

F.No.V.11011/01/2013-PNDT (Pt-3)
Government of India
Ministry of Health & Family Welfare
PNDT Division

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Nirman Bhawan, New Delhi
Dated the of March, 2016

Ministry of Health & Family Welfare, Government of India is proposing to bring some amendments in provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. A copy of the minutes of the meeting of the Expert Committee constituted to examine the proposed amendments in the PC & PNDT Act, 1994 and amendments by the Expert Committee are enclosed herewith. *discussed*

The views /Suggestions from the stakeholders and general public is solicited and the same may be sent through email on sopndt-mohfw@gov.in on or before 21st March, 2016.

B 7/3/16
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Encl.: As above

Minutes of the meeting of the Expert Committee constituted to examine the proposed amendments in the provisions of the Pre-conception and Pre-natal Diagnostic Technique Act, held under the Chairmanship of JS (RCH) on 24th November, 2015 at Committee Room No. 151, A wing, Nirman Bhawan, New Delhi

As per the decision of the 23rd meeting of the Central Supervisory Board, an Expert Committee was constituted to re-examine the proposed amendments in the provisions of the Act with a view to make them more effective in preventing Gender Biased Sex Selection. The first meeting of the Expert Committee was held under the Chairmanship of Dr. Rakesh Kumar, Joint Secretary (RCH), at 2.30 pm. List of the proposed amendments in the provisions of the Act is at Annexure B. List of the participants is at Annexure A.

Welcoming the participants, Dr. Rakesh Kumar, JS (RCH) apprised the Committee about the evolutionary process in arriving at the proposed list of amendments at *Annexure B* in the provisions of the Act. It was informed that the Central Supervisory Board in its 19th meeting felt the need to evaluate the provisions of the Act and the rules and directed the constitution of a Committee with an objective to strengthen the implementation of PC&PNDT Act and to regulate the misuse of medical diagnostic technologies leading to female foeticide. The proposed list of amendments is the outcome of the long consultations so far.

Dr. Rakesh Kumar, JS(RCH) summarized the objectives of the meeting and informed that the Committee needs to examine the proposed list of amendments and propose appropriate amendments that can ensure the effective regulation of Pre-conception and Pre Natal Diagnostic Techniques to curb the unethical and criminal practice of sex selection, without creating practical problems to medical doctors. He also updated the members about the procedure involved in the process of amendments and said that any amendment proposed/ recommended by the Committee will be placed before the CSB and if approved by the Board, further action will be taken for obtaining final approval of the Parliament.

All the members were then invited by Dr. Rakesh Kumar, JS (RCH) to provide their inputs and deliberate on the suggestions received from the CSB members, one by one, on the proposed amendments of the provisions of the Act.

PREAMBLE:

Discussing the Preamble, Dr. K. K. Agarwal, Secretary IMA said that the “**Detection**” word used in the Act could be replaced by “**Disclosure**” since prenatal diagnostic techniques have the potential of inadvertently detecting the sex of the foetus, especially, while diagnosing the sex related genetic disorders. He further said that the prohibition is on communicating the sex of the foetus and not on detection. Responding to the arguments put forward by Dr. K. K. Agarwal, members said that the word **Detection** used in the PC&PNDT Act has to be read in the context of its intentional misuse and need not be deleted from the Act.

For the proposed amendment to replace “**leading to female foeticide**” and “**abortion**” by “**Sex Selective Termination of Pregnancy**”, Mr Naveen Jain, Mission Director of Government of Rajasthan was of the opinion that “**leading to female foeticide**” may be retained as this terminology helps to use related IPC provisions to catch the culprits under the law.

CHAPTER I, Section 2(g):

Regarding the revised definition of **Medical Geneticist**, Dr. Rakesh Kumar, JS (RCH) briefed the members that this definition has been developed in consultation with an Expert Committee.

In response to this proposed amendment, the Ministry of Women and Child Development had earlier suggested that the definition could be reframed; however, this suggestion was turned down by the Committee on the ground that enough deliberations has been done by a dedicated committee for this purpose and the definition may be endorsed as it is.

In this regard, Dr. K. K. Agarwal sought clarification whether **Medical Geneticist** is allowed to use ultrasound machines under this Act or not. Responding to the query, it was informed that under Rule 3 (3) (1) (b) of the PC& PNDT Rules, clear provisions have been laid down for qualification of using ultrasound machine.

CHAPTER II, Section 3B:

The Committee recommended that a separate provision for buyback needs to be included in this section, since the companies that take ultrasound equipments in buy back arrangements are not registered and such transfer as per the proposed amendment will be illegal.

The Committee also raised the issues of dismantling and discarding of old and redundant ultrasound machines ^{as} the provisions that do not have any mention in the PC&PNDT Act. On this, JS (RCH) apprised that MOHFW has sought detailed guidelines under E-waste regulation from the Ministry and of Environment, Forests and Climate Change, and they have communicated that the import/ export of all kind of second hand **Electrical and Electronic Equipment (EEE)** including any kind of medical equipment are presently regulated under **Schedule IIIB (B1110) of Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008**. The issue of regulation of refurbished machines was also discussed and, it was suggested that this area also needs to be regulated.

CHAPTER III, Section 6:

The insertion of sub-sections 6 (1) (a) & (b) in the section 6 of the PC&PNDT Act, to ensure the prevention of misuse of prenatal diagnostic techniques by the Appropriate Authority was unanimously agreed upon by the Expert Committee.

<p>Section 6: Determination of sex prohibited</p>	<p><i>Insertion of Section 6 (1) as :-</i> Prevention of misuse of prenatal diagnostic techniques: (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. (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>
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CHAPTER VII Section 23:

Section 23 was discussed at length and by the Committee. It was suggested that the line “**who contravenes any of the provisions of this Act or Rule made thereunder**” in the section may be replaced by “**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**”.

<p>Section 23: Offences and Penalties</p> <p>Section 23 (1): Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a genetic counselling centre, a genetic laboratory, or a genetic clinic or is employed in such a centre, laboratory or clinic or render his professional or technical services to or at such a centre, laboratory or clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or Rule made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.</p>	<p>Section 23 (1):- <i>May read as</i> “Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a genetic counselling centre, a genetic laboratory, or a genetic clinic or is employed in such a centre, laboratory or clinic or render his professional or technical services to or at such a centre, laboratory or clinic, whether on an honorary basis or otherwise, and <u>“who contravenes any of the provisions of this Act or Rule made thereunder”</u> may be replaced by <u>“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”</u>. shall be punishable with imprisonment for a term which shall not be less than three years and with fine which may extend to fifty thousand rupees and on any subsequent conviction, with imprisonment which shall not be less than five years and with fine which may extend to one lakh rupees.</p> <p><i>Insertion of Section 23(1)(a).as :-</i> Any person who shall not abide by the following prescribed norms including: (a) Wearing apron with proper name plate while performing diagnostic procedure , (b) Putting up-sign board disclaiming sex selection at a prominent place in the clinic. (c) Copy of PNDT Act always present in the clinic shall be punishable with a fine of not less than one thousand rupees and in case of continuing contravention with an additional fine of not less than five hundred rupees for every day.</p>
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Section 25: The Committee deliberating on Section 25 suggested that it is not required to mention the provision of the Indian Forest Act and ^amere adoption of its provision would be appropriate. This would entail confiscation of the equipment used for the commission of offence in case of continuous contravention,

<p>Section 25: Penalty for contravention of the provisions of the Act or Rules for which no specific punishment is provided: Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contraventions with and additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction of the first such contravention.</p>	<p>Section 25: <u>May read as</u> Penalty for contravention of the provisions of the Act or Rules for which no specific punishment is provided: Under Section 25, fine may extend to Rs10,000/- and in the case of continuous contravention, with an additional fine which may extend to Rs.1,000/- every day during which such contravention continues. <u>In case of continuous contravention sonography machine and other equipment used for commission of offence shall also be confiscation.</u></p>
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Section 26: The proposed amendment was considered very appropriate, as the Committee felt that such a provision will increase the accountability on the part of manufacturers. The Committee also discussed the suggestion made by Government of West Bengal to include another provision in the same section that will mandate the manufacturing companies to submit the sales reports regularly. The Committee suggested that an additional provision of (3) (B) in Section 26 may be included, as suggested by the Government of West Bengal.

<p>Section 26: Offences by the companies</p>	<p><u>Insertion of Section 26 (3) as:</u> When any offence punishable under this Act has been committed by a Company, it should be liable to a punishment of not less than 3 years and a fine not less than 25 lakhs.</p> <p><u>Addition of 26(3)(B) as:</u> Any Company that refuses or fails to provide sales details of USG machine and other imaging equipments to centre Government and the respective State or District Appropriate Authority on quarterly basis, or else as desired, will be punishable with a fine of not less than Rs 5 lakhs and in the case of continuous contravention, with an additional fine which may extend to Rs.5,000/- for every day during which such contravention continues.</p>
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Section 31: The Committee unanimously agreed upon this amendment without any change. The meeting concluded on the note that the Committee will analyze and review the compiled suggestions further and recommend the appropriate and suitable amendments for the approval of CSB.

<p>Section 31:</p> <p><i>Protection of action taken in good faith.-</i> No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorized by the Central or State Government or by the Authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act</p>	<p>Section 31: <u>May read as</u></p> <p><i>Protection of action taken in good faith.-</i> No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorized by the Central or State Government or by Authority or by any person including social organization which has made complaint to the Court under Section 28 (1)(b) of the Act for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.</p>
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Besides the discussions on the proposed amendments, the role of police in the implementation of PC&PNDT Act was also discussed. Mr Naveen Jain vehemently supported the role of police on the basis of his state experience in implementing the PC&PNDT Act whereas representatives of IMA, FOGSI and IRIA had their reservations. They quoted PCPNDT Rules also which mention involvement of Police may as far as possible be avoided. Representatives of Maharashtra were of the view that the police have to be involved in the investigation and for maintaining law and order during inspections. Dr. Rakesh Kumar JS (RCH) in this regard said that the role of the police in the implementation of the Act has to be clearly defined since Section 27 of the PC&PNDT Act identifies every offence under the PC&PNDT Act as cognizable. JS further deliberated that the Police may be involved right from inspection, investigation and filing of case in the Court. This would ensure better prosecution besides having deterrent effect on the offenders and ensure smooth inspection, seal and seizures on the spot. Accordingly, a provision needs to be suitably incorporated in the PC&PNDT Act and Rules after due legal consultation.

The meeting ended with thanks to the Chair.

LIST OF PARTICIPANTS

1. Dr. Rakesh Kumar, Joint Secretary (PNDT), MOHFW
2. Mr. Naveen Jain, Mission Director & SAA, Govt. of Rajasthan
3. Mr. Birsingh Majhi, Asst. Legal Advisor Department of Legal Affairs,
Ministry of Law & Justice
4. Mr. V.V. B Raju, Deputy Secretary, National Commission for Women
5. Dr. A. O. Khade, State Family Welfare Pune, Govt. of Maharashtra
6. Dr. V.K. Goyal, Member Expert Committee, Govt. of Punjab
7. Dr. A. Marthanda Pillai, President IMA
8. Dr. Prakash Trivedi, President FOGSI
9. Dr. Jignesh Thakkar, IRIA
10. Dr. O. P. Bansal, IRIA
11. Dr. K.K. Aggarwal, Secretary IMA
12. Mr. Deepak Kumar, IRIA
13. Mr. Krishna Ram Esharwal, State Nodal Officer, Govt. of Rajasthan
14. Mrs. Bindu Sharma Director(PNDT)
15. Mr. D.K.Sahu, US- PNDT, MOHFW

**AMENDMENTS PROPOSED BY THE EXPERT COMMITTEE
CONSTITUTED TO RE-EXAMINE THE PROVISIONS OF THE ACT**

	Existing provision of PC & PNDT Act	Proposed amendments
PREAMBLE:		
1.	Statement of Objects and Reason: Point No. (i): prohibition of the misuse of pre natal diagnostic techniques for determination of sex of the foetus, leading to female foeticide;	<u>Point No. (i): May read as</u> (i) prohibition of the misuse of pre natal diagnostic techniques for determination of sex of the foetus, leading to sex selective elimination of foetus leading to decline in child sex ratio
2.	Statement of Objects and Reason: Point No. (iii) permission and regulation of the use of Pre Natal Diagnostic Techniques for the purpose of detection of specific genetic abnormalities or disorders;	<u>Point No. (iii): May read as</u> (iii) prohibition and prevention of the misuse of Pre Natal Diagnostic Techniques for detection or determination of sex;
3.	Use of appropriate terms for- “leading to female foeticide” and “Abortion”	<u>Terms to be replaced as</u> 1. “Sex selective termination of pregnancy”.
CHAPTER I		
4.	Section 2(g): “ medical geneticist” includes a person who possesses a degree or diploma in genetic science in the fields of sex selection and pre-natal diagnostic techniques or has experience of not less than two years in any of these fields after obtaining – (i) Any one of the medical qualifications recognised under the Indian Medical Council Act,1956; or (ii) A post-graduate degree in biological sciences;	“medical geneticist” is defined as a person who has DM/ MD in Medical Genetics recognized by MCI or has worked/done research for not less than five years in a recognized university or institute or has obtained a doctorate degree in the area of clinical or medical or human genetics after obtaining: (i) Medical qualifications recognized under the Indian Medical Council Act, 1956 (102 of 1956); Or (ii) A recognized post graduate degree in subjects like Zoology/ Molecular Biology/ Human Genetics/ Bio-chemistry/ Bio-

		technology, Biomedical sciences and Biosciences /Life sciences
CHAPTER II		
5.	Section 3B: <i>Prohibition on sale of ultrasound machines, etc., to persons, laboratories, clinics, etc. not registered under the Act.</i> - No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.	<i>Prohibition on sale <u>or otherwise transfer</u> of ultrasound machines, etc., to persons, laboratories, clinics, etc. not registered under the Act.</i> - No person shall sell <u>or in any other manner transfer</u> any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.
CHAPTER III		
6.	Section 6: Determination of sex prohibited	<u>Insertion of Section 6 (1) as :-</u> Prevention of misuse of prenatal diagnostic techniques: (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. (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.
CHAPTER VII		
7.	Section 23: Offences and Penalties Section 23 (1): Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a genetic counselling centre, a genetic laboratory, or a genetic clinic or is employed in such a centre, laboratory or clinic or render his	Section 23 (1):- <u>May read as</u> “Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a genetic counselling centre, a genetic laboratory, or a genetic clinic or is employed in such a centre, laboratory

	<p>professional or technical services to or at such a centre, laboratory or clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or Rule made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.</p>	<p>or clinic or render his professional or technical services to or at such a centre, laboratory or clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or Rule made thereunder shall be punishable with imprisonment for a term which shall not be less than three years and with fine which may extend to fifty thousand rupees and on any subsequent conviction, with imprisonment which shall not be less than five years and with fine which may extend to one lakh rupees.</p> <p><u>Insertion of Section 23(1)(a).as :-</u> Any person who shall not abide by the following prescribed norms including:</p> <ul style="list-style-type: none"> (a) Wearing apron with proper name plate while performing diagnostic procedure , (b) Putting up-sign board disclaiming sex selection at a prominent place in the clinic. (c) Copy of PNDT Act always present in the clinic <p>shall be punishable with a fine of not less than one thousand rupees and in case of continuing contravention with an additional fine of not less than five hundred rupees for every day.</p>
8.	<p>Section 25: Penalty for contravention of the provisions of the Act or Rules for which no specific punishment is provided: Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of</p>	<p>Section 25: <u>May read as</u> Penalty for contravention of the provisions of the Act or Rules for which no specific punishment is provided: Under Section 25, fine may extend to Rs10,000/- and in the case of continuous contravention, with an additional fine which may extend to Rs.1,000/- for every day during which such contravention continues. Confiscation of sonography machine and other equipment used for commission of offence maybe</p>

	continuing contraventions with and additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction of the first such contravention.	provided as per provision of Section 55 of the Indian Forest Act, 1927. *
9.	Section 26: Offences by the companies	<u>Insertion of Section 26 (3) as:</u> When any offence punishable under this Act has been committed by a company it should be liable to a punishment of not less than 3 years and a fine not less than 25 lakhs
10.	Section 31: <i>Protection of action taken in good faith.-</i> No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorized by the Central or State Government or by the Authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act	Section 31: <u>May read as</u> <i>Protection of action taken in good faith.-</i> No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorized by the Central or State Government or by Authority or by any person including social organization which has made complaint to the Court under Section 28 (1)(b) of the Act for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

* **Section 55 in The Indian Forest Act, 1927:** Forest- procedure, tools, etc., when liable to confiscation.

(1) All timber or forest- produce which is not the property of Government and in respect of which a forest- offence has been committed, and all tools, boats, carts and cattle used in committing any forest- offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.