

Pre Conception and Pre Natal Diagnostics Techniques Act



PNDT ACT

- Maharashtra was first State to enact Maharashtra regulation of use of PNDT Act in 1987
- Pre Natal Diagnostic Techniques Act was passed in 1994



Key Milestones

- PNDT Act was passed in 1994
- Supreme Court passed an Interim judgment in 2001 for strict implementation of Act based on PIL.
[CEHAT Vs Union of India \(2001\)5 SCC 577](#) ;
[CEHAT Vs Union of India \(2003\)8 SCC 398](#)
- PNDT Act amended in 2003- Pre conception and Pre natal Diagnostic Technique Act (PCPNDT)
- Constitutional Validity of the Act challenged but upheld [Vinod Soni Vs Union of India 2005 Cri.L.J. Bom. 3408](#) ; [Vijay Sharma Vs Union of India AIR 2008 BOM 29](#)

Preamble

Prohibition of sex selection before or after conception

Regulation of pre-natal diagnostic techniques

- Detecting genetic abnormalities
- Metabolic disorders
- Chromosomal abnormalities
- Congenital malformations
- Sex linked disorders

Prevention of misuse- for sex determination

Prohibitory Provisions

Section / Rule	Prohibitory Provisions under the Act
Section 3A	Prohibition of Sex selection
Section 3B	Prohibition on sale of ultrasound machine 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	Determination of sex prohibited
Section 22	Prohibition of advertisement relating to Pre conception and prenatal determination of sex___ <u>Mumbai Municipal Corporation Vs Chhaya Tated and Shubhan...</u>

Regulatory Provisions

Section / Rule	Regulatory Provisions
Section 4	Regulation of per natal diagnostic techniques
Section 5(1)	Written consent of pregnant woman
Section 9 & 9(4)	Maintenance and preservation of records <u>Suo Moto Vs Sate of Gujarat 2009 Cri. L.J. 721 (F.B.)</u>
Section 18	Registration of Genetic counseling centres, genetic laboratories and genetic clinic
Section 19	Certificate or registration
Section 20	Cancellation or suspension of registration
Section 29	Maintenance of records

Regulatory Provisions...Contd

Rule 10	Conditions for conducting pre natal diagnostic procedures
Rule 3(B)	Regulation of portable machine
Rule 8	Renewal of registration
Rule 4	Registration of genetic counseling centre, genetic laboratory, genetic clinic, ultrasound clinic and imaging centre
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

Section / Rule	Penal Provisions
Section 22 (3)	Penalty for advertising 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 Practitioner 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 woman
Section 25	Anyone contravening any provision of the Act or Rules for which no penalty has been provided elsewhere

Structures under the Act

- Central Supervisory Board (Section 7)
- State Supervisory Board (Section 16A)
- State Appropriate Authority / State Advisory Committee (Section 17)
- District Appropriate Authority / District Advisory Committee

Composition of Supervisory Board

- Minister of H & FW- Chairperson
- Secretary H & FW- Vice Chairperson
- Senior officer of H & FW – Member Secretary
- Representatives of WCD, Law and Judiciary
- Ex officio women members from NGOs
- Elected Representatives
- Specialists from legal and medical field

Functions of Central Supervisory Board

- Highest decision making and advisory body
- Reviews and monitors implementation of Act
- Creates awareness on the issue
- Can suggest amendments in Act
- Meets once in six months

Functions of State Supervisory Board

- Monitors implementation of Act
- Reviews activities of Appropriate Authority
- Creates Public awareness
- Sends consolidated reports to Central Supervisory Board regarding activities undertaken in the State
- Meets once in four months

Who is an Appropriate Authority (AA) under PCPNDT Act

- State Appropriate Authority (AA)- Three member team (Officer of rank of Joint Director or above of Department of Health and Family Welfare, Eminent women from NGO, Officer of Law and Judiciary Department)
- District AA – Civil Surgeon
- Corporation AA – Medical officer of Health

AAs have to be notified in the official gazette

Functions of AA

- Grant, suspend and cancel registration of clinics
- Ensure standards prescribed for clinics are followed
- Investigate complaints of breach of provision of Act
- Seek advise of advisory committee for registration of clinics or suspension or cancellation of registration and take action
- Take appropriate legal action against use of any sex selection technique by any person
- Create public awareness on issue
- Recommend to State Supervisory Board modifications required in rules of Act based on technological developments.

Duties of AA

- Search, seize or seal equipment or clinic and seize records at a genetic counselling centre, laboratory and clinic. (Section 30) [Dr. Mrs. Suhasini Umesh Karanjakar Vs Kolhapur Municipal...](#)
- Filing a complaint (Section 28a)-[Dr. Preetinder Kaur Vs State of Punjab 2011 CriLJ 876](#)
- Cancellation or suspension of Registration (Section 20). [M/s Malpani Infertility Clinic Vs Appropriate Authority ...](#)
- Report name of medical practitioner against whom charge has been framed to State Medical Council.- (Section 23 - 2)

Composition of Advisory Committee

Advisory committee consists of eight members:

- Medical Professionals (3)
- Social Workers (3)
- Legal Expert
- Officer of Information and Publicity
Department

Functions of Advisory Committee

- Advice AA while granting, suspending or canceling licenses
- Meets once in two months
- Gives feedback of general public and medical community on implementation of Act
- AA required to attend meetings of advisory committees and provide technical support.

Procedural Issues under the Act

- **Taking Cognizance-** Section 28- MM, JMFC
- **No role of police-** Considering technical and medical nature of the Act.
- **Conduct of Court trial-** Conducted as warrant cases other than on police report.
- **Nature of evidence-** Oral and documentary
- **Appreciating evidence-** Keep in mind Object and Reasons of the Act. No aggrieved person hence direct evidence may not be available. Importance of circumstantial evidence.
- **Passing of final order:** Any contravention of any provision of Act liable for punishment with imprisonment and fine

CEHAT Vs Union of India

(2001)5 SCC 577

PIL filed under Article 32 of the Constitution by CEHAT, MASUM and Dr Sabu George

Supreme Court passed several orders and directions from time to time for proper and effective implementation of the Act, with all vigour and zeal it deserves. S.C. also gave directions:

- For appointment of Appropriate Authorities.
- For amendment of the Act in view of emerging technology.
- To review and monitor the implementation of the Act.
- To create public awareness against the practice of sex-determination and sex-selection.
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CEHAT Vs Union of India (2003)8 SCC 398

SC again expressed grave concern about discrimination against girl-child prevailing in India. It opined that the reasons for this are:

- The mind set which still favours a male child against a female.
- The misuse of modern science and technology preventing the birth of Girl Child by sex determination.

Hence, SC gave further directions for effective implementation of the Act:

- Activation of CSB to monitor and review implementation of Act by States
- States to appoint AAs by notification
- States to publish list of AAs
- States to create awareness against the practice of sex determination
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Vinod Soni Vs Union of India

2005 Cri.L.J. Bom. 3408

Constitutional validity of the Act was challenged on the ground that it violates Article 21 of Constitution - the right to personal liberty of a citizen of India, guaranteed under Art. 21 of the Constitution, includes the liberty of choosing the sex of the child.

Bombay High Court held that:

- Right to bring into existence a life in future with a choice to determine the sex of that life can not in itself be a right.
- Right to personal liberty cannot include liberty of choosing sex of the child
- Right to life under Article 21 cannot include right to selection of sex, whether pre-conception or post-conception.
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Vijay Sharma Vs Union of India

AIR 2008 BOM 29

In this writ petition Constitutional validity was challenged on the ground that it violates the principle of equality enshrined in Article 14 of the Constitution.

Petitioners argued that couples having children of one sex should be allowed to make use of pre natal or pre conception diagnostic techniques to have a child of the opposite sex.

The High Court after elaborately dealing with the object, reasons and provisions of the Act held that:

- Sex selection is against the spirit of Law and Constitution.
- It affects the dignity of Women and undermines their importance.
- It insults and humiliates womanhood.
- It violates woman's right to life.

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Mumbai Municipal Corporation Vs Chhaya Tated and Shubhangi Adkar

Accused No. 1 had published an advertisement twice in the weekly magazine Lokprabha in Nov. 2004 soliciting whether any one wants a son? If yes, such person can approach their clinic- Shree maternity and nursing home.

The defence that it was a printing and editorial mistake was rejected as an after thought and accused were convicted for a period of three years and fine of Rs. 10,000/- under section 22(3) and 23 for contravention of Rules 4(1) (2), 6(2), 9(1).
Conviction of Accused confirmed

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Suo Moto Vs Sate of Gujarat

2009 Cri. L.J. 721 (F.B.)

In this case, full bench of Gujarat High Court was deciding the reference made by single judge ,whether deficiency or inaccuracy in filing Form F as required under statutory provision is merely a procedural lapse.

The full bench :

- Gives progressive interpretation to S.4(3) of the Act holding that by virtue of deeming provision of the proviso to said section, contravention of the provisions of S.5 or 6 is legally to be presumed. Hence, there need not be allegation in the complaint about the inaccuracy or deficiency in maintaining record as resulting in contravention of S. 5 or 6 of the Act.
- Burden to prove the contravention of this provision does not lie on the prosecution.
- Deficiency or inaccuracy in filling Form –F under Rule 9 is not merely a procedural lapse but an independent offence.

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**M/s Malpani Infertility Clinic Vs
Appropriate Authority
AIR 2005 Bom 26**

In this writ petition, order passed by AA suspending the registration of petitioners diagnostic center was challenged. Main contention raised was that S.20(3) of the Act provides only for cancellation and not for suspension of the registration of the clinic.

High Court rejected this contention saying that such power has to be read in to the Section, Otherwise the provisions of a welfare enactment will be rendered nugatory.

“ Where there is a conflict of pvt interests to carry on a particular activity, which the public authority considers as damaging to social interest, the under the statute has to be read as an enabling power”

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Dr. Mrs. Suhasini Umesh Karanjakar Vs Kolhapur Municipal Corp.

2011(4)AIR BomR 326 (F.B)

In this full bench judgment high court made an attempt to answer whether the power to search, seize and seal any other material object conferred u/s 30 of the Act includes the USG machine or any other machine or object and is AA empowered to seize and seal sonography machine which is suspected to being used for conducting sex determination. The full bench:

- Held that, words “any other material object” used in S. 30 of the Act and Explanation (2) to Rule 12 clearly provide that Appropriate Authority is empowered to seize and seal ultra-sound machines, other machines and equipments capable of aiding or assisting in sex-selection. (Earlier contrary view reversed)
- Considering declining sex-ratio in Maharashtra from 913 in 2001 to 883 in 2011, the directions were given for expeditious disposal of the pending cases under the Act with utmost priority, preferably within one year.

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Dr. Preetinder Kaur Vs State of Punjab

2011 CriLJ 876

In this civil writ petition competency of the Authority who initiated criminal prosecution against petitioner for violation of section 3(a) punishable u/s 23 of the Act was challenged.

In the judgment High Court discussed scope of section 28 of the Act and held that Act does not narrow down the class of persons who can initiate action:

- Apart from Appropriate Authority, an officer authorized by Central or State Govt. can also file a complaint.
- Complainant can also be a person authorized by Appropriate Authority or a social organization.

The case broadens the scope of S.28, giving authority to a wide class of persons to initiate action being a legislation to prevent social evil.

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