is in consonance with the provisions of the Act and only with a view to prevent possible misuse of such machine. It also cannot be said that any fundamental right of a person either under Article 14 or 19 is violated, as petitioner can carry out its activity within the institute itself and at the recognized place. The restriction imposed by the AA, therefore, was held to be most reasonable and in public interest and issued on the basis of the experience and collection of data showing the misuse of machines if taken outside.

As it was further pointed out that the direction is applicable to the entire State of Maharashtra and the Ministry of Health has also taken a similar stand of putting restrictions on taking such machines out of the clinic, the Court did not pass any further directions to that effect.

Government and NGO Efforts in Effective Implementation of the Act and the Critical Role of Prosecutors

As specified in the module, a panel of experts (constituting a senior official of the Department of Health related to PCPNDT Act for example, the State Appropriate Authority or State PCPNDT Nodal Officer, a representative from an NGO and Director or Additional Director Prosecution) would be invited to conduct this session.

In order to discuss the role of Government in addressing the issue of declining sex ratios, a sample case study from Maharashtra has been given below. This provides an excellent example of the initiatives taken by the state to address this issue. Each state may request the panellist to prepare a case study on similar lines for the discussion. Discussing the efforts of the Government to address this issue with Judicial Officers would help them understand their role as part of the larger canvas to address this issue.

Role of the Government – A Case Study of Maharashtra

Maharashtra was the first state in the country to enact the Maharashtra Regulation of Use of Pre-Natal Diagnostic Techniques Act in 1987, which paved the way for the enactment of the of Pre-Natal Diagnostic Techniques (Prevention of Misuse) Act in 1994 and the amended Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act in 2003.

In Maharashtra, all the structures listed under the Act at the State level – the State Supervisory Board and the State Advisory Committee – have been constituted and are meeting regularly. Similarly, the District and Corporation Advisory Committees have also been constituted. Maharashtra has also taken an initiative to constitute a high level inspection and monitoring committee under the chairpersonship of Chairperson *Mahila Aayog*.

Maharashtra has adopted a four-pronged approach to address the issue of sex selection:

1. Evidence-based advocacy
2. Strengthening implementation of the law
3. Community mobilization and mindset change
4. Undertaking communication for behaviour change

Evidence based advocacy

In order to bring the issue of sex selection to the table, a booklet titled *Chakulya Muklelya* mapping the CSRs in all blocks and districts of the state was brought out. This booklet was shared with a large number of stakeholder groups within and outside the Government. The booklet, which mapped the decline in CSRs across districts of Maharashtra proved to be a useful advocacy tool by raising the volume of discourse on the issue of sex selection in the middle of the last decade and helped bring the issue into the public domain and establish it as a critical issue.

Strengthening implementation of the PCPNDT Act

To strengthen implementation of the PCPNDT Act, the state has undertaken the following initiatives:

- Capacity building of AAs to brief them on the issue, the Act and their role in effective implementation of the Act. Training of the AAs is an ongoing activity.
- Capacity building of Judicial Officers and Public Prosecutors was organized jointly by the Maharashtra State Legal Services Authority, State Health Systems Resource Centre, MJA and UNFPA. Judicial Colloquia were organized in all districts for speedy redressal of cases under the Act. In addition, the issue of sex selection and PCPNDT Act has been integrated into all programmes of the MJA. The work with the Judiciary has led to some path-breaking and landmark judgements in the state. As on December 31, 2013, 477 cases have been registered in the state, of these 131 have been finalized with 50 convictions involving 54 doctors.
- The state has also undertaken capacity building of faculty from law colleges so that they could include the PCPNDT Act and other women-related Acts as part of the regular law college curriculum.

In the last couple of years, the State Appropriate Authority along with the District Appropriate Authorities have undertaken three drives to inspect USG clinics to see if they are PCPNDT compliant. As part of this drive several machines were sealed and cases registered against erring centres.

In order to give teeth to the PCPNDT Act, on July 11, 2011, the state initiated a helpline (188002334475) and a website (amchimulgi.gov.in) for reporting about erring doctors. The moment a complaint is lodged on the website, the AA of the concerned district gets an auto email intimation to take action on the complaint. The AA conducts a detailed investigation based on the nature of the complaint. During the period August 01, 2011 (when the website was launched) to December 31, 2013, 601 complaints were received on the basis of which, 15 machines have been sealed, 13 court cases have been filed and five decoy operations have been conducted. Complaints received on the helpline are also investigated by the concerned AA. During the period July 11, 2011 through December 31, 2013, 562 complaints were received, based on which 31 machines have been sealed and 24 court cases have been filed.

Maharashtra was the first state to issue guidelines and provide funds to NGOs for conducting decoy operations on erring doctors. As on December 31, 2013, 67 sting operations were conducted in the state involving decoy clients. A large number of these operations were conducted by NGOs.

The state has also issued guidelines for sale, buyback and scrapping of machines. Guidelines have also been issued on how to file and conduct cases under the PCPNDT Act. Guidelines for specific sections involving cancellation and suspension of registration of centres registered under the Act, search and seal operations and guidelines on use of funds received from registration of centres have also been issued.

The state has launched a single window system, whereby District Appropriate Authorities communicate names of doctors against whom charges have been framed. These names are then communicated to the Maharashtra Medical Council (MMC), The Indian Council of Medicine, Maharashtra Branch and the Maharashtra Council of Homeopathy for suspension of registration as per Section 23(2) of the Act. Until December 31, 2013 names of 89 doctors have been given to the MMC for deregistration. Similarly, names of 14 doctors have been given to the Council of Indian Medicine and nine to the Council of Homeopathy. The MMC has suspended the registration of 46 doctors and has removed the name of one doctor permanently from the Council's Register. Similarly, the Council of Indian Medicine has suspended the registration of two doctors and 12 cases are under process. The Maharashtra Council of Homeopathy has suspended the registration of four doctors and five cases are under process.

Community mobilization and mindset change

In order to stimulate behaviour change and community action on the issue of sex selection and promote the positive image of the girl child, Maharashtra has collaborated with NGOs and multilateral organizations like UNFPA to work with different stakeholders like the media, elected representatives, youth and NGOs on the one hand and with the medical and nursing community on the other as they are the first contact point for any couple intending to go in for sex selection.

Elected representatives from rural and urban areas have been trained and their capacities built to help create an atmosphere of zero-tolerance towards the practice of sex selection leading to social disapproval of the practice by the community. Many elected representatives have organized campaigns and events for advocacy on the issue of sex selection in their wards. The issue of sex selection and the PCPNDT Act has been integrated into all programmes being conducted with elected representatives and Municipal Officers by the All India Institute of Local Self Government, which is an autonomous body under the Urban Development Department.

Mother NGOs (MNGOs) and Field NGOs (FNGOs) who were part of NRHM have been trained on the issue of sex selection and the PCPNDT Act and have been requested to undertake advocacy and action in their respective areas for community mobilization and mindset change.

In order to draw the attention of the media and public to the positive efforts in the media on the issue of sex selection and to create awareness about the issue, UNFPA and Population First, Maharashtra have supported the institution of awards for gender sensitivity in media. This has led to increased media coverage on the issue of sex selection.

In Maharashtra work on the issue with the youth has been undertaken to prepare them for their role as future parents. The work with youth is being done through colleges wherein workshops on gender and sex selection are being organized through the *Mahila Aayog* and the Department of Women and Child Development. For out-of-school youth, popular culture and entertainment in the form of street theatre, a very popular medium of communication, has been used.

The issue of sex selection and the PCPNDT Act has been included in the capacity building of SHG members under the *Mahila Arthik Vikas Mahamandal* (MAVIM) that covers 7.5 lakh women across the state. Frontline functionaries of MAVIM have also undertaken theatre campaigns on the issue for behaviour change.

Work has been undertaken with professional medical associations like IMA to break the link between demand and supply for sex selection. The IMA is committed to engage with civil society by forming Doctors' Forums against Sex Selection for community mobilization. The state is in continuous dialogue with the Federation of Obstetric and Gynaecological Society (FOGSI) and has sought their help to organize trainings and capacity building workshops for gynaecologists and obstetricians. Similarly, the state has been closely working with Indian Radiological and Imaging Association to build the capacities of radiologists and seek their support for effective implementation of the Act.

The state has built capacities of professors from all medical colleges across Maharashtra to integrate the issue of sex selection as part of co-curricular and teaching activities. The state has also undertaken the capacity building of nursing trainers to address the issue of sex selection.

Undertaking communication for behaviour change

In order to create public awareness on the issue and promote a positive image of the girl child, the State IEC Bureau has undertaken several initiatives. These include:

- Discussion programmes on *Doordarshan* on the theme of sex selection
- Bus panels and hoardings with messages on sex selection
- Regular broadcast of radio jingles with messages on sex selection
- Regular articles on the issue of sex selection carried in *Aarogya Patrika*, a monthly magazine of the Health Department, that has a circulation of 20,000 .
- A mobile exhibition on the theme of the girl child and sex selection has been designed and has been made available to all districts for events. The Bureau has also developed an audiovisual show on the theme. This show is taken to all districts through a mobile van called the *Parivartan Express*.
- Celebrity couple Sachin and Supriya Pilgaonkar have been appointed as Goodwill Ambassadors on the issue.
- The IEC Bureau and several NGOs have encouraged *Ganesh Pandal* owners to give visibility to the issue and the cause of the 'missing girls' through the *pandals*. The *pandal* committee members are sensitized on the issue and encouraged to put up interesting audiovisual shows and exhibitions on the theme. The *pandals* are visited by a number of devotees and hence provide an ideal opportunity to reach out with information on the issue. NGOs are also encouraged to put up street plays on the theme at immersion sites.

Role of NGOs

Civil society organisations have played an important role in enactment and effective implementation of the Act and to change mindsets that prefer sons over daughters. The different roles played by civil society organisations include:

- Awareness building at various levels – community, youth in and out of colleges, elected representatives, etc.
- Capacity building of frontline functionaries
- Being members of Advisory Committees at the district and state level
- Conducting decoy cases

Given below are examples of decoy cases conducted by a civil society organisation in Maharashtra. Each state could invite local NGOs to share their experiences related to implementation of the PCPNDT Act.

Case Story 1

As narrated by an NGO representative from Maharashtra to elaborate on the steps followed during decoy operation and the critical role of NGOs in effective implementation of the PCPNDT Act.⁷⁶

“Way back in the year 2004, during interaction with SHG members, we got to know about a local doctor (sonography clinic) who indulged in sex selection on a regular basis. We planned a decoy (operation) to bring the malpractice to light and address the issue of decline in child sex ratio and discrimination of girls”, said the founder, an active member of an NGO from Satara, Maharashtra. The members of the organization prepared seven-month pregnant Shaku (name changed) and her family for the decoy operation. Two witnesses were also prepared to accompany the decoy patient and were groomed to follow the required procedure. Shaku was given an audio recorder (which she practised using) to be kept safely hidden close to her body and one witness carried a video recorder (hidden in a handbag). The pregnant woman gave an affidavit stating her willingness to be part of the decoy operation on a stamp paper of Rs. 100. The affidavit also made a mention of the currency note numbers to be used in the decoy operation. The pregnant woman and witnesses were briefed about their role and asked to build their character profile complete with minute details to avoid any hesitation during the decoy operation. The AA was informed about the date and time of the decoy operation but no other details were shared to avoid leak of any information to the clinic or the doctor concerned. The steps to be followed by the client and the witnesses were clearly chalked out to bring to light the nexus of various people involved. As planned, the pregnant woman went to the local retired ANM who was practicing in the village under the guise of being a doctor and expressed her desire to undergo a sex determination test. Shaku said, “This is my second child and I want it to be son, else my husband and his family are going to throw me out.” The retired ANM made a few enquiries about her and referred her to a nearby sonography clinic. Shaku was charged Rs. 800 by the retired ANM (the currency notes with serial numbers mentioned in the affidavit were used). The pregnant woman then requested the retired ANM to write the address of the clinic on a paper (as this would prove

⁷⁶ Narrated by Adv. Varsha Deshpande of Dalit Mahila Vikas Mandal, an NGO situated in Satara District of Maharashtra. The NGO has been working on this issue under the campaign *Lek Ladki Abhiyaan* and has conducted 42 decoy operations till 31/12/2013

to be a vital piece of evidence). The appointment at the clinic was fixed for evening (most clinics give appointments for sex determination during late evenings or on holidays). On reaching the clinic, Shaku registered herself and informed the clinic staff of her desire for a sex determination test. The clinic staff struck off her name from the register on getting to know that she had come for a sex determination test (later the page in the register with the name struck off the register was used as evidence). When the doctor at the clinic took her in for sonography, the pregnant woman kept the audio recorder hidden inside her blouse and when asked about it, said it was a mobile. The conversation was recorded and captured the doctor telling Shaku that the foetus was male. Shaku expressed happiness and relief and requested for a report to be given so as to convince her husband, saying else she was in for trouble. The doctor said that no report could be provided but handed over the sonography with a prescription for some vitamins and the letter “M” written on the prescription (evidence). Shaku was asked to pay a fee of Rs. 1200 and again used the currency notes mentioned in the affidavit to do so.

All through the process a team from the organization (inspectors) continued to ‘shadow watch’ the decoy, both to support her or intervene if required. As soon as the pregnant woman came out of the clinic (a signal that the decoy operation had been completed successfully), the ‘shadow watch’ team informed the AA. The NGO representative along with her decoy team went to the AA and requested him to accompany them to the clinic for further investigations. The AA was requested to switch off his mobile, have no contact with anyone and was not allowed to go anywhere alone on the way to the clinic. On reaching the clinic the first words of the AA to the doctor were, “Now I can do nothing to help you out of this situation”.

The AA began the investigation – the currency notes were produced and recorded, the Form ‘F’, declaration and consent reports were asked for, but could not be produced as they had not been filled. Statements of the decoy patient, witnesses and others at the clinic were recorded. The machine was sealed, as also the registration certificate which was available in duplicate. By this time the police arrived to take charge of the case but were informed by the NGO team that they had no role to play under the PCPNDT Act although it was a cognizable offence. This came as shock to them and they insisted that investigations be handed over to them (clearly implying that they too were not aware about the Act). It was explained to them that under the PCPNDT Act cognizance could only be taken by an AA, who in this case was the Civil Surgeon of the district and who had been notified and notification to that effect had been published in the Official Gazette. A local Judge was approached for admitting the case.

Case Story 2

There were several complaints about Dr. Satu (name changed) from Beed District in Maharashtra indulging in sex selection practices. The members of an NGO along with pregnant Chunni (name changed) decided on a “decoy operation” to find out the facts.

Two members of the NGO – one male and one female – accompanied Chunni as witnesses. On reaching Beed, the district administration and AA were informed by the NGO regarding the decoy operation, but were not given details of the centre where the decoy operation was to be conducted. On reaching the hospital of Dr. Satu, the members of the team were informed that she would come at 11 am and that they should wait. A number of pregnant women from different parts of Maharashtra had come to the clinic and were waiting to see the doctor. On being informed that Chunni had come for sex determination, the compounder instantly said, “All

these women waiting have come for the same reason; register your name and wait for your turn.” A couple of hours later they were directed to Dr. (Mr.) Satu on the first floor who said, “Okay” when told that Chunni had come to find out if the foetus was male or female. He wrote name of the client and the date on the case paper and guided them to the second floor. Many other pregnant women were sitting in the huge hall, waiting for their turn. The relatives of the client were told to be seated separately and were not allowed to communicate with the client. Two female staff of the clinic were present to check if clients were carrying any mobile, audio or video recording equipment. Five pregnant women were guided into the room for sex determination. Following a quick sonography of the pregnant women, the doctor, Dr. (Mrs.) Satu would write a number on the client’s case paper. After doing the sonography on Chunni, she wrote 19, (16 in Marathi) after case paper. Chunni enquired if the foetus was male or female. The doctor angrily replied, “It is written on the case paper, do you not understand?” Chunni said that she had not understood to which the lady doctor replied, “It is a boy.” On meeting Dr. (Mr.) Satu on the floor below, he again clarified that it was boy and continued his conversation with another client, saying “It is a girl. You can get admitted now and by morning you will be free to go home.” The client sheepishly mentioned that she had come from far and would not be able to carry the foetus with her, to which the doctor promptly replied, “That is no problem, we have ways of disposal.....” The NGO volunteers who had accompanied Chunni thought that it might be useful to record what they had heard and so they wrote their signed statements on the toilet wall in the hospital. The incident was narrated to the AA to register a case and begin investigations.

Role of Public Prosecutors

In the Indian Criminal Justice System, the role of Public Prosecutor is as important as that of the Judicial Officer. The prosecution is generally referred to as the “Minister of Justice”, who is expected to place before the court all the facts and material collected by the Investigating Agency. Prosecution is a link between the court and the AAs appointed under the PCPNDT Act. The United Nations Guidelines on the role of prosecutors requires them to perform their duties fairly and impartially by protecting human dignity and upholding human rights.

The role of the prosecution in the trial process is like the role of a Judge in the discovery, vindication and establishment of truth. The prosecution has to become an active participant in the trial, evincing intelligent and keen interest for eliciting all relevant material necessary for assisting the court to find out the truth and administer justice which is in tune with expectations of the society. Prosecutors have been given ample powers to do so under the various provisions of CrPC like Sections 311 and 319 and also under Section 145 of the Evidence Act. The fate of the case to a large extent depends on the skills, initiative, proactive approach and integrity of prosecutors.

In cases under the PCPNDT Act, where witnesses are mostly women who may not be aware of legal jargon and technicalities, the Public Prosecutors are expected to go the extra mile to make them aware of the procedures of examination in chief, cross-examination and re-examination. It is necessary for them to brief the witnesses in advance and create confidence in their minds by making them aware of the solemn task which they are performing by giving evidence in the court, as their evidence is not limited to their individual case but would also have an impact on society at large. A well merited Judgement, which is an outcome of the quality of evidence adduced, is far more effective than the law enacted to stop the practice of sex selection.

Public Prosecutors have to be sensitive to this larger issue and make effective contribution at each and every stage of the trial and pre-trial, from the stage of releasing the accused on bail or remanding him/her to custody or framing of charge. It is for them to ensure that the best possible evidence is adduced before the Court. On the framing of charge, in view of Section 23 of the PCPNDT Act, they have to brief the AA to inform the Medical Council for suspending the registration of the accused. At the stage of passing final order, in case of conviction of the accused, it is their duty to insist on appropriate punishment which should be commensurate with the gravity of the crime and also to secure the necessary orders of sending a copy of the Judgement to the Medical Council for cancellation of registration of the accused, confiscation of sonography machine used in the commission of offence etc.

The PCPNDT Act is a relatively new legislation and has been undergoing several amendments. There are very few, but landmark Judgements, interpreting the provisions of this law, keeping in view its object. Public Prosecutors should keep themselves abreast of these recent changes in law and the judicial pronouncements. They have to effectively co-ordinate with the AA which is the Investigating Agency in these cases. Like police, AAs are not well versed with the procedure of drawing *Panchanama*, recording statement of witnesses, filing of final report/complaint in the court. Similarly, in decoy or other cases NGOs have also been given *locus standi* to file a case. Their role as witnesses is also of importance. The Public Prosecutor should work in co-ordination with them to help them to get clarity on legal issues. A well equipped, well sensitized Public Prosecutor can prove to be a real asset in successful implementation of this law.

Part IV

Annexures

Annexure 1: Energisers & Warm-Ups

Activity	1, 2, 3, <i>sar par hath</i> 4, 5, 6, turn around...
Objectives	<ul style="list-style-type: none"> • Create a conducive and open learning environment • Rebuild energy, alertness among participants • Help create a comfort level among participants and with the facilitator
Duration	10 minutes
Process	<ul style="list-style-type: none"> • Invite all the participants to stand in a circle • Introduce the game as an opportunity for having fun and learning by observation • Count in turn around the circle • Every time the number five or a multiple of five is reached, that person claps instead of saying the number • Every time the number seven or a multiple of seven is reached, that person turns around once instead of saying the number • If someone makes a mistake, they drop out of the circle and the next person goes back to '1' again • Let the energiser continue for some time (till a few participants are left) • End the energiser with a round of applause for all and announce that the purpose of the energiser is not to win but to have fun together

Activity	'All move who...'
Objectives	<ul style="list-style-type: none"> • Create a conducive and open learning environment • Rebuild energy, alertness among participants • Help create a comfort level among participants and with the facilitator
Duration	10 minutes
Process	<ul style="list-style-type: none"> • Invite participants to sit in a circle with one person standing in the middle • This person announces 'All move who are wearing blue' • While people are changing seats s/he grabs one place • The new person comes in the middle of the circle and announces 'All move who came by bus' • This continues... • The person in the middle can think of various possibilities: <ul style="list-style-type: none"> ▪ 'All move who can speak more than two languages' ▪ 'All move who get up before 5 in the morning' ▪ 'All move whose name starts with S' ▪ 'All move who love to eat sweets' ▪ 'All move who can swim' ▪ 'All move who never work in the kitchen' ▪ 'All move who love to cook' ▪ 'All move whose birthday is this month' ▪ 'All move whose age is more than 25 years' • End the energiser with a round of applause

Activity	Shake up! Wake up!
Objectives	<ul style="list-style-type: none"> • Create a conducive and open learning environment • Rebuild energy, alertness among participants • Help create a comfort level among participants and with the facilitator
Duration	10 minutes
Resources	<ul style="list-style-type: none"> • Tennis balls
Process	<ul style="list-style-type: none"> • If there is room, stand in a big circle (you included) and throw a tennis ball to the person in front of you, who then does the same to someone else • Once everyone has caught and thrown the ball, the cycle is complete • Then ask everyone to remember what he or she did and do it again – quicker • Then begin to add extra balls for fun, and see how many people can keep going • End the energizer with a round of applause

Activity	Write name in the air
Objectives	<ul style="list-style-type: none"> • Create a conducive and open learning environment • Rebuild energy, alertness among participants • Help create a comfort level among participants and with the facilitator
Duration	10 minutes
Process	<ul style="list-style-type: none"> • Invite participants in a circle • Ask them to mime writing their name in the air with different parts of the body • Ideas include: <ul style="list-style-type: none"> ▪ Right hand ▪ Left hand ▪ Right elbow ▪ Big toe ▪ Nose • End the energizer with a round of applause

Annexure 2: Difference between Teaching and Facilitation⁷

Teaching	Facilitation
Teacher starts from their own knowledge	Facilitator starts from the knowledge of the group
Teacher follows a pre-set curriculum	Facilitator addresses issues identified by the group or their community and adapts new ideas to the needs and culture of the group
Teacher presents new information upfront	Facilitator uses practical, participatory methods, for example, group discussion and activities in which all members of the group participate
Information flows in just one direction – from teacher to students	Information flows in many different directions between the facilitator and individual group members; there is a genuine exchange of ideas
Teacher brings extensive knowledge of the subject	Facilitator draws out and builds on the knowledge of the group, and knows where to find further information on the subject
Teacher is concerned with students understanding the ‘right’ answer	Facilitator encourages and values different views
Teacher works for the community and may come from outside the community	Facilitator works with the community and may come from within the community
Teacher has a formal relationship with the students, based on their status as a teacher	Facilitator is considered as an equal, and has relationships based on trust, respect and a desire to serve

Annexure 3: Principles of Effective Adult Learning⁷⁸

Needs Assessment: Discover what the group really needs to learn, what they already know, and what aspects of the course that has been designed really fits their situations. Listening to the learners' needs helps to shape a programme that is immediately useful to adults.

Safety: Create an inviting setting for the learners. Begin with simple, clear, and easy tasks before advancing to more complex or difficult ones. The environment needs to be non-judgemental.

Sound Relationships: Foster an open communication process involving respect, safety, listening. Strike a balance between advocacy and inquiry.

Praxis: Enable participants to go through a continuous process of assessment, analysis and action as part of learning.

Learners as Subjects of Their Own Learning: Recognize that learners are decision makers. The dialogue of learning is between subjects, not objects. They suggest and make decisions about what occurs in the learning event.

Learning with Ideas, Feelings, and Actions: Make every learning task an element of ideas – feelings – skills.

Assuming New Roles for Dialogue: Whatever impedes dialogue must be courageously addressed and eliminated. Whatever enables dialogue must be fearlessly nurtured and used.

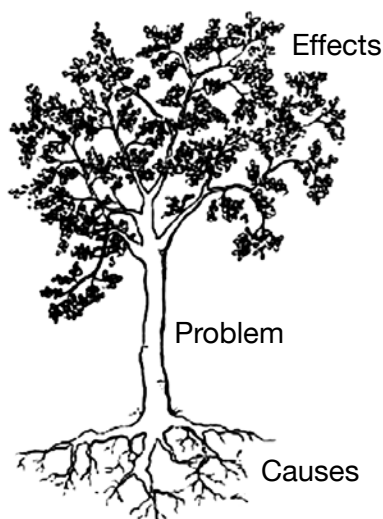
Teamwork: Teams provide an element of safety that is effective and helpful for learning.

Engagement: Invite learners to put themselves into the learning task and participate wholeheartedly. Without engagement there is no learning.

Accountability: What was proposed to be taught must be taught; what was meant to be learned must be learnt; the skills intended to be gained and attitudes taught must manifest in all the learners; the knowledge conveyed must be visible in learners' language and reasoning.

⁷⁸ To know more about facilitation please refer the following link <http://www1.umn.edu/humanrts/edumat/hreduseries/hrhandbook/part2B.html>

Annexure 4: Problem Tree



The 'Problem Tree' exercise is an effective visual method of presenting the cause-effect relationship. It provides scope for in-depth probing of the causes as well as effects, as perceived by groups.

The facilitator draws a tree with roots, trunk, branches and fruits and calls it the 'Problem Tree'. The facilitator then writes the problem on the trunk of the tree and explains that the participants have to identify the root causes of the problem. It is important that the participants identify the major root cause of the problem after discussion. Now invite the participants to list the implications/consequences of the problem and write them as fruits.

Facilitate a discussion around the declining CSR – causes, relationship between declining number of girls and gender construct, socio-cultural factors responsible, gender and related issues, patriarchy and son preference.

⁷⁸ <http://www.massassets.org/masssaves/documents/12PrinciplesAdultLearning.pdf>

Annexure 5: Statements Related to Sex and Gender

Identify whether the following are related to Sex or Gender:

1. In most countries women earn significantly less than men.
2. Girls are gentle while boys are tough.
3. Women can breastfeed babies, men can bottle feed babies.
4. In most of the world, women do more housework than men.
5. Men generally have bigger bones than women.
6. Women can menstruate while men cannot.
7. According to UN statistics, women do 67% of the world's work, yet their earnings for it amount to only 10% of the world's income.
8. Women are better at caring for children than men.
9. Body hair is OK for men, but women have to remove it.
10. Male doctors do post-mortems.
11. Male voice breaks at puberty.
12. Men are sexually more aggressive than women.
13. Men are soldiers, because they are brave and can use weapons to fight.
14. Women have broader hips than men and so their gait is more attractive.

Answers

- Sex: 3, 6, 11
- Gender: 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 14

Annexure 6: Pre- and Post-Test Questionnaire for Self-assessment

The questions listed herein are suggestive and not exhaustive. The training coordinator may decide to include as many questions as considered appropriate in the pre- and post-test evaluation questionnaire. The questionnaire should be provided to the participants at the beginning of the training and they should be requested to fill it up for self assessment on the topics to be covered as part of the training. Request the participants to keep the form safely as it is to be answered again (post-test response) during the concluding session.

No.	Question	Pre-test Response	Post-test Response
1.	There are less girls in our society as compared to boys (Circle the right answer)	True False	True False
2.	The status of women and girls will improve if their numbers are less (Circle the right answer)	True False	True False
3.	Is sex selection justified if a couple has two or more daughters (Circle the right answer)	Yes No	Yes No
4.	Sex selection is an excellent means for balancing a family (Circle the right answer)	True False	True False
5.	Women can take better care of children as compared to men (Circle the right answer)	True False	True False
6.	India is a signatory to various international conventions that refer to gender discrimination as reflected in sex selection (Circle the right answer)	True False	True False
7.	In India abortion is legal under certain circumstances. Can you name them?	1 2 3 4	1 2 3 4
8.	All clinics conducting ultrasonography must be registered. (Circle the right answer)	True False	True False
9.	The PNDT Act was amended in 2003, mention the main amendment in the Act		
10.	Since offences under the PCPNDT Act are cognizable, can police file a complaint under the Act? (Circle the right answer)	Yes No	Yes No
11.	Can a pregnant woman be made an accused under the PCPNDT Act (Circle the right answer)	Yes No	Yes No
12.	What should be the appropriate term to address the issue of declining sex ratio so that women's access to safe and legal abortion is not compromised? (Circle the right answer)	<ul style="list-style-type: none"> • Sex selective abortion • Female foeticide • Gender biased sex selection • <i>Bhrunhatya</i> 	<ul style="list-style-type: none"> • Sex selective abortion • Female foeticide • Gender biased sex selection • <i>Bhrunhatya</i>

Annexure 7: Feedback Form

No.	Questions	Feedback
1.	Overall Training	
2.	Resource Persons	
3.	Topics dealt with in the training	
4.	Lodging & boarding arrangements	
5.	Suggestions, if any	

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Steps should be taken by the State Governments and the Union Territories to educate the people of the necessity of implementing the provisions of the PCPNDT Act by conducting workshops as well as awareness camps at the State and district levels.

*Hon'ble Justice Dipak Misra, Judge, Supreme Court of India,
Voluntary Health Association of Punjab vs. Union of India and Others
(2013) 4 SCC 1*

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It is...directed that all cases under the Act shall be taken up on top priority basis and the Metropolitan Magistrates, Mumbai and the JMFCs 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 31st December 2011.

*Hon'ble Shri Mohit S. Shah, Chief Justice, Bombay High Court,
Dr. (Mrs.) Suhasini Umesh Karanjkar vs. Kolhapur Municipal Corporation
2011(4) Mh.L.J. 21.*

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