

A black and white photograph of a hand touching water with reeds in the background. The hand is on the left side of the frame, with fingers slightly spread, touching the surface of the water. Concentric ripples emanate from the point of contact. In the background, a dense cluster of tall, thin reeds or grasses stands against a light, hazy sky. The overall mood is contemplative and serene.

THE LITTLE HANDBOOK ON PC & PNDT

PRE-CONCEPTION & PRE-NATAL DIAGNOSTIC TECHNIQUES
[PROHIBITION OF SEX-SELECTION] ACT, 1994

WRITTEN & COMPILED BY
ANUBHA RASTOGI



THE LITTLE HANDBOOK ON PC & PNDT Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

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HRLN
Human Rights Law Network

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Introduction

This little book has a very pointed and defined purpose. It is meant to assist effective implementation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, as it is known now (hereafter the PC & PNDT Act). This book is targeted towards lawyers, government authorities, activists, doctors and other stakeholders. It simplifies the law to result in its implementation.

To put it in one sentence, this Act clearly and absolutely prohibits the misuse of technology to determine the sex of the foetus or to assist in pre-birth sex selection. But the implementation of this law is the weakest link in the drive against the misuse of diagnostic technologies and the resultant continuing and worsening decline in the sex ratio across the country.

The PC & PNDT Act is one of the most comprehensive and well thought out laws in the country. To say a little about the amendments that have given this Act the present shape, it is after the intervention of the Hon'ble Supreme Court in *CEHAT, MASUM & Dr. Sabu George v Union of India and Ors* (AIR 2003 SC 3309) that the law had been considerably overhauled to bring within its purview the changing technologies.

The truth today is that this brilliant piece of legislation is far from being implemented in its true spirit and purpose. Infact the first ever conviction leading to imprisonment of an offender under the PC & PNDT Act in the entire country has taken place in March 2006, 12 years after the Act came out in 1994. It is therefore no exaggeration to state that legal implementation of the PC & PNDT Act has practically failed this far.

One of the main reasons why this law has failed to be implemented is that the provisions of this law have gotten lost in the abortion debate. To set the record straight, this law only deals with sex determination and sex selection and then it stops. This law does not even refer or speak about abortions: sex selective or otherwise as there are other laws covering the issue of legal abortion and any offences related to forced abortions like The Medical Termination of Pregnancy Act and the provisions of The Indian Penal Code. This law aims at the source of this particular form of discrimination instead of working at the consequence. This little book goes straight into the provisions of the PC & PNDT Act without confusing the reader about the abortion debate.

Another reason why this law remains a beautiful legislation only on paper is because of the criminals it targets. The crimes committed under this Act are not committed by 'traditional' criminals but by medical professionals, who are traditionally considered one of the most respectable sections of the society. Also, these offenders have tremendous clout not just due to their social status but also because of the enormous amount of money power they wield, including the money they earn from committing these very offences. Together these factors combine to make the offences under the Act 'high profit, low risk' to commit.

Another argument coming in the way is the myth that fewer girls will be far more respected. What is shocking is that a lot of people who do know of the demographic change that is happening, led of course by the principal offenders, the medical professionals themselves, are the propagators of this myth. Some also say that it is better that a girl child is not born at all than to ill-treat and deprive her after her birth. This argument ends up justifying the commission of offences under the act, making the offenders good samaritans of the society. Nothing can be more fallacious than this. Infact the definite impact would be along the following lines:

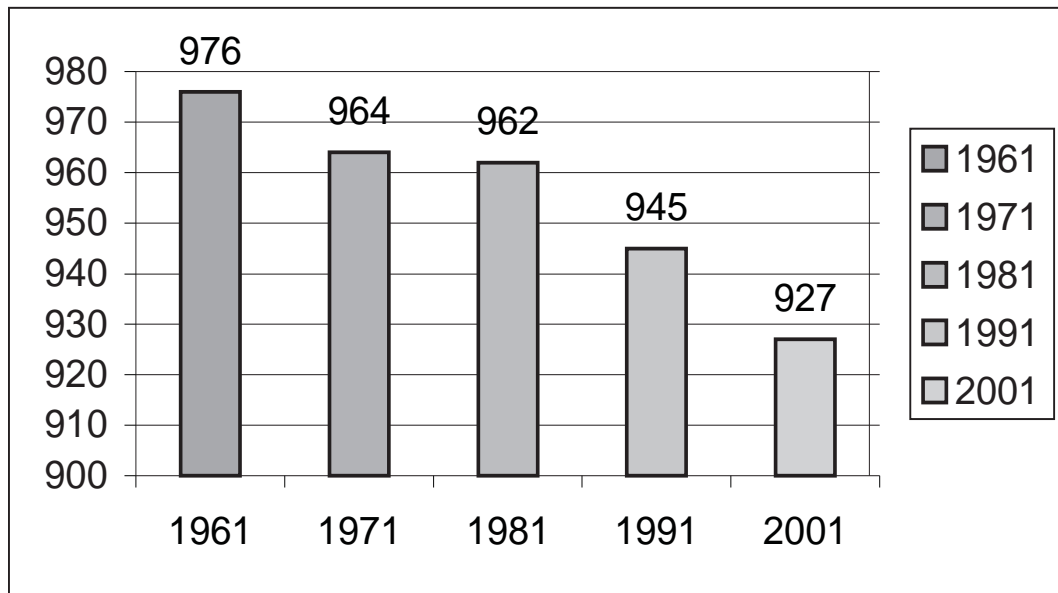
- Rise in sexual offences against women
- Rise in child sexual abuse
- Increase in trafficking of women for sexual exploitation
- Rise in domestic and all other forms of violence against women
- Decreased social and economic mobility of women
- Rise in incidence of 'bride price' and other changes in patterns in societal, marital and familial relationships

It is important to right away understand the implications of imbalance in the sex ratio in a population. A healthy population should have the sex ratio of 933 (which means 933 females born for every 1000 males), today in India the sex ratio is 927. Now, that may look like a miniscule decline, in a country with 1.2 billion people, this difference translates into millions of fewer females in the population. It is also pertinent to see how this decline has come about steadily over the years:

Trend of decline in child sex ratio (number of girls per 1000 boys for 0-6 years age group) in last 40 years is:

While the population of India rose by almost 21% between 1991 and

INTRODUCTION



2001, the country saw an overall decline in child sex ratio from 945 to 927 in India in that decade. It is imperative today that the country takes this issue in utmost seriousness and all the stakeholders join in stringently addressing it.

It is largely acknowledged that the biggest lacuna in the response to this issue is the implementation of the law. While there may still be some loopholes in it, the law as it stands today has enough teeth to be able to stop further damage. However, there has been a gap between, on one hand, the action by the civil society working at the community level and involved in advocacy around the Act, and on the other hand, the follow-up at the legal level. This gap is the main reason for the failure of all the social activism to culminate in legal action, such that successful prosecutions are launched and the offenders are convicted. The legal system has to understand the implementation hurdles and devise strategies to handle them appropriately and on an urgent basis.

What further needs to be clarified so that there is no confusion is the link that is being made between the misuse of technology in violation of this Act and the right to a safe abortion under the Medical Termination Of Pregnancy Act, 1971. It has to be clearly understood for all purposes that an abortion, which is carried out only for the reason that the sex of the foetus is not desirable, is the consequence of the misuse of technologies like ultrasound

etc. It is obvious that unless the woman knows the sex of the foetus a sex-selective abortion will not be carried out. This law clearly aims at booking the specialists, which in this case are the doctors for misusing the law as this technology specific law can be violated only by technology specialists.

For the purposes of absolute clarity and completeness, this little book will deal with every section in detail and the relevant rules have been referred to when the section has been explained. At the end of the book a copy of the bare act, the forms and the relevant judgments have been annexed.

CHAPTER 1: PRELIMINARY

This law extends to the whole of India except for the State of Jammu and Kashmir and has been brought into force on 01.01.1996.

Some important definition clauses are as under:

“conceptus” means any product of conception at any stage of development from fertilization until birth including extra embryonic membranes as well as the embryo or foetus.

“embryo” means a developing human organism after fertilization till the end of eight weeks, i.e. fifty-six days.

“foetus” means a human organism during the period of its development beginning on the fifty-seventh day following fertilization or creation

“genetic counseling center, clinic and laboratory” means an institute, hospital, nursing home, or any place, by whatever name called which provides for genetic counseling to patients, or which is used for conducting pre-natal diagnostic procedures and includes a vehicle where a mobile, portable equipment capable or having the potential to determine or/and select the sex of the foetus is used. A genetic laboratory means and includes a place where facilities are provided for conducting analysis or tests of samples received from genetic clinic for pre-natal diagnostic tests and includes a place where mobile, portable equipment capable or having the potential to determine or/and select the sex of the foetus is used. (has been referred to as a center, clinic or laboratory hereinafter)

“pre-natal diagnostic techniques” includes pre-natal diagnostic tests and pre-natal diagnostic procedures. Procedures are defined as all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo blood or any other tissue or fluid of a man, or of a woman, before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception. Tests are defined as ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex linked disease. (hereinafter referred to as PNDT)

“sex-selection” 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.

CHAPTER II

REGULATION OF GENETIC COUNSELLING CENTRES, GENETIC LABORATORIES AND GENETIC CLINICS

This chapter contains Sections 3, 3-A and 3-B.

Section 3 clearly emphasizes that no Genetic Counselling Centre, Genetic Laboratory or Genetic Centre can conduct or associate with or help in conducting activities relating to pre-natal diagnostic techniques, which is not registered. It further goes on to say that a person who does not possess the qualifications prescribed under Rule 3 cannot be employed or taken on service whether on a honorary basis or on payment. This section further prescribes that no qualified person shall conduct or cause any pre-natal diagnostic technique to be conducted in any place other than a place registered under this Act.

Rule 3 lays down that a place can be registered as a Genetic Counseling Centre when:

- the qualified person is either a gynaecologist or a paediatrician having six months experience or four weeks training in genetic counseling or a medical geneticist and

- the place has adequate space and educational charts, models, equipments required for carrying out genetic counseling.

Further, a person having adequate space and being or employing a medical geneticist and a laboratory technician, having a B.Sc degree in Biological Sciences or a degree or diploma in medical laboratory course with atleast one year's experience in conducting appropriate pre-natal diagnostic techniques, tests or procedures.

The Rules lay down the various equipments that such a laboratory should have for carrying out chromosomal studies, biochemical studies and molecular studies. This Rule goes on to provide for the setting up of a genetic clinic, ultrasound clinic or imaging center.

Section 3-A clearly prohibits sex selection by laying down that no person individually or a team of specialists in the field of infertility shall conduct or help in conducting, any PNDT or other technology capable of sex selection, either through himself or through another on any man or woman or both or

on any tissue, fluid etc derived from either a man or a woman or both.

Section 3-B addresses the manufacturers. It prohibits sale of any equipment capable of detecting the sex of a foetus to any centre, clinic, laboratory or any other person. Rule 3-A clearly provides that no manufacturer or organisation, or any other person including, importer, dealer, supplier of any equipment capable of detecting the sex of the foetus can be distributed, supplied, rented, allowed or authorized to be used in any manner whether for consideration or otherwise to any body or person unless it is registered under this Act.

Further, the provider of such machines has to submit, to the State Government/Appropriate Authority and to the Central Government, a list of people to whom such equipment has been provided. This list has to be submitted once in every three months. Also the person providing such machines or equipment is bound to take an affidavit from the person to whom this machine is being provided, declaring that the machine/equipment shall not be used for detection of sex of foetus or selection of sex before or after conception.

Therefore it is aptly clear that this chapter focuses entirely on the necessity of registration. It is only through registration that the implementing authorities under this Act can keep a check on the functioning of these places.

CHAPTER III

REGULATION OF PRE-NATAL DIAGNOSTIC TECHNIQUES

This Chapter contains Sections 4, 5 and 6.

The previous chapter provided for the kind of places permitted to conduct pre natal diagnostic techniques, this chapter provides for the statutory reasons for which a PNDT can be conducted on a person.

Section 4 lays down that a pre-natal diagnostic procedure can be conducted only for detecting chromosomal abnormalities, genetic metabolic diseases, hemoglobinopathies, sex-linked genetic diseases, congenital anomalies and for any other abnormality as prescribed under this Act.

It further lays down the conditions that have to be satisfied before any pre-natal diagnostic technique is conducted. These specifically are that:

- the age of the pregnant woman is above thirty-five years,

- the pregnant woman has undergone two or more spontaneous abortions or foetal loss,

- the pregnant woman has been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals,

- the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease also any other condition that may be prescribed under this Act.

Remember! The reasons for conducting a pre-natal diagnostic procedure have to be recorded in writing. Also, every pre-natal diagnostic procedure has to be preceded by locating the foetus and placenta through ultrasonography and has to be done under direct ultrasonographic monitoring so as to prevent any damage to the foetus and placenta.

Further, the person conducting the procedure has to maintain a complete record of the details as prescribed under this Act. In case of any inaccuracy or deficiency in the records, it will be presumed that the provisions of the present Act have been violated unless the contrary is proved. Every laboratory, center and clinic is expected to maintain a register in which the names and addresses of the men and women given genetic counseling,

PNDT or procedures, the names of their spouse or father and the date on which they first reported for such counseling etc.

In **Form D** the details of every woman counseled have to be entered by the center.

In **Form E** the laboratory has to maintain a record of all men or women subjected to any prenatal diagnostic technique or procedure.

In **Form F** the Genetic Clinic has to maintain a record of all men or women subjected to a pre-natal diagnostic test or procedure.

This section further lays down that except for the reasons provided for in this Act, no person including a relative or husband of the pregnant woman shall force or encourage the conducting of a PNDT or the use of any sex-selection technique either on the pregnant woman or on himself or on both.

Section 5 specifies that the pre-natal diagnostic procedure can be conducted by a person prescribed under this Act only where all known side and after effects of such procedures have been explained to the woman and her consent is obtained in writing in the language that she understands and a copy of the written consent so obtained is given to her. The consent has to be obtained in **Form G**. A translated version of this form should be available in all local languages. If it is not available, then the clinic should make a translated version available.

This section further goes on to say that no person should communicate the sex of the foetus to the pregnant woman or her relatives or any other person by words, signs or in any other manner.

A declaration has to be given by the person conducting the ultrasonography that he/she has neither detected nor disclosed the sex of the foetus of the pregnant woman to anybody. A declaration by the pregnant woman has to be given that she does not want to know the sex of her foetus.

This section clearly prohibits the communication to any one, which will also include the physician of the pregnant woman or anyone else. It further prohibits the use of any word, sign or gesture to communicate the sex of the foetus. This makes the using of code words like names of sweets or gods and goddesses etc. that are being used to communicate the sex of the foetus also an offence under this law.

Section 6 specifically prohibits the determination of sex. It lays down that no place shall be used to conduct or cause to conduct any pre-natal

CHAPTER III

diagnostic procedure for the purpose of determining the sex of the foetus. It further lays down that no pre-natal diagnostic procedure will be used to determine the sex of the foetus and finally it lays down that no person shall cause or allow to be caused pre-conception sex selection.

Therefore this section clearly prohibits the conducting of a PNDT in any place for the purpose of sex determination, the misuse of any PNDT for the purpose of sex determination and the selection of sex before conception. Further it has also been laid down that a laboratory can accept a sample for conducting any procedures only if it has been referred by a Genetic Clinic.

CHAPTER IV

CENTRAL SUPERVISORY BOARD

This chapter contains Sections 7 to 16 A and deals with the establishment, composition, powers and functioning of the Central Supervisory Board. The powers and functions of the Board have been identified in this Act.

Section 7:

The Board consists of 24 members. These are as follows:

The Chairperson is the Minister in charge of the Ministry of Health and Family Welfare.

The Vice-chairperson will be the Secretary of the department of family welfare; this is an ex officio post.

3 members will be appointed by the Central Government from ministries relating to Women and Child Development, Law and Justice and Indian System of Medicine and Homeopathy.

The Director General of Health Services of the Central Government

10 members are to be appointed by the Central Government covering experts and representatives of doctors, representatives of women's organizations and social scientists.

3 women Members of Parliament: 2 from Lok Sabha and 1 from Rajya Sabha

4 members are to be appointed by rotation representing the States and Union Territories.

The Member Secretary is a person not below the rank of Joint secretary of the department of Health and family welfare and is an ex-officio post.

The term of office of the members for others except for ex officio members is three years and for the representatives of the States and Union Territories is 1 year. **(Section 8)**

The Board is bound to meet atleast once in 6 months and may meet more often. All decisions are to be taken on the basis of majority votes and the veto power would be with the Chairperson or the member presiding over the meeting. **(Section 9)**

Section 10 clearly lays down that any action taken by the Central Supervisory Board will not be invalid only on the grounds of any vacancy or defect in the constitution of the Board, any defect in the appointment of any member of the Board or due to any irregularity in the procedure which does not have effect on the merits of the case or issue.

The Central Supervisory Board, over and above the team of specialists that it contains within itself also has the liberty to associate with itself persons on temporary basis for particular purposes (**Section 11**). These persons will have the right to participate in the discussions of a meeting, but will not have a right to vote. The Board is also at liberty to appoint such officers and other staff as is required by it to function smoothly and efficiently. The orders of the Board will be authenticated by the signature of either the Chairperson or a person authorized to do so. (**Section 13**)

A person can be disqualified from his appointment as a member on the ground of: • having been convicted and sentenced for an offence which involves moral turpitude • is an undischarged insolvent • a competent court has declared him to be of an unsound mind • is not employed with the Government anymore.

Two important grounds due to which a member can be disqualified are that in the opinion of the Central Government the member has such a financial or other interest in the functioning of the Board that may prejudice his role as a member and secondly, in the opinion of the Central Government has been associated with the promotion of the use of pre-natal diagnostic techniques for the purposes of sex-selection and sex-determination. (Section 14) It is also pertinent to mention that no member is eligible to re-appointment for more than two consecutive terms. (**Section 15**)

Therefore it can be seen that to facilitate the complete implementation of the Act in its true letter and spirit an independent and self-sufficient Board has been constituted.

Section 16 enumerates the functions of the Central Supervisory Board. The Board has the responsibility of advising the Central Government on the use and misuse of pre-natal diagnostic techniques and sex selection techniques. The Board is the reviewing and monitoring body on the implementation of the Act and is expected to recommend changes in the provisions of the Act and the rules wherever required.

The responsibility for creating public awareness against sex-determination

and sex-selection is also with the Board. The other two important functions of the Board are to lay down a code of conduct for the persons working at the centers, laboratories and clinics and to oversee and supervise the performance of the other authorities under this Act.

Section 16-A

This chapter also provides for the establishment of State Supervisory Boards. The functions of the State Supervisory Boards also include creating awareness on this issue within their State, to review the functioning of the Appropriate Authorities in the State and report to the Central Supervisory Board. An additional function given to the State Board is to send consolidated reports of the activities taken up in the State to the Central Board and to the Central Government.

The State Board consists of 21 members similar to the composition of the Central Supervisory Board. The State Board has to meet atleast once in 4 months and one-third of its members form the quorum for a meeting.

CHAPTER V

APPROPRIATE AUTHORITY AND ADVISORY COMMITTEE

This chapter contains Sections 17 and 17A.

Under **Section 17** the Central Government has to appoint one or more Appropriate Authorities for the Union Territories and the State Government has to appoint Appropriate Authorities for the State. The important aspect here is that the appointment is through notification in the official gazette. This is emphasized because in a case in Mumbai, the complaint made by the Appropriate Authority was dismissed on the ground that the appointment of the particular Appropriate Authority had not been notified in the official gazette.

An Appropriate Authority for the entire State or the Union Territory would consist of 3 members namely:

- an officer from the Health and Family Welfare Department of or above the rank of Joint Director as the Chairperson,

- an eminent woman representing a woman's organisation, and

- an officer of the law department of the State.

The Act has clearly stipulated a timeline for the formation of the State Appropriate Authorities by providing for the same to be formed within 3 months of the passing of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002.

This section also further provides that any vacancy in the multi-member authority has to be filled within 3 months.

Under **Section 17 (3)(b)** District Appropriate Authorities have been constituted to implement the Act and carry out the functions enumerated under Section 18 of this Act. The Chief Medical Officer is generally appointed as the District Appropriate Authority, but the same may vary from State to State. Now even the District Collector can be appointed as D. A. A.

The efficacy of the implementation of this Act is directly proportionate to the functioning of the Appropriate Authority. What needs to be understood is

that the key to implementing this Act is through strictly and completely enforcing the provisions of registration and maintenance of records.

Functions of the Appropriate Authority have been enumerated in **Section 17(4)**. It is the mandate of the Appropriate Authority:

- to grant, suspend or cancel the registration of a Counselling Centre, Laboratory and Clinic,

- to enforce the standards prescribed for the above stated places,

- to investigate complaints of breach of the provisions and/or the rules of this Act and take immediate action.

The places registered under this Act are bound to provide all reasonable facilities for the inspection of the place • equipment and records to the Appropriate Authority or any other authorized for registration of such places • for detection of the misuse of such facilities • or advertisements or for detection of the violation of any of the provisions under this Act.

This Act also provides for the establishing of an Advisory Committee for all Appropriate Authorities (explained later). The Appropriate Authority must seek and consider the advice of the Advisory Committee on matters such as, **a)** application for registration and cancellation, **b)** complaints for suspension or cancellation of registration. It is pointed out here that although the Appropriate Authority is expected to approach the Advisory Committee on the above aspects, it is not bound by the advice given by the Advisory Committee. On the other hand, the Appropriate Authority cannot disregard the advice of the Committee as a matter of routine. It is also the mandate of the Appropriate Authority to take action on the recommendations of the Advisory Committee made after investigation of a complaint for suspension or cancellation of registration.

The key function of the Appropriate Authority is to take appropriate legal action against the use of sex selection technique or procedure by any person at any place. This action can be taken by the Appropriate Authority on its own or on receipt of a complaint by any person. Further, the Appropriate Authority has the power to initiate independent legal action against such offender.

The other functions of the Appropriate Authority include creating awareness amongst the public about the misuse of technology prohibited under this Act and supervise its implementation and to recommend to the

Boards modifications or clarifications required from the point of view of the ground realities and the growing pace of technology. The Appropriate Authority or the concerned Government may publish periodically a list of registered places under this Act and the findings from the reports and other information that can be useful.

Clause 5 lays down the constitution and role of the Advisory Committee. It has been laid down that, to aid and advice the Appropriate Authority, for each Appropriate Authority there should be an Advisory Committee.

The Advisory Committee is composed of 8 persons including 3 medical experts, 1 legal expert, 1 officer from the department of information and publicity and 3 eminent social workers, atleast one being from a woman's organisation.

It has been clarified for all purposes that no person who has been associated in any activity prohibited under this Act can be appointed as a member of the Advisory Committee.

This Committee is expected to meet as and when it thinks fit or on the request of the Appropriate Authority. The Advisory Committee is to advise the Appropriate Authority on aspects of grant of registration certificates, suspension and cancellation of certificates, and advice on complaints of breach of the provisions of this Act.

In instances where the Appropriate Authority has not been vigilant enough, it is the pro-activeness of the Advisory Committee that has booked a number of criminals.

It has also been laid down that the intervening period between two meetings cannot go beyond the prescribed period, which in this case is sixty days.

The Appropriate Authority has the power to summon any person who is in possession of or has access to any information concerning violations of the provisions of this Act, it further has the power to ask for the production of any such document/information and to issue search warrants of any place suspected to be indulging in sex determination or/and sex selection.

(Section 17-A)

The Appropriate Authority can even search and seal any equipment, records, place etc. that is running without registration. The same can be released by paying a fine which is five times more than the registration fee and after giving an undertaking that it shall not detect the sex of the foetus or undertake pre-birth sex selection either before conception or after.

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While conducting a search the Appropriate Authority will do so in the presence of two independent witnesses for searching and examining any record and for sealing the same to be utilized as evidence.

CHAPTER VI

REGISTRATION OF GENETIC COUNSELLING CENTRES, GENTIC LABORATORIES AND GENETIC CLINICS

This chapter contains Sections 18, 19 & 20.

Section 18 provides that no person, after the amendment, shall open or render service to any clinic or center or place, which is or has equipment capable of carrying out sex determination or sex selection unless such place is registered.

The Rules provide for the manner in which and the fees required for making an application for registration to the Appropriate Authority.

For the places in existence before the amendment of the present Act, the Rules set a timeframe of 60 days within which such places are to apply for registration. On the expiry of 6 months after the amendment, such above stated places would cease to conduct PNDT till such time they are registered or their applications are disposed off.

Rule 4 deals with the procedure to apply for registration. An application in duplicate has to be made in **Form A** accompanied by an affidavit giving an undertaking that any test or procedure, for selecting the sex of the foetus before or after conception, will not be conducted and that the sex of the foetus will not be disclosed to anybody.

The applicant has to give another undertaking in the form of an affidavit stating that a notice will be prominently displayed at the place which is sought to be registered stating that no procedure or test is conducted here for the purpose of sex determination or sex selection. An acknowledgement receipt has to be given by the office of the Appropriate Authority concerned.

One of the main pre-conditions of registration is the satisfaction of the Appropriate Authority as to the capability of the place in providing and maintaining all the facilities and in the manner prescribed by this Act.

Section 19 lays down the provisions in relation to the grant of the certificate of registration. The Appropriate Authority is expected to first hold an inquiry and then, only after its complete satisfaction about the compliance of the provisions of this Act and considering the advice of the Advisory Committee can a certificate of registration be granted in duplicate in **Form B**. The certificate can be granted for one or more specified test or procedure

depending upon the space, availability, equipment standards and employees of the place.

After holding an enquiry and giving the applicant an opportunity to be heard and further considering the advice of the Advisory Committee, if the Appropriate Authority concludes that the requirements of this Act and rules are not being complied with, then the Appropriate Authority can reject the application with reasons recorded in writing in **Form C**. The enquiry or inspection can be conducted only after giving due notice to the applicant. The application has to be disposed off within 90 days from the date of its receipt.

This section further provides for renewal only after payment of prescribed fees. The application fee is Rs. 3,000/- for a Genetic Counselling Centre, Laboratory or clinic or an ultrasound clinic or imaging center. For an institute, hospital, nursing home or any place providing any of these facilities jointly, the application fee is Rs. 4,000/-. If the application is being re-submitted within 90 days of having been rejected, then the application fee will not have to be paid again. Any other subsequent application will be accompanied by the fee. This fee is non-refundable. This fee is to be utilized by the Appropriate Authority for activities in connection with the implementation of the provisions of this Act and Rules.

One important aspect is that the place, which has been granted registration certificate, is bound to display the same in a conspicuous place in its place of business. Also this certificate is non-transferable and in case of change of ownership or management or on closing down, both the copies of the registration certificate have to be surrendered to the Appropriate Authority. In the event of change of ownership or management, registration certificate has to be applied for afresh. A registration certificate is valid for 5 years.

For renewal of registration certificate, the application has to be made 30 days before the certificate expires. Before renewing the certificate of registration, the Appropriate Authority will satisfy itself about the implementation of the provisions of this Act and also consider the advice of the Advisory Committee.

The fee for renewal of the certificate will be $\frac{1}{2}$ of the fee provided. Both copies of the earlier certificate have to be surrendered. Further, if within a period of 90 days, the Appropriate Authority does not communicate to the applicant about the renewal or rejection of its certificate, then the certificate will be automatically renewed.

Section 20 provides for the cancellation or suspension of registration. This section clearly lays down that a show cause notice for cancellation or suspension of registration can be issued to the center or laboratory by the Appropriate Authority on its own or on a complaint made by any person. The notice should mention the reasons for the same.

Clause (2) lays down that after the person representing the center or clinic has been given a reasonable opportunity of being heard, for reasons to be recorded in writing and based on the advice of the Advisory Committee, if the Appropriate Authority is of the opinion that an offence under the provisions of this Act has been committed, it may suspend the registration for a prescribed period or cancel the registration as the case may be. It is further clarified that this action is without prejudice to any criminal action that can be taken against the center.

Further, the Appropriate Authority also has the discretion to suspend or cancel the registration of a clinic without issuing a show cause notice. This discretion can be used only where the Appropriate Authority is of the opinion that the above action is expedient in the public interest and reasons have to be recorded in writing.

Section 21 provides for an appellate mechanism to the Centre from its order of suspension or cancellation. An appeal can be preferred within 30 days to the Central Government against the order of the Central Appropriate Authority and the State Government against the order of the State Appropriate Authority.

CHAPTER VII

OFFENCES AND PENALTIES

This chapter contains Sections 22 to 28 and deals with acts, omissions and commissions that constitute offences under this Act and lays down the penalties for the same.

Section 22 prohibits advertisement relating to pre-natal and pre-conception determination of sex. This is one of the key provisions of this law.

Clause 1 clearly prohibits advertisement by any person, organisation, genetic center, laboratory and clinic, or any other center, laboratory or clinic having an ultrasound machine or any other technology capable of undertaking determination of the sex of the foetus or sex selection. This clause has been worded in such a manner that it covers existing technologies and also covers any future technologies.

While describing what acts would constitute advertisement it prohibits issuing, publishing, distributing, communicating, or causing to be issued, published, distributed or communicated any advertisement in any form which includes advertisement on the internet regarding facilities of pre-natal determination of sex or selection of sex before conception available at any center, clinic or any other place.

An important action that has been taken against advertisement of the availability of these technologies was the case against Dr. Malpani's Clinic in Mumbai. The website of this clinic advertised how parents could choose the sex of their unborn children with the help of modern technology. This case was brought to notice during the pendency of the PIL in the Supreme Court and due to directions from the Court, the content of the website had to be altered.

Clause 2 prohibits advertisement in any of the forms stated above regarding pre-natal determination or pre-conception sex selection by any means, scientific or otherwise. This provision covers advertisement of any kind of technology that purports determination or selection of the sex of the foetus, even if the technology is not accurate or is based on surmises and conjectures. A glaring example of the extent of this clause is the case that had been filed against Reliance Telecom as they offered the facility of knowing whether a pregnant woman would have a girl or a boy through the Chinese calendar. Even this was considered as an offence committed under this law.

Clause 3 lays down the punishment of imprisonment for a term that may extend to 3 years and of fine extending to Rs. 10,000/- for the contravention of this section.

Further an explanation clause clearly sets out the extent of coverage of the term advertisement for this section. It provides that advertisement includes any notice, circular, label, wrapper, or any other document and includes advertisement through the internet or any other media in electronic or print form. It further includes any visible representation made by means of any hoarding, wall-painting, signal, light, sound, smoke or gas.

Section 23 lays down that any qualified person who owns, or is employed and renders its technical services whether on an honorary basis or otherwise, to or at any centre, clinic or laboratory and contravenes any provisions or rules of this law, shall be punishable with imprisonment which may extend to 3 years and with fine extending to Rs. 10,000/-. On a subsequent conviction the term of imprisonment may extend to 5 years and fine may extend to Rs. 50,000/-.

Clause 2 further lays down that the Appropriate Authority shall report the name of the Registered Medical Practitioner (RMP) to the State Medical Council for taking necessary action including suspension of the registration of the RMP if charges have been framed and till the case is disposed off by the Court. It provides for removal of the name of the RMP from the register for a period of 5 years on the first offence and permanently for the subsequent offence.

Clause 3 penalises any person seeking the aid/help or approaching any center, clinic or laboratory for sex selection or for conducting a PNDT on any pregnant woman for any other purpose than the ones laid down in Section 4 of this Act. The punishment laid down is imprisonment extending to 3 years and fine extending to Rs. 50,000/- for the first offence. For the subsequent offence, imprisonment extending to 5 years and fine extending to Rs. 1,00,000/-.

Clause 4 clarifies any doubts about the liability of the pregnant woman. It clearly states that the above clause will not apply to a woman who was compelled to undergo such a procedure. Infact the argument of compulsion can be taken to such an extent that even a woman who walks into a clinic of her own will and says that she wants to know the sex of her foetus as she believes that it is better not to have a girl child be born than let her live in the unsafe environment that exists now, will be considered to be under the compulsion of societal norms.

Section 24 further clarifies and gives a presumption in favour of the woman. It says that the court will presume that the woman was compelled by her husband, or a relative or any other person, to undergo any technique in violation of the provision of this law unless the contrary is proved. Basically, the onus to prove that there was no compulsion will be on the other party and the woman will not have to prove that she was compelled as the same is being presumed by the Court. This is over and above the law relating to evidence.

Further such person compelling the woman will be booked under the Act for the offence of abetting the offence stated in the above clause and shall be punished accordingly.

Section 25 lays down a punishment of imprisonment extending upto 3 months or a fine of Rs. 1,000/- or both for violation or contravention of the provisions or rules of this Act for which no specific punishment has been laid down. It further provides for a penalty of an additional fine extending to Rs. 500/- per day for a continuing contravention after conviction for the first contravention.

Section 26 deals with offences committed by companies. It holds every person who was, at the time of commission of the offence, in charge of and was responsible to the company for the conduct of its business, and the company, liable. An exception can be made when the person proves that he had no knowledge of the commission of the offence or that he had exercised due diligence to prevent the commission of this offence.

Section 27 lays down explicitly that every offence under this Act is cognizable, non-bailable and non-compoundable.

Section 28 further goes on to say that a court of a Judicial Magistrate first class or Metropolitan Magistrate can take cognizance of a case only in two cases, when a complaint is made by the Appropriate Authority concerned or any officer authorized or when a person or a social organisation makes a complaint to the court after having given a 15 days notice to the concerned Appropriate Authority of its intention of filing a complaint. Therefore, clearly no role has been defined for the police and in most cases; the Appropriate Authorities have involved the police only for the purposes of protection fearing a backlash by the doctor/s.

It has also been specified that where a private complaint is being made, the Court can direct the Appropriate Authority to make available all records that may be relevant for the case to the complainant on demand.

CHAPTER VIII

MISCELLANEOUS

This chapter contains Sections 29 to 34.

Section 29 speaks of maintenance of records. It specifically lays down that all the records that are required to be maintained under this Act have to be preserved for a period of 2 years or for the period prescribed. Also, the Appropriate Authority, as specified in **Form H** has to maintain a permanent record of all applications received for grant or renewal of registration.

Further letters of intimation of change of address ownership etc have also to be maintained permanently. If there is any proceeding pending against a clinic, laboratory or center then the records have to be maintained till the case has been finally disposed off.

The Appropriate Authority or anyone so authorized will have access to inspect all such records at any reasonable time. The clinic is bound to make these records available to the Authority. If a clinic maintains records in the computer or any other electronic form, then a printed copy of the record shall be taken and maintained after being authenticated by the person responsible for maintaining such records.

Every place registered under this Act is bound to submit a complete report in terms of the all pre-conception and pregnancy related tests, procedures carried out every month by the 5th of the next month to the Appropriate Authority concerned.

Section 30 is the most important provision as it clearly defines the power of the Appropriate Authority to search and seize. This section empowers the Appropriate Authority to:

Enter and search any clinic, laboratory, centre or place,

Examine any record, register, document, book, pamphlet, advertisement or any other material object found, and

Seize and seal any or all of the above if it can be furnished as evidence of an offence having been committed.

The Appropriate Authority can do all these acts where it has reason to believe that an offence under this Act has been committed or is being committed. These powers can also be exercised by any person authorized by

the Appropriate Authority. Further the normal procedures of search and seizure will apply as per the Code of Criminal Procedure.

Section 31 lays down that no legal action can be taken against an Authority under this Act for any act done in good faith or intended to be done under the provisions of this Act.

Section 31-A provides for the removal of any difficulties that arise in the implementation of the amended Act by the Central Government.

Sections 32-34 provide for the framing of rules and regulations by the Central Government for carrying out the provisions of this Act.

Any place registered under this Act is bound to prominently display a notice in English and in the local language informing the public that disclosure of the sex of the foetus is prohibited under law and atleast one copy of this Act should be available in each place and shall be made available on demand.

CONCLUDING REMARKS

This law as it is, if implemented completely and in its entirety is strong enough to curb the declining sex ratio and brutal discrimination against women. When various stakeholders emphasize the implementation of this Act, they often encounter arguments that first the condition of women needs to be improved, practices like dowry must be stopped and automatically the issue of sex selection will cease to be a problem. This is a fallacy. Undoubtedly the other issues affecting women need to be addressed. However, this law has a clear and pointed purpose of prohibiting the misuse of technology and for which unless the offending doctors are booked nothing can be done.

Another argument that is now dangerously gaining favour is of curbing access to abortion in the country. For a lot of people the logical argument is that since the child sex ratio is declining due to female fetuses being aborted, the logical solution is that abortion rights be curbed. The point that gets entirely missed in the process is that unless the sex of the foetus is known a 'sex selective' abortion cannot take place, it therefore makes better sense to regulate the technologies that can reveal the sex of the foetus. This area is one of specialization and a layperson cannot interpret the reports and the findings of these PNDT and procedures. Therefore, this law does not speak about abortion at all as it aims to hit the root in this particular crime.

**THE PRE-CONCEPTION AND
PRE-NATAL DIAGNOSTIC
TECHNIQUES (PROHIBITION
OF SEX-SELECTION) ACT,
1994
(57 of 1994)
[20th September, 1994]**

CHAPTER I: PRELIMINARY

1. Short title, extent and commencement.--(1) This Act may be called the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.
 - (2) It shall extend to the whole of India except the State of Jammu and Kashmir.
 - (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. Definitions.-- In this Act, unless the context otherwise requires,--
 - (a) "Appropriate Authority" means the Appropriate Authority appointed under section 17;
 - (b) "Board" means the Central Supervisory Board constituted under section 7;
 - [(ba) "conceptus" means any product of conception at any stage of development from fertilisation until birth including extra embryonic membranes as well as the embryo or foetus;
 - (bb) "embryo" means a developing human organism after fertilisation [till the end of eight weeks (fifty-six days);
 - (bc) "foetus" means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth]
 - (c) "Genetic Counselling Centre" means an institute, hospital, nursing home or any place, by whatever name called, which provides for genetic counselling to patients;
 - (d) "Genetic Clinic" means a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures;

[Explanation.--For the purposes of this clause, "Genetic Clinic" includes a vehicle, where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment

which has the potential for detection of sex during pregnancy or selection of sex before conception, is used]

(e) "Genetic Laboratory" means a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic test;

[Explanation.--For the purposes of this clause, "Genetic Laboratory" includes a place where ultrasound machine or imaging machine, or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during pregnancy or selection of sex before conception, is used]

(f) "gynaecologist" means a person who possesses a post-graduate qualification in gynaecology and obstetrics;

[(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 (102 of 1956); or

(ii) a post-graduate degree in biological sciences]

(h) "paediatrician" means a person who possesses a post-graduate qualification in paediatrics;

[(i) "pre-natal diagnostic procedures" means all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo, blood or any other tissue or fluid of a man, or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception]

(j) "pre-natal diagnostic techniques" includes all pre-natal diagnostic procedures and pre-natal diagnostic tests;

[(k) "pre-natal diagnostic test" means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex linked diseases]

(l) "prescribed" means prescribed by rules made under this Act;

(m) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as

defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in a State Medical Register;

(n) "regulations" means regulations framed by the Board under this Act.

[(o) "sex selection" 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;

(p) "sonologist or imaging specialist" means a person who possesses any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956) or who possesses a post-graduate qualification in ultrasonography or imaging techniques or radiology;

(q) "State Board" means a State Supervisory Board or a Union territory Supervisory Board constituted under section 16A;

(r) "State Government" in relation to Union territory with Legislature means the Administrator of that Union territory appointed by the President under article 239 of the Constitution.]

CHAPTER II: REGULATION OF GENETIC COUNSELLING CENTRES, GENETIC LABORATORIES AND GENETIC CLINICS

3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.--On and from the commencement of this Act,--

(1) no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques;

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

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

[3A. Prohibition of sex selection .--

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

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

No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of the foetus to any Genetic

Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act]

CHAPTER III: REGULATION OF PRE-NATAL DIAGNOSTIC TECHNIQUES

4. Regulation of pre-natal diagnostic techniques.--On and from the commencement of this Act,--

(1) no place including a registered Genetic Counselling Centre or Genetic Laboratory or Generic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

(2) no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:--

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

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

- (i) age of the pregnant woman is above thirty-five years;
- (ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
- (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
- (iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
- (v) any other condition as may be specified by the Board:

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to

contravention of the provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

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

(5) no person including a relative or husband of a woman shall seek or encourage the conduct of any sex selection technique on her or him or both.]

5. Written consent of pregnant woman and prohibition of communicating the sex of foetus.--(1) No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless--

(a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;

(b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and

(c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

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

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

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

(b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

[(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.]

CHAPTER IV: CENTRAL SUPERVISORY BOARD

7. Constitution of Central Supervisory Board.--(1) The Central Government shall constitute a Board to be known as the Central Supervisory Board to exercise the powers and perform the functions conferred on the Board under this Act.

(2) The Board shall consist of--

(a) the Minister in charge of the Ministry or Department of Family Welfare, who shall be the Chairman, ex officio;

(b) the Secretary to the Government of India in charge of the Department of Family Welfare, who shall be the Vice-Chairman, ex officio;

[(c) three members to be appointed by the Central Government to represent the Ministries of Central Government in charge of Women and Child Development, Department of Legal Affairs or Legislative Department in the Ministry of Law and Justice, and Indian System of Medicine and Homoeopathy, ex officio]

(d) the Director General of Health Services of the Central Government, ex officio;

(e) ten members to be appointed by the Central Government, two each from amongst

(i) eminent medical geneticists;

(ii) eminent gynaecologist and obstetrician or expert of stri-roga or prasuti-tantra]

(iii) eminent paediatricians;

(iv) eminent social scientists; and

(v) representatives of women welfare organisations;

(f) three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States;

(g) four members to be appointed by the Central Government by rotation to represent the States and the Union territories, two in the alphabetical order and two in the reverse alphabetical order:

Provided that no appointment under this clause shall be made except on the recommendation of the State Government or, as the case may be, the Union territory;

(h) an officer, not below the rank of a Joint Secretary or equivalent of the Central Government, in charge of Family Welfare, who shall be the Member-Secretary, ex officio.

8. Term of office of members.--(1) The term of office of a member, other than an ex officio member, shall be,--

(a) in case of appointment under clause (e) or clause (f) of sub-section (2) of section 7, three years;^{1[**]}

["Provided that the term of office of a member elected under clause (1) of sub-section (2) of section 7 shall come to an end as soon as the member becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or ceases to be a member of the House from which she was elected; and".]

(b) in case of appointment under clause (g) of the said sub-section, one year.

ANNEXURE I

- (2) If a casual vacancy occurs in the office of any other members, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled by the Central Government by making a fresh appointment and the member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.
- (3) The Vice-Chairman shall perform such functions as may be assigned to him by the Chairman from time to time.
- (4) The procedure to be followed by the members in the discharge of their functions shall be such as may be prescribed.
9. Meetings of the Board.--(1) The Board shall meet at such time and place, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be provided by regulations:
- Provided that the Board shall meet at least once in six months.
- (2) The Chairman and in his absence the Vice-Chairman shall preside at the meetings of the Board.
- (3) If for any reason the Chairman or the Vice-Chairman is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting.
- (4) All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote.
- (5) Members other than ex officio members shall receive such allowances, if any, from the Board as may be prescribed.
10. Vacancies, etc., not to invalidate proceedings of the Board.--No act or proceeding of the Board shall be invalid merely by reason of--
- (a) any vacancy in, or any defect in the constitution of, the Board; or
- (b) any defect in the appointment of a person acting as a member of the Board; or
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.
11. Temporary association of persons with the Board for particular purposes.--
- (1) The Board may associate with itself, in such manner and for such purposes as may be determined by regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.
- (2) A person associated with it by the Board under sub-section (1) for any purpose shall have a right to take part in the discussions relevant to that

purpose, but shall not have a right to vote at a meeting of the Board and shall not be a member for any other purpose.

12. Appointment of officers and other employees of the Board.--(1) For the purpose of enabling it efficiently to discharge its functions under this Act, the Board may, subject to such regulations as may be made in this behalf, appoint (whether on deputation or otherwise) such number of officers and other employees as it may consider necessary :

Provided that the appointment of such category of officers, as may be specified in such regulations, shall be subject to the approval of the Central Government.

(2) Every officer or other employee appointed by the Board shall be subject to such conditions of service and shall be entitled to such remuneration as may be specified in the regulations.

13. Authentication of orders and other instruments of the Board.--All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other member authorised by the Board in this behalf, and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary or any other officer of the Board authorised in like manner in this behalf.

14. Disqualifications for appointment as member.--A person shall be disqualified for being appointed as a member if, he--

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a Corporation owned or controlled by the Government; or

(e) has, in the opinion of the Central Government, such financial or other interest in the Board as is likely to affect prejudicially the discharge by him of his functions as a member; or

[(f) has, in the opinion of the Central Government, been associated with the use or promotion of pre-natal diagnostic technique for determination of sex or with any sex selection technique.]

15. Eligibility of member for re-appointment--Subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a member shall be eligible for re-appointment as such member.

- [16. Functions of the Board.--The Board shall have the following functions, namely:--

- (i) to advise the Central Government on policy matters relating to use of pre-natal diagnostic techniques, sex selection techniques and against their misuse;
- (ii) 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;
- (iii) to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide;
- (iv) to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics;
- (v) to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation;
- (vi) any other functions as may be prescribed under the Act.]

CHAPTER V: APPROPRIATE AUTHORITY AND ADVISORY COMMITTEE

17. Appropriate Authority and Advisory Committee.--(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union Territories for the purposes of this Act.

(2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.

(3) The officers appointed as Appropriate Authorities under sub-section (1) or subsection (2) shall be,--

[(a) when appointed for the whole of the State or the Union territory, consisting of the following three members--

- (i) an officer of or above the rank of the Joint Director of Health and Family Welfare--Chairperson;
- (ii) an eminent woman representing women's organisation; and
- (iii) an officer of Law Department of the State or the Union territory concerned:

Provided that it shall be the duty of the State or the Union territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:

Provided further that any vacancy occurring therein shall be filled within three months of the occurrence.]

(e) 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;

(f) to create public awareness against the practice of sex selection or prenatal determination of sex;

(g) to supervise the implementation of the provisions of the Act and rules;

(h) to recommend to the Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.]

(5) The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

(6) The Advisory Committee shall consist of--

(a) three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists;

(b) one legal expert;

(c) one officer to represent the department dealing with information and publicity of the State Government or the Union Territory, as the case may be;

(d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

[(7) No person who has been associated with the use or promotion of prenatal diagnostic techniques for determination of sex or sex selection shall be appointed as a member of the Advisory Committee.]

(8) The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation registration and to give advice thereon:

Provided that the period intervening between any two meetings shall not exceed the prescribed period.

(9) The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed.

[17A . Powers of Appropriate Authorities.--The Appropriate Authority shall have the powers in respect of the following matters, namely:--

- (a) 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;
- (b) production of any document or material object relating to clause (a);
- (c) issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and
- (d) any other matter which may be prescribed.]

CHAPTER VI: REGISTRATION OF GENETIC COUNSELLING CENTRES, GENETIC LABORATORIES AND GENETIC CLINICS

18. Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics.--¹[(1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus and sex selection, or render services to any of them, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such Centre, Laboratory or Clinic is duly registered under the Act.]
- (2) Every application for registration under sub-section (1), shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.
- (3) Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged, either partly or exclusively, in counselling or conducting pre-natal diagnostic techniques for any of the purposes mentioned in section 4, immediately before the commencement of this Act, shall apply for registration within sixty days from the date of such commencement.
- (4) Subject to the provisions of section 6, every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged in counselling or conducting pre-natal diagnostic techniques shall cease to conduct any such counselling or technique on the expiry of six months from the date of commencement of this Act unless such Centre, Laboratory or Clinic has applied for registration and is so registered separately or jointly or till such application is disposed of, whichever is earlier.
- (5) No Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be registered under this Act unless the Appropriate Authority is satisfied that such Centre, Laboratory or Clinic is in a position to provide such facilities, maintain such equipment and standards as may be prescribed.
19. Certificate of registration.--(1) The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the

requirements of this Act and the rules made thereunder and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration in the prescribed form jointly or separately to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.

- (2) If, after the inquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act or the rules, it shall, for reasons to be recorded in writing, reject the application for registration.
 - (3) Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.
 - (4) The certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in a conspicuous place at its place of business.
20. Cancellation or suspension of registration.--(1) The Appropriate Authority may suo moto, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.
- (2) If, after giving a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.
 - (3) Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).
21. Appeal.--The Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the Appropriate Authority under section 20, prefer an appeal against such order to--
- (i) the Central Government, where the appeal is against the order of the Central Appropriate Authority; and
 - (ii) the State Government, where the appeal is against the order of the State Appropriate Authority, in the prescribed manner.

CHAPTER VII: OFFENCES AND PENALTIES

[22. Prohibition of advertisement relating to preconception and pre-natal determination of sex and punishment for contravention .-- (1) No person, organisation, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic including clinic, laboratory or centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of the foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such Centre, Laboratory, Clinic or at any other place.

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

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

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

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

24. Presumption in the case of conduct of pre-natal diagnostic techniques Notwithstanding anything contained in the Indian Evidence Act 1872, (1 of 1872) the court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4 and such person shall be liable for abetment of offence under

sub-section (3) of section 23 and shall be punishable for the offence specified under that 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 contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

26. Offences by companies.--(1) Where any offence, punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals, and

(b) "director", in relation to a firm, means a partner in the firm.

27. Offence to be cognizable, non-bailable and non-compoundable.--Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

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

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

(b) a person who has given notice of not less than ⁴[fifteen days] in the manner

prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.--For the purpose of this clause, "person" includes a social organisation.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

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

CHAPTER VIII: MISCELLANEOUS

29. Maintenance of records.--(1) All records, charts, forms, reports, consent letters and all the documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed:

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

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

30. Power to search and seize records, etc.--[(1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place, such Authority or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such Authority or officer considers necessary, such Genetic Counselling Centre Genetic Laboratory, Genetic Clinic or any other place and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize and seal the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.]

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

31. Protection of action taken in good faith.--No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorised 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.

32. Power to make rules.--(1) The Central Government may make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for--

- [(i) the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (2) of section 3;
- (ia) the manner in which the person conducting ultrasonography on a pregnant woman shall keep record thereof in the clinic under the proviso to sub-section (3) of section 4;]
- (ii) the form in which consent of a pregnant woman has to be obtained under section 5;
- (iii) the procedure to be followed by the members of the Central Supervisory Board in the discharge of their functions under sub-section (4) of section 8;
- (iv) allowances for members other than ex officio members admissible under subsection (5) of section 9;
- [(iva) code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics to be laid down by the Central Supervisory Board under clause (iv) of section 16;
- (ivb) the manner in which reports shall be furnished by the State and Union territory Supervisory Boards to the Board and the Central Government in respect of various activities undertaken in the State under the Act under clause (iv) of sub-section (1) of section 16A;
- (ivc) empowering the Appropriate Authority in any other matter under clause (d) of section 17A;]
- (v) the period intervening between any two meetings of the Advisory Committee under the proviso to sub-section (8) of section 17;
- (vi) the terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee under sub-section (9) of section 17;
- (vii) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 18;
- (viii) the facilities to be provided, equipment and other standards to be maintained by the Genetic Counselling Centre, Genetic Laboratory or

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Genetic Clinic under subsection (5) of section 18;

- (ix) the form in which a certificate of registration shall be issued under sub-section (1) of section 19;
 - (x) the manner in which and the period after which a certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 19;
 - (xi) the manner in which an appeal may be preferred under section 21;
 - (xii) the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 29;
 - (xiii) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody such documents, records or objects were seized under subsection (1) of section 30;
 - (xiv) any other matter that is required to be, or may be, prescribed.
33. Power to make regulations.--The Board may, with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for--
- (a) the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 9;
 - (b) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 11;
 - (c) the method of appointment, the conditions of service and the scales of pay and allowances of the officer and other employees of the Board appointed under section 12;
 - (d) generally for the efficient conduct of the affairs of the Board.
34. Rules and regulations to be laid before Parliament.--Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE)

RULES, 1996

1. Short title and commencement-

- (1) These Rules may be called the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996.]
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.- In these rules, unless the context otherwise requires:-

- (a) “Act” means The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994);
 - (b) “Employee” means a person working in or employed by a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic, and includes those working on part-time, contractual, consultancy, honorary or on any other basis;
 - (c) “Form” means a Form appended to these rules;
 - (e) “Section” means a section of the Act;
 - (f) Words and expressions used herein and not defined in these rules but defined in the Act, shall have the meanings, respectively, assigned to them in the Act.
3. The qualifications of the employees, the requirement of equipment etc. for a Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall be as under:
- (1) Any person being or employing
 - (i) a gynaecologist or a paediatrician having six months experience or four weeks training in genetic counseling or
 - (ii) a medical geneticists, having adequate space and educational charts/models/equipments for carrying out genetic counselling may set up a genetic counselling center and get it registered as a genetic counselling center.
 - (2) (a) Any person having adequate space and being or employing
 - (i) a Medical Geneticist and
 - (ii) a laboratory technician, having a B.Sc. degree in Biological Sciences or a degree or diploma in medical laboratory course with at least one year experience in conducting appropriate prenatal diagnostic techniques, tests

or procedures may set up a genetic laboratory.

(b) Such laboratory should have or acquire such of the following equipments as may be necessary for carrying out chromosomal studies, bio-chemical studies and molecular studies:-

- (i) Chromosomal studies:
 - (1) Laminar flow hood with ultraviolet and fluorescent light or other suitable culture hood.
 - (2) Photo-microscope with fluorescent source of light.
 - (3) Inverted microscope.
 - (4) Incubator and oven.
 - (5) Carbon dioxide incubator or closed system with 5% CO₂ atmosphere.
 - (6) Autoclave.
 - (7) Refrigerator.
 - (8) Water bath.
 - (9) Centrifuge.
 - (10) Vortex mixer.
 - (11) Magnetic stirrer.
 - (12) pH Meter.
 - (13) A sensitive balance (preferably electronic) with sensitivity of 0.1 milligram.
 - (14) Double distillation apparatus (glass).
 - (15) Such other equipments as may be necessary.
- (ii) Biochemical studies: (requirements according to tests to be carried out)
 - (1) Laminar flow hood with ultraviolet and fluorescent light or other suitable culture hood.
 - (2) Inverted microscope.
 - (3) Incubator and oven.
 - (4) Carbon dioxide incubator or closed system with 5% CO₂ atmosphere.
 - (5) Autoclave.
 - (6) Refrigerator.
 - (7) Water bath.
 - (8) Centrifuge.
 - (9) Electrophoresis apparatus and power supply.

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- (10) Chromatography chamber.
- (11) Spectro-photometer and Elisa reader or Radio-immunoassay system (with gamma beta-counter) or fluorometer for various biochemical tests.
- (12) Vortex mixer.
- (13) Magnetic stirrer.
- (14) pH meter.
- (15) A sensitive balance (preferably electronic) with sensitivity of 0.1 milligram.
- (16) Double distillation apparatus (glass).
- (17) Liquid nitrogen tank.
- (18) Such other equipments as may be necessary.
- (iii) Molecular studies:
 - (1) Inverted microscope.
 - (2) Incubator.
 - (3) Oven.
 - (4) Autoclave.
 - (5) Refrigerators (4 degree and minus 20 degree Centigrade).
 - (6) Water bath.
 - (7) Microcentrifuge.
 - (8) Electrophoresis apparatus and power supply.
 - (9) Vertex mixer.
 - (10) Magnetic stirrer.
 - (11) pH meter.
 - (12) A sensitive balance (preferably electronic) with sensitivity of 0.1 milligram.
 - (13) Double distillation apparatus (glass).
 - (14) P.C.R. machine.
 - (15) Refrigerated centrifuge.
 - (16) U.V. Illuminator with photographic attachment or other documentation system.
 - (17) Precision micropipettes.
 - (18) Such other equipments as may be necessary.
- (3) (1) Any person having adequate space and being or employing
 - (a) Gynaecologist having experience of performing at least 20 procedures in

chorionic villi aspirations per vagina or per abdomen, chorionic villi biopsy, amniocentesis, cordocentesis foetoscopy, foetal skin or organ biopsy or foetal blood sampling etc. under supervision of an experienced gynaecologist in these fields, or

- (b) a Sonologist, Imaging Specialist, Radiologist or Registered Medical Practitioner having Post Graduate degree or diploma or six months training or one year experience in sonography or image scanning, or.
- (c) A medical geneticist. may set up a genetic clinic/ultrasound clinic/imaging centre.
- (2) The Genetic Clinic/ultrasound clinic/imaging centre should have or acquire such of the following equipments, as may be necessary for carrying out the tests or procedures -
 - (a) Equipment and accessories necessary for carrying out clinical examination by an obstetrician or gynaecologist.
 - (b) An ultra-sonography machine including mobile ultrasound machine, imaging machine or any other equipment capable of conducting foetal ultrasonography.
 - (c) Appropriate catheters and equipment for carrying out chorionic villi aspirations per vagina or per abdomen.
 - (d) Appropriate sterile needles for amniocentesis or cordocentesis.
 - (e) A suitable foetoscope with appropriate accessories for foetoscopy, foetal skin or organ biopsy or foetal blood sampling shall be optional.
 - (f) Equipment for dry and wet sterilization.
 - (g) Equipment for carrying out emergency procedures such as evacuation of uterus or resuscitation in case of need.
 - (h) Genetic Works Station.]

3A. Sale of ultrasound machines/imaging machines:

- (1) No organization including a commercial organization or a person, including manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment, capable of detecting sex of foetus, shall sell distribute, supply, rent, allow or authorize the use of any such machine or equipment in any manner, whether on payment or otherwise, to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person unless such Centre, Laboratory, Clinic, body or person is registered under the Act.
- (2) The provider of such machine/equipment to any person/body registered

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

- (3) Any organization or person, including manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment capable of detecting sex of foetus selling, distributing, supplying or authorizing, in any manner, the use of any such machine or equipment to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person registered under the Act shall take an affidavit from the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any other body or person purchasing or getting authorization for using such machine /equipment that the machine/equipment shall not be used for detection of sex of foetus or selection of sex before or after conception.

4. Registration of Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres.-

- (1) An application for registration shall be made to the Appropriate Authority, in duplicate, in Form A, duly accompanied by an Affidavit containing-
 - (i) an undertaking to the effect that the Genetic Centre/Laboratory/ Clinic/ Ultrasound Clinic/ Imaging Centre/ Combination thereof, as the case may be, shall not conduct any test or procedure, by whatever name called, for selection of sex before or after conception or for detection of sex of foetus except for diseases specified in Section 4(2) nor shall the sex of foetus be disclosed to any body; and
 - (ii) an undertaking to the effect that the Genetic Centre/Laboratory/ Clinic/ Combination thereof, as the case may be, shall display prominently a notice that they do not conduct any technique, test or procedure etc. by whatever name called, for detection of sex of foetus or for selection of sex before or after conception.]
- (2) The Appropriate Authority, or any person in his office authorized in this behalf, shall acknowledge receipt of the application for registration, in the acknowledgement slip provided at the bottom of Form A, immediately if delivered at the office of the Appropriate Authority, or not later than the next working day if received by post.

5. Application Fee

- (1) Every application for registration under Rule 4 shall be accompanied by an application fee of :-
 - (a) Rs. 3000.00 for Genetic Counselling Centre, Genetic Laboratory, Genetic

Clinic, Ultrasound Clinic or Imaging Centre.

- (b) Rs. 4000.00 for an institute, hospital, nursing home, or any place providing jointly the service of a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres, Ultrasound Clinic or Imaging Centre or any combination thereof.

Provided that if an application for registration of any Genetic Clinic/ Laboratory/ Centre etc. has been rejected by the Appropriate Authority, no fee shall be required to be paid on re-submission of the application by the applicant for the same body within 90 days of rejection. Provided further that any subsequent application shall be accompanied with the prescribed fee. Application fee once paid will not be refunded.

- (2) The application fee shall be paid by a demand draft drawn in favour of the Appropriate Authority, on any scheduled bank payable at the headquarters of the Appropriate Authority concerned. The fees collected by the Appropriate Authorities for registration of Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre or any other body or person under sub-rule (1), shall be deposited by the Appropriate Authority concerned in a bank account opened in the name of the official designation of the Appropriate Authority concerned and shall be utilized by the Appropriate Authority in connection with the activities connected with implementation of the provisions of the Act and these rules.]

6. Certificate of registration.-

- (1) The Appropriate Authority shall, after making such enquiry and after satisfying itself that the applicant has complied with all the requirements, place the application before the Advisory Committee for its advice.
- (2) Having regard to the advice of the Advisory Committee the Appropriate Authority shall grant a certificate of registration, in duplicate, in Form B to the applicant. One copy of the certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic at a conspicuous place at its place of business:

Provided that the Appropriate Authority may grant a certificate of registration to a Genetic Laboratory or a Genetic Clinic to conduct one or more specified pre-natal diagnostic tests or procedures, depending on the availability of place, equipment and qualified employees, and standards maintained by such laboratory or clinic.

- (3) If, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of the Act and these rules, it shall, for the reasons to be recorded in writing, reject the application for registration and communicate

such rejection to the applicant as specified in Form C.

- (4) An enquiry under sub-rule(1), including inspection at the premises of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, shall, be carried out only after due notice is given to the applicant by the Appropriate Authority.
- (5) Grant of certificate of registration or rejection of application for registration shall be communicated to the applicant as specified in Form B or Form C, as the case may be, within a period of ninety days from the date of receipt of application for registration.
- (6) The certificate of registration shall be non-transferable. In the event of change of ownership or change of management or on ceasing to function as a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, both copies, of the certificate of registration shall be surrendered to the Appropriate Authority.
- (7) In the event of change of ownership or change of management of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, the new owner or manager of such Centre, Laboratory or Clinic shall apply afresh for grant of certificate of registration.

7. Validity of registration.- Every certificate of registration shall be valid for a period of five years from the date of its issue.

8. Renewal of registration.-

- (1) An application for renewal of certificate of registration shall be made in duplicate in Form A, to the Appropriate Authority thirty days before the date of expiry of the certificate of registration. Acknowledgement of receipt of such application shall be issued by the Appropriate Authority in the manner specified in sub-rule (2) of rule 4.
- (2) The Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and these rules and having regard to the advice of the Advisory Committee in this behalf, renew the certificate of registration, as specified in Form B, for a further period of five years from the date of expiry of the certificate of registration earlier granted.
- (3) If, after enquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of the Act and these rules, it shall, for reasons to be recorded in writing, reject the application for renewal of certificate of registration and communicate such rejection to the applicant as specified in Form C.

- (4) The fees payable for renewal of certificate of registration shall be one half of the fees provided in sub-rule (1) of rule 5.
- (5) On receipt of the renewed certificate of registration in duplicate or on receipt of communication of rejection of application for renewal, both copies of the earlier certificate of registration shall be surrendered immediately to the Appropriate Authority by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.
- (6) In the event of failure of the Appropriate Authority to renew the certificate of registration or to communicate rejection of application for renewal of registration within a period of ninety days from the date of receipt of application for renewal of registration, the certificate of registration shall be deemed to have been renewed.

9. Maintenance and preservation of records.-

- (1) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres shall maintain a register showing, in serial order, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counselling, procedure or test.]
- (2) The record to be maintained by every Genetic Counselling Centre, in respect of each woman counseled shall be as specified in Form D.
- (3) The record to be maintained by every Genetic Laboratory, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form E.
- (4) The record to be maintained by every Genetic Clinic, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F.
- (5) The Appropriate Authority shall maintain a permanent record of applications for grant or renewal of certificate of registration as specified in Form H. Letters of intimation of every change of employee, place, address and equipment installed shall also be preserved as permanent records.
- (6) All case related records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters shall be preserved by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic for a period of two years from the date of completion of counseling, pre-natal diagnostic procedure or pre-natal diagnostic test, as the case may be. In the event of any legal proceedings, the records shall be preserved till the final disposal of legal proceedings, or till the expiry of the said period of two years, whichever is later.

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- (7) In case the Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.
- (8) Every Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres shall send a complete report in respect of all pre-conception or pregnancy related procedures/ techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority.]

10. Conditions for conducting pre-natal diagnostic procedures.-

- (1) Before conducting preimplantation genetic diagnosis, or any pre-natal diagnostic technique/test/procedure such as amniocentesis, chorionic villi biopsy, foetoscopy, foetal skin or organ biopsy or cordocentesis, a written consent as specified in Form G, in a language the person undergoing such procedure understands, shall be obtained from her/him.]

Provided that where a Genetic Clinic has taken a sample of any body tissue or body fluid and sent it to a Genetic Laboratory for analysis or test, it shall not be necessary for the Genetic Laboratory to obtain a fresh consent in Form G.

- (1A) Any person conducting ultrasonography/image scanning on a pregnant woman shall give a declaration on each report on ultrasonography/image scanning that he/she has neither detected nor disclosed the sex of foetus of the pregnant woman to any body. The pregnant woman shall before undergoing ultrasonography/image scanning declare that she does not want to know the sex of her foetus.]
- (2) All the State Governments and Union Territories may issue translation of Form G in languages used in the State or Union Territory and where no official translation in a language understood by the pregnant woman is available, the Genetic Clinic may translate Form G into a language she understands.

11. Facilities for inspection.-

- (1) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic, Imaging Centre, nursing home, hospital, institute or any other place where any of the machines or equipments capable of performing any procedure, technique or test capable of pre-natal determination of sex or selection of sex before or after conception is used, shall afford all reasonable facilities for inspection of the place, equipment and records to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf for registration of such institutions, by whatever name called, under the Act, or for detection of misuse of such facilities or advertisement therefor or for selection of sex before or after

conception or for detection/disclosure of sex of foetus or for detection of cases of violation of the provisions of the Act in any other manner.

- (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 organisation if the organisation has not got itself registered under the Act. These machines of the organisations may be released if such organisation 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.]

12. Procedure for search and seizure.

- (1) The Appropriate Authority or any officer authorised in this behalf may enter and search at all reasonable times any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of two or more independent witnesses for the purposes of search and examination of any record, register, document, book, pamphlet, advertisement, or any other material object found therein and seal and seize the same if there is reason to believe that it may furnish evidence of commission of an offence punishable under the Act.

Explanation:- In these Rules -

- (1) 'Genetic Laboratory/Genetic Clinic/ Genetic Counselling Centre' would include an ultrasound centre/imaging centre/ nursing home/hospital/institute or any other place, by whatever name called, where any of the machines or equipments capable of selection of sex before or after conception or performing any procedure, technique or test for pre-natal detection of sex of foetus, is used;
- (2) 'material object' would include records, machines and equipments; and
- (3) 'seize' and 'seizure' would include 'seal' and 'sealing' respectively.]
- (2) A list of any document, record, register, book, pamphlet, advertisement or any other material object found in the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and seized shall be prepared in duplicate at the place of effecting the seizure. Both copies of such list shall be signed on every page by the Appropriate Authority or the officer authorized in this behalf and by the witnesses to the seizure:

Provided that the list may be prepared, in the presence of the witnesses, at a place other than the place of seizure if, for reasons to be recorded in writing, it is not practicable to make the list at the place of effecting the seizure.

- (3) One copy of the list referred to in sub-rule (2) shall be handed over, under acknowledgement, to the person from whose custody the document, record,

ANNEXURE II

register, book, pamphlet, advertisement or any other material object have been seized:

Provided that a copy of the list of such document, record, register, book, pamphlet, advertisement or other material object seized may be delivered under acknowledgement, or sent by registered post to the owner or manager of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, if no person acknowledging custody of the document, record, register, book, pamphlet, advertisement or other material object seized is available at the place of effecting the seizure.

- (4) If any material object seized is perishable in nature, the Appropriate Authority, or the officer authorized in this behalf shall make arrangements promptly for sealing, identification and preservation of the material object and also convey it to a facility for analysis or test, if analysis or test be required:

Provided that the refrigerator or other equipment used by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic for preserving such perishable material object may be sealed until such time as arrangements can be made for safe removal of such perishable material object and in such eventuality, mention of keeping the material object seized, on the premises of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be made in the list of seizure.

- (5) In the case of non-completion of search and seizure operation, the Appropriate Authority or the officer authorized in this behalf may make arrangement, by way of mounting a guard or sealing of the premises of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, for safe keeping, listing and removal of documents, records, book or any other material object to be seized, and to prevent any tampering with such documents, records, books or any other material object.

13. Intimation of changes in employees, place or equipment. Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall intimate every change of employee, place, address and equipment installed, to the Appropriate Authority within a period of thirty days of such change.

14. Conditions for analysis or test and pre-natal diagnostic procedures.-

- (1) No Genetic Laboratory shall accept for analysis or test any sample, unless referred to it by a Genetic Clinic.
- (2) Every pre-natal diagnostic procedure shall invariably be immediately preceded by locating the foetus and placenta through ultrasonography, and the pre-natal diagnostic procedure shall be done under direct ultrasonographic monitoring so as to prevent any damage to the foetus and placenta.

15. Meetings of the Advisory Committees.- The intervening period between any two meetings of Advisory Committees constituted under sub-section (5) of Section 17 to advise the Appropriate Authority shall not exceed sixty days.

16. Allowances to members of the Central Supervisory Board.-

- (1) The ex-officio members, and other Central and State Government officers appointed to the Board will be entitled to Travelling Allowance and Daily Allowance for attending the meetings of the Board as per the Travelling Allowance rules applicable to them.
- (2) The non-official members appointed to, and Members of Parliament elected to the Board will be entitled to Travelling Allowance and Daily Allowance for attending the meetings of the Board as admissible to non-official and Members of Parliament as the case may be, under the Travelling Allowances rules of the Central Government.

17. Public Information.-

- (1) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres shall prominently display on its premises a notice in English and in the local language or languages for the information of the public, to effect that disclosure of the sex of the foetus is prohibited under law.
- (2) At least one copy each of the Act and these rules shall be available on the premises of every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres, and shall be made available to the clientele on demand for perusal.
- (3) The Appropriate Authority, the Central Government, the State Government, and the Government/Administration of the Union Territory may publish periodically lists of registered Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics and findings from the reports and other information in their possession, for the information of the public and for use by the experts in the field.

18. Code of Conduct to be observed by persons working at Genetic Counseling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics. Imaging Centres etc.

All persons including the owner, employee or any other persons associated with Genetic Counseling Centres, Genetic Laboratories, Genetic Clinics, Ultrasound Clinics, Imaging Centres registered under the Act/these Rules shall -

- (i) not conduct or associate with, or help in carrying out detection or disclosure of sex of foetus in any manner;

ANNEXURE II

- (ii) not employ or cause to be employed any person not possessing qualifications necessary for carrying out pre-natal diagnostic techniques/ procedures, techniques and tests including ultrasonography;
- (iii) not conduct or cause to be conducted or aid in conducting by himself or through any other person any techniques or procedure for selection of sex before or after conception or for detection of sex of foetus except for the purposes specified in sub-section (2) of section 4 of the Act;
- (iv) not conduct or cause to be conducted or aid in conducting by himself or through any other person any techniques or test or procedure under the Act at a place other than a place registered under the Act/these Rules;
- (v) ensure that no provision of the Act and these Rules are violated in any manner;
- (vi) ensure that the person, conducting any techniques, test or procedure leading to detection of sex of foetus for purposes not covered under section 4(2) of the Act or selection of sex before or after conception, is informed that such procedures lead to violation of the Act and these Rules which are punishable offences;
- (vii) help the law enforcing agencies in bring to book the violators of the provisions of the Act and these Rules;
- (viii) display his/her name and designation prominently on the dress worn by him/her;
- (ix) write his/her name and designation in full under his/her signature;
- (x) on no account conduct or allow/cause to be conducted female foeticide;
- (xi) not commit any other act of professional misconduct.

19. Appeals.-

- (1) Anybody aggrieved by the decision of the Appropriate Authority at sub-district level may appeal to the Appropriate Authority at district level within 30 days of the order of the sub-district level Appropriate Authority.
- (2) Anybody aggrieved by the decision of the Appropriate Authority at district level may appeal to the Appropriate Authority at State/UT level within 30 days of the order of the District level Appropriate Authority.
- (3) Each appeal shall be disposed of by the District Appropriate Authority or by the State/Union Territory Appropriate Authority, as the case may be, within 60 days of its receipt.
- (4) If an appeal is not made within the time as prescribed under sub-rule (1), (2) or (3), the Appropriate Authority under that sub-rule may condone the delay in case he/she is satisfied that appellant was prevented for sufficient cause

FORM A

[See rules 4 (1) and 8 (1)]

(To be submitted in Duplicate with supporting documents as enclosures)

FORM OF APPLICATION FOR REGISTRATION OR RENEWAL OF REGISTRATION OF A GENETIC COUNSELING CENTRE/ GENETIC LABORATORY/ GENETIC CLINIC/ ULTRASOUND CLINIC/ IMAGING CENTRE

1. Name of the applicant
(Indicate name of the organisation sought to be registered)
2. Address of the applicant
3. Type of facility to be registered
(Please specify whether the application is for registration of a Genetic Counselling Centre/ Genetic Laboratory/ Genetic Clinic/ Ultrasound Clinic/ Imaging Centre or any combination of these)
4. Full name and address/ addresses of Genetic Counselling Centre/ Genetic Laboratory/ Genetic Clinic/ Ultrasound Clinic/ Imaging Centre with Telephone/ Fax number(s) Telegraphic/ Telex/ E-mail address(s)
5. Type of ownership of Organisation (individual ownership/ partnership/ company/ co-operative/ any other to be specified). In case type of organization is other than individual ownership, furnish copy of articles of association and names and addresses of other person responsible for management, as enclosure.
6. Type of Institution (Govt. Hospital/ Municipal Hospital/ Public Hospital/ Private Hospital/ Private Nursing Home/ Private Clinic/ Private Laboratory/ any other to be stated.)
7. Specific pre-natal diagnostic procedures/ tests for which approval is sought
 - (a) Invasive (i) amniocentesis/ chorionic villi aspiration/ chromosomal/ biochemical/ molecular studies
 - (b) Non-Invasive Ultrasonography leave blank if registration is sought for Genetic Counselling Centre only.
8. Equipment available with the make and model of each equipment (List to be attached on a separate sheet).
9. (a) Facilities available in the Counselling Centre.
(b) Whether facilities are or would be available in the Laboratory/ Clinic for the following tests:
 - (i) Ultrasound
 - (ii) Amniocentesis

ANNEXURE III

- (iii) Chorionic villi aspiration
- (iv) Foetoscopy
- (v) Foetal biopsy
- (vi) Cordocentesis

Whether facilities are available in the Laboratory/ Clinic for the following:

- (i) Chromosomal studies
- (ii) Biochemical studies
- (iii) Molecular studies
- (iv) Preimplantation genetic diagnosis

10. Name, qualifications, experience and registration number of employees (may be furnished as an enclosure).

11. State whether the Genetic Counselling Centre/ Genetic Laboratory/ Genetic Clinic/ Ultrasound Clinic/ Imaging Centre qualifies for registration in terms of requirements laid down in Rule 3]

12. For renewal applications only:

- (a) Registration No.
- (b) Date of issue and date of expiry of existing certificate of registration.

13. List of Enclosures:

(Please attach a list of enclosures/ supporting documents attached to this application)

Date:

(.....)

Place:

Name, designation

and signature of the person authorized to sign on behalf of the organisation to be registered.

DECLARATION

I, Sh./ Smt./ Kum./ Dr. son/ daughter/ wife of
..... aged Years resident of
..... working as (indicated
designation) in (indicate name of the organisation to be
registered) Hereby declare that I have read and
understood the Pre-natal Diagnostic Techniques (Regulation and Prevention of
Misuse) Act, 1994 (57 of 1994) and the Pre-natal Diagnostic Technique (Regulation
and Prevention of Misuse) Rules, 1996.

I also undertake to explain the said Act and Rules to all employees of the

THE LITTLE HANDBOOK

Genetic Counselling Centre/ Genetic Laboratory/ Genetic Clinic/ Ultrasound Clinic/ Imaging Centre in respect of which registration is sought and to ensure that Act and Rules are fully complied with.

Date:

(.....)

Place:

Name, designation and signature of the person authorized to sign on behalf of the organisation to be registered.

[SEAL OF THE ORGANISATION SOUGHT TO BE REGISTERED]

ACKNOWLEDGMENT

The application in Form A is duplicate for grant*/ renewal* of registration of Genetic Counselling Centre*/ Genetic Laboratory*/ Genetic Clinic*/ Ultrasound Clinic*/ Imaging Centre* by (Name and address of applicant) has been received by the Appropriate Authority On (date).

* The list of enclosures attached to the application in Form A has been verified with the enclosures submitted and found to be correct.

OR

* On verification it is found that the following documents mentioned in the list of enclosures are not actually enclosed.

This acknowledgment does not confer any rights on the applicant for grant or renewal of registration.

(.....)

Signature and Designation of Appropriate Authority, or authorised person in the Office of the Appropriate Authority

Date:

Place:

SEAL

FORM B

[See Rules 6 (2) and 8 (2)]

CERTIFICATE OF REGISTRATION

(To be issued in duplicate)

1. In exercise of the powers conferred under section 19 (1) of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994) the Appropriate Authority..... hereby grants registration to the Genetic Counselling Centre*/ Genetic Laboratory*/ Genetic Clinic*/ Ultrasound Clinic*/ Imaging Centre* named below for purposes of carrying out Genetic Counselling/ Pre-natal Diagnostic Procedures*/ Pre-natal Diagnostic Tests/ ultrasonography under the aforesaid Act for a period of five years ending on

2. This registration is granted subject to the aforesaid Act and Rules thereunder and any contravention thereof shall result in suspension or cancellation of this Certificate of Registration before the expiry of the said period of five years apart from prosecution.

A. Name and address of the Genetic Counselling Centre*/ Genetic Laboratory*/ Genetic Clinic*/ Ultrasound Clinic*/ Imaging Centre*

B. Pre-natal diagnostic procedures* approved for (Genetic Clinic).

Non-Invasive

(i) Ultrasound

Invasive

(ii) Amniocentesis

(iii) Chorionic villi biopsy

(iv) Foetoscopy

(v) Foetal skin or organ biopsy

(vi) Cordocentesis

(vii) Any other (specify)

C. Pre-natal diagnostic Tests approved (for Genetic Laboratory)

(i) Chromosomal studies

(ii) Biochemical studies

(iii) Molecular studies

D. Any other purpose (please specify)

3. Model and make of equipments being used (any changes is to be intimated to the Appropriate Authority under rule 13).

4. Registration No. allotted

5. Period of validity of earlier Certificate of Registration.
(For renewed Certificate of Registration only)

From.....To.....

Signature, name and designation of
The Appropriate Authority

SEAL

Date:

FORM C

[See rule 6 (3), 6 (5) and 8 (3)]

FORM FOR REJECTION OF APPLICATION FOR GRANT/ RENEWAL OR REGISTRATION

In exercise of the powers conferred under section 19 (2) of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 the Appropriate Authority hereby rejected the application for grant*/ renewal of registration of the under-mentioned Genetic Counselling Centre*/ Genetic Laboratory*/ Genetic Clinic*/ Imaging Centre*.

(1) Name and address of the Genetic Counselling
Centre*/ Genetic Laboratory*/ Genetic Clinic*/
Ultrasound Clinic*/ Imaging Centre*

(2) Reasons for rejection of application for grant/
Renewal of registration:

Signature, name and designation of
the Appropriate Authority with

Seal of office

Date:

Place:

FORM D

[See rule 9 (2)]

FORM FOR MAINTENANCE OF RECORDS BY THE GENETIC COUNSELING CENTRE

1. Name and address of Genetic Counselling centre.
2. Registration No.
3. Patient's name
4. Age
5. Husband's/ Father's name
6. Full address with Tel. No., if any
7. Referred by (Full name and address of Doctor(s) with registration No.(s) (Referral note to be preserved carefully with case papers)
8. Last menstrual period/ weeks of pregnancy
9. History of genetic/ medical disease in the family (specify)

Basis of diagnosis:

- (a) Clinical
- (b) Bio-chemical
- (c) Cytogenetic
- (d) Other (e.g. radiological, ultrasonography)

10. Indication for pre-natal diagnosis

A. Previous child/ children with:

- (i) Chromosomal disorders
- (ii) Metabolic disorders
- (iii) Congenital anomaly
- (iv) Mental retardation
- (v) Haemoglobinopathy
- (vi) Sex linked disorders
- (vii) Single gene disorder
- (viii) Any other (specify)

B. Advance maternal age (35 years or above)

C. Mother/ father/ sibling having genetic disease

ANNEXURE III

(specify)

D. Others (specify)

11. Procedure advised

(i) Ultrasound

(ii) Amniocentesis

(iii) Chorionic villi biopsy

(iv) Foetoscopy

(v) Foetal skin or organ biopsy

(vi) Cordocentesis

(vii) Any other (specify)

12. Laboratory tests to be carried out

(i) Chromosomal studies

(ii) Molecular studies

(iii) Pre-implantation genetic diagnosis

13. Result of diagnosis

If abnormal give details.

Normal/ Abnormal

14. Was MTP advised?

15. Name and address of Genetic Clinic* to which patient is referred.

16. Dates of commencement and completion of genetic counseling.

Name, Signature and Registration No. of the Medical Geneticist/
Gynaecologist/ Paediatrician administering Genetic Counselling

Place:

Date:

FORM E

[See rule 9 (3)]

FORM FOR MAINTENANCE OF RECORDS BY GENETIC LABORATORY

1. Name and address of Genetic Laboratory
2. Registration No.
3. Patient's name
4. Age
5. Husband's/ Father's name
6. Full address with Tel. No., if any
7. Referred by/ sample sent by (full name and address of Genetic Clinic) (Referral note to be preserved carefully with case papers)
8. Type of sample: Maternal blood/ Chorionic villus sample/ amniotic fluid/ Foetal blood or other foetal tissue (specify)
9. Specify indication for pre-natal diagnosis
 - A. Previous child/ children
 - (i) Chromosomal disorders
 - (ii) Metabolic disorders
 - (iii) Malformation(s)
 - (iv) Mental retardation
 - (v) Hereditary haemolytic anaemia
 - (vi) Sex linked disorders
 - (vii) Single gene disorder
 - (viii) Any other (specify)
 - B. Advance maternal age (35 years or above)
 - C. Mother/ father/ sibling having genetic disease (specify)
 - D. Others (specify)
10. Laboratory tests carried out (give details)
 - (i) Chromosomal studies
 - (ii) Biochemical studies
 - (iii) Molecular studies

ANNEXURE III

(iv) Pre-implantation genetic diagnosis

11. Result of diagnosis

If abnormal give details.

Normal/ Abnormal

12. Date(s) on which tests carried out.

The results of the Pre-natal diagnostic tests were conveyed to
..... on

Name, Signature and Registration No. of the
Medical Geneticist/ Director of the Institute

Place:

Date:

FORM F

[See proviso to section 4 (3), rule 9 (4) and rule 10 (1-A)]

FORM FOR MAINTENANCE OF RECORD IN RESPECT OF PREGNANT WOMAN BY
GENETIC CLINIC/ ULTRASOUND CLINIC/ IMAGING CENTRE

1. Name and address of the Genetic Clinic/ Ultrasound Clinic/ Imaging Centre.
2. Registration No.
3. Patient's name and her age
4. Number of children with sex of each child
5. Husband's/ Father's name
6. Full address with Tel. No., if any
7. Referred by (full name and address of Doctor(s)/ Genetic Counselling Centre (Referral note to be preserved carefully with case papers)/ self referral
8. Last menstrual period/ weeks of pregnancy
9. History of genetic/ medical disease in the family (specify)
Basis of diagnosis:
 - (a) Clinical
 - (b) Bio-chemical
 - (c) Cytogenetic
 - (d) Other (e.g. radiological, ultrasonography, etc.) (specify)
10. Indication for pre-natal diagnosis
 - A. Previous child/ children
 - (i) Chromosomal disorders
 - (ii) Metabolic disorders
 - (iii) Congenital anomaly
 - (iv) Mental retardation
 - (v) Haemoglobinopathy
 - (vi) Sex linked disorders
 - (vii) Single gene disorder
 - (viii) Any other (specify)

ANNEXURE III

- B. Advance maternal age (35 years or above)
- C. Mother/ father/ sibling having genetic disease (specify)
- D. Others (specify)

11. Procedures carried out (with name and registration

No. of Gynaecologist/ Radiologist/ Registered Medical Practitioner) who performed it.

Non-Invasive

- (i) Ultrasound (specify purpose for which ultrasound is to done during pregnancy)

[List of indications for ultrasonography of pregnant women are given in the note below]

Invasive

- (ii) Amniocentesis
- (iii) Chorionic Villi aspiration
- (iv) Foetal biopsy
- (v) Cordocentesis
- (vi) Any other (specify)

12. Any complication of procedure please specify

13. Laboratory tests recommended

- (i) Chromosomal studies
- (ii) Biochemical studies
- (iii) Molecular studies
- (iv) Pre-implantation genetic diagnosis

14. Result of

- (a) Pre-natal diagnostic procedure (give details)

- (b) Ultrasonography

(specify abnormality detected, if any). Normal/ Abnormal

15. Date(s) on which procedures carried out.

16. Date on which consent obtained. (In case of invasive)

17. The result of pre-natal diagnostic procedure were conveyed to..... on

18. Was MTP advised/ conducted?

19. Date on which MTP carried out.

Date: _____ Name, Signature and Registration number of
the Gynaecologist/ radiologist/ Director of the Clinic

Place: _____

DECLARATION OF PREGNANT WOMAN

I, Ms. (name of the pregnant woman) declare that by undergoing ultrasonography/ image scanning, etc. I do not want to know the sex of my foetus.

Signature/ Thumb impression of pregnant woman

DECLARATION OF DOCTOR/ PERSON CONDUCTING ULTRASONOGRAPHY/ IMAGE SCANNING

I, (name of the person conducting ultrasonography/ image scanning) declare that while conducting ultrasonography/ image scanning on Ms. (name of the pregnant woman), I have neither detected nor disclosed the sex of her foetus to any body in any manner.

Name and signature of the person conducting ultrasonography/ image scanning/
Director or owner of genetic clinic/ ultrasound clinic imaging centre.

Important Note:

- (i) Ultrasound is not indicated/ advised/ performed to determine the sex of foetus except for diagnosis of sex-linked diseases such as Duchenne Muscular Dystrophy, Haemophilia A & B, etc.
- (ii) During pregnancy Ultrasonography should only be performed when indicated. The following is the representative list of indications for ultrasound during pregnancy.
 - (1) To diagnose intra-uterine and/ or ectopic pregnancy and confirm viability.
 - (2) Estimation of gestational age (dating).
 - (3) Detection of number of foetuses and their chorionicity.
 - (4) Suspected pregnancy with IUCD in-situ or suspected pregnancy following contraceptive failure/ MTP failure.
 - (5) Vaginal bleeding/ leaking.
 - (6) Follow-up of cases of abortion.
 - (7) Assessment of cervical canal and diameter of internal os.
 - (8) Discrepancy between uterine size and period of amenorrhoea.
 - (9) Any suspected adnexal or uterine pathology/ abnormality.

ANNEXURE III

- (10) Detection of chromosomal abnormalities, foetal structural defects and other abnormalities and their follow-up.
- (11) To evaluate foetal presentation and position.
- (12) Assessment of liquor amnii.
- (13) Preterm labour/ preterm premature rupture of membranes.
- (14) Evaluation of placental position, thickness, grading and abnormalities (placenta praevia, retroplacental position, thickness, grading and abnormalities (placenta praevia, retroplacental haemorrhage, abnormal adherence, etc.)
- (15) Evaluation of umbilical cord presentation, insertion, nuchal, encirclement, number of vessels and presence of true knot.
- (16) Evaluation of previous Caesarean Section scars.
- (17) Evaluation of foetal growth parameters, foetal weight and foetal well being.
- (18) Colour flow mapping and duplex Doppler studies.
- (19) Ultrasound guided procedures such as medical termination of pregnancy, external cephalic version, etc., and their follow-up.
- (20) Adjunct to diagnostic and therapeutic invasive interventions such as chorionic villus sampling (CVS), amniocenteses, foetal blood sampling, foetal skin biopsy, amnio infusion, intrauterine infusion, placement of shunts, etc.
- (21) Observation of intra-partum events.
- (22) Medical/ surgical conditions complicating pregnancy.
- (23) Research/ scientific studies in recognized institutions.

Person conducting ultrasonography on a pregnant women shall keep complete record thereof in the clinic/ centre in Form F and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 of the Act, unless contrary is proved by the person conducting such ultrasonography.

FORM G

[See rule 10]

FORM OF CONSENT

(For invasive techniques)

I, wife/ daughter of Age years
residing at hereby state that I have been
explained fully the probable side effects and after effects of the pre-natal diagnostic
procedures.

I wish to undergo the pre-implantation/ pre-natal diagnostic technique/ test/
procedures in my own interest to find out the possibility of any abnormality (i.e.,
disease/ deformity/ disorder) in the child I am carrying.

I undertake not to terminate the pregnancy if the pre-natal procedure/ technique/
test conducted show the absence of disease/ deformity/ disorder.

I understand that the sex of the foetus will not be disclosed to me.

I understand that breach of this undertaking will make me liable to penalty as
prescribed in the Pre-natal Diagnostic Techniques (Regulation and Prevention of
Misuse) Act, 1994 (57 of 1994) and rules framed thereunder.

Date:

Signature of the pregnant woman.

Place:

I have explained the contents of the above to the patient and her companion (Name
..... Address Relationship
.....) in a language she/ they understand.

Name, Signature and/ Registration number of
Gynaecologist/ Medical Geneticist/ Radiologist/ Paediatrician/
Director of the Clinic/ Centre/ Laboratory

Date:

Name, Address and Registration number of
Genetic Clinic/ Institute

SEAL

FORM H

[See rule 9 (5)]

FORM FOR MAINTENANCE OF PERMANENT RECORD OF APPLICATIONS FOR GRANT/ REJECTION OF REGISTRATION UNDER THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTATION OF MISUSE ACT, 1994)

1. Sl. No.
2. File number of Appropriate Authority.
3. Date of receipt of application for grant of registration.
4. Name, Address, Phone/ Fax, etc., of Applicant:
5. Name and address(es) of Genetic Counselling Centre*/ Genetic Laboratory*/ Genetic Clinic*/ Ultrasound Clinic*/ Imaging Centre*.
6. Date of consideration by Advisory Committee and recommendation of Advisory Committee, in summary.
7. Outcome of application (state granted/ rejected and state of issue of orders-record date of issue of order in Form B or Form C).
8. Registration number allotted and date of expiry of registration.
9. Renewals (date of renewal and renewed upto).
10. File number in which renewals dealt.
11. Additional information, if any.

Name, Designation and Signature of
Appropriate Authority

Guidance for Appropriate Authority

- (a) Form H is a permanent record to be maintained as a register, in the custody of the Appropriate Authority.
- (b) * Means strike out whichever is not applicable.
- (c) On renewal, the Registration Number of the Genetic Counselling Centre/ Genetic Laboratory/ genetic Clinic/ Ultrasound Clinic/ Imaging Centre will not change.

AIR2003SC3309, 2003(7) SCALE345, (2003) 8SCC398

IN THE SUPREME COURT OF INDIA

Writ Petition (Civil) No. 301 of 2000

Decided On: 10.09.2003

Centre for Enquiry Into Health and Allied Themes (CEHAT) and Ors.

Vs.

Union of India (UOI) and Ors.

Hon'ble Judges:

M.B. Shah and Ashok Bhan, JJ.

JUDGMENT

Shah, J.

1. It is an admitted fact that in Indian Society, discrimination against girl child still prevails, maybe because of prevailing uncontrolled dowry system despite the Dowry Prohibition Act, as there is no change in the mind-set or also because of insufficient education and/or tradition of women being confined to household activities. Sex selection/sex determination further adds to this adversity. It is also known that number of persons condemn discrimination against women in all its forms, and agree to pursue, by appropriate means, a policy of criminalizing discrimination against women, still however, we are not in a position to change mental set-up which favours a male child against a female. Advance technology is increasingly used for removal of foetus (may or may not be seen as commission of murder) but it certainly affects the sex ratio. The misuse of modern science and technology by preventing the birth of girl child by sex determination before birth and thereafter abortion is evident from the 2001 Census figures which reveal greater decline in sex ratio in the 0-6 age group in States like Haryana, Punjab, Maharashtra and Gujarat, which are economically better off.

2. Despite this, it is unfortunate that law which aims at preventing such practice is not implemented and, therefore, Non-Governmental Organisations are required to approach this Court for implementation of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 renamed after amendment as "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act" (hereinafter referred to as 'the **PNDT** Act') which is the normal function of the Executive.

3. In this petition, it was interalia prayed that as the Pre-natal Diagnostic Techniques contravene the provisions of the **PNDT** Act, the Central Government and the State Governments be directed to implement the provisions of the **PNDT** Act **(a)** by appointing appropriate authorities at State and District levels and the Advisory Committees; **(b)** the Central Government be directed to ensure that

Central Supervisory Board meets every 6 months as provided under the **PNDT** Act; and (c) for banning of all advertisements of pre-natal sex selection including all other sex determination techniques which can be abused to selectively produce only boys either before or during pregnancy.

4. After filing of this petition, notices were issued and thereafter various orders from time to time were passed to see that the Act is effectively implemented.

5.A] On 4th May 2001, following order was passed: --

"It is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that gentle touch of a daughter and her voice has soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of female infanticide whereby female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advance medical techniques. Unfortunately, developed medical science is misused to get rid of a girl child before birth. Knowing full well that it is immoral and unethical as well as it may amount to an offence; foetus of a girl child is aborted by qualified and unqualified doctors or compounders. This has affected overall sex ratio in various States where female infanticide is prevailing without any hindrance.

For controlling the situation, the Parliament in its wisdom enacted the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as "the **PNDT** Act"). The Preamble, inter alia, provides that the object of the Act is to prevent 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. The Act came into force from 1st January 1996.

It is apparent that to a large extent, the **PNDT** Act is not implemented by the Central Government or by the State Governments. Hence, the petitioners are required to approach this Court under Article 32 of the Constitution of India. One of the petitioners is the Centre for Enquiry Into Health and Allied Themes (CEHAT), which is a research center of Anusandhan Trust, based in Pune and Mumbai. Second petitioner is Mahila Sarvangeen Utkarsh Mandal (MASUM) based in Pune and Maharashtra and the third petitioner is Dr. Sabu M. George who is having experience and technical knowledge in the field. After filing of this petition, this Court issued notices to the concerned parties on 9.5.2000. It took

nearly one year for the various States to file their affidavits in reply/written submissions. **Prima facie it appears that despite the PNDT Act being enacted by the Parliament five years back, neither the State Governments nor the Central Government has taken appropriate actions for its implementation.** Hence, after considering the respective submissions made at the time of hearing of this matter, as suggested by the learned Attorney General for India, Mr. Soli J. Sorabjee following directions are issued on the basis of various provisions for the proper implementation of the **PNDT Act**: -

I. Directions to the Central Government

1. The Central Government is directed to create public awareness against the practice of pre-natal determination of sex and female foeticide through appropriate releases/programmes in the electronic media. This shall also be done by Central Supervisory Board ("CSB" for short) as provided under Section 16(iii) of the **PNDT Act**.
2. The Central Government is directed to implement with all vigor and zeal the **PNDT Act** and the Rules framed in 1996. Rule 15 provides that the intervening period between two meetings of the Advisory Committees constituted under Sub-section (5) of Section 17 of the **PNDT Act** to advise the appropriate authority shall not exceed 60 days. It would be seen that this Rule is strictly adhered to.

II. Directions to the Central Supervisory Board (CSB)

1. Meetings of the CSB will be held at least once in six months. [Re. Proviso to Section 9(1)] The constitution of the CSB is provided under Section 7. It empowers the Central Government to appoint ten members under Section 7(2)(e) which includes eminent medical practitioners including eminent social scientists and representatives of women welfare organizations. We hope that this power will be exercised so as to include those persons who can genuinely spare some time for implementation of the Act.
2. The CSB shall review and monitor the implementation of the Act. [Re. Section 16(ii)].

3. The CSB shall issue directions to all State/UT. Appropriate Authorities to furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about:-
 - (i) Survey of bodies specified in Section 3 of the Act.
 - (ii) Registration of bodies specified in Section 3 of the Act.
 - (iii) Action taken against non-registered bodies operating in violation of Section 3 of the Act, inclusive of search and seizure of records.
 - (iv) Complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.
 - (v) Number and nature of awareness campaigns conducted and results flowing therefrom.
4. The CSB shall examine the necessity to amend the Act keeping in mind emerging technologies and difficulties encountered in implementation of the Act and to make recommendations to the Central Government. [Re. Section 16]
5. The CSB shall lay down a code of conduct under Section 16(iv) of the Act to be observed by persons working in bodies specified therein and to ensure its publication so that public at large can know about it.
6. The CSB will require medical professional bodies/associations to create awareness against the practice of pre-natal determination of sex and female foeticide and to ensure implementation of the Act.

III. Directions to State Government/UT Administrations

1. All State Government/UT Administrations are directed to appoint by notification, fully empowered Appropriate Authorities at district and sub-district

levels and also Advisory Committees to aid and advise the Appropriate Authority in discharge of its functions [Re. Section 17(5)]. For the Advisory Committee also, it is hoped that members of the said Committee as provided under Section 17(6)(d) should be such persons who can devote some time for the work assigned to them.

2. All State Governments/UT Administrations are directed to publish a list of the Appropriate Authorities in the print and electronic media in its respective State/UT.

3. All State Governments/UT Administrations are directed to create public awareness against the practice of pre-natal determination of sex and female foeticide through advertisement in the print and electronic media by hoarding and other appropriate means.

4. All State Governments/UT Administrations are directed to ensure that all State/UT appropriate Authorities furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about:-

(i) Survey of bodies specified in Section 3 of the Act.

(ii) Registration of bodies specified in Section 3 of the Act.

(iii) Action taken against non-registered bodies operating in violation of Section 4 of the Act, inclusive of search and seizure of records.

(iv) Complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.

(v) Number and nature of awareness campaigns conducted and results flowing therefrom.

IV. Directions to Appropriate Authorities

1. Appropriate Authorities are directed to take prompt action against any person or body who issues or causes to be issued any advertisement in violation of Section 22 of the Act.
2. Appropriate Authorities are directed to take prompt action against all bodies specified in Section 3 of the Act as also against persons who are operating without a valid certificate of registration under the Act.
3. All State/UT Appropriate Authorities are directed to furnish quarterly returns to the CSB giving report on the implementation and working of the Act. These returns should inter alia contain specific information about:-
 - (i) Survey of bodies specified in Section 3 of the act.
 - (ii) Registration of bodies specified in Section 3 of the Act including bodies using ultrasound machines.
 - (iii) Action taken against non-registered bodies operating in violation of Section 3 of the Act, inclusive of search and seizure of records.
 - (iv) Complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.
 - (v) Number and nature of awareness campaigns conducted and results flowing therefrom.

The CSB and the State Governments/Union Territories are directed to report to this Court on or before 30th July 2001. List of the matter on 6.8.2001 for further directions at the bottom of the list."

6. **B]** In spite of the above order, certain States/UTs did not file their affidavits. Matter was adjourned from time to time and on 19th September, 2001, following order was passed:--

"Heard the learned counsel for the parties and considered the affidavits filed on behalf of the various States. From the said affidavits, it appears that the directions issued by this Court are not complied with.

1. At the outset, we may state that there is total slackness by the Administration in implementing the Act. Some learned counsel appointed out that even though the Genetic Counselling Centre, genetic Laboratories or Genetic Clinics are not registered, no action is taken as provided under Section 23 of the Act, but only a warning is issued. In our view, those Centres which are not registered are required to be prosecuted by the Authorities under the provisions of the Act and there is no question of issue of warning and to permit them to continue their illegal activities.

It is to be stated that the Appropriate Authorities or any officer of the Central or the State Government authorised in this behalf is required to file complaint under Section 28 of the Act for prosecuting the offenders.

Further wherever at District Level, appropriate authorities are appointed, they must carry out the necessary survey of Clinics and take appropriate action in case of non-registration or non-compliance of the statutory provisions including the Rules. **Appropriate authorities are not only empowered to take criminal action, but to search and seize documents, records, objects etc. of unregistered bodies under Section 30 of the Act.**

2. It has been pointed out that the States/Union Territories have not submitted quarterly returns to the Central Supervisory Board on implementation of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as "the Act"). Hence it is directed that the **quarterly returns to Central Supervisory Board should be submitted giving the following information:-**

- (a) Survey of Centres, Laboratories/Clinics,
- (b) Registration of these bodies,
- (c) Action taken against unregistered bodies,
- (d) Search and Seizure,
- (e) Number of awareness campaigns, and
- (f) Results of campaigns"

7. **C]** On 7th November, 2001, learned counsel for the Union of India stated that the Central Government has decided to take concrete steps for the implementation of the Act and suggested to set up National Inspections and Monitoring Committee for the implementation of the Act. It was ordered accordingly.

8. **D]** On 11th December, 2001, it was pointed out that certain State Governments have not disclosed the names of the members of the Advisory Committee. Consequently, the State Governments were directed to publish the names of advisory committee in various districts so that if there is any complaint, any citizen can approach them. The Court further observed thus:--

"For implementation of the Act and the rules, it appears that it would be desirable if the Central Government frames appropriate rules with regard to sale of ultrasound machines to various clinics and issue directions not to sell machines to unregistered clinics. Learned counsel Mr. Mahajan appearing for Union of India submitted that appropriate action would be taken in this direction as early as possible."

9. **E]** On March 31, 2003, it was pointed out that in conformity with the various directions issued by this Court, the Act has been amended and titled as "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act". It was submitted that people are not aware of the new amendment and, therefore, following reliefs were sought:--

- a)** Direct the Union of India, State Governments/UTs and the authorities constituted under the **PNDT** Act to prohibit sex selection techniques and its advertisement throughout the country;
- b)** Direct that the appropriate authorities shall also include "vehicles" with ultra sound machines etc., in their quarterly reports hereinafter as defined under Section 2(d);
- c)** Any person or institution selling Ultra Sound machine should provide information to the appropriate State Authority in furtherance of Section 3-B of the Amended Act;
- d)** Direct that State Supervisory Boards be constituted in accordance with the amended Section 16A in order to carry out the functions enumerated therein;
- e)** Direct appropriate authorities to initiate suo moto legal action under the amended Section 17(iv)(e);
- f)** Direct that the Central Supervisory Board shall publish half yearly consolidated reports based on the quarterly reports obtained from the State bodies. These reports should specifically contain information on:

ANNEXURE IV

- 1) Survey of bodies and the number of bodies registered.
- 2) Functioning of the regulatory bodies providing the number and dates of meetings held.
- 3) Action taken against non-registered bodies inclusive of search and seizure of records.
- 4) Complaints received and action taken pursuant thereto.
- 5) Nature and number of awareness programmes.
- 6) Direct that the Central Supervisory Board shall carry out all the additional functions as given under the amended Section 16 of the Act, in particular, to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation.

As against this, Mr. Mahajan learned counsel appearing for the Union of India submits that on the basis of the aforesaid amendment, appropriate action has already been taken by Union of India for implementation and almost all State Governments/UTs are informed to implement the said Act and the Rules and the State Governments/UTs are directed to submit their quarterly report to the Central Supervisory Board.

Considering the amendment in the Act, in our view, it is the duty of the Union Government as well as the State Governments/UTs to implement the same as early as possible."

10 F] At the time of hearing, learned counsel for the petitioners substituted that appropriate directions including the steps which are required to be taken on the basis of **PNDT** Act and the suggestion as given in the written submission be issued.

11. On this aspect, learned counsel for the parties were heard.

12. In view of the various directions issued by this Court, as quoted above, no further directions are required except that the directions issued by this Court on 4th May, 2001, 7th November, 2001, 11th December, 2001 and 31st March, 2003 should be complied with. The Central Government/State Governments/UTs are further directed that: --

- a) For effective implementation of the Act, information should be published by way of advertisements as well as on electronic media. This process should be continued till there is awareness in public that there should not be any discrimination between male and female child.

- b)** Quarterly reports by the appropriate authority, which are submitted to the Supervisory Board should be consolidated and published annually for information of the public at large.
- c)** Appropriate authorities shall maintain the records of all the meetings of the Advisory Committees.
- d)** The National Monitoring and Inspection Committee constituted by the Central Government for conducting periodic inspection shall continue to function till the Act is effectively implemented. The reports of this Committee be placed before the Central Supervisory Board and State Supervisory Board for any further action.
- e)** As provided under Rule 17(3), public would have access to the records maintained by different bodies constituted under the Act.
- f)** Central Supervisory Board would ensure that the following States appoint the State Supervisory Board as per the requirement of Section 16A.
 - 1. Delhi 2. Himachal Pradesh 3. Tamil Nadu 4. Tripura 5. Uttar Pradesh.
- g)** As per requirement of Section 17(3)(a), the Central Supervisory Board would ensure that the following States appoint the multi-member appropriate authorities:
 - 1. Jharkhand 2. Maharashtra 3. Tripura 4. Tamil Nadu 5. Uttar Pradesh

13. It will be open to the parties to approach this Court in case of any difficulty in implementing the aforesaid directions.

The Writ Petition is disposed of accordingly.

14. In view of the aforesaid order, pending IAs have become infructuous and are disposed of accordingly.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5295 OF 2003

M/s. Malpani Infertility Clinic Pvt. Ltd.
& others

... Petitioners

V/s.

Appropriate Authority
PNDT Act & others.

... Respondents

Mr. Anil V. Anturkar for Petitioners

Mr. A.Y. Sakhare with Mr. M.D. Patil for Respondent No. 1.

Mrs. J.S. Pawar, Additional Govt. Pleader for Respondent No. 2

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CORAM: H.L. GOKHALE &
SMT. NISHITA MAHTRE, JJ.

DATED: 17TH September 2004

ORAL ORDER: (Per H.L. Gokhale, J.)

1. Heard Mr. Anturkar for the Petitioners. Mr. Sakhare Senior Advocate with Mr. Patil appears for Respondent No. 1 and Mrs. Pawar, Additional Government Pleader for Respondent No. 2.

2. This Petition seeks to challenge the order dated 7th August 2003 issued by Respondent No. 1 under the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, "the PNDT Act) which suspends the registration of the 1st Petitioner's Diagnostic Centre under the PNDT Act. This is an Act which has been passed by the Parliament to deal with the Problem of pre-natal sex determination leading to female foeticide. A Public Interest Petition bearing Writ Petition (Civil) No. 301 of 2001 was filed in the Apex Court by an N.G.O. CEHAT (Centre for Enquiry into Health and Allied Themes) wherein a grievance was made that inspite of passing the said Act, the activities, which are prohibited under this Act, are going on. The Petitioners herein intervened

in that matter inasmuch as they were carrying on a Centre called as a Diagnostic Centre, whose activities could be said to be prohibited under the said Act. They joined as Respondent No. 38 in the proceedings before the Apex Court. In the Apex Court, in fact, the Petitioners filed an affidavit and defended the sex determination test on the ground of “family balancing” by filing an affidavit, though subsequently another affidavit was filed wherein an apology was tendered and it was stated that only wrong committed by them was to continue the advertisement of such an activity on web site. The Apex Court gave appropriate directions for the implementation of the Act and thereby the Petition was disposed of.

3. It is material to note that the above-referred affidavit containing apology was filed in the Apex Court in July 2003. As a part of the implementation of the directions of the Supreme Court, the Respondents stated the prosecution of the Petitioner under section 22 (3) of the said Act on 22nd July 2003 and then came the impugned order, which is issued by the Appropriate Authority on 7th August 2003. This order in the reference column refers to two items viz. (i) Case No. 34/S/ of 2003 filed against the Petitioners in the court of Metropolitan Magistrate, 37th Court, Esplanade, Health Services. Thereafter, the order states in second paragraph as follows: -

“As per the reference given above you are hereby informed that said Registration is suspended/ cancelled with effect from 07.08.2003 in the Public interest till further orders from the court, which please note.”

The registration mentioned therein is the registration of the Petitioners to carry on certain activities as permitted under the said Act for a period of five years and which is issued to the Petitioners sometimes in January 2002.

4. Mr. Anturkar, learned Counsel appearing for the Petitioners, submitted that this order was uncalled for. He further submitted that the only section to which this order can be related, is Section 20 of the said Act. Sub-section (1) of Section 20 of the said Act requires a show cause notice to be given to the person concerned or to the Centre concerned on a complaint being received or on a suo motu basis by the appropriate Authority. Thereafter, under sub-section (2) of Section 20 of the said Act, a hearing is contemplated and thereafter if the Authority is satisfied that there is a breach of the provisions of this Act or the rules that it may, without prejudice to any criminal action, suspend the registration. Mr. Anturkar submitted that, in the present case, no notice has been given to the Petitioners nor has there been any hearing and, therefore, the impugned order is bad in law. He further submitted that, according to the disputed activities and the only mistake committed by them was not to update the web site, which, according to him, has now been done.

5. Mr. Sakhare, learned senior Counsel appearing for Respondent No. 1 and Mrs. Pawar, learned Additional Government Pleader appearing for Respondent No.

2, submitted that the Petition ought not to be entertained for the reason that an Appeal is available under Section 21 of the said Act to the Appellate Authority. As far as this submission is concerned, Mr. Anturkar submitted that against the order of the Appropriate Authority, an Appeal is available to the Additional Director of Health Services and since it is that officer, who has written a letter leading to the suspension, the Appeal will be meaningless. It was suggested to Mr. Anturkar that an Appeal may be preferred to the Principal Secretary of the Health Department since under Section 21 of the said Act, the Appeal lies to the State Government. Mr. Anturkar, however, submitted that the then Principal Secretary one Mr. Manmohan Singh had written a letter in July 2003 taking certain position on this controversy. He, therefore, submitted that it will be difficult to expect a fair hearing from this Secretary. Ms. Pawar, learned Additional Government Pleader appearing for Respondent No. 2, pointed out that Mr. Manmohan Singh is now no longer the Principal Secretary is one Mr. Navin Kumar. However, inspite of this, Mr. Anturkar submitted that it would be better that this Court itself may go into the aspect of this matter.

6. Mr. Sakhare, learned senior counsel appearing for Respondent No. 1, submitted that an Appeal having been provided, it ought to be first exhausted. As far as this submission is concerned, undoubtedly there is some merit therein. However, the principle of exhaustion of internal remedies is a rule of self restriction as far as the powers of the High Court are concerned. That being so, if a party feels that there is no use in resorting to the remedy inasmuch as it is like going from Caesar and if the party wants the grievance to be redressed in the High Court, the High Court cannot prevent the party from doing so.

7. In view of this position, we have heard Mr. Anturkar. As stated above, he has referred to the provisions of sub-section (1) and (2) of Section 20. As against this, it is material to note that sub-sections (3) of Section 20, provides for a suspension of the registration and that power can be exercised notwithstanding anything contained in sub-sections (1) and (2) for the reasons to be recorded in writing. Mr. Anturkar submitted that even if this sub-section (3) is pressed into service, that sub-section requires reasons to be given in writing. In our view, there is a clear reference to the prosecution lodged against the Petitioners in the reference clause. The Petitioners very much knew that a Public Interest Petition was filed in the Apex Court. They have filed an affidavit in that proceedings. Thereafter, they had tendered an apology as stated above in July 2003. Thereafter on 22nd July 2003, they knew that they were prosecuted. This being the position, if the Appropriate Authority refers to that prosecution and issues an order of suspension, in our view, there is a sufficient mention of the reasons from the Authority which have led it to take the action.

8. Mr. Anturkar submitted that in the affidavit filed by the Authority, they have stated that this is an action of cancellation. Inasmuch as sub-section (3) of Section 20 does not provide for a cancellation, this order cannot be considered as an order

of cancellation. It can only be treated as an order of suspension which will mean suspension till the hearing and disposal of the prosecution which has been mentioned in the order. In our view, such an action has to be permitted to the Authority concerned. If the Authority has some material before it, which, prima facie, it had, at the relevant time, it ought to have such a power to suspend the activities of such a nature. If such power is not read into the section, the provisions of a welfare enactment will be rendered nugatory. It is only a particular kind of activity which has been stopped and two machines have been seized by the Authority concerned. The 2nd and 3rd Petitioners are Gynaecologists and their practice as Gynaecologists is not prevented in any manner whatsoever. In a situation like this, where there is a conflict of private interest to carry on a particular activity which the public Authority considers as damaging to the social interests, surely, the power under the Statute has to be read as an enabling power. In the instant case, in our view, sub-section (3) of Section 20 provides an adequate power to the Authority concerned to suspend the licence.

9. Mr. Sakhare appearing for Respondent No. 1 and Ms. Pawar, Additional Government Pleader for Respondent No. 2, have referred to two affidavits filed by the Respondents' officers, which mention violation of various rules including Rule 6 (2) 4 (i) (ii) and 9 (i) of the Rules framed under the said Act as well as Section 23 (i) which empowers the prosecution. They drew our attention to a statement of one of the patients attending the Clinic pointing out the purpose for which she went there and the assurance given to her. Inasmuch as such prosecution has been lodged, if the Public Authority forms an opinion that pending that prosecution, a particular activity should be suspended, we do not think that there is any error on its part and it is not necessary that when the reasons are required to be given in writing, there ought to be a detailed discussion. A reference to the prosecution is sufficient as the reason for the action and the same is provided in the order.

10. In the circumstances, there is no substance in the Petition and the same is dismissed. The interim order passed earlier is vacated. Mr. Anturkar applies for extension of the stay for a period of four weeks. However, in view of the circumstances leading to the impugned order, we are not inclined to extend the stay.

11. Authenticated copy of this order be made available to the parties.

(H.L. GOKHALE, J.)

(SMT. NISHITA MHATRE, J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 4644 OF 2004

Dr. Aniruddha Malpani and anr. ... Applicants

Versus

Dr. Jaywant Anant Khandare & anr. ... Respondents

.....

Mr. A.V. Anturkar with Mr. S.B. Deshmukh and Ms. Vinita V. Shastry, for the Applicants.

Mr. A.Y. Sakhare, Senior Counsel, with Ms. T.H. Puranik, for Respondent No. 1

Mr. S.R. Shinde, A.P.P., for Respondent No. 2.

.....

CORAM: A.M. KHANWILKAR, J.

23rd December 2004

P.C.:

01. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Ms. Puranik waives notice for Respondent No. 1 Mr. Shinde, A.P.P., waives notice for Respondent No. 2. Petition taken up for final disposal forthwith by consent.

02. The short question that arises in this petition is whether the Respondent No. 1 Dr. Jayant Anant Khandare, Medical Officer of Health "A" Ward of Municipal Corporation of Greater Mumbai, was competent to institute criminal action against the Applicants in relation to offences punishable under Section 22, read with Rules 6 (2), 4 (I) (ii) and 9 (1), of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as "the Act"), as filed before the Court of Metropolitan Magistrate, 37th Court, Esplanade, Mumbai, being Case No. 34/S/2003. This question is agitated in the context of mandate of section 17 of the Act. The relevant extract of Section 17 of the Act reads as follows:

"17. Appropriate Authority and Advisory Committee.

(1)

- (2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.
- (3)“

03. The Applicants assert that no notification has been published in the Official Gazette appointing the Respondent No. 1 as the Appropriate Authority as is required by Section 17 of the Act. It is submitted that it is only on such publication of the notification, the Respondent No. 1 can assume authority or acquire competence to initiate criminal action as the Appropriate Authority. Reliance is also placed on the mandate of Section 28 of the Act, which postulates that no Court shall take cognizance of offence under this Act except on a complaint made by the Appropriate Authority concerned.

04. Whereas, according to the Respondent No. 1, he has already been notified as the Appropriate Authority and, therefore, the complaint as instituted by him was valid and permissible in law and the trial court has legitimately acted on that complaint. Reliance was placed on the purported Notification dated 27th December 2001 issued by the Public Health Department, Government of Maharashtra, in this behalf. It is, however, fairly accepted that this Notification has not been published in the “Official Gazette”.

05. The question, therefore, is: In absence of publication of the said Notification in the Official Gazette, is it open to the Respondent No. 1 to claim that he has been notified as the Appropriate Authority within the meaning of Section 17 of the Act? In my opinion, the answer should be plainly in the negative. When the statute requires the Notification to be published in the Official Gazette and that act is not undertaken, the Notification issued in any other manner is of no consequence for the purposes of Section 17 of the Act. A person is clothed with the power of the Appropriate Authority only upon publication of the Notification in the Official Gazette, naming such person as such. In other words, publication of notification in the Official Gazette is the sine qua non. The contention pressed into service on behalf of the Applicants is supported by the exposition of the Apex Court in *I.T.C. Bhadrachalam Paperboards v. Mandal Revenue officer*, reported in (1996) 6 S.C.C. 634 (see paras 13 to 15). A priori, in law, the Respondent No. 1 was not competent to initiate criminal action; nor the Court could take cognizance of the complaint filed by person other than Appropriate Authority in view of the mandate of section 28 of the Act.

06. To get over this position, Mr. Sakhare contends that although the Notification in question was issued by the concerned Department, but the same has remained to be published in the Official Gazette due to some lapses which is being soon remedied as per the instructions already issued by the Secretary of the Family

Welfare Department, Government of Maharashtra, to forthwith publish the said Notification in the Official Gazette. However, Mr. Sakhare is not in a position to point out any legal provision, which would permit the authority to appoint a person as Appropriate Authority with retrospective effect. Inasmuch as, the Notification in question will come into effect only from the date of its publication in the Official Gazette. If it is so, the publication of the Notification in question in the Official Gazette in posterity can be of no consequence to decide the point in issue. So understood, the fact that steps are now being taken for publication of the subject Notification in the Official Gazette need not detain us. In the present case, suffice it to observe that, on the date of institution of the subject complaint by the Respondent No. 1 against the Applicants, no Notification published in the Official Gazette authorizing the Respondent No. 1 to exercise that power was in existence.

07. Mr. Sakhare then contends that the Applicants have already carried the matter before the Apex Court against the decision of the Division Bench of this Court pertaining to the issue of “suspension of the licence” of the Applicants. It is, however, fairly accepted that in the matter pending before the Apex Court, being S.L.P. (Civil) No. 21471/ 2004, the issue is entirely different than the one raised in the present case, especially in the context of authority to initiate criminal action under the Act. In the circumstances, pendency of that matter is of no avail to the Respondent No. 1.

08. In the circumstances, this petition should succeed in terms of prayer clause (a). Ordered accordingly.

09. It is, however, made clear that this decision is not an expression of opinion on the remedy as may be available to the Respondent No. 1 or any other authorised person after publication of the Notification in the Official Gazette. That aspect is left open.

(A.M. KHANWILKARM, J)

IN THE HIGH COURT OF ALLAHABAD AT ALLAHABAD

Criminal Misc. Writ Petition No. 5086 of 2006

Dr. Varsha Gautam.....Petitioner

Versus

State of U.P. and others.....Respondents

Hon'ble Imtiyaz Murtaza, J.

Hon'ble Amar Saran, J.

Delivered by Amar Saran J

This writ petition has been filed with a prayer for quashing of the first information report dated 11.4.2006 lodged at case crime No. 192 of 2006, under Sections 312 and 511 IPC read with the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, hereinafter called 'the Act.'

The allegations in the FIR lodged by the C.M.O, Agra on 11.4.06 at P.S. Hari Parvat, Agra was that a sting operation shown on television by the Rastriya Sahara Channel revealed that a pregnant woman wanted to get her abortion done because there was a girl child in her womb. She approached the petitioner Dr. Varsha Gautam at her hospital, who agreed to perform the abortion although it was an offence to perform such an operation and even determination of the sex by doctors using ultrasound technique was illegal. The Petitioner is said to have engaged in getting abortions done in her hospital in collusion with doctors, who determined the sex of the foetus by conducting ultrasound tests. Her clinic was not even registered under the Act and she was not entitled to conduct pre-natal diagnostic procedures therein.

We have heard Shri V.C. Mishra and Sri Kamal Krishna, learned counsel for the Petitioner and learned Additional Government Advocate.

Firstly, it was contended that there is a bar on investigation in view of Section 28 of the Act which prohibits cognizance by any court of an offence except on a complaint made by the concerned appropriate authority.

In our view the said prohibition does not apply at the stage of investigation and only relates to the stage when cognizance is sought to be taken by the concerned court. In this regard when dealing with the question of a bar under section 195(1)(b)(ii), it has been held in M. Narayan Das v. State of Karnataka, AIR 2004 SC 768, that the said bar only applies at the time when the court takes

cognizance of an offence, and not at the stage of investigation. The material Paragraph 8 reads as follows:

'We are unable to accept the submissions made on behalf of the Respondents. Firstly it is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise there is no substance in the submission. The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of State of Punjab v. Raj Singh reported in 1998 (2) SCC 391. In this case it has been that as follows : AIR 1998 SC 768

"2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468, I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii), Cr. P. C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195, Cr. P. C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1), Cr. P. C; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceedings in Court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195, Cr. P. C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b), Cr. P. C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340, Cr. P. C. The judgment of this Court in Gopala-krishna Menon v. Raja Reddy ((1983) 4 SCC 240 : 1983 SCC (Cri) 822 : AIR 1983 SC 1053) on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil Court and hence it was held that the Court

could not take cognizance on such a complaint in view of Section 195, Cr. P. C."

Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340, Criminal Procedure Code is followed. Thus no right of the Respondents, much less the right to file an appeal under Section 341, is affected.'

Secondly, it was urged that no offence under Section 312 read with Section 511 IPC is made out as mere consent to commit the offence of performing the abortion on the woman is only an expression of an intention to commit an offence and it could at the highest only be considered as preparation to commit an offence and would not amount to any attempt to commit offence, which is punishable under the Penal Code.

There is no clear dividing line between the stage of preparation and the stage of attempt and these questions of fact can properly be determined by the Court at the appropriate stage. In *Abhyanand Mishra v. State of Bihar*, AIR 1961 SC 1698, it has been held that obtaining forged mark sheets for the purpose of appearing in the M.A. examinations was not regarded as only a preparation to commit an offence, but was considered an attempt to cheat, even though the accused in that case had already been acquitted of committing forgery. Paragraphs 11 and 12 may be quoted here with advantage:

'11. Another contention for the appellant is that the facts proved do not go beyond the stage of preparation for the commission of the offence of 'cheating', and do not make out the offence of attempting to cheat. There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control he is said to have attempted to commit the offence. Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. This is clear from the general expression 'attempt to commit an offence' and is exactly what the provisions of S. 511, I.P.C., require. The relevant portion of S. 511, I. P. C., is:

"Whoever attempts to commit an offence punishable by this Codeor to cause such an offence to be committed and in such attempt

does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt be punished....."

These provisions require that it is only when one, firstly, attempts to commit an offence and, secondly, in such attempt, does any act towards the commission of the offence, that he is punishable for that attempt to commit the offence. It follows, therefore, that the act which would make the culprit's attempt to commit an offence punishable, must be an act which, by itself or in combination with other acts, leads to the commission of the offence. The first step in the commission of the offence of cheating, therefore, must be an act which would lead to the deception of the person sought to be cheated. The moment a person takes some step to deceive the person sought to be cheated, he has embarked on a course of conduct which is nothing less than an attempt to commit the offence, as contemplated by S. 511. He does the act with the intention to commit the offence and the act is a step towards the commission of the offence.

12. It is to be borne in mind that the question whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependent on the nature of the offence and the steps necessary to take in order to commit it. No exhaustive precise definition of what would amount to an attempt to commit an offence is possible. The cases referred to make this clear.

Again the observations in paragraph 16 of the said law reports further clarifies that attempt does not only relate to the penultimate stage of the offence:

'16. In In the matter of the petition of R. MacCrea, ILR 15 All 173 it was held that whether any given act or series of acts amounted to an attempt which the law would take notice of or merely to preparation, was a question of fact in each case and that S. 511 was not meant to cover only the penultimate act towards the completion of an offence and not acts precedent, if those acts are done in the course of the attempt to commit the offence, and were done with the intent to commit it and done towards its commission. Knox J., said at page 179: "Many offences can easily be conceived where, with all necessary preparations made, a long interval will still elapse between the hour when the attempt to commit the offence commences and the hour when it is completed. The offence of cheating and inducing delivery is an offence in point. The time that may elapse between the moment when the preparations made for committing the fraud are brought to bear upon the mind of the person to be deceived and the moment when he yields to the deception practised upon him may be a very considerable interval of time. There may be the interposition of inquiries and other acts upon his part. The acts whereby those preparations may be brought to bear upon her mind may be several in point of number, and yet the first act after preparations completed will, if criminal in itself, be beyond all doubt, equally an attempt with the ninety and ninth act in the series.

Again, the attempt once began and a criminal act done in pursuance of it towards

the commission of the act attempted, does not cease to be a criminal attempt, in my opinion, because the person committing the offence does or may repent before the attempt is completed".

Blair J., said at page 181:

"It seems to me that the section (S. 511) uses the word 'attempt' in a very large sense; it seems to imply that such an attempt may be made up of a series of acts, and that any one of those acts done towards the commission of the offence, that is, conducive to its commission, is itself punishable, and though the act does not use the words, it can mean nothing but punishable as an attempt. It does not say that the last act which would form the final part of an attempt in the larger sense is the only act punishable under the section. It says expressly that whosoever in such attempt, obviously using the word in the larger sense, does any act, and c., shall be punishable. The term 'any act' excludes the notion that the final act short of actual commission is alone punishable."

We fully approve of the decision and the reasons therefor.'

It was also argued by learned counsel for the petitioner that no offence under the Act was disclosed, and that the FIR itself mentioned that sex determination of the woman had already been conducted elsewhere, when she approached the petitioner who agreed to perform the operation. Now according to learned counsel the offence would only arise at the stage when an illegal abortion was performed on the woman, which would constitute an offence under s. 312 IPC and not under the Act.

In this connection the definition of sex selection in Section 2(o) of the Act may usefully be perused:

Section 2 (o) "Sex selection 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."

Section 3-A prohibits sex selection by providing that no person including a specialist in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man. Section 3-A of the Act reads as under:

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

It is thus clear from a reading of Section 3-A of the Act that prohibition of sex selection (i.e. an act for increasing the probability that an embryo will of a particular sex) has been given a wide meaning under the said provisions and the restriction is on every person including a specialist on conducting or even causing to be conducted or aiding in conducting by himself or by any other person sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either of both of them. Therefore, both conducting sex selection oneself or by aiding another person to engage in sex selection, has been brought within the purview of this section.

The contention of the learned counsel for the petitioner that sex selection only amounts to determination of the sex of the embryo, which was conducted by an outside agency and thereafter determination of the pregnancy would constitute only an offence under Section 312 IPC, which, for the reasons mentioned by the learned counsel had not reached the stage of attempt, cannot therefore be accepted.

Sex determination includes not only determination of the sex, but also includes anything done from fertilization until birth, which increases the probability that the embryo will be of a particular sex. Therefore, sex selection cannot only be confined to the determination of the sex of the foetus.

That such a comprehensive and extended meaning of sex selection has been given is also clear from an examination of Sections 6(b) and Section 6(c) of the Act, which read as under:

“6(b) “No person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus;

6 (c) No person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.”

It is noteworthy that Section 6 (c) as also the other provisions relating to the aspect of sex selection have been introduced by the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 (14 of 2003) with effect from 14.2.2004. Prior to that date only determination of sex by ultrasonography etc was prohibited, but after the said amendment, any step taken by a specialist or any other person to cause or even to allow to be caused selection of sex before or after conception was made punishable.

It appears that this amendment was introduced also for ensuring that all aspects of sex selection, starting from the initial activity of determination of the sex by pre-natal diagnostic procedures and thereafter all the steps taken by any person or specialist for facilitating sex selection before or after conception would be brought under the ambit of this amendment.

Even the title of the Act was amended and whereas in the earlier title the long title was for “An Act to provide for the Regulation of the use of Pre-natal

Diagnostic Techniques for..... , after the amendment Act No. 14 of 2003 the initial line reads as “ An Act to provide for the prohibition of sex selection, before or after conception and for regulation of pre-natal diagnostic techniques.....the purpose of pre-natal sex determination leading to female foeticide.....

The statement of objects and reasons of the amendment Act No. 14 of 2003 also indicated the inadequacy of the 1994 Act and the need for expanding the scope of the Act so as to include a ban on sex selection techniques and procedures. The statement of Objects and Reasons of Act No. 14 of 2003 reads as under:

Amendment Act 14 of 2003 Statement of Objects and Reasons- The pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. During recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.

The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.

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

Accordingly, it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended.”

We also observe that admittedly there was no registration of the petitioner's clinic under the Act, which amounts to an offence under Section 3(1) of the Act. The said provisions reads as under:

Section 3(1) “ No Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques.”

The said provisions also clarifies that no Genetic Counseling Centre, Laboratory or clinic unless it is registered under the Act can conduct or even associate with or help in conducting the activities relating to pre-natal diagnostic techniques. Therefore, even association or helping with activities for sex selection would be prohibited under the Act.

In this background, we also find no force in another contention raised by the learned counsel for the petitioner that as the offence of engaging or aiding any sex selection is punishable for three years under Section 23 of the Act, and as the present offence would only be a case of attempt to commit, whose maximum punishment would be half or 1 ½ years, hence an offence of sex selection, would become non-cognizable in view of the last clause of Schedule 1, of the Code of Criminal Procedure dealing with 'Classification of Offences against other laws'. Here it may be pointed that there is a direct provision under the Act, viz. Section 27 which clearly provides that every offence under this Act shall be cognizable, non-bailable and non-compoundable. Therefore this special provision in the Act would prevail over the general provision in view of section 5 of the Code of Criminal Procedure.

The last submission raised by the learned counsel for the petitioner by means of a supplementary affidavit that while preparing a certain Parcha of the case diary on 20.4.2006, the investigating officer had exonerated the petitioner from an offence under the Act.

We cannot consider or appreciate the value of such an entry in the case diary at this stage in the present petition under Article 226, and it is for the court to apply its mind and consider whether an offence under a particular provision is made out or not at the appropriate stage. In this connection it has been held in Supdt. of Police, CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 in paragraph 22 at page 185, that the FIR need not even mention all the ingredients of an offence, and the same may be brought out on the conclusion of the investigation :

“22. The High Court has also quashed the GD entry and the investigation on the ground that the information did not disclose all the ingredients of the offence, as if the informant is obliged to reproduce the language of the section, which defines “criminal misconduct” in the Prevention of Corruption Act. In our view the law does not require the mentioning of all the ingredients of the offence

in the first information report. It is only after a complete investigation that it may be possible to say whether any offence is made out on the basis of evidence collected by the investigating agency.”

It has further been mentioned in paragraph 22 of the aforesaid law report that the mere mention or non-mention of a particular section in the FIR is not conclusive, and it is for the Court to determine at the appropriate stage as to the offence for which the charge may be framed. The relevant lines read as under:

“Similarly, the mentioning of a particular section in the FIR is not by itself conclusive as it is for the court to frame charges having regard to the material on record. Even if a wrong section is mentioned in the FIR, that does not prevent the court from framing appropriate charges.”

As any activity for sex selection as pointed out above has very grave social consequences as it can disturb the balance in the male-female ratio. With the female-male ratio having already declined to 933 per 1000 males, we are sitting on a virtual time bomb, which can spell social disaster. Instances of villages where there are no eligible females for marriages are being reported, or where girls are being purchased from backward areas for servicing several brothers as brides. Whilst the earlier primitive methods of female foeticide were still relatively confined to a limited section of the population, however by using the modern scientific and relatively covert methods which the Act seeks to bring under its purview, sex selection has become a rampant phenomena which has affected every strata of society.

In view of the laxity in implementing the provision of the Act, and the continuing sex-selection and discriminatory practices against the female child compared to the male child, the apex Court has issued directions in Centre for Enquiry Into Health And allied Themes (CEHAT) and others, v. Union of India and others, AIR 2003 SC 3309 calling for the effective implementation of the Act and for complying with its earlier order. The Center/State Govts. and Union Territories were further directed to issue advertisements to create awareness in public that there should not be any discrimination between male and female child. The reports of appropriate authorities were to be published annually for information of public. The National Monitoring and Inspection Committee was to continue to function till the Act was effectively implemented. Certain States were directed to appoint State Supervisory Boards and multi-membered appropriate authorities.

In view of what has been indicated hereinabove, we find no ground to quash the FIR or to stay the arrest of the petitioner. The petition has no force. It is accordingly dismissed.

Dated 26.5.2006

**IN THE COURT OF SHRI JAGJIT SINGH, HCS,
SUB DIVISIONAL JUDICIAL MAGISTRATE: PALWAL:**

CASE NO. RBT - 298/2 OF 2001

DATE OF INSTT: 5.11.2001/ 20.7.2004

DATE OF DECISION:

State through District Appropriate Authority cum Civil Surgeon, Faridabad.

.....Complainant

VERSUS

1. Dr. Anil Sabhani, Prop. M/s Dr. Anil's Ultra Sound Opp G. H. Palwal, Faridabad,
2. Sh. Kartar Singh son of Sh. Lakhi Singh, Technician M/s. Dr. Anil Ultrasound, Opp. G. H. Palwal, Faridabad. Resident of V. P. O. Maheshpur, District Faridabad.
3. M/s Dr. Anil Ultrasound, Opp. G. H. Palwal, Faridabad (H) through Dr. Anil Sabhani.

.....Accused

**COMPLAINT UNDER PRE NATAL DIAGNOSTIC TECHNIQUE
(REGULATION AND PREVENTION OF MISUSE) ACT, 1994 AND
RULES, 1996.**

Present: A. P. P. for the State/ Complainant.

Both accused on bail with Sh. R. A. Gupta, Advocate.

JUDGMENT:

The present case was initially filed as a complaint by the District Appropriate Authority cum - Civil Surgeon, Faridabad against accused on the grounds that the complainant has been appointed as the 'Appropriate Authority' under 17 (2) of the Pre Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred as 'PNDT Act') vide Haryana Govt. Gazette Notification No: 1/19/88 2HB II 97 dated 18.09.1997 for the district and is presently posted as Civil Surgeon District Faridabad, that M/s. Dr. Anil Ultrasound Centre, situated Opp. G. H. Palwal, Faridabad is a registered genetic clinic under Section 3 of the Pre Natal Diagnostic Techniques Act 1994 and Rule 1996 having registration No.12 granted on 9.8.2001.

2. It was further submitted that on 11.10.01 the complainant directed Dr. C.

Paul, SMO, Incharge G. H. Ballabgarh cum Team Incharge PNDT to conduct raid along with PNDT team and volunteer decoy patients at Dr. Anil's ultrasound center, who was reportedly engaged in illegal sex determination. Earlier PNDT team members Dr. Rekha Mishra and Dr. Kewal Kumar visited Palwal on 2.10.2001 with decoy patient Mrs. Santosh and her husband Sohan Pal and Dr. Anil conveyed to her about female foetus after performing ultrasonography and charged Rs. 1350/-. Again the team visited him on 5.10.2001 with a new patient Raveeta wife of Shiv Kumar, who was told about breech foetus by Dr. Anil. Again Dr. C. Paul and Dr. Rekha visited Palwal on 8.10.2001 along with patient Raveeta for her foetus's sex determination and Dr. Anil Sabhani after performing ultrasound told her about male foetus and charged Rs. 1200/-. On 1.10.2001 Hemwati wife of Narender also visited Dr. Anil Sabhani and got ultrasound of her foetus without any referral slip and consent letter of the patient. The three pregnant women were identified by Dr. C. Paul, who got ready voluntarily to pose as decoy patients and extend all possible help to the complainant's team and agreed to work on humanitarian grounds keeping in view the decreasing sex ratio in the country particularly in Haryana.

3. Since from the visits of the above persons, it was established that Dr. Anil Sabhani had indulged in illegal unethical and unsocial act of determination of sex of foetus of pregnant women with ulterior motive and was violating the provisions of PNDT Act. It was decided that a Task force be prepared to nab the accused while doing ultrasonography on pregnant woman and catch him red handed. In pursuance to this on 11.10.2001 the complainant visited Palwal along with three decoy volunteer patients and their attendants along with the team members and Dr. Mini Vohra, Sh. Bijender Ahlawat and Sh. Sanjay with Video Camera. Dr. C. Paul sent one of his team member Dr. Kewal Kumar with decoy patient Mrs. Madhu and Dr. Kewal Kumar posed as her attendant and they went to Dr. Anil Ultrasound Centre for getting her foetus's sex determination. Dr. C. Paul put his signatures on three currency notes of five hundred denomination each and three currency notes of one hundred denomination each in the presence of the members of the inspection team and these currency notes were given to Dr. Kewal Kumar for use at the Ultrasound centre. Dr. Kewal Kumar with a hidden tape recorder visited Dr. Anil's ultrasound centre with Mrs. Madhu while other members stayed out side waiting for signal from Dr. Kewal Kumar. Dr. Kewal Kumar paid Rs. 300/- to accused Kartar Singh as charges for routine normal ultrasound and in the presence of Dr. Kewal Kumar while Dr. Anil Sabhani performing routine ultrasound on Mrs. Madhu he asked her about her children and suggested her that he could also tell the sex of her foetus, if she makes an additional payment of Rs. 1200/- to him for this purpose. The decoy patient Mrs. Madhu accepted the suggestion of Dr. Anil stating that she already had two daughters. Rs. 1200/- was paid by Dr. Kewal Kumar to accused Kartar Singh, who returned Rs. 300/- to Dr. Kewal. Dr. Anil Sabhani performed ultrasonography on Mrs. Madhu without any referral slip and without any written consent of the patient and conveyed to her the sex of foetus as

female orally. No receipt for payment or any written report of sex determination was issued by the accused. However, a routine ultrasound report card was prepared.

4. After this on receiving information from Dr. Kewal Kumar, the entire team consisting of Dr. C. Paul, Dr. Mini Vohra, Dr. Rekha Mishra, Dr. Sneha Lata, Sh. G. L. Singhal, Sh. Praveen Arora, Biologist, Dr. Sanjeev Bhagat, M. D and Dr. B. S. Sharma, MO reached ultrasound centre accompanied by video camera of Sanjay and Bijender Ahlawat press correspondent. The team gave its introduction and directed Dr. Anil Sabhani to produce the record of ultrasonography and he produced some files and registers, which were taken into custody. Dr. Anil Sabhani admitted having conducted ultrasonography on Mrs. Madhu on 11.10.2001. On Hemwati on 1.10.2001, and on Raveeta on 5.10.2001, but the name of none of these patients was found entered in his ultrasound register. Their names were however entered in a note book maintained by accused Kartar Singh meant for recording of miscellaneous ultrasound. Both accused admitted in writing before the team that they had charged Rs. 300/- plus Rs. 1200/- for sex determination of Mrs. Madhu and had only made an entry of Rs. 300/-. Accused Dr. Anil Sabhani also could not produce any referral slip and consent letter for performing ultrasonography on these patients. Statement of Mrs. Madhu who was conveyed sex of her foetus as female by the accused was also recorded who deposed about giving signed currency notes of Rs. 500/- and of Rs. 100/- to accused no. 2 and in the presence of the inspection team these currency notes were recovered from accused Kartar Singh, who also admitted in writing about having received this amount. Both the accused also admitted in writing about not issuing any written receipt of cash to the patient and Dr. Anil Sabhani agreed to have accepted the money from the patient and having conveyed sex of foetus to her. Seized currency notes were put in an envelope and were sealed and were signed by the members of the inspection team and by the accused. The entire process of raid was recorded and the inspection report was prepared and the SMO, Incharge Ballabgarh cum Team Incharge of PNDT task force submitted his report dated 11.10.2001 to the complainant informing him about nabbing of Dr. Anil Sabhani red handed while performing ultrasonography on pregnant women disclosing the sex of the foetus.

5. Vide letter of the complainant dated 12.10.2001 the registration granted to Dr. Anil Sabhani ultrasound centre was suspended and Dr. Anil Sabhani vide letter dated 12.10.2001 was asked to produced record of ultrasonography prior to 1.10.2001 for purpose of inspection which were not produced by him. Complainant vide letter dated 15.10.2001 issued show cause notice to both the accused, but no reply was received from any of the accused till filing of the complaint and no records were produced by the accused. On perusal of the records seized, it was observed that accused had performed ultrasonography on the basis of referral slips issued by persons who are not qualified doctors under the PNDT Act and therefore, not authorized to issue or advise ultrasonography to the patients and it seemed that a nexus was operating between the accused and other unqualified doctors and

persons who referred patients for ultrasonography to his clinic for some ulterior motive. It was further submitted that accused were engaged in sex determination of foetus at their ultrasound centre and were not maintaining any record and records maintained was incomplete and by not maintaining the record the ulterior motive of the accused became clear and thus when female ratio was decreasing in the country, the accused were indulging in serious crime despite being in the knowledge that it is immoral, unethical and amounts to an offence and thus the accused contravened the various provisions of the PNDT Act and Rules 1996 and therefore, the present complaint was filed for summoning the accused and punishing them.

6. On filing of the complaint, vide order dated 12.02.2002, the court ordered the summoning of the accused as the present complaint was made by a public servant in the discharge of his duty and there was no necessity of recording evidence in terms of section 200 Cr. P. C. The accused were summoned for offence punishable under section 23 of the PNDT Act.

7. Accused in pursuance of the summons and warrants appeared before the court and the complainant was asked to lead its pre charge evidence.

8. In pre charge evidence, the complainants led their evidence and on the basis of the same charge against the accused for the commission of offence, punishable under Section 23 of the PNDT Act was framed vide order dated 23.3.2005, to which they pleaded not guilty and claimed trial.

9. In its entire oral evidence, prosecution examined PW 1 Dr. B. S. Dahiya, Director General Health, PW 2 Dr. G. Paul, Deputy CMO, Faridabad, PW 3 Dr. Rekha, PW 4 Dr. Snehlata, PW 5 Dr. Kewal Kumar, PW 6 Dr. Parveen Kumar Arora, Biologist, PW 7 Dr. B. S. Sharma, PW 8 Dr. Mini Vohra, PW 9 Girdhari Lal Singhal and in documentary evidence, the prosecution placed reliance upon the following documents: -

- Ex. PW 1/A: Complaint
- Ex. PW 2/A: Inspection note;
- Ex. PW 2/B: Form of inspection
- Ex. PW 2/C: Ultrasound report card;
- Ex. PW 2/D: Register
- Ex. PW 2/E: Sealed envelop; containing currency notes;
- Ex. PW 2/F: Statement of Mrs. Santosh;
- Ex. PW 2/G: Statement of Mrs. Madhu
- Ex. PW 2/H: Spot memo dated 8.10.2001
- Ex. PW 2/I: Receipt of documents taken into custody;

ANNEXURE VIII

Ex. PW 3/A: Spot Memo

Ex. PW 3/B: Written admission of sonography;

Ex. PW 2/A: Statement of Sohan Pal

Mark A: envelope containing video cassette

Mark B: envelope containing tape recorder cassette

Mark A: Photocopy of list of patents;

Ex. PW 9/A: Receipt of documents taken into custody;

10. The point of determination in this case was whether the prosecution has successfully proved that the accused in a raid conducted at their ultrasound centre were found conducting sex determination of foetus and were found not explaining the side effect by not obtaining written consent and was communicating to the patients the sex of foetus by words and signs and used ultrasound centre for conducting sex determination and conducted the same in violation of the provisions of the Act and also failed to maintain proper record of the ultrasound centre and contravening the various provisions of the Act.

11. To prove the point of determination PW 1 complainant/ stepped into the witness box and deposed about being posted as Civil Surgeon and Appropriate Authority, Faridabad in October, 2001 and having filed the complaint Ex. PW. 1/A. He also deposed that on 11.10.2001 he had authorized Dr. C. Paul along with other members to conduct a raid at the Sabhani Clinic Ultrasound Centre of accused Anil Sabhani, who is also a radiologist. He further deposed that this centre was registered under the PNDT Act without any office. He further deposed that after the raid was conducted the matter was reported to him on the basis of which, he filed the present complaint.

It was further deposed by the witness that during the investigation by the team, it was found that accused Dr. Anil Sabhani had conducted sex determination upon one Madhu and had also disclosed the sex of the foetus being female in the womb and this was in utter violation of the PNDT Act and Rules and there was neither any consent nor receipt given by the accused. It was further deposed that prior to this raid earlier also accused Dr. Anil Sabhani conducted ultrasonography on one Santosh on 2.10.2001 and already there is fall of the male/ female sex ratio due to illegal sex determination and followed by illegal abortions when the foetus is disclosed as female by the accused like persons.

PW 2 deposed that on 11.10.2001 he was directed by the then Civil Surgeon, Faridabad to inspect and check the ultrasound centre of the accused and he along with his team members and three decoy patients Mrs. Madhu, Mrs., Santosh and Mrs, Raveeta came to Palwal. The witness sent Dr. Kewal Kumar along with decoy patients as attendant of Madhu to ultrasound centre of for ultrasonography and he was also directed to give a signal to the witness, if the accused Dr. Anil Sabhani does

the sex determination of foetus of Madhu. On getting the hint the witness with his team went inside the centre and came to know that the accused had done sex determination of foetus of Madhu.

On the request of witness the accused Dr. Anil Sabhani showed the relevant record and when asked as to whether he had done sex determination, he refused, but on cross questioning of the decoy customer and his technician in presence of the team members and on hearing his voice from the tape recorder and on seeing the currency notes recovered from his technician which he had accepted as money for doing the sex determination, accused Dr. Anil Sabhani accepted his offence. A spot memo was prepared at the spot and also an inspection note. The records relating to the patients coming for ultrasound which contained names of the patients were also taken into custody. The video and Audio cassettes were prepared at the spot and the currency notes which were given to the technician co accused were put in an envelope, which is Ex. PW. 2/E. On the same day the witness recorded the statements of both the accused along with decoy patients. PW 3 deposed that on 2.10.2001 she along with Dr. Kewal Kumar under the guidance of the District Appropriate Authority along with decoy patient went to Palwal and to the ultrasound centre of accused Dr. Anil Sabhani for a routine ultrasound. Accused Dr. Anil Sabhani prompted the patient to know the sex of foetus and demanded Rs. 1200/- without giving any receipt or report he declared the foetus as female. Again on 5.10.2001 the witness and Dr. C. Paul came with decoy patient Raveeta to get her ultrasound done and were asked to come on 8.10.2001. On 8.10.2001 the witness along with Dr. Kewal Kumar and patients Raveeta and Santosh came to Palwal and the patient went to Sabhani ultrasound centre and Dr. Anil Sabhani detected Raveeta foetus as male. On 11.10.2001 the whole team along with District Appropriate Authority came to Palwal to nab the accused red handed. Dr. Kewal Kumar along with patient Madhu and currency notes signed by Dr. C. Paul entered in the clinic of the accused and asked Dr. Anil Sabhani to do the ultrasound of patient Madhu. Dr. Anil prompted patient Madhu to know the sex of foetus and asked for extra amount of Rs, 1200/- to disclose the foetus and she was told that it was a female foetus. The team members along with the District Appropriate Authority and Dr. C. Paul reached the clinic in the presence of the Indian Medical Association, Zonal Secretary and correspondent of the Press and accused had confessed about conducting the sex determination of foetus and the proceedings were recorded on a video. Later on statements of Mrs. Santosh, Mrs. Madhu and Mrs. Raveeta were recorded, which is Ex. PW 2/F, Ex. PW 2/G. Both the accused also made their statements Ex. PW . 3/B regarding conducting sex determination of foetus and Ex. PW 2/E is the envelop which contained currency notes recovered from accused Kartar Singh, which were accepted by him as fees for sex determination.

PW 4 deposed that she was a member of the raiding party on 11.10.2001 and visited Palwal along with team members. Dr. Kewal Kumar along with decoy patient

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Mrs. Madhu visited the hospital of the accused while witness and others stood outside the clinic. Dr. Kewal Kumar gave a signal to them and they reached inside and Mrs. Madhu told them that Dr. Anil Sabhani had told her with respect to the foetus of her as female. In the presence of the witness the currency notes were recovered from accused Kartar Singh and confessional statements of the accused Ex. PW. 3/B was recorded in her presence and bears her signatures.

PW 5 deposed that on 2.10.2001 he along with Dr. Rekha and patient Mrs. Santosh wife of Sohan Pal went to clinic of Dr. Anil Sabhani to get her ultrasound done. The patient was disclosed about her foetus as female and Rs. 1350/- were charged from her. On 5.10.2001 he along with Dr. Rekha and patient Raveeta wife of Shiv Kumar went to Palwal and got her ultrasound conducted at Dr. Anil ultrasound Centre and she was disclosed as breech foetus. On 11.10.2001 he along with the District Appropriate Authority and the whole team reached Palwal where Patient Madhu and two other patients were also present. He was given Rs. 1800/- signed by Dr. C. Paul and they he along with patient Madhu went to Dr. Anil Ultrasound Centre posing himself as her attendant and he got ultrasound of Mrs. Madhu done in normal routine for which he paid Rs. 300/-. After that Dr. Anil Sabhani asked about the children of Madhu, who told about having two daughters. Dr. Anil Sabhani then instigated her whether she wanted to know the sex of her child, then Madhu enquired of the money that would be charged from her. She was asked to deposit Rs. 1200/- to know the sex of the child and Mrs. Madhu asked the witness to deposit the amount, who deposited the same with accused Kartar Singh in the form of three 500/- notes and accused Kartar Singh returned Rs. 300/- to the witness. After that Dr. Anil accused told that Madhu is having a female foetus and this conversation between the witness, patient Madhu and Dr. Anil was recorded by the witness in a hidden tape recorder. After this a signal was given to the team standing outside and the team members entered ultrasound centre of accused Dr. Anil and recorded the statement and checked the record. Dr. Anil Sabhani confessed in presence of all the team members that he had done sex determination of foetus of patient Madhu. Video film prepared at the spot and spot memo was also prepared and three currency notes of Rs. 500/- each were also recovered from accused Kartar Singh, which are in envelop Ex. PW. 2/E.

PW 6 deposed that on 11.10.2001 he was a member of the raiding team which included Dr. Rekha, Dr. C. Paul, Dr. Kewal Kumar. He stood out side the ultrasound centre of accused while Dr. Kewal Kumar and Dr. C. Paul went inside and he was told that on receiving a signal he should come inside. When the ultrasonography was done inside the witness along with other team members went inside and the record of ultrasound centre was taken into custody and in his presence matter was enquired from accused Dr. Anil Sabhani and a spot memo was prepared and three currency notes of Rs. 500/- each were recovered from accused Kartar Singh. Some registers and books of the accused were also taken into custody.

PW 7 deposed that on 11.10.2001 at about 11:00 A.M as per the orders of Dr. B. S. Dahiya Civil Surgeon, Faridabad, he was a members of Team of Dr. C. Paul made under the PNDT Act for raiding the ultrasound centre. As per their programme Dr. Kewal Kumar, Dr. Rekha and patient Mrs. Madhu, who was pregnant went to the ultrasound centre of the accused Dr. Anil Sabhani and if accused prompted them for sex determination, a signal was to be given to other team members by Dr. Kewal Kumar. After the sex determination by the accused. Dr. Kewal Kumar gave a signal by coming outside the ultrasound centre and on this team members went inside along with Dr. Mini Vohra of the Indian Medical Association and other members. Dr. C. Paul gave his introduction and checked the clinic of the accused. Initially Dr. Anil Sabhani refused having conducted sex termination, but on further questioning and on hearing the tape recorded conversation, accused Dr. Anil Sabhani admitted conducting sex determination. Three currency notes of Rs. 500/- each given as fees for sex determination were also recovered from accused Kartar Singh, which were sealed in an envelop which is Ex. PW. 2/E. Spot memo was prepared and the records were taken into custody. The inspection note was also prepared and accused are present in the court and identified by him.

PW 8 deposed that on 11.10.2001 she was present along with Dr. B. S. Dahiya, Dr. C. Paul. Dr. C. Paul was the in-charge of raiding team along with Dr. Rekha Mishra, Dr. Snehlata, Dr. Kewal Kumar and Shri Bijender and they went to raid the ultrasound centre as complaints had been received about the accused conducting sex determination of pregnant women. Dr. Kewal Kumar took along with him one decoy patient Mrs. Madhu to get her ultrasonography done. Dr. Kewal Kumar accompanied Mrs. Madhu be attendant and he was charged Rs. 300/- for routine ultrasound. During routine ultrasound Dr. Anil Sabhani prompted them to know the sex of the foetus for which he would only charge Rs. 1200/-. On this the fees was paid and the accused disclosed them about the female foetus. After this the team members went inside and checked the documents and record maintained by the accused. At serial number 15 on 11.10.2001 the name of patient was mentioned with only Rs. 300/- paid whereas Rs. 1500/- had been charged by the accused. From the pocket of accused Kartar Singh attendant of accused Dr. Anil Sabhani Rs. 1500/- signed currency notes were recovered which he disclosed had been taken for special checkup. Accused Dr. Anil Sabhani in the presence of all the team members admitted having taken the money for special checkup and to determine the sex of the patient. The admission of the accused is Ex. PW. 3/B and bears the signatures of the witness.

PW 9 deposed that on 11.10.2001 he was posted as ASDC at Faridabad and on the same day along with Dr. C. Paul and his team went to Palwal at Anil Ultrasound Centre where a raid was conducted. Dr. C. Paul was the in-charge of the raiding team consisting of Dr. Rekha Mishra, Dr. Sneh Lata, Dr. Bhagat, Dr. Praveen Kumar, Dr. Mini Vohra and Bijender Ahlawat and others along with a video camera. This raiding team had been prepared on the directions of the Chief Medical Officer

Dr. Dahiya. The raid team was prepared as there were complaints about the accused conducting sex determination on pregnant women. Dr. C. Paul gave Rs. 1800/- to Dr. Kewal Kumar with his signatures and sent him with decoy patient to the clinic of Dr. Anil Sabhani. After the sex determination conducted by the accused, the team members went inside and introduced themselves and asked accused Dr. Anil Sabhani as to whether he conducted sex determination of patient Madhu and previously of patient Mrs. Raveeta and Mrs. Santosh. The record at the spot was taken into custody and only Rs. 300/- had been mentioned against the name of Madhu whereas Rs. 1500/- had been charged from her. Statement of accused was recorded at the spot, wherein he admitted conducting the sex determination. The currency notes given to accused Kartar Singh were also recovered and sealed in an envelop Ex. PW 8/A. Dr. Anil Sabhani admitting in writing about conducting the sex determination, which is statement Ex. PW. 3/B at point 'A'.

12. On the basis of the statement of these witnesses, who have clearly deposed about the initial visit of patient with the team members to the ultrasound centre of the accused, where he disclosed the foetus of their sex to them and later on the raid conducted by the entire team at the ultrasound centre of accused where he was found having conducted sex determination of patient Mrs. Madhu and also on the basis of the record taken into custody, which was not prepared by the accused as per the requirement of the Act, it was argued by the learned APP for the State that the prosecution has been able to prove the point of determination beyond shadows of reasonable doubt and accused accordingly deserve to be convicted.

13. The learned defence counsel cross examined the witnesses of the prosecution and argued that the accused have been falsely implicated in this case due to some personal motive of the raiding team and the accused have never conducted any sex determination upon any patient. It was argued by the learned defence counsel that the Act provides for complaint to be received on which the ultrasound centre could have been checked, but there is no written complaint produced by the prosecution to show about any complaint against the accused for the alleged offence. The learned defence counsel further cross examined the witnesses of the prosecution and pointed out to the discrepant statements by them, as PW 1 has stated in his cross examination that he was not a member of the raiding team and did not visit the clinic of the accused on 11.10.2001 whereas the other team members and witnesses have deposed about PW 1 Dr. B. S. Dahiya also being a member of the team. This witness has further admitted in his cross - examination that there was no written complaint of any person against accused and that the decoy patients were arranged by the Task force members, which argued by the learned defence counsel shows that they were not volunteers for the alleged raid.

14. It was further pointed out that PW 2 in his examination in - chief has deposed about recording statement of decoy patient at the spot itself whereas PW 1

has deposed that the same were recorded in his office. PW 2 admits that PW 1 was a member of the raiding team, which was denied by PW 1. PW 2 also deposed that decoy patients were only known to him for 8-10 days prior to the raid and it was argued that this shows the arrangement made by the team to fabricate a false case against the accused. PW 2 further admits that he was not aware about the conversation between the accused and patient Madhu prior to his entering the room. PW 3 has meanwhile deposed that on 11.10.2001 they had come to nab the culprits red handed, which shows that the intention of the raiding team was not good and they were trying to fabricate a false case against the accused. The witness PW 3 further deposed that the decoy patients were known to her for a year prior to the date of raid and this shows that the planning for fabricating a case against the accused was being carried out for a long time. This witness has further deposed that there is no list of team members on the file and the Chief Medical Officer was a member of the team, which was denied by PW 1, CMO himself. The witness further deposed that patient Mrs. Madhu was introduced to on 11.10.2001 whereas earlier he has deposed about having known the patient for more than one year. She further deposed that the Chief Medical Officer gave approximately Rs. 1400/- to Mrs. Santosh whereas PW 2 has deposed otherwise. This witness further deposed that there was no written complaint about the accused.

15. The learned defence counsel further pointed out to the cross examination of PW 4 and argued that PW 4 is merely deposing about hearsay evidence as proceedings allegedly having taken place inside the clinic were not in her presence. This witness deposed about Dr. B. S. Dahiya being with the Task Force, which is denied by PW 1 Dr. B. S. Dahiya. It was further deposed by this witness that Dr. Dahiya gave currency notes to Dr. C. Paul, which were signed by Dr. C. Paul, but PW 3 deposed otherwise. She further deposed that she never visited ultrasound centre of the accused and in her presence the statements of decoy patients were also not recorded and statement of Mrs. Madhu was recorded at Palwal, whereas PW 1 deposed otherwise. PW 5 in his examination in chief has deposed about having recorded the conversation between him, patient Madhu and accused in a hidden tape recorder, but the same was not played or produced in the court. This witness further deposed about confessional statement made by Dr. Anil Sabhani in presence of team members, but such statement was not admissible in evidence. This witness further deposed that no police member was present at that time, which is denied by PW 3. This witness further deposed that the currency notes were given to him by Dr. C. Paul, but PW 1 deposed that he had given the currency notes. It was further deposed by this witness that even he got conducted x ray in the clinic of the accused and paid Rs. 100/- but the same were never recovered by the raiding team. PW 6 denied the presence of Dr. Dahiya in the raiding team and also deposed that in his presence the accused had not disclosed the sex of the foetus. PW 7 has deposed that many persons had gathered at the spot on the day of the alleged raid, but no other independent witness was joined by them from the other citizens

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present there. PW 8 is also deposing about hear say evidence and deposed that the alleged disclosing of the foetus of sex, had taken place prior to her entry in the clinic of the accused. She further deposed that she was told by Mrs. Madhu about accused having disclosed about female foetus to her, but this was only a hear say evidence.

16. Apart from this the learned defence counsel has also placed reliance upon the defence witnesses examined by the accused which included the decoy patients Madhu as DW 1, DW 2 Santosh, DW 3 Sohal Pal and by way of documentary evidence reliance was placed upon an affidavit of Mrs. Madhu Ex. D 1, affidavit of Mrs. Santosh Ex D 2 and that of Sohal Pal Ex. D 3.

17. In the defence DW 1 deposed that she had come to the court to depose as a witness about 10 11 months back, but on that day her statement was not recorded and she had given one affidavit Ex. D 1. She further deposed that about 3 4 years back the doctors of Government Hospital had brought her from her house and told her to get her free ultrasound done and free treatment. They took her to several Hospital including Siri Ram Hospital and her ultrasound was done in B. K. Hospital and she was told that one more ultrasound would be done at Palwal. On that day she got her ultrasound done at the clinic of the accused and she had enquired of well being of the foetus. She never got the ultrasound done to ascertain the sex of the foetus and she did not enquire about this and nor the same was disclosed by the accused. No currency notes were recovered in her presence and her signatures were obtained on some documents and she had merely been told to tell at Palwal, that accused had told to her about a female foetus. The accused have been falsely implicated in this case.

DW 2 meanwhile deposed that about 11 months back she had given one affidavit Ex D 2 and she never got her ultrasound done from the ultrasound centre of the accused and never enquired about sex of foetus and her statement was not recorded before the Chief Medical Officer although her signatures were obtained on blank papers. She had never come to Palwal. She was told about her foetus by the doctor of B. K. Hospital and she had been brought to Palwal to create a scene at the ultrasound centre of accused and on the asking of the doctor of B. K. Hospital, she created a scene at the ultrasound centre of the accused by telling that the accused had disclosed to her about her foetus.

DW 3 was the husband of DW 2 and deposed that he had given one affidavit Ex. D 3 in this court. He along with his wife had been brought by Government doctors of B. K. Hospital on the pretext of getting them treated free and getting ultrasound done and they were asked to say that the ultrasound had been done by the accused whereas ultrasound of his wife was done in B. K. Hospital. They never got recorded any statement in the office of the Chief Medical Officer and their signatures were obtained on blank papers.

18. Pointing out to the discrepant statements made by the witnesses examined

and the fact that the recorded version was never put to the accused and the fact that the decoy patients Mrs. Madhu and Mrs. Santosh along with Sohan Pal were not supporting the alleged prosecution case and they had also deposed that they were never a part of the raiding team and were only joined to fabricate a false case against the accused, it was argued by the learned defence counsel that the circumstances clearly show that accused have never indulged in any determination of sex and for their personal benefits and to destroy the career of the accused, the witnesses have deposed falsely and no reliance can be placed upon their testimony, more so, in view of the statement of the decoy patient accused, deserve to be acquitted in this case.

19. Statements of the accused were record under section 313 Cr. P. C. wherein they have submitted that a false case has been fabricated upon them and they deserve to be acquitted. In their defence evidence the accused have examined DW 1 Madhu, DW 2 Santosh and DW 3 Sohan Pal and in documentary evidence, the accused placed reliance upon affidavit of the aforesaid witnesses Ex. D 1 to Ex. D 3.

20. I have heard the arguments of the learned APP for the State and the learned defence counsel. In the present case the prosecution story was about the accused having been found conducting sex determination of foetus and also not maintaining proper record of the ultrasound centre and contravening the various provisions of the Act.

21. It is pertinent to note here that the present case registered on the basis of a complaint was one of the earlier cases registered under the Pre conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (here in after to be referred as the Act). In the past Pre Natal diagnostic centers sprang up in the urban areas of the country using pre natal diagnostic techniques for determination of sex of the foetus. Such centers became very popular and their growth was tremendous as the female child is not welcomed with open arms in most of the Indian families. The result was that such centers became centers of female foeticide. Such abuse of the technique is against the female sex and affects the dignity and status of women. Various organization working for the welfare and uplift of the women raised their heads against such an abuse. It was considered necessary to bring out a legislation to regulate the use of, and to provide deterrent punishment to stop the misuse of, such techniques. The matter was discussed in Parliament and the Pre natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill, 1991 was introduced in the Lok Sabha. The Lok Sabha after discussions adopted a motion for reference of the said Bill to a Joint Committee of both the Houses of Parliament in September, 1991. The Joint Committee presented its report in December, 1992 and on the basis of the recommendations of the Committee, the Bill was reintroduced in the Parliament.

22. The object and reasons for which the present Act was formulated were as

follows: -

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

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

23. It is also pertinent to note that being the first of its kind cases under the Act and having been registered on the basis of the complaint filed by the District Appropriate Authority there never was the role of any prosecuting agency as such like police or some other organizations related to the prosecution agency to investigate the case and conduct investigation or record statements of witnesses or visit the site. All this work was done by the complainants, which was a team of doctors under the District Appropriate Authority and they have done the investigation part to the best of their knowledge and capability.

24. The present Act came into force in view of the declining sex ratio between the male and female child in India and the sex ratio in Northern India is getting worse day by day. The child sex ratio in Punjab has fallen from 793 in 2001 to 776 in 2003 and in Haryana from 820 to 807 during this period. Himachal Pradesh, Uttar Pradesh, Rajasthan, Gujarat and Bihar are the other states where the child sex ratio is worse and declining further.

(a). The learned defence counsel in the present case has cross examined the witnesses of the prosecution at length and tried to bring to notice the discrepancies in the statements of the witnesses and some minor contradictions here and there. It is to be noted that the present case although triable as a criminal case, but still the handling of the case under this Act cannot be a replica of what is seen or looked for in other criminal cases such as cases relating to hurt or injury. In cases relating to hurt or injury where an occurrence is alleged with eye witnesses to the occurrence, the contradictory statements made by the witnesses relating to the occurrence, the

number of injuries suffered and kind of medical reports brought by the doctor, are very material, but in the case in hand the minor contradictions pointed out would not be very material due to the different and typical nature of the case.

(b). From the perusal of the evidence on the file and cross examination conducted by the learned defence counsel on the witnesses of the prosecution some things became very clear and the same are as follows: -

- (i). There was a team of doctors and other members which had raided the clinic of the accused;
- (ii). There was the presence of the decoy patients along with the said team;
- (iii). The team raided the clinic of the accused and questioned him;

(iv). There were some admissions made by the accused in writing and in secretly recorded audio tape before the team. With the above points in mind, the arguments of the learned defence counsel can not to be looked into. The major thrust of the arguments of the learned defence counsel was with regard to contradiction in the statements of the witnesses. It was argued that some witnesses have deposed about the presence of Civil Surgeon cum Appropriate Authority, Faridabad in the raiding team while he himself has denied being a member of the Team. Whether the appropriate authority was always present along with the raiding team or he was not present in the raid along with the team does not affect the merits of this case, as PW 1, the appropriate authority was not the sole witness on which the prosecution has based its case. The absence of this witness, even if his evidence is taken into consideration, from the raiding team does not show or prove that the raid was not conducted, when in the cross examination of the witnesses the fact of raid having been conducted is admitted by the learned defence counsel.

The learned defence counsel had also argued that about the handing over the currency notes being stated differently by the different witnesses. It was argued that as per PW 1 he paid Rs. 1800/- for decoy patient Madhu whereas the other witnesses have deposed that the money was given by PW 1 to Dr. C. Paul. Here it is pertinent to note that PW 1 has only deposed about having given Rs. 1800/- 'for' decoy patients Madhu and it was never deposed by him that he had given any money 'to' patient Madhu. It was always the case of the prosecution that PW 1 had given the money for patient Madhu because on the day the raid was conducted i. e. 11.10.2001, there currency notes of Rs. 500/- each and three currency notes of Rs. 100/- each were given to be used as money for transaction in the clinic by PW 1 to Dr. C. Paul and he signed the same and he gave them to Dr. Kewal Kumar, who was acting as the attendant of patient Madhu and who used the said currency notes in the clinic when demand was made by the accused of sum of Rs. 1200/- to report about the sex of the foetus of patient Madhu.

It was further the arguments of the learned defence counsel that there was never

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any written complaint against the accused and this has also been deposed by the witnesses and thus there was no ground to raid the clinic of the accused and he was never doing any illegal act. Hence a perusal of the statements of the witnesses recorded shows that it has been deposed by PW 1 himself that there was several oral complaints with regard to the accused indulging in sex determination in his clinic and as provided under Section 17 of the Act, the appropriate authority had full right to investigate the complaint of breach of the provisions of this Act or the Rules made there under and he is also competent to take immediate action. When it had come to the notice of the Appropriate authority about the accused violating the provisions of the act, he was not required to wait for written complainants and then take the action.

It was further argued by the learned defence counsel that some witnesses who deposed, have only deposed on the basis of hear say evidence and the actual alleged occurrence had not taken place in their presence. This was in context to the case of prosecution that on the exact date of raid Dr. Kewal Kumar along with patient Madhu and her husband had gone to the clinic of the accused while the others had waited outside and thus the conversation that took place inside the clinic could not, has been known first hand to the persons waiting outside. This contention and arguments of the learned defence counsel does not hold much the defence of the accused as the corroborating circumstances and the evidence of the witnesses would show that even Dr. Kewal Kumar has appeared in the witness box as PW 5 and moreover, the witnesses have also deposed about the later admissions and confessions made by the accused in their presence.

It was further argued by the learned defence counsel that witness PW 3 has deposed about presence of police along with the team while others have denied this and this is a major contradiction, but the same can only be said to be a minor contradiction and expect for PW 3 no other witness deposed about presence of police with the raiding team and neither was this question asked to other witnesses.

It was further argued by the learned defence counsel that the witnesses have laid a great thrust on a tape recorded conversation between the accused and Dr. Kewal Kumar and patient Madhu inside the clinic and that this tape recorder conversation cannot be taken into evidence since the same has not been proved as per law. The learned defence counsel although argued about this tape recorder conversation, but even the prosecution could prove this tape recorded conversation as per procedure laid down by the law. To prove this conversation which was the material evidence with the prosecution, it was required that first the transcript of the conversation be placed on file and then on the application of the prosecution and with the consent of the accused, their sample voice was to be recorded and then to be sent for verification along with the original conversation in the alleged audio tape. This procedure was never followed by the prosecution for the reasons best known to them.

Here it is important to say that the prosecution which was mainly consisting of the appropriate authority and his team members has not shown except for some members the same zeal that was shown when they formed a task force to check the violations of the Act and raided the clinic of the accused. Till the filing of the complaint, a lot of hard work went in the preparation and subsequent raid at the clinic of the accused but a perusal of the case file shows that some how the sing went missing after the filing of the complaint. The witnesses mentioned in the list attached with the complaint some how did not seem very keen to appear in the court and depose in the witness box and despite having been granted sufficient opportunities some of the witnesses were still not examined in the witness box as the list included 18 witnesses of which the prosecution was able to examine only nine witnesses. The presence of some more witnesses could have further helped the case of prosecution.

The learned defence counsel has also argued that the witnesses are laying great importance to confessional statement Ex. PW 3/B where as per prosecution both the accused have admitted about having violated the provisions of the Act and having conducted sex determination on the foetus of patient Madhu and where accused Dr. Anil admitted having accepted money for sex determination. It was argued that this so called confessional statement cannot be taken into consideration at all as the Appropriate Authority had no right to obtain this statement and the same cannot be used as evidence against the accused. As earlier discussed, there was no opportunity in this case for any agency to conduct the investigation and what ever was best thought at the relevant time was done by the members of the raiding party and when they confronted the accused with the signed currency notes recovered from accused Kartar and with the alleged audio tape having recorded conversation of the accused, the accused admitted their guilt and gave the entire admission in writing in their own hand.

It is important to note that Ex. PW 3/B is in the hand of the accused themselves and this fact is also not denied by the accused and thus this document cannot be simply brushed aside by saying that the same is not admissible in evidence, when it is in the hand of the accused and accused have also failed miserably in showing any witness motive on the part of the members of the raiding team for raiding the clinic of the accused. The present documents is a circumstantial and corroborative evidence of the prosecution and it helps to the prosecution to a large extent in view of the fact that he prosecution had always stated about using the signed currency notes at the time of the raid on the clinic of the accused and these currency notes on the asking of the accused Anil were given to accused Kartar Singh and also recovered from him and on the recovery of these currency notes, the same were put in an enveloped were sealed and this envelope bore the signatures of the members of the task force as well as the accused and which is Ex. PW 2/E. The learned defence counsel has not felt the need to confront the accused with these currency notes by requesting the court for opening of the envelope and thus it amounted to

admission on the part of the accused about the recovery of these signed currency notes from accused Kartar Singh which were with him at the demand made by accused Anil.

Another argument put forward by the learned defence counsel was with regard to the place of raid being a busy place and non joining of any independent witness from the public at large. The joining of any witness from the public who were present at the spot was not very material in the present case as the raiding team had taken a precaution of joining Dr. Mini Vohra in its team, who was not a doctor working for the government, but in fact was a private doctor and was the secretary of the Indian Medical Association Faridabad.

(c). The learned defence counsel also had with him three witnesses examined as defence witnesses i. e. Mrs. Madhu, Mrs. Santosh and Sohan Pal who were initially the witnesses of the prosecution and were not examined by them as their witnesses, but were examined by the accused as their defence witnesses. It is pertinent to mention that Mrs. Madhu and Mrs. Santosh were two of the alleged decoy patients with the task force and Sohan Pal was the husband of Mrs. Madhu, who accompanied the task force on the alleged date of raid i. e. 11.10.2001. From the testimony of these witnesses, the learned defence counsel tried to bring forward the story, of the task force members having induced these witnesses to accompany them as members of the team and to raise false alarm against accused in their clinic, by saying that Dr. Anil by conducting sex determination of Mrs. Madhu had told about a female foetus in her womb. On these lines is the testimony of these witnesses and DW 1 deposed that some Govt. doctors came to their house from B. K. Hospital, Faridabad and told her that they would get her treated for free and asked her to accompany them to the clinic of the accused and to raise false alarm as discussed above. The witnesses deposed that she did accordingly and no money was ever recovered from the accused in her presence. On the same lines DW 2 Santosh also deposed that she was first taken by some Govt. doctors to B. K. Hospital, Faridabad and her signatures were obtained on blank papers and she was also asked to create a scene and raise a false alarm in the clinic of the accused. DW 3, the husband of patient Madhu has also deposed that he was also induced by the Govt. doctors on the pretext of free treatment to him and taken to the clinic of the accused with a prior planning of raiding team. A perusal of the testimony of these witnesses bring to mind the recent Jessica Lal's case where there was a huge list of prosecution witnesses going hostile and not supporting statements made by them earlier. The three witnesses of the defence as earlier discussed never got any chance to get their statements recorded before any prosecuting agency like the police and there was no statement of these witnesses recorded on oath at any stage on the basis of which they could on oath at any stage on the basis of which they could be termed turning hostile, but there are some similar circumstances in the present case also. As per prosecution, after they had conducted the raid at the clinic of the accused, the raiding team had recorded the statements of these witnesses, which is

Ex. PW. 2/F and Ex. PW. 2/G being statement of Santosh and Madhu and in these statements, these witnesses had supported the case of prosecution. However, as earlier stated their statements not being on oath, these witnesses could not be termed as hostile witnesses when examined as defence witnesses and as such proceedings against them for perjury could not be initiated. However, a perusal of their cross examination by the learned APP goes to show the circumstances under which these witnesses may have deposed for the accused. All the three witnesses deposed that some doctors from the Government hospital came to them on the pretext that they would give them free treatment. A perusal of the testimony shows that no prudent person even if he is considered to be an illiterate person would simply got up and joined a group of persons, who come to him and identified themselves as Govt. Doctor. This observation has been made as the defence witnesses have stated that they accepted the persons as Govt. doctors because it was said so by them. These witnesses further deposed that the said group of persons took them and made them sign some blank papers which also cannot be believed even with closed eyes, as no one would sign blank papers on the asking of the persons, the identity of whom he or she is not aware of DW 1 has stated in her cross examination that although she is illiterate, but can put her signatures. The learned defence counsel along with the testimony of these three defence witnesses also placed reliance upon their alleged affidavits Ex. D 1 to Ex. D 3. In these affidavits, the witnesses examined by the accused have stated the same fact as stated by them in the witness box i.e. denying being a part of the raiding team and only having been used by them against the accused. These three affidavits were alleged to have been signed by Mrs. Madhu and Mrs, Santosh and Sohan Pal, but a perusal of the affidavits shows that these were not properly drafted and in the verification there was no mention as to which part of the affidavit was true to the knowledge of the deponent and which part to his or her belief. Further these so called affidavits were said to have been attested by some oath commissioner, but again the attestation was also not proper as neither does the seal of the oath commissioner contained his name and neither does the seal of attestation mentions the name of oath commissioner and neither these affidavits had been entered at any serial number in the register of the said oath commissioner, whose identity cannot be ascertained from the signatures allegedly present on these affidavits. Thus no reliance can be placed on these affidavits and on the same lines is the testimony of the defence witnesses and it is stated by DW 1 that she is not aware about the contents of Ex. D 1 has also deposed that the members of the raiding team had asked her to co-operate with them for the benefit of the public and thus she had joined them and this statement of the witness shows that there was never any ulterior motive on the part of the raiding team when they joined this witness as decoy patient with them.

A perusal of cross examination of DW 2 shows that she denied her presence on 11.10.2001 at the clinic of the accused where as in her examination in chief says

that she was made to create a scene on 11.10.2001 by the team members and on the same lines was her affidavit Ex D 2 on which she was placing reliance. It is also pertinent to note that these witnesses have stated in their cross examination that they were brought to depose in the witness box by the accused and this shows that why these witnesses were deposing in favour of the accused. DW 3 also made it clear in his cross examination that he was brought to depose by Dr. Anil Sabhani.

A perusal of the testimony of these defence witnesses shows that although initially these witnesses had joined the task force members for a very noble cause and the circumstances also required the presence of such witnesses to expose the violation and practice of the accused there was the necessity of pregnant woman on whom the accused could conduct the sex determination and he could be caught. A perusal of the statements of the witnesses shows that PW 3 had arranged for these decoy patients, but perusing the entire evidence it comes to notice that when the prosecution agency needed these witnesses they must have cared for them, but as earlier discussed, after the filing of the complaint these witnesses seem to have been left in the lurch and thus they became easy prey for the accused to use them as his witnesses instead of being the witnesses of the task force members. Here the need arises to take care of such witnesses who by going against all odds tried to help the prosecution with its case which was for noble cause and then none cared to look back at these witnesses and the circumstances in which they were maintaining themselves. The above observation would show that the testimony of these defence witnesses in favour of the accused is not trust worthy and cannot be relied upon at all for the benefit of the accused, more so, because of the other evidence of the prosecution to support its case.

(d). Having a look at the case of prosecution in its entirety some thing that come forward and are to be looked at is that the sex ratio in India and more so in the states of Punjab and Haryana has always been a matter of concern but this concern sounded a red alert when the state entered the 21st century with a sex ratio of 776 per 1000 and 807 per 1000 respectively. A question that can be asked is as to where the missing girls are? The obvious answer is that they have either been eliminated even before they were born or had died a slow death as a result of neglect. The perpetrator of the crime goes scot free. Here it is also important to mention that the determination of sex of the unborn child has also led to the large scale killing of the girl child because as soon as one comes to know about the sex of foetus being female the next step is to get terminated the pregnancy and kill the girl child and thus the sex determination tests followed by sex selection abortions have given an impetus to the hideous crime of killing the girl child prevalent. The PNDT Act alone cannot change the situation even though its stringent implementation may bring down the number of sex selective abortions. The nexus seems to be too strong and weighs heavily in favour of the medical fraternity. It is important to note that the entire blame for determination of sex of the unborn child cannot be put entirely on presence like the accused, but said blame should be shared jointly by the society.

When ever a persons goes to the ultrasonologist for determination of the sex of the foetus, the act is not alone of the persons like the accused, but equal role is also played by the patient and his family members. On the mere instigation of the person like the accused no sane person would agree to abort their child until time they have an interest in the termination of the pregnancy. The persons like the accused cannot force any person to know the sex of the child till the said person is also interested in knowing the same. This, however, does not mean that persons like the accused are not to be blamed at all and rather such persons like the accused should deter the patient from making enquires about the sex of the foetus and should refrain form disclosing the same as provided under the act.

(e). A perusal of the complaint of the prosecution shows that to nab the accused a great effort was put in by the task force members as a result of which they initially visited the clinic of the accused with decoy patient Santosh and were conveyed a female foetus by the accused. To further certify the act of the accused, the team members visited the clinic on 5.10.2001 with patient Raveeta and she was disclosed having male foetus on 8.10.01 and charged the fees amounting to Rs. 1200/-. By verifying the act of the accused finally the raid was conducted on 11.10.2001 along with decoy patients and independent witness Dr. Mini Vohra and there, as earlier discussed, signed currency notes were given by Dr. C. Paul to Dr. Kewal Kumar, which were three currency notes of Rs. 500/- each and three currency notes of Rs. 100/- each and Dr. Kewal Kumar posed as the attendant of patient Madhu and got her normal ultrasonology done, but accused Dr. Anil asked about the children of Madhu and suggested her that he could also tell the sex of her present foetus, if she makes additional payment of Rs. 1200/- to him. This demand was most with the help of the signed three currency notes of Rs. 500/- and after this a female foetus was disclosed by accused in the womb of Mrs. Madhu. The team members on signal of Dr. Kewal Kumar joined them in the clinic and confronted the accused with the recovered currency notes from accused Kartar Singh and then both accused admitted their guilt as earlier discussed to their crime and admitted their act by way of admission Ex. PW. 3/B. The team members also took the records of the accused into custody and a perusal of the said records showed that the accused was not maintaining the records as per the rules of the Act. It is provided under the Rules and the Act under section 6 that the Genetic Centre would not conduct ultrasonography for the purpose of determining the sex of foetus and it has been further provided under section 5 of the Act as follows: -

“5. Written consent of pregnant woman and prohibition of communicating the sex of foetus: -

- (1) No person referred to in clause (2) of section 3 shall conduct the pre - natal diagnostic procedures unless: -
 - (a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;

ANNEXURE VIII

- (b) he has obtained in the prescribed from her written consent to undergo such procedures in the language which she understands; and
- (c) a copy of her written consent obtained under clause (b) is given to the pregnant woman”.

A perusal of the records taken into custody from the accused, however, shows the violations of this section as some ultrasound report cards taken into custody from the spot show that the requirement of Act has not been met at all by the accused and during their entire defence, the accused have also failed to prove or show that there was no violation of this section by them. There was also violations of section 4(1), 4(2) and 4(3) of the Act by the accused and it was further provided under the Rules of the Act to maintain proper record by the ultrasound center and the patient examined and this was provided under section 29 of the Act, which read as follows:-

“29 Maintenance of Record:

(1) All records, charts, forms,, reports, consent letters and all the documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed.

Provided that, if any criminal or other proceedings are instituted against any genetic clinic, the records and all other documents of such center, laboratory or clinic shall be preserved till the final disposal of such proceedings.

(2) All such records shall, at all reasonable times, be made available for inspection to the appropriate authority or to any other persons authorized by the appropriate authority in this behalf.

Rule 9 of the Act was also violated by the accused along with section 29 with regard to non-maintenance of proper records and the accused also did not maintain proper records as required under Form F. The entire records of the accused taken into custody show that Form-F has not at all been maintained by the accused, which contains a declaration of the pregnant woman and declaration of the person conducting ultrasonography which mentions in the declaration that the woman did not want to know the sex of her foetus and the person conducting ultrasonography neither detected nor disclosed the sex of her foetus to any body in any manner. This there has been gross flouting of the Rules by the accused and a very serious offence has been committed by both the accused, while the accused are required not to attend to any patient without reference they were doing so openly which is clear from the records taken into custody.

(f) A perusal of the testimony of the witnesses also shows that there have been admissions of the act of the accused at several places. What PW-2 Dr. C. Paul deposed in his examination-in-chief about the raid at the clinic of the accused and disclosing of sex of foetus by the accused and also the recovery of currency notes

has not at all been denied in the cross-examination of the witnesses which would amount to its admission. The accused also admitted to the document Ex.PW.3/B being in their own hand during cross-examination of PW-2 where it was suggested to the witness that the statement of accused was taken under some threat but such threat has not been proved or made clear by the accused. Similar suggestion was also made to PW-3 and even she denied the suggestion made to her and which amounted to the statement of accused having been recorded by them in their own hand. The learned defence counsel has also tried to make the defence witness Madhu say that no ultrasonography was conducted upon her in the clinic of the accused, but in the cross-examination of PW-5, it was suggested to him that only a sum of Rs. 300/- was paid for patient Madhu and only a normal ultrasound was conducted by the accused upon patient Madhu, which she was trying to deny in her testimony in the witness box. All the witnesses who were the members of the task force have deposed in one breathe about the admissions made by the accused in their presence as also the recovery of currency notes and for the sake of repetition accused have failed miserably to show any ulterior motive of the part of any of the witness of the prosecution to depose against them.

25. The above detailed observations and the circumstantial and corroborative piece of evidence and the records taken into custody from the accused clearly proves the point of determination of the prosecution about the accused having been found contravening the provision of Section 6 (a) and 6 (b) of the Act when a raid was conducted at their clinic and further the accused having been found conducting PNDT procedure in violation of section 5 (1) and 5 (2) of the Act and using ultrasound centre for conducting PNDT in violation of section 4 (1) 4 (2) and 4 (3) of the Act and also failing to maintain proper records of the ultrasound center and contravening the provisions of Section 29 read with Rule 9 and Form F under the PNDT Act Rules and all the offences are punishable under Section 23 of the Act. Both the accused are accordingly held guilty and convicted for the above offences. Let the convicts be heard on the point of quantum of sentence on 28.3.2006.

Sd/-

Announced:

Sub Divisional Judicial Magistrate

Dt: 25.3.2006

Palwal. 25.3.2006

JUDGMENT CONTINUED:

Present : APP for the State/Complainant

Both convicts in person with Sh. R.A. Gupta, Advocate

ORDER OF SENTENCE

1. Arguments on the point of quantum of sentence heard. Convict Dr. Anil Sabhani has stated that he is the sole bread earner of the family with an old mother

and small children to look after. He is doctor by profession and not a previous convict and a lenient view be taken against him. Convict Kartar Singh has meanwhile stated that he is not a previous convict and has old parents and small children to look after. He is the sole bread earner of the family and a lenient view taken against him. The learned counsel for the convicts argued that the convicts are not previous offenders and they did not indulge in any criminal act and as much leniency be shown to them. The learned APP meanwhile argued that stringent punishment be awarded to the convicts, who have indulged in a very serious offence.

2. I have heard the convict, their counsel as also the learned APP for the State. The convicts have prayed for a lenient view against them, but in my considered view they could not deserve the leniency prayed for. As earlier discussed due to the illegal acts of the persons like the convicts the sex ratio is declining day by day in the country and in the State and because of the persons like the convicts the day is not far when they would be no girl child around. In the present case, the convicts orally conveyed the sex of foetus to the patients, but due to the check of such illegal acts the persons like the convicts have worked out their own sex determination code. It was reported in the news paper recently as follows:

“If the doctor tell us to come and get the report on Monday, we know it's a boy. Friday means a girl,” says Sarla, proud mother of three strapping boys in Karnal's Chonchda village. Her neighbour's doctor adopted a slightly different modus operandi signature in red ink to indicate a girl child and blue for a boy. “No words are exchanged. It's an unspoken thing and one doesn't even have to ask,” she says. If the doctor doesn't oblige, some tout does.”

3. It is further to be seen that Haryana's infamously skewed sex ratio is not just about numbers though they are quite horrific 861 per 1,000 males as per the 2001 census it's also about attitudes. Combined with ultrasound technology that motorable roads, electricity and extensive urbanization have brought only closer home, this has translated into a dearth of brides. The statistics speak for themselves: 36.24% of men between 15 and 44 years of age (the so-called reproductive or marriageable age) were tabulated as being unmarried in the 1991 census. In some districts like Rohtak, the percentage was as high as 44. Since then the number has only gone up. Though the state government has claimed success in its efforts to correct the skewed sex ration through awareness drives and incentives for the girl child, activists who work in the area are skeptical.

4. The convicts together have indulging in a very serious crime. To kill a person who may have the opportunity to defend himself is a very serious

offence, but even more serious is the offence where a person kills someone who is not even in a stage to defend himself. The determination of sex by persons like the convicts lead to the above reality where on determining the sex of the foetus as female the same is killed in a cruel manner. The act of the convicts is to be condemned and in my considered view the punishment to be awarded to the convict should act as a deterrent to other persons, so that no one indulges in such a heinous crime. Accordingly, I order both the convicts to undergo a simple imprisonment for a period of two years and to pay fine of Rs. 5000/- each for the offences mentioned in section 6(a), 6(b), section 5(1), 5(2) section 4(1), 4(2), 4(3) and section 29 read with Rule 9 of the Act and all the offences punishable under section 23 of the Act. In default of payment of fine, the convicts shall further undergo simple imprisonment for a period of three months. Fine paid.

Sd/-

Announced in open court:

Sub Divisional Judicial Magistrate

Dated 28th March, 2006

Palwal. 28.3.2006

NOTE: This judgment contains forty-nine pages and each page has been signed by me.

Sd/-

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Sub Divisional Judicial Magistrate

Palwal. 28.3.2006

This little book has a very pointed and defined purpose. It is meant to assist effective prosecution under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act. The need for bringing out this little book has been strongly felt as implementation of this law is one of the weakest links in the drive against the misuse of diagnostic technologies and the resultant continuing and worsening decline in the sex ratio across the country. For the purposes of absolute clarity and completeness, this little book will deal with every chapter in detail.

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