

**The Pre-Natal Diagnostic Techniques
(Regulation and Prevention of Misuse)
Act, 1994**

Amended as

**The Pre Conception and Prenatal
Diagnostic Techniques (Prohibition of Sex
Selection) Act 2003.**

**The Medical termination of Pregnancy Act,
1971 & The Indian Penal Code Sec. 312 to
316.**

---- Adv (Dr) Santosh A Shah.....

Object of law –

To regulate human conduct,
To deal with a mischief.

Preamble / Objects: PC-PNDT Act

- Prohibition of sex selection – before or after conception.
- Regulation of Pre Natal Diagnostic Techniques (ultra sonography or other test)
- Prevention of misuse of Pre Natal Diagnostic Techniques for sex-determination leading to female foeticide.

An Act to provide for the Prohibition of the sex selection, before or after conception and for regulation of the prenatal diagnostic techniques for the purposes of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorder and for the prevention of their misuse for sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto.

- **Sec 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;**

Definitions

- **Sec 2 (bc): Foetus:** It 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.

- **Sec 2(i) Pre Natal Diagnostic Procedures:**
It 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 woman before or after conception for being sent to a genetic laboratory or genetic clinic for conducting any types of analysis or pre-natal diagnostic test for selection of sex before or after conception.

- **Sec 2(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.**

Section 3

**REGULATION OF GENETIC
COUNSELLING CENTRES, GENETIC
LABORATORIES AND GENETIC
CLINICS : Registration, Qualification
and Place must.....**

Section 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.

REGULATION OF PRE- NATAL DIAGNOSTIC TECHNIQUES

No, pre-natal diagnostic techniques shall be conducted except for the purpose 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;**

- **No pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied 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 of two or more spontaneous abortions or foetal loss;
- (iii) the pregnant woman had been exposed to potentially teratogenic agents such as durgs, radiation, infection or chemicals;

- (iv) The pregnant woman 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 Central Supervisory Board;**
(Seventy conditions included allowing ultrasonography)

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

Section 6

- **Determination of sex prohibited.**- On and from the commencement of this Act,--
- (a) no Genetic Counselling Centre or 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.

Functions of Appropriate Authority

- (The Appropriate Authority shall have the following functions, namely:--
- (a) To grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;
- (b) To enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;

- **(c) To investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;**
- **(d) To seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;**

- (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 CSB 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.

22. Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention

- (1) No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clin, including clinic, laboratory or center having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of 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 center, laboratory, clinic or at any other place.

- (2) No person or organization 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 prenatal 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.

Sec. 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, 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.

(2) The name of the registered medical practitioner who has been convicted by the court under sub-section (1), shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register or the Council for a period of two years for the first offence and permanently for the subsequent offence.

3) Any person who seeks the aid of a Genetic Counselling Centre, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or of a medical geneticist, gynaecologist or registered medical practitioner for conducting pre-natal diagnostic techniques on nay regnant woman (including such woman unless she was compelled to undergo such diagnostic techniques) for purposes other than those specified in clause (2) of section 4, shall, be punishable with imprisonment for a tern 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.

Sec. 27

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

Sec. 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 thirty 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 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 subsection (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.

- **Power to search and seize records etc.**

(1) If the Appropriate Authority has reason to believe that an offence under the Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic such Authority or any officer authorised thereof 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 or Genetic Clinic and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize 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.

AIR 2001 SC 2007 in the case of centre for enquiry into Heath and Allied Themes Vs Union of India,

- The SC in the aforesaid judgment has observed that the traditional system of female infanticide continues in different form by taking advantage of advance medical techniques . The court has further observed the developed medical science is misused to get rid of girl child before birth.

- The Court further observes that this has affected overall sex ratio in various states. The court therefore in this case finding that the state Govt. or Central Govt. have not taken appropriate action for its implementation issued directions for implementation of the PC-PNDT Act. The scheme of the Act particularly that section 3 provides for regulation and registration of genetic counseling centers, genetic laboratories and genetic clinics. S. 3 A prohibits sex selection. S. 4 (3) allows use of pre-natal diagnostic techniques only on certain conditions,
 - “ (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.”

- S. 4(3) proviso therefore makes it mandatory for person conducting ultra sonograhpy to keep complete record thereof .
- S. (2) prohibits communication of sex of the foetus.
- S.17- A gives the following powers to appropriate authority ----

- “S. 17 A- The Appropriate Authority shall have the Powers in respect of 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

- S- 23 provides for offences and penalties for violation of provisions of Act.
- S. 29 provides for maintenance of records , charts, forms, reports, consent letters and all the documents for a period of 2 years.
- S. 30(1) gives power to the appropriate authority to enter and search any place for examination of any record registered documents book, pamphlets, advertisement or any other material object. S. 31 gives protection of action taken in good faith by appropriate authority intended to be done in pursuance of the provisions of the Act.

- The rules framed under the said Act particularly R. 9 (4) makes it mandatory for a genetic clinic to maintain record in form 'F'. Rule 9 (6) provides for preservation of laboratory results, pictures, Sonographic plate or slides for a period of 2 years in centers, laboratories or clinics. If record is maintain on computer, a printed copy also to be preserved under R. 9 (7).

- **R. 9 (8) makes it obligatory that the centers should sent complete report of all pre- conception or pregnancy related procedure / technique of 5th day of the following month to the appropriate authority. R. 12 (2) provides for procedure for search and seizure which defines material object to include record, machines and equipments. R. 18 provides for code of conduct. R. 19 provides for appeals from the decision of appropriate authority.**

- 2012 Vol. 114 (1) Bom. L.R. 0150
- Radiological and Imaging Association (State Chapter), through Dr. Jignesh Gokkuldas Thakker Vs Union of India and Ors. Through Secretary, Ministry of Health and Family Welfare, New Delhi and Ors.
- Constitution – Legality of Directions – Sections 17 and 17-A of Pre- Natal Diagnostics Techniques (Prohibition of Sex Selection) Act, 2003- Whether the direction issued by the Medical Health Officer (MHO) was required to be interfered as it would infringe the fundamental rights of the Petitioner Association?

- Held, direction issued by the Authority was in consonance with the provisions of the Act and only with a view to prevent possible misuse of such machine. It cannot be disputed that such a machine can be utilized for prenatal diagnosis even at the place where the machine is taken outside the clinic. Ultra sonography is one of the prenatal diagnosis technique as prescribed under the Act. There are cases where such techniques are being misused to detect sex of the fetus and termination of pregnancy of unwanted female child.

- Even if there is only one case out of millions this Court may not interfere with such a policy decision which is the most scientific and in the interest of the society. Considering the said aspect, it could not be said that any fundamental right either under Article 14 or 19 was violated as the Petitioner- Association could carry out its activity within the Institute itself and at the recognized place. The restriction imposed by the concerned officer was the most reasonable and in public interest and does not violate the fundamental right of the Petitioner in any manner..

- Ultimately, the public interest at large is required to be taken into account and the decision taken by the concerned officer was in consonance with the provisions of the Act. The Medical Health Officer (MHO), an appropriate, authority under the Act had issued these directions under Section 17 and 17 – A of the Act in respect of implementation of the Act.

- Thus, the directions were issued by the MHO on the basis of his experience and the collection of data of the instances he had come across of the misuse of the ultra sound sonography machine. Movement of the machine is prohibited qua Act. It is to be noted that the State and the Appropriate Authority are taking various steps to prevent the misuse of the machine used by the radiologist. The impugned and notice and this decision would be applicable to the machines in the institutes and genetic clinics as mentioned under the Act. The direction given by the concerned officer was, therefore, in public interest and in consonance with the provisions of the Act. Therefore, petition dismissed.

- Preventing female foeticide - A two-judge Bench of the Supreme Court (M. B. Shah and Ashok Bhan, JJ.), while hearing a public interest litigation, directed the central and state governments to swing into directed the central and state governments to swing into action and seize the unlicensed ultrasound machines being used for sex determination purposes. The court observed that to prevent illegal female foeticide the activities of the ultrasound diagnostic clinics should be strictly monitored. /With no change in the mindset about females, the sex determination tests add to the adverse situation.

- The court expressed concern about the misuse of modern science and technology in preventing the birth of a girl child. It has become evident from the 2001 census figures which reveal greater decline in sex ratio in the 0-6 age group in states like Punjab, Haryana, Maharashtra and Gujarat, which are economically better off. The Court issued specific directives to the central government about creating public awareness against female foeticide and gave relevant directions to the central supervisory board and the state governments / union territory administrations. [Centre for Enquiry into Health and Allied Themes (CEHAT) & Ors. v. Union of India & Ors., 2003 (7) SCALE 345].

- **Family – Termination or pregnancy – Non- inclusion of eventualities – Vires of the Act – Section 3 and 5 of Medical Termination of pregnancy Act, 1971- Petitioner in her 26th week of pregnancy had sought termination of pregnancy as the foetus was diagnosed for complete heart block with a small percentage of kids being symptomatic – Challenge was to the Act the extent to include eventualities for termination of pregnancy in Section 5 as specified under Section 3(2) (B) (ii) of the Act as ultra vires – Hence , the present petition contending that Section 5(1) of the said Act should be read down to include the eventualities in Section 3 and for a direction to the Respondents to allow the Petitioner No. 3 to terminate the pregnancy – Held, under the guise of reading down a provision of law, the Courts are not empowered to legislate upon a statute – Sections 3 and 5 clearly speak of right to terminate pregnancy under the specified circumstances and after taking necessary precautions and after obtaining medical opinion of the medical experts who are required to give their opinion in good faith in that regard**

- – Section 5 can be resorted to for termination of pregnancy when the non-termination of pregnancy would be dangerous to the life of pregnant woman – As regards the physical or mental abnormalities of serious nature to the child to be born which could be the cause for termination of pregnancy, the legislature in its wisdom has imposed certain period within which the pregnancy can be terminated – Noting is placed on record on behalf of the Petitioners even to remotely suggest that the period so prescribed by the statute has been arbitrarily prescribed or that there is no logic behind the period prescribed by the legislature in that regard – Further, since 26 weeks of pregnancy has already passed the court could not pass nay direction for exercise of right under Section 3 – Petition dismissed.
- Dr. Nikhil D. Dattar v. Union of India and Anr. P. 3293
- BLR November 2008 Vol. 110 (9), Part 35

- **Criminal – Search and Seizure – Seizure of machinery – Section 30 of the P.N.D.T. (Regulation of prohibition of misuse) Act, 1994 – Petitioner's Ultra Sonography machinery was seized by the Authorities - Hence, the present petition – Held, under the provisions of section 30, of Appropriate Authority is empowered to seize the documents, record, register, book, pamphlet, advertisement or any material object found in the Genetic Center – Nowhere in the statute, provides for the seizure of the machinery / machine used in the Genetic Clinic – Hence, the Authority is not empowered to seize the Ultra Sonography machinery – Orders of the Seizure of the Machinery is thus set aside – Petition disposed of .Dr. Dadasabeb v. State of Maharashtra and Ors. P. 3650**

- **Law of Medicine** – Power to search and seize records – Sealing and seizure of ultra sound machine- Sections 17 – A (c) and 30 of Preconception and Pre- natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act), the Pre conception and Pre natal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996 (Rules), Amendment Act 14 of 2003 – Complaint against Petitioner Gynecologist that she was using ultra sound machine for

- conducting sonography for determination of sex of foetus – Appropriate Authority seized the record of hospital and the ultrasound machine and put his seal on the record and the ultrasound machine after drawing a panchanama – Registration of Petitioner was suspended – Whether power to search, seize and seal “any other material object” under Section 30 of the Act includes power to search, seize and seal an ultrasound machine or any other machine or equipment, if Appropriate Authority or Authorised officer has reason to believe that it may furnish evidence of the commission of an offence punishable under the Act –

- Held, bare perusal of the Act and Rules makes it clear that person conducting ultrasound has to maintain records in manner prescribed in Rules makes it clear that person conducting ultrasound has to maintain records in manner prescribed in Rules and deficiency or inaccuracy in maintaining such records would amount to an offence. Section 17 – A (c) empowers Appropriate Authority to issue search warrant for place suspected to be indulging in prenatal sex determination with an ultrasonography test. Section 30 of the Act, as amended by Amended Act 14 of 2003 confers power not only to seize but also ‘ to seal’ any record, register documents, books, pamphlet, advertisement or ‘ nay other material object’.

- Parliament has considered ultrasound machine as a 'material object' because it is capable of detecting sex of a foetus. Thus, the expression 'material object' for which the power to seize and seal is conferred on Appropriate Authority, includes ultra sound machines, other machines and equipment used for pre-natal diagnostic techniques or sex selection techniques. Petition dismissed.
- Dr. Suhasini umesh karanjkar and anr vs Kolhapur Municipal Corporation and ors ,p. 2373
- BLR 16 July- 31 July, 2011 Vol 113 (4), Part 2

Radiological & Imaging Association v/s Union of India, Collector District Kolhapur

- **Primary challenge**
- In this petition, the petitioner has challenged the action of Collector and District Magistrate, Kolhapur in issuing Circular dated 10th March 2010 whereby all doctors, sonologists and radiologists practicing in Kolhapur District are called upon to install device 'Silent Observer' in their sonography/ultra-sound machines.

- According to the petitioner, this machine and its software enables the Collector to directly review at district headquarters at Kolhapur, to scan images of the patient which is illegal, against the provisions of the Act and invades privacy of the patients. It is contended that under the Rules, the ultra-sound clinics and other bodies governed by Act and the Rules are given time upto 5th day of the next month for submitting information in the format which is to be signed by the doctor and the patient. However, public notice dated 14 January 2011 (exhibit `F') issued by the Collector and District Magistrate requiring the doctors/sonologists/radiologists to transmit form –F on-line within 24 hours is without authority of law.

The Division Bench of Bombay High Court headed by Chief Justice Held –

- We find considerable substance in the submission of Mr. Kumbhakoni, learned counsel for the Collector and District Magistrate, Kolhapur that if the number of `F' forms giving particulars about sonography test conducted on pregnant women in Kolhapur district alone runs into almost 1,50,000 `F' forms per year or 15,000 forms per month, and if they are not submitted on-line, it will be impossible for any appropriate authority or officer authorized by the appropriate authority to make any meaningful scrutiny and analysis of `F' forms being received in such large numbers.

- **The on-line submission of `F' forms in such large numbers has four distinct advantages.**

- In the first place, the sonography centres sending such forms in physical form very often take the plea in the prosecution under the Act that some columns in the form were not filled in inadvertently, but there was no mens rea and, therefore, the appropriate authority should not take a harsh view by prosecuting the radiologist/sonologist merely for incomplete information submitted in 'F' form. The advantage of the on-line submission of 'F' form will be that if any column in the form is left blank, the form will not be accepted on-line. Hence, the person filling in the form is immediately alerted that some column/s in the form/s is/are incomplete. Hence, all the columns in form 'F' will have to be filled in.

The second advantage will be that since `F' form is to be submitted on-line within 24 hours, the concerned persons required to submit the information in `F' form will have to complete their work on day-to-day basis and, therefore, will have no excuse to plead that the information cannot be submitted after lapse of one month. In fact, having gone through the contents of `F' form, we find that it would be possible for the person assisting the radiologist/sonologist to fill in the form immediately after the sonography test is undertaken.

- The third advantage is to the district administration. On account of a large number of such 'F' forms being received on-line (15,000 per month in one district), it will be possible for the appropriate authority and the officer authorized by it to make a meaningful scrutiny and analysis of the 'F' forms by searching the relevant data such as age of the foetus, the number of children of the pregnant woman as on the date of the sonography test, etc. This will help the Appropriate Authority to zero in on cases where MTP was resorted to after sex selection.

- The fourth advantage will be that Section 17(4) requires the Appropriate Authority to "take immediate action" in case of complaints of breach of provisions of the Act and the Rules, but it would not be possible to take immediate action if the authority had to wait for submission, hard copy of the "F" form till the 5th day of the next month. In every field electronic filing is to be followed by submitting paper documents. Hence the instructions to submit "F" form on-line within 24 hours are in keeping with the letter and spirit of Section 17(4).

- Coming to the "silent observer", the entire petition is based on the premise that the information stored in the silent observer which contains the images of ultra sonography on all patients will be transmitted on-line and will be available in public domain and thereby would violate the privacy rights of the patients undergoing ultrasonography.

- The entire premise and the apprehension based thereon is without any basis. The affidavit of the Collector and District Magistrate, Kolhapur states in terms that the silent observer is embedded on the ultra-sound machine, that the images stored therein are not at all transmitted on-line to any server, and that it is only for the purpose of cross-checking the information supplied in the 'F' forms submitted on-line, that as and when any violation of the Act and the Rules is suspected, the appropriate authority will obtain the images stored in the silent observer for the purpose of cross-checking the information submitted in the 'F' form on-line. Since the appropriate authorities have been invested specifically with the power to take appropriate legal action against the use of any sex selection or sex

- determination technique by any person at any place even suo motu as provided in section 17(4)(e), and section 17-A also specifically empowers the appropriate authority to summon any person who is in possession of the information relating to violation of the provisions of any Act or the Rules and to obtain production of any document or any material object relating to violation of the provisions of the Act and also to issue search warrant for any place suspected to the indulging in sex selection techniques or pre-natal sex determination and proviso to section 4(3) specifically provides that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic and Rule 9 also provides

- microscopic pictures, sonographic plates or slides etc. are required to be preserved in the sonography centre for a period of two years and Rule 9(8) also requires the Ultra-sound Clinic to send a complete report in respect of all pre-conception or pregnancy related procedures/techniques/tests conducted by them to the concerned appropriate authority, in our view, the instructions sent by the Collector and District Magistrate, Kolhapur requiring the sonologists/persons incharge of ultra-sound machines to install SIOB

- (popularly known as silent observer) are within the letter and spirit of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act and Rules made thereunder.

- 35. As regards the allegation of invasion of privacy rights, it is amply clear from the affidavit of the Collector and District Magistrate, that the images stored in the silent observer are not transmitted on-line to any server and thus they remain very much part of the ultra-sound machine on which the silent observer is embedded and that the silent observer is to be opened only in the presence of the concerned radiologist/sonologist/doctor incharge of the Ultra-sound Clinic.

- 38. In *Sharda v. Dharmpal*² a three Judge Bench of the Supreme Court explained the interplay between the right to privacy on the one hand and public interest on the other hand in the following terms:-
- 57. But the right to privacy in terms of Article 21 of the Constitution is not an absolute right.
- 58. In *Gobind v. State of M.P*⁴. it was held :
"Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a fundamental right, that fundamental right must be subject to restriction on the basis of compelling public interest."

- 40. Having regard to the aforesaid principles and considering the matter in the factual backdrop already highlighted hereinabove that the information contained in 'F' form submitted on-line is submitted only to the Collector and District Magistrate and that except the authorized officer no third party can have access to it and that the information contained in the silent observer remains embedded on the ultrasound machine and that after analysis of the information contained in 'F' form submitted on-line, the appropriate authority or the officer authorised by the authority has to access the information contained in the silent observer including the visual images, we are of the considered opinion that there is no violation of the doctor's duty of confidentiality or the patient's right to privacy. The contours of the right to privacy must be circumscribed by the compelling public interest flowing through each and every provision of the PC&PNDT Act, when read in the background of the following facts and circumstances:

- sex ratio in the last five decades: Year No. of girls per 1000 boys (in the age group 0-6 years)
National Average Maharashtra
- 1961 976
- 1991 927 946
- 2001 933 913
- 2011 914 883

While the Court cannot close its eyes to these depressing figures, the assertion of Collector and District Magistrate, Kolhapur that after introduction of the impugned innovative measures, the sex ratio in the district has gone up from 839 in May 2010 to 876 in January 2011- is certainly a heart warming eye opener.

The Medical Termination of Pregnancy Act, 1971

- **British Law made abortion a crime except where induced to save life of the mother.**

- **This Act legalized termination of pregnancy on various socio – medical grounds :**
 - 1. As a health measure- when there is danger to the life of risk to physical or mental health of the woman.**
 - 2. On humanitarian grounds- when pregnancy arises from a sex crime.**
 - 3. Eugenic grounds – when there substantial risk that the child if born, would suffer form deformities and deceases**

- **Sec. 3 When Pregnancies may be terminated by registered Medical Practitioners –**
- **A pregnancy may be terminated by a registered medical practitioner –**
- **Where the length of the pregnancy does not exceed twenty weeks it such medical practitioners are of the opinion formed in good faith, that,-**

- (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health ; or
- (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

- **Explanation**

1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

- **Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.**

- **(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in subsection (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.**

- **(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.**

- **(b) Save as otherwise provided in C1.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.**

Sec. 4 Place where pregnancy may be terminated.

- **A] A Government Hospital.**
- **B] Recognized place by Government or Competent Authority of the Government.**

- **5. Sections 3 and 4 when not to apply**

- **(1) The provisions of Sec.4 and so much of the provisions of sub-section 2 of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.**

Offences under the Act.

- **Sec 5 (2) –Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.**

- **Sec 5 (3) – Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.**

- **Sec 5 (4)- Any person being owner of a place which is not approved under clause (b) or section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to sever years.**

- **Explanation 1 – For the purposes of this section, the expression “owner” in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.**

- **Explanation 2 – For the purposes of this section, so much of the provisions of clause (d) of section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.**

Penal Provisions under Indian Penal Code for violation of the Provisions of The M.T.P Act 1971 – Sec. 312 to Sec. 316 of the Indian Penal Code - copy

Conclusion

- 1. The police have no role to play under the PC-PNDT Act.
- 2. The police have role to play under the MTP Act and the Indian Penal Code Sections. 312 to 316 under usual criminal law.
- 3. Many cases may involve application of PC-PNDT Act, MTP Act & The Indian Penal Code once violation of PC-PNDT Act results in feticide.

- Sec 312- Expenses of complaints and witnesses – Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complaint or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

- Sec 313- Power to examine the accused –
(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court –
 - A) May at any stage, without previously warning the accused put such questions to him as the court considers necessary ;

- B) shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case :
- Provided that in a summons- case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b)

- 2) No oath shall be administered to the accused when he is examined under subsection (1).
- 3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

- 4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

- 5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section

- Sec 314- Oral arguments and memorandum of arguments –
- 1) Any party to a proceeding may, as soon as may be, after the close of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the Court setting forth concisely and under distinct headings, the arguments in support of his case and every such memorandum shall form part of the record.

- 2) A copy of every such memorandum shall be simultaneously furnished to the opposite party.
- 3) No adjournment of the proceedings shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

- 4) The Court may, if it is of opinion that the oral arguments are not concise or relevant, regulate such arguments.

Sec. 315 – Accused person to be competent witness

- 1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial ;
- Provided that -

- A) he shall not be called as a witness except on his own request in writing ;
- B) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial

- 2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107, or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X may offer himself as a witness in such proceedings :

- Provided that in proceedings under section 108, section 109 or section 110, the failure of such person to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against him or any other person proceed against together with him at the same inquiry.

- Sec. 316 – No influence to be used to induce disclosure – Except as provided in sections 306 and 307, no influence by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

AIR 2001 SUPREME COURT 2007 "Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India"

- 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 advanced 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.

- AIR 2008 ORISSA 71
- "Hemanta Rath v. Union of India
- Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (57 of 1994), S.28, S.17 - PRE-NATAL DIAGNOSTIC TECHNIQUES - COGNIZANCE OF OFFENCE - Cognizance of offence - Can be taken only on a complaint made by Appropriate authority - Failure of State to constitute appropriate authority u/S.17 - Fact that male-female ratio is better in State of Orissa - No reason why provisions of Act shall not be implemented - Directions issued to constitute Appropriate Authorities within period of six weeks - Authority if constituted must act strictly in terms of provisions of Act. (Paras 9, 13, 14)

AIR 2008 BOMBAY 29

"Vijay Sharma v. Union of India"

- A) Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (57 of 1994), S.2, S.3A, S.4(5), S.6(c) (as amended by Amendment Act 2002) - PRE-NATAL DIAGNOSTIC TECHNIQUES - TERMINATION OF PREGNANCY - EQUALITY - Ban on sex Selection - At Pre-conception stage or thereafter constitutional validity - Medical Termination of Pregnancy Act (1997) (MTP Act) permitting termination of pregnancy of a woman cannot be compared with Act of 1994 - Termination of Pregnancy under the MTP Act is not prompted because of the unwanted sex of the foetus - MTP Act does not deal with sex selection - Both the Acts operate in different fields - A prospective mother who does not want to bear a child of a particular sex cannot be equated with a mother who wants to terminate the pregnancy not because of the sex of the child but because of other circumstances laid down under the MTP Act - Therefore, by process of comparative study, the provision of the said Act cannot be called discriminatory and, hence, violative of Article 14.

AIR 2008 GUJARAT 106 "Bharathai Dhanjihai Modi Nagarwada v. Collector, Porbandar"

- Gujarat Municipalities Act (34 of 1964), S.11(1)(h) - Hindu Marriage Act (25 of 1955), Pre. - Medical Termination of Pregnancy Act (34 of 1971), S.3(2) - MUNICIPALITIES - MARRIAGE - PREAMBLE - TERMINATION OF PREGNANCY - CONSTITUTIONALITY OF AN ACT - REPUGNANCY BETWEEN STATUTES - Validity - S.11(1)(h) disqualifying councillor on ground of having more than two children - Not inconsistent with provisions of Hindu Marriage Act (25 of 1955) and provisions of Medical Termination of Pregnancy Act (34 of 1971) - It does not take away right of wife to enjoy marital bliss, nor do they impinge upon her right to prevent pregnancy.

“Winston Churchill:

- **Courage is what it takes to stand up and speak. Courage is also what it takes to sit down and listen .”**

THANK YOU.....