



# Vidhi

Centre For Legal Policy

BETTER LAWS. BETTER GOVERNANCE

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

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SUGGESTIONS ON AMENDMENTS INVITED BY THE EXPERT  
COMMITTEE CONSTITUTED BY THE MINISTRY OF HEALTH  
AND FAMILY WELFARE

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## About the Authors

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**SUGGESTIONS ON THE AMENDMENTS TO THE PRE-  
CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES  
(PROHIBITION OF SEX SELECTION) ACT, 1994 (“PCPNDT  
ACT”)**

S.NO.	PROPOSED AMENDMENT	COMMENT / SUGGESTION
<b>STATEMENT OF OBJECTS AND REASONS</b>		
1.	<p>It is proposed to amend point (i) of the Statement of Objects and Reasons to provide:</p> <p><i>“(i) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of the foetus, leading to <b>sex selective elimination of foetus leading to decline in child sex ratio</b>”</i></p>	<p>(i) The Statement of Objects and Reasons is appended to a bill, for introduction of the bill in Parliament. Unlike the preamble, it does not form part of the legislation. It is a well settled position of law that the Statement of Objects and Reasons is not admissible in construing any part of the legislation, but is to be used for the <u>limited purpose of understanding the background, antecedent state of affairs, the surrounding circumstances in relation to the statute which actuated the introduction of the bill and the evil which the statue sought to remedy, at the time of introduction in the Parliament.</u> Therefore, the Statement of Objects and Reasons, which captures the background and the prevailing conditions at the time of introduction of the bill, cannot be amended thereafter. Moreover, an amendment to this Statement does not alter the object or purpose of the legislation and therefore serves no practical purpose.</p> <p>(ii) The phrase “leading to decline of child sex ratio” is not necessary, and might not be entirely accurate as a factual representation. Factors other than female foeticide also contribute to declining child sex ratios.</p>
2.	<p>It is proposed to amend point (iii) of the Statement of Objects and Reasons:</p> <p>to replace <i>“permission and regulation of the use of pre-natal</i></p>	<p>(i) As already mentioned, an amendment to the Statement of Objects and Reasons cannot be amended once the bill has been passed and become law.</p>

	<i>diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders” with “prohibition and prevention of the misuse of pre-natal diagnostic techniques for detection or determination of sex”.</i>	(ii) One of the significant objectives of the PCPNDT Act is to regulate the use of pre-natal diagnostic techniques for detecting genetic abnormalities (as is evident from the Preamble of the PCPNDT Act and sub-section (2) of Section 4). It is important that this provision be retained in order to recognise this legitimate use. In any case, there appears to be no rationale for making the proposed substitution, since it is already covered under point (i) of the Statement of Objects and Reasons.
3.	Replacing the terms “leading to female foeticide” and “abortion” with “sex selective termination of pregnancy”	-
<b>CHAPTER I</b>		
4.	Section 2(g) defining “medical geneticist”	-
<b>CHAPTER II</b>		
5.	Section 3B It is proposed to amend Section 3B to extend the prohibition on the <i>sale</i> of ultrasound machines, imagine machines, scanners and other equipment to a <i>transfer in any other manner</i> .	Rule 3A(1) of the PCPNDT Rules already states that no person or organisation shall sell, distribute, supply, rent, allow or authorise the use of ultrasound machine / imaging machine or any other equipment, capable of detecting sex of the foetus, whether on payment or otherwise to any body or person not registered under the PCPNDT Act.  (i) Since the objective of the proposed Section 3B of the PCPNDT Act and Rule 3A(1) of the PCPNDT Rules is the same, it is suggested that the language of the proposed amendment to Section 3B be aligned with Rule 3A(1), to reduce the chance of any statutory anomaly or confusion.  (ii) Instead, a proviso could be added to Section 3B to clarify that the disposal of medical equipment that might have fallen out of use does not fall within the prohibition under Section 3B. However, such disposal should continue to comply with the provisions set out

		<p>in Rule 18A(7), that provide for the monitoring of ultrasound equipment, including scrap.</p> <p>(iii) It is pertinent to note that the Minutes of the meeting of the Expert Committee constituted to examine the proposed amendments to the PCPNDT Act under the chairmanship of JS (RCH) on 24<sup>th</sup> November, 2015 (“<b>Minutes</b>”) mention that there are no regulations for dismantling and discarding of old and redundant ultrasound machines under the PCPNDT Act, and that the import / export of medical equipment waste is regulated under the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008. These rules, however, govern only the <u>export and import</u> of medical equipment waste. The disposal of medical equipment does not appear to be regulated under the E-waste (Management and Handling) Rules, 2010 either. Having said that, Rules 11(2) and 18A(7) of the PCPNDT Rules already appear to cover the possibility of discarded/re-assembled/re-furbished ultrasound machines being misused for sex determination and sex selection. For instance, under Rule 11(2), the Appropriate Authority can seal or seize, and also confiscate a discarded ultrasound machine, scanner or any other equipment capable of detecting the sex of a foetus if such equipment is not registered under the PCPNDT Act. Further, under Rule 18A(7), the Appropriate Authority is required to regulate ultrasound equipment, by: a) monitoring the sales and import of such equipment; b) requiring quarterly reports from manufacturers, dealers, wholesalers, retailers etc., c) conducting periodical surveys and audits of all ultrasound machines sold and operating in the state or district to identify unregistered machines, and d) filing complaints against the owner or seller of unregistered ultrasound machines.</p>
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**CHAPTER III**

<p>6.</p>	<p>Section 6(1)</p> <p>It is proposed to amend Section 6 to read as:</p> <p>Prevention of misuse of prenatal diagnostic techniques:</p> <p>(a) Every Appropriate Authority shall prevent and may interpose for the purpose of preventing, and shall to the best of his ability, prevent the misuse of pre-natal diagnostic techniques and commission of any offence under the Act.</p> <p>(b) Appropriate Authority may, if it thinks fit, for purpose of preventing commission of any offence under the Act, obtain a bond from the concerned person giving undertaking that he will not indulge into misuse of pre-natal diagnostic techniques.</p>	<p>(i) The provisions of the proposed Section 6(1)(a) are superfluous, as the duty to prevent the misuse of pre-natal diagnostic techniques and commission of any offence under the PCPNDT Act are already covered under Section 17(4) which enumerates the functions of the Appropriate Authorities and Rule 18A, which lays down a detailed code of conduct for the Appropriate Authorities. Under Section 17(4), the Appropriate Authority can <i>inter alia</i> investigate a breach of the provisions of the PCPNDT Act and PCPNDT Rules, take appropriate legal action against the use of any sex selection technique by any person, at any place, initiate independent investigations, and also take steps to create public awareness against the practice of sex selection or pre-natal determination of sex. Under Rule 18A, the Appropriate Authority is required to observe a detailed code of conduct while discharging functions under the PCPNDT Act and Rules. This code of conduct relates to the processing of complaints and carrying out investigations under the PCPNDT Act, taking legal action, regulating ultrasound machines, inspecting and monitoring the registered facilities etc. for the purposes of furthering the objective of the PCPNDT Act and rules. Together, these provisions are sufficient to impose a duty on the Appropriate Authority to prevent the misuse of pre-natal diagnostic techniques under the Act.</p> <p>(ii) It is unclear what purpose would be served by obtaining a bond from the ‘concerned person’, when penalty provisions are already present in the PCPNDT Act for the misuse of pre-natal diagnostic techniques. Further, under Rule 3A of the PCPNDT Rules, any organisation or person selling, distributing, supplying or authorising in any manner the use of an ultrasound machine or imaging machine, is required to take an affidavit from the person or body purchasing or getting authorisation for using such machine that it will not be used for detection of sex of the foetus or selection of sex before or after conception.</p>
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**CHAPTER VII**

7.	<p>Section 23</p> <p>It is proposed to insert Section 23(1)(a) to prescribe a minimum fine for not abiding by the following norms:</p> <ul style="list-style-type: none"> <li>(a) Wearing apron with proper name plate while performing diagnostic procedure</li> <li>(b) Putting up sign-board disclaiming sex-selection</li> <li>(c) Keeping a copy of the PCPNDT Act in the clinic</li> </ul>	<p>The language suggested in the Minutes for amending Section 23(1) is as follows - replacing “<b>who contravenes any of the provisions of this Act or Rule made thereunder</b>” with “<b>who indulges in or assists or aids sex determination / selection or for conducting pre-natal diagnostic techniques on any person for the purposes other than those specified in sub-section (2) of section 4</b>”. The proposed amendment ought not be adopted, as it will result in limiting the scope of the section, given that Section 23 as it currently stands covers <i>any</i> contravention of the PCPNDT Act or PCPNDT Rules, whereas Section 23 more narrowly defines the offence. For example, if the proposed amendment were to be adopted, it would not cover a person opening a genetic counselling centre or clinic with an unregistered machine capable of determining the sex of the foetus, since possessing an unregistered machine would not strictly amount to ‘indulging in or aiding sex determination or conducting pre-natal diagnostic techniques on a person. However, this proposed change is not reflected in Annexure B of the Minutes, and it is the latter version that ought to be retained.</p> <ul style="list-style-type: none"> <li>(i) The three offences enumerated under Section 23(1)(a) are defined under Rule 17(1) &amp; (2) and Rule 18(viii) of the PCPNDT Rules. First, the language of the proposed amendment and the existing rules ought to be harmonised reduce the</li> </ul>
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		<p>chance of statutory anomaly and confusion. For example, the proposed amendment requires ‘wearing apron with proper nameplate’ while Rule 18(viii) requires relevant persons to ‘display his/her name and designation prominently on the dress worn by him/her.’</p> <p>(ii) Second, there appears to be no rationale for reducing the punishment in the abovementioned cases and not in others. For instance, Rule 18(ix) requires relevant persons to write their name and designation in full under their signature. Non-compliance with this particular provision attracts the higher punishment under Section 23 (imprisonment that may extend to three years and a fine that may extend to ten thousand rupees). It is recommended that a uniform yardstick be applied to categorise similar offences and their punishments.</p> <p>(iii) Further, as per Section 27 of the PCPNDT Act, every offence under the PCPNDT Act and PCPNDT Rules is cognizable, non-bailable and non-compoundable. This ought not to be applicable to the offences proposed under Section 23 (1) (a), which in any case, are punishable only with a fine. Section 27 ought to be amended accordingly to exclude these proposed offences. In any case, the blanket nature of Section 27 requires reconsideration, since it subjects relatively minor infractions of the law to stringent criminal action. As mentioned above, it is recommended that the various offences under the Act and Rules be classified into separate categories, depending on the gravity of the offence.</p>
8.	<p>Section 25</p> <p>The proposed amendment states that the confiscation of equipment used to commit an offence under the PCPNDT Act “maybe</p>	<p>(i) Section 55 of the Indian Forest Act is of absolutely no relevance to the PCPNDT Act. The provision refers to the confiscation of timber and forest produce and cannot be applied to the PCPDNT Act, which has an entirely different object and scope.</p>

	<p>provided as per Section 55 of the Indian Forest Act, 1927.”</p>	<p>(ii) Attention may be drawn to Rule 11(2) which empowers the Appropriate Authority to seal and seize any ultrasound machine, scanner or any other equipment capable of detecting the sex of the foetus. It also states that such machines shall be confiscated and further action may be taken under Section 23 of the PCPNDT Act. It may be noted that although a detailed procedure for search and seizure is provided under Section 30 of the PCPNDT Act read with Rule 12 of the PCPNDT Rules, there is no similar provision for confiscation. (Confiscation differs from seizure, as confiscation occurs after seizure through an order of the court, and vests the ownership of the property in the government)</p> <p>(iii) It is suggested that Sections 8,9 and 10 of the Prevention of Money-Laundering Act, 2002 may be looked at for guidance in drafting a separate confiscation process under the PCPNDT Act, and not as a part of Section 25, which deals with penalties for contravention of the provisions of the Act or rules for which no specific punishment is provided.</p>
<p>9.</p>	<p>Section 26</p> <p>The proposed amendment provides that a company shall be liable for a punishment not less than three years and a fine not less than 25 lakhs, the intent being, as per the Minutes, to increase the accountability on the part of the manufacturers.</p>	<p>(i) The limited object of Section 26 is to place liability on the officer in default when a company has committed an offence under the Act. This is a standard provision in most laws and is not generally used to prescribe the period of imprisonment or fine, as the proposed amendment suggests. Instead, this increased liability for manufacturers ought to be incorporated in the existing Section 25 of the Act, with the following corrections to the language of the proposed amendment:</p> <ul style="list-style-type: none"> <li>○ The term imprisonment needs to be inserted, as currently the proposed amendment merely states “punishment not less than three years”;</li> </ul>

		<ul style="list-style-type: none"> <li>○ The term “rupees” must be inserted before the fine amount of 25 lakhs;</li> <li>○ The proposed section needs to be redrafted to clarify whether the fine has to be paid by the company, or the officer in default, or both;</li> <li>○ The proposed section should also be re-drafted so that the imprisonment refers to the officer in default, and not the company.</li> </ul>
10.	<p>Section 31</p> <p>The proposed amendment extends immunity for the Government and the Appropriate Authority against suits, prosecutions or other legal proceedings done in good faith, to social organisations that are permitted to file complaints under Section 28.</p>	<p>Immunity from prosecution for acts undertaken in exercise of statutory functions, by its very nature applies only to State authorities. Social organisations under the PCPNDT Act do not exercise any statutory functions, they may only file complaints of alleged offences under the Act after giving notice to the Appropriate Authority. State immunity cannot be extended to private organisations that are not charged with the corresponding duties of public authorities. For instance, under the Juvenile Justice (Care and Protection of Children) Act, 2000 (as it then was), voluntary organisations were required to discharge statutory functions in certain instances (maintain observation / special / children’s homes, produce juveniles before the child welfare committee, prepare investigation reports, form part of committees etc.), and thus, the good faith provision under the said act extended to voluntary organisations as well. This is not the case under the PCPNDT Act, where social organisations are not required to discharge any statutory or public functions.</p>
11.	<p>Involvement of the police under the PCPNDT Act</p>	<p>The Minutes recommended greater involvement of the police in the implementation of the PCPNDT Act, but did not make any amendments to that effect. It is suggested that the police be involved in the search and seizure function, along with the Appropriate Authority, under Section 17A of the PCPNDT Act. As a first step, Rule 18A(3)(iv), which explicitly states that the Appropriate Authorities should, as far as possible, <i>not</i> involve the police for investigating cases under the PCPNDT Act, be deleted.</p>



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