

ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION

NOTE ON PCPNDT ACT

The Law To Prevent Sex Selection:

In the 1980s modern medical technologies, such as amniocentesis, which were useful for the detection of abnormalities in the foetus, began to be misused for determining the sex of the foetus. This resulted in the rising numbers of selective abortions of the female foetuses and a sharp decline in sex ratios.

A national law, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (PNDT Act), 1994 was enacted to prevent sex determination and came into force on January 1st, 1996. However, this law was never implemented. In the meantime new techniques had been developed that used pre-conception or during-conception sex selection. To bring these new technologies under the purview of the Act and to ensure rigorous implementation, the law was amended in 2003 and is renamed the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act), (effective from February 14, 2003).

Key features of the Act:

The Act mainly provides for-

- Absolute prohibition of sex selection and sex determination.
- Regulation of the use of prenatal diagnostic techniques (e.g. amniocentesis and ultrasonography).
 - These can only be conducted for specified conditions, such as the detection of specific abnormalities in the fetus.
 - All clinics, hospitals, nursing homes and laboratories conducting these tests and ultrasound must be registered under the PCPNDT Act 2003 by paying a fee. A copy of the registration certificate must be prominently displayed by the clinic. Detailed patient records as per specified formats have to be maintained.
 - Only doctors qualified under the Act (MD in Medicine, Gynecologists, Pediatricians and Medical Geneticist) can conduct these diagnostic techniques including ultrasonography.
- No person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives the sex of the fetus by words, signs or in any other manner.
- Advertising of sex determination tests in any form is prohibited.
- The sale of ultrasound machines to persons not registered under this Act is prohibited.
- Any person violating these provisions is liable to be punished under the Act.

Legal Use of Pre-natal Diagnostic Tests under this Act:

Pre-natal literally means before birth. Legally, tests can be used to detect physical and mental abnormalities in a fetus and are known as **pre-natal diagnostic techniques**. These techniques include the study of blood, body fluid (e.g. Amniocentesis), cells and tissue (eg. Chorionic villi biopsy) taken from a pregnant woman or the fetus. These tests are used on pregnant women when there is:

1. History of the woman concerned of giving birth to children having physical and mental abnormalities
2. Hereditary forms of anaemias, mental retardation and mental illnesses in the family
3. History of stillborn births
4. Pregnant woman's exposure to chemicals, drugs, radiation etc that are known to cause birth defects
5. Pregnant women above the age of 35 years
6. Different blood groupings (Rh incompatibility) of the fetus and mother.

The doctor carrying out the tests has to take **written consent of the pregnant woman** informing her about the side effects of the tests. A copy of the consent obtained must be given to the woman. **This has to be done in a language that she understands.** The other technique is **ultrasonography**. It is used to monitor the growth of the fetus as part of ante-natal check-up. **None of these tests can be used to determine the sex of the fetus.**

Sex Selection:

The amended act also regulates new techniques that are used by infertility clinics to ensure conception (e.g. in-vitro fertilisation). These **pre-conception or during conception techniques** cannot be used to select the sex of the fetus.

Punishment for Violation of the Act:

1. For a doctor or medical person who misuses these techniques for sex selection:

- 3 years imprisonment and/or fine up to Rs 10,000 for first conviction. Suspension of Registration by the Medical Council for 5 years for first offence.
- For subsequent offence, 5 years imprisonment and/or fine Rs 50,000. Permanent removal for subsequent breaches.

2. Persons seeking to know the sex of the fetus:

- 3 years imprisonment and/or fine Rs 50,000 for the first offence
- For subsequent offence, 5 years imprisonment and/or fine Rs 1,00,000.

The pregnant woman herself is considered innocent under the Act, unless and until proved otherwise. It is presumed that she will have been compelled to undergo sex determination tests by her husband and relatives

3. Persons connected with advertising of sex selection/ sex determination services:

- 3 years imprisonment and/or a fine of Rs 10,000 with additional fine for continuing contravention at the rate of Rs 500 per day.

Lodging a complaint and Action to be taken:

A written complaint has to be made to the Appropriate Authority of the State or District or sub-district. The Appropriate Authority (AA) is a senior health department official, such as the Chief medical Officer at the District level or a Ward Medical Officer in the Municipality. Action has to be taken within 15 days of lodging the complaint.

The AA will investigate the complaint. The clinic will be searched and documents examined and seized if offence is taking place. The AA would file the case.

Implementation Machinery for the PCPNDT Act:

1. Central Supervisory Board (CSB) 2. State Supervisory Board (SSB) and Union Territory Supervisory Board (UTSB)	The highest decision-making bodies at Central/State/UT levels. These monitor and review the implementation of the Act.
3. State Advisory Committee (SAC)	An AC is appointed by State Government to aid and advise each AA in its functioning. Thus, ACs exist from State to sub-district levels. Consists of 3 doctors, 3 representatives of social organisations such as women's organisation, 1 legal expert, 1 official from Department of Information and Publicity
4. Appropriate Authority (AA)	Grants registration, checks applications for registration, investigates complaints and files the case. State AA – Official of the rank of Joint Director of Health and family Welfare (Chairperson); an eminent woman representing women's organisation; an officer of the Law dept. District or Municipality AAs – CMO or Civil Surgeon at the district level; Medical Officer of the Ward in the Municipal Corporation
5. Advisory Committees (AC) attached to each AA of different districts and sub districts of the State.	Local area ACs consist of – 3 medical experts 1 legal expert 1 publicity official 3 social workers or representatives of social and women's organisations

Social & Women's organisations interested in monitoring the misuse of tests can become members of their State and District / local area advisory committees (ACs).

The Government must create wide awareness through the mass media about the Act.

What Should AIDWA do?

1. Monitor the implementation of the Act

- Find out if the various committees have been formed in the State and at the District and sub-district levels
- Find out the names of the members on the committee. Apply to become a member of the committee.
- Enquire how many clinics have been registered.
- Find out how many cases have been registered by the AA for violation of the different sections of the Act.
- Demand that the fees collected for registration of the clinics be used to conduct awareness campaigns against sex-selection.
- Check if the registration certificate is properly and boldly displayed by clinics.
- Check if case papers and the 18-column register specified under the Act are being maintained.
- If there are MTPs (abortions) being conducted at the same premises as the ultrasonography clinic, check if the MTP clinic is registered.
- Critically evaluate the publicity material brought out by the government and the awareness campaigns undertaken by the SSBs and SACs.

Note: The best way to find out whether the clinic/doctor is violating the Act is to first conduct a discussion in the area amongst women to find out if any doctor in the area is doing sex-selective abortions. On that basis, you can visit a clinic and check if its registration certificate is displayed. You can also pretend to be a patient or a relative of a patient and engage in conversations with the patients to find out what is going on in the clinic. If you know of someone in the area who has had a sex-selective abortion done and is willing to become a witness, tape her and ask her to make an affidavit. You can then approach the AA and conduct a raid. **This is also why it is important to try and become a member of the committee - it gives us the authority to check clinics.**

2. Social Action

- Organise workshops for AIDWA activists to explain the provisions of the PCPNDT Act. You can send small proposals to the district level committee for conducting such workshops.
- Select an area and conduct a campaign to check if the clinics in that area are complying with the Act.
- Have protest actions against those who break the law and pressurize authorities and the government to register the offence.
- Conduct awareness campaigns against son preference, dowry and sex selection, and for equal rights of women