

PCPNDT Act: Overview and Latest Developments

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Article History

Received: 23.10.2018

Accepted: 06.11.2018

Published: 30.11.2018



DOI :

10.36348/sijlcj.2018.v01i04.003

Abstract: Implementation of PCPNDT Act strictly in past few years has created terror in mind of doctors who are operating imaging technology and infertility clinics. The terror is mainly due to criminal liability under the Act and adverse media publicity. Many doctors had to face criminal charges for trivial things like non-putting of Apron or nameplate, size of display board, clerical errors in filling of form etc. The punishment is serious in the form of imprisonment and penalty further leading to cancellation of medical practitioner licence. Indian Radiological and Imaging Association (IRIA) has taken up the issue seriously and taking the issue to various courts to avoid unnecessary harassment of doctors. Various judgements have come and depicts the stern view of the Courts. The most effective precautionary measures are to maintain records scrupulously, fill the Form-F as provided in the Act, accurately and correctly, submit and maintain the records to the appropriate authority within the stipulated time. Although there is no gap between the intent of the legislature and stand of doctors. Both are in favour of stopping female foeticide and avoiding sex discrimination. Doctors need that PCPNDT Act should serve the intent of stopping sex determination but not as a harassment tool with authorities which is taking away doctor's self-respect and giving nightmares.

Keywords: PCPNDT, Sex Determination, Female Foeticide, Doctors Criminal Liability, Sonography (USG), Infertility, IRIA.

INTRODUCTION

The Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994 commonly known as PCPNDT Act provides for regulation of genetic counselling centres, genetic laboratories and genetic clinics and also regulates pre-natal diagnostic procedures.

The strict implementation of act created terror in mind of Doctors because of criminal liability arising out of this act and negative media publicity leading to tarnished image of the renowned doctors. Many doctors had to face criminal charges for trivial things like non-putting of Apron or nameplate, size of display board, clerical errors in filling of form etc. The immediate action is seizure of machine, prosecution and adverse media publicity. It all may lead to cancellation of registration, non-renewal of PNDT registration and sometime sentence to jail.

Indian Radiological and Imaging Association (IRIA) has taken up the issue seriously and taking the issue to various courts to avoid unnecessary harassment of doctors with over strict actions of appropriate authorities at some places of country. IRIA and all

doctor community respects the basic objective of the PCPNDT Act to stop female foeticide.

Objective of the Act

Prohibition of the misuse of pre-natal diagnostic technique for determination of sex of foetus, leading to female foeticide [1].

- Prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex.
- Permission and regulation of the use of pre-natal diagnostic technique for the purpose of detection of specific genetic abnormalities or disorders
- Permitting the use of such techniques only under certain conditions by the registered institutions
- Punishment for violation of the provisions of the proposed legislation.

The Act confers a broader aspect so as to protect female foeticide in India which is seriously impairing the socio-cultural fabric of India. The medical professional running the genetic centre has to be registered under the PNDT Act. The Act provides for three years imprisonment and fine up to ten thousand rupees as punishment in contravention of the Act the representatives of women's welfare

organization may exercise the power and perform the functions conferred by the board under the Act.

Section 3A of the Act prohibits sex selection. This section has been inserted by amended Act of 2003. It says that no person including specialist or 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 both on any tissue, embryo, conceptus, fluids or gametes derived from either or both of them.

The Act also prohibits sale of ultrasound or imaging machine capable of detecting sex of foetus to unregistered person or centre etc, to persons, laboratories, clinics, which are not registered under the Act. The object of the Act is to avoid sex selection at pre or post conception stages and also prohibits sex-selective abortion.

Basic Requirements of the Act

- Registration under Section (18) of the PC-PNDT Act.
- Written consent of the pregnant woman and prohibition of communicating the sex of foetus under Section 5 of the Act.
- Maintenance of records as provided under Section 29 of the Act.
- Creating awareness among the public at large by placing the board of prohibition on sex determination.

A look at the basic requirement of the Act shows the simplicity of the Act, but non-compliance of the Act in any manner, be it the smallest of an error brings wrath upon the errant. The Act penalizes all the errants, either involved in sex determination or non-maintenance of records.

Regulations and Indication for Pre Natal-Diagnostic Techniques (Section 4):

The Act aims to regulate pre-natal diagnostic technique for the below indications and must be in writing [2]: -

- Where the age of the pregnant women is above 35 years (advance maternal age)
- Where the pregnant woman has undergone two or more spontaneous abortions or foetal loss.
- Where the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals.
- Where the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as spasticity or other genetic disease
- Any other conditions as may be specified by the Board.

Punishment (Chapter VII) [3]:

- The Act provides for the punishment to any such medical geneticists, gynaecologists, registered medical practitioners or any person who owns a genetic clinics, centre or laboratory or employed in it or renders his professional or technical services on an honorary basis or otherwise and who contravenes any of the provisions of the Act or rules made hereunder shall be punishable with imprisonment for a term upto 3 years and with fine up to Rs 10,000/ and in case of subsequent conviction with imprisonment up to 5 years and fine up to Rs. 50,000/.
- Besides, name of the registered Medical Practitioner convicted by the court shall be reported to the State Medical Council for temporary cancellation of medical registration for a period of 5 years for the first time and permanently for the subsequent offence.
- Similarly, if any person such as a husband or any other relatives compel pre-natal diagnostic test on any pregnant woman for the purpose other than as indicated in act shall also be punished with punishment and fine.
- The court shall presume, unless, the contrary is proved that the pregnant women has been compelled by her husband or relatives to undergo Pre Natal-Diagnostic Technique and such person shall be liable for abetment/encouragement of offence.
- Every offence under this Act shall be non-bailable, cognizable and non-compoundable.

The Act is legislated in a manner that it should be a deterrent for those indulging in sex determination. The unfortunate decline in the male-female sex ratio has brought in stringent measures, there is suspension of registration, filing of criminal cases and sealing of machines. Besides, criminal prosecution will also bring in suspension and cancellation of registration granted by the State Medical Council.

Remedies and Precautions

Remedies are also provided—like filing an appeal before the appellate authority and getting the machine released from the court of law, but all these remedial measures are time-consuming and bring the career of an individual to a standstill.

It would not be out of place to therefore state that the most effective precautionary measures are to maintain records scrupulously, fill the Form-F as provided in the Act, accurately and correctly, submit the records to the appropriate authority within the stipulated time; then there will be nothing to worry.

There is no doubt that there are a few shortcomings in the Act but that does not give any

reason for non-compliance of or contravention of any of the provisions of the Act.

The major contribution by radiologists/sonologists/ gynaecologists towards prevention of female feticide can be achieved by thus fulfilling the mandatory requisitions of the PC-PNDT Act.

Court Proceedings and Steps by IRIA

The PNDT Act with Rules made thereunder are an act to safeguard the girl child. The Courts have at all material times and in all possible manners delivered judgments indicating therefore that the PC-PNDT Act is actually a whip to penalize those indulging in sex determination and to serve as a deterrent to others.

The recent judgments of the Courts are also supportive of the strict implementation of the PC-PNDT Act. The Indian Radiological and Imaging Association (IRIA) is fighting tooth and nail to support the cause of the radiologists all over and also to prevent the misuse or improper and erroneous application of the Act by the appropriate authority.

The appropriate authority on the other hand is itself coming up with some or the other suggestion/idea to somehow curb the menace of female feticide. But in the process the radiologists are at the receiving end and the best possible solution in today's scenario is to abide by the dictum of the PC-PNDT in its true letter and spirit.

The Maharashtra State Branch of IRIA challenged the ban being imposed by the Municipal Corporation of Mumbai [4] on the use of portable machines before the Hon'ble High Court Mumbai, which petition came to be dismissed and the judgment in the petition means that the portable machine can now be used only in the institute or hospital where it is registered thereby restricting the portability of the portable USG.

There is another judgment of the Hon'ble High Court, which upholds the installation of SIOB (i.e. Silent Observer) in the USG. The Collector of Kolhapur has come up with this novel idea of installing the SIOB under the delicate issue of Save the Baby Girl Child and which has been done in Kolhapur [5]. The device is a private external device for the purpose of filling the F-form online and recording all images of the sonographies whether obstetrics or non-obstetrics. The Hon'ble High Court dismissed the petition and review petition filed by the IRIA.

Then the IRIA has also filed a petition before the Hon'ble High Court Delhi, whereby a few provisions of the PC-PNDT Act have been challenged, such as the registration given to other medical members, the mode of training imparted. The said petition is still pending.

Besides, there are many machines sealed for non-compliance of provisions of the PC-PNDT Act or for improper maintenance of records under the provisions of the Act. Then subsequent thereto-criminal cases are also registered. It is pertinent to note that the conviction may not be very severe, but it may result in suspension of registration under the State Council Act, which is an issue to be seriously noted by all.

There is another issue which arises and that is sealing of machines. Sealing is not a mandamus but all the appropriate authorities are doing that. The release of the machine in a criminal case will be the subject of jurisdiction of the criminal court and otherwise before the appellate authority provided under the PC-PNDT Act.

CONCLUSION

It is evident that doctors are threatened and feel unsafe by strict and sometime over exertion of power given under PCPNDT Act to appropriate authorities and their representatives. Although the Act is made in good spirit and clean objectives to save the girl child and avoid sex discrimination.

IRIA is taking welcome steps to fight against harassment of Doctors. Medical fraternity is also against prenatal sex determination and is with the government to stop sex determination but asking for relief against the harsh action taken by authorities for trivial issues of clerical errors, nameplate, display board fonts, apron wearing etc. However, the recent scenario indicates the strict actions of the appropriate authority and the stern view of the Courts.

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