



PAPER ON:

**KEY LEGAL GUIDELINES AND BEST PRACTICES
FOR IMPLEMENTING THE PCPNDT AND MTP
ACTS – BALANCING WOMEN’S RIGHTS WITH
LEGAL MANDATES**

**DIVISIONAL JUDICIAL SEMINAR, RAIPUR DIVISION
ON 22.09.2024 AT RAIPUR, C.G.**

PRESENTATION BY:

**DISTRICT & SESSIONS COURT,
DISTRICT RAIPUR, C.G.**

A TEAMWORK BY:

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**KEY LEGAL GUIDELINES AND BEST
PRACTICES FOR IMPLEMENTING THE PRE-
CONCEPTION AND PRENATAL DIAGNOSTIC
TECHNIQUES (PROHIBITION OF SEX
SELECTION) ACT, 1994**

Karnataka, Shruthi was leading a very happy matrimonial life. But very soon her life faced havoc when she became pregnant and her husband and her mother in law came to know the fact that she is having a female foetus in her womb and they began to force her for abortion but she declined and when finally she gave birth to baby girl, her mother in law refused to see her and her husband stopped taking care of her and the baby girl. She was forced to rely on her parents for essential needs. Eventually she parted her ways with

her husband after he physically assaulted her leading to the termination of second pregnancy. Now she and her eight year old daughter live with her parents facing the harsh realities of life and her husband has since remarried and now has a son.

Similarly, a woman aged 40 years in Mumbai was forced by her husband to abort eight times as the husband wanted a male child despite the fact that the woman was the daughter of a retired judge.

There are numerous incidents of the like nature which we come across every now and then. Researchers says that births of upto 10 million girls in India may have been prevented by selective abortion in the past twenty years. Half a million babies aborted

every year because they are girls. Resulting in the unbalanced gender ratios. In India females are 48.04% of the total population which is less than that of the males which are 51-96%.

And so this has become a matter of great concern for the stakeholders as to why our society is bleeding from such heinous crime of female foeticide.

See families want a son at any cost. Because if a son is born in the family, he takes care of the family, carries the name forward, helps earn money and feed the members, is safe and does not need to be taken care of physically

whereas,

the daughters are regarded as transitory members in the family. Dowry system casts heavy burden upon the parents during their marriages and once they are married, their contribution to their parental household is virtually nil and the unidirectional flow of resources from parental household to matrimonial one continues throughout her life.

But it's an irony, that women in India are blamed for giving birth to a girl child despite being an established medical fact that it is only the X and Y chromosome present in the male sperm which determines the sex of the child. If the father passes on X chromosome, the child will be female and if he passes on Y chromosome, the child will be male.

Then why the women bear such blame. The reason being she is physically and emotionally weak and choose to remain mum most of the time to save her family life. This has its root deep seated in **Manusmriti**, which says a woman is not fit to act on her own. Her father guards her in her childhood, her husband guards her in her youth, and her sons guard her in her old age.

And that is why, The Indian goverment took a brilliant step to empower today's women and to curb this menace of sex detection of foetus and female foeticide, by enacting the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act in 1994.

PCPNDT Act aims to prevent the misuse of medical technologies for sex determination, addressing gender discrimination and protecting the girl child. The Act serves to balance women's access to essential pre-natal diagnostic services while enforcing strict legal mandates to prevent sex discrimination.

Key Legal Guidelines under the PCPNDT Act:

1. Prohibition of Sex Selection and Determination:

The Act bans sex selection and sex determination both before and after conception, preventing the use of pre-natal diagnostic techniques for identifying the sex of the fetus.

2. Regulation of Diagnostic Centers:

All diagnostic centers offering ultrasound and other pre-natal services must be registered under the Act. These centers are monitored regularly to ensure compliance with legal guidelines.

3. Record-Keeping and Accountability:

Diagnostic centers are required to maintain detailed records of all procedures as prescribed under the Act, ensuring transparency and allowing authorities to monitor for illegal sex determination practices.

4. They are also required to create awareness among the public at large by placing the board of prohibition on sex determination.

5. According to sec. 5 of the act no person will conduct the pre natal diagnostic procedure unless-

- a) explained all known side and after effects of the procedures to the pregnant woman.
- b) obtained her written consent to undergo the procedure in the language which she understands.
- c) copy of her written consent is given to the pregnant woman.

6. When can PNDT be conducted-

- a) pregnant woman is above 35 years.
- b) pregnant woman has undergone 2 or more spontaneous abortion or foetal loss.
- c) pregnant woman has been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals.
- d) pregnant woman or her spouse has a family history of mental retardation.
- e) physical deformities such as spasticity or any other genetic disease.
- f) Any other condition specified by supervisory boards.

7. Penalties for Violations:

The Act imposes strict penalties, including fines and imprisonment, for violations such as conducting sex determination tests or failing to maintain proper records, etc.

8. Offences under this Act are cognizable and non compoundable and are triable by judicial magistrate first class or metropolitan magistrate.

9. Under sec. 28 of the Act Court will take the cognizance only on complaint made by-

- a) Appropriate authority or any other officer authorised in this behalf by the central or the state government.

- b) A person who has given not less than 15 days notice to the appropriate authority of the alleged offence and his intention to make a complaint to the court.

Best Practices for Implementation:

- 1. Regular Inspections:** Diagnostic centers should be inspected frequently to ensure compliance with the Act and to prevent illegal sex determination practices.
- 2. Training for Medical Professionals:** Healthcare providers should be trained on the ethical use of diagnostic technologies, reinforcing the need to avoid gender-biased practices.

3. Public Awareness Campaigns: Raising awareness about the importance of gender equality and the legal provisions under the PCPNDT Act can help reduce societal pressure on women to seek sex determination.

How this Act ensures Balancing Women's Rights:

1. Access to Legitimate Medical Care:

The Act ensures that women have access to legitimate diagnostic services for detecting genetic disorders and foetal abnormalities, protecting their reproductive health.

2. Protection from Coercion:

By making sex determination illegal, the law prevents women from being coerced into sex-selective abortions, thereby promoting gender equality and protecting their autonomy.

3. Confidentiality and Privacy:

Women's identities and medical records are kept confidential, ensuring their privacy and preventing any form of stigma or discrimination.

Judicial Interpretations and Latest Developments:

1. Hon'ble Apex court Supreme Court in *Voluntary Health Association of Punjab v. Union of India, 2016* has observed when a female foetus is

destroyed through artificial means which is legally impermissible, the dignity of life of a woman is extinguished and the legislature has brought a complete code i.e. the PCPNDT Act and it subserves the constitutional purpose and reaffirmed the strict implementation of the PCPNDT Act, emphasizing the need for comprehensive monitoring of diagnostic centers to curb sex-selective practices. The Court directed authorities to conduct regular inspections and cancel registrations of centers violating the law.

2. In *Vinod Soni vs. Union of India 2005 Cri.L.J. Bom 3408*, Hon'ble High Court has held that right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself be a Right.

Right to life under Article 21 of the Indian Constitution can not include the right to selection of sex whether preconception or post conception.

3. In *Vijay Sharma vs. Union of India AIR 2008 Bom 29*, constitutional validity of the PCPNDT Act was challenged on the ground that it violates Article 14 of the constitution. **Hon'ble High Court rejecting the challenge** held that sex selection is against the spirit of law and constitution. It effects the dignity of women and undermines their importance. It insults and humiliates the womanhood and it violates woman's right to life.

4. In *Chitra Aggrawal vs. State of Uttrakhand AIR 2006 Utr 78*, It was held that the action of cancellation

of Registration is directed against the ultrasound centre whereas criminal action is directed against the person who has committed the offence. Both the actions are independent. Thus, Bar of Double Jeopardy will not be attracted here and both the actions can be proceeded simultaneously.

5. In *Dr. Amritlal Rohledar vs. State of Chhattisgarh and six others CrMP 2378/2019*, Hon'ble High Court of Chhattisgarh presided by Hon'ble Shri. Justice Sanjay K. Aggrawal has held that first information report cannot be lodged/registered by police against the medical practitioner for commission of offence under the provisions of sec.23 of Pre-conception and Pre-Natal

Diagnostic Techniques (Prohibition of sex selection) Act 1994, only complaint can be filed under sec. 28 of the said Act before the jurisdictional criminal court.

6. In *Dr. Ravindra vs. State of Maharashtra* 2012(10) LJSOFT 138, it was observed that procedure for conducting the trial under sec. 22 and 23 of the PCPNDT Act is that of warrant case registered on complaint otherwise than on police report. Hence, evidence before framing of charge has to be recorded.

7. In *Dr. Mrs. Kakoly Borthakuar vs. Dr. Pramod Kumar and others*, 2010(8) LJSOFT(URC)152 the question under consideration is Where the complaint is to be filed under sec 28 of the PCPNDT Act-At the

place where sonography test was done or at the place where the girl child is born.

Held - at the place where sonography test was conducted.

“Gems may be precious but girls are priceless. Save them, save the world.”

**KEY LEGAL GUIDELINES AND BEST
PRACTICES FOR IMPLEMENTING THE MEDICAL
TERMINATION OF PREGNANCY ACT, 1971**

Background

Prior to 1971, MTP was governed by the Indian Penal Code, 1860, which criminalized abortion except

to save the mother's life. The Shanti Lal Committee was established by the Ministry of Health and Family Welfare in 1964 to look into the reasons behind the rising number of abortion cases. Then in 1970 as per the recommendation by the committee in August 1971, The Medical Termination of Pregnancy Act was introduced to safeguard women subjected to unsafe abortion and also make provisions that are essential to safeguard women. The Medical Termination of Pregnancy Act, 1971, liberalized abortion laws, permitting MTP under specific circumstances. After the MTP Act passed there were several amendments to the Act in 2002, 2003 and finally in 2021. The Medical Termination of Pregnancy Act, 2021 covered the

limitations of all the previous Acts and increased the scope of the Act. The Constitution of India provides the right to life and personal liberty which should be available to all citizens regardless of their sex. Abortion rights play an important role in today's world as this plays a significant part in women's empowerment. The evolution of abortion laws has significantly reduced the rate of death of women due to unsafe pregnancy. Therefore, the evolution of abortion laws plays a vital role in society.

Objectives of the Act

The MTP Act aims to ensure that abortions are conducted in a safe and legal manner to protect the health and well-being of women, it defines the

conditions under which a pregnancy can be terminated, and provides legal protection to medical professionals performing abortions under authorized conditions.

Key Provisions of the MTP Act

- **Permissible Grounds for Abortion:** The Act allows for the termination of pregnancies under specific conditions, such as:
 - If the pregnancy poses a risk to the life of the woman or could lead to serious physical or mental health issues.

- If there is a substantial risk that the child, if born, would suffer from serious physical or mental abnormalities.
- In cases of pregnancies resulting from rape or contraceptive failure (for married women).
- **Gestation Period:** Under the amended law, the gestation limit for abortion has been extended from 20 weeks to 24 weeks in specific cases, such as for survivors of rape or incest and women with severe fetal abnormalities.
- **Opinion of Medical Practitioners:** For pregnancies up to 20 weeks, the opinion of one registered medical practitioner is required. For

pregnancies between 20-24 weeks, the opinion of two registered medical practitioners is necessary.

- **Confidentiality:** Medical professionals are obligated to maintain the privacy of the woman seeking an abortion.

Amendments in 2021

The Medical Termination of Pregnancy Amendment Act, 2021 made new provisions and widened the scope of the Act. According to the new amendment Act, new provisions were inserted which include abortion rights for unmarried women. The amendment aims to make safe abortion services more accessible to women, especially in rural areas where healthcare infrastructure is limited. The gestation limit

was increased from 20 to 24 weeks under this Act. A single registered medical practitioner can do a pregnancy termination under this Act for a maximum duration of 20 weeks. In the case of a 24-week pregnancy, two registered medical practitioners are required for cases involving rape, incest, or sexual assault, minors, fluctuating woman's marital status while she is still pregnant, women with physical disabilities, mentally ill women, complications during childbirth, and even if the child has physical or mental abnormalities that could result in a serious handicap. The law further ensures the protection of women's identity by requiring healthcare providers to maintain

strict confidentiality. Thus, the 2021 Act covered the limitations that existed in the previous Act.

Case Laws on Medical Termination of Pregnancy in India

Over the years, various case laws have shaped the interpretation and implementation of MTP laws in India. The following landmark case laws on MTP in India highlight the evolving legal landscape.

1. The case, ***Justice K Puttuswamy v. Union of India, 2017 (10) SCC 1***, emphasized the women's right to make choices related to reproductive health. The court also observed that this right is also about the right to dignity, privacy, etc. which is covered under Article 21.

2. *Suchita Srivastava vs. Chandigarh Administration, (2009) 9 SCC 1*

A woman staying in a home run by Chandigarh Administration was found to be pregnant. Woman had “mild mental retardation” and was suffering from spinal deformity and Hepatitis B. She was an orphan having no one else to look after. Administrative Authorities sought permission to have her pregnancy terminated questioning her physical and mental capacity to bear and raise a child and on the ground that although she was 19 years of age, she suffered from mental retardation. The High Court ordered the termination of the pregnancy invoking *parens patriae* doctrine. The Supreme Court quashed the order of the

High Court and held that The woman's pregnancy cannot be terminated without her consent and proceeding with the same will not be in her best interest. Court further directed that woman be provided best medical facilities so as to ensure proper care and supervision during pregnancy as well as for post-natal care....Women's right to make choices is also a dimension of personal liberty as understood under Article 21 of the Constitution. Reproductive choices can be exercised to procreate as well as to abstain from procreation. The Act makes a distinction between 'mental illness' and 'mental retardation'. In case of mental illness, the guardian's consent is necessary for the termination of pregnancy but based

on mental retardation, the woman herself is capable of having her consent. In this case, the woman has not given her consent for termination of pregnancy. The doctrine of *parens patriae* invoked by the High Court is applicable in the case of those persons who are minors or those who are found mentally incapable of making informed decisions for personal liberty there should be no restriction on the exercise of reproductive choice.

3. *Meera Santosh Pal vs. Union of India, (2017) 3 SCC 462*

Meera was a woman who was in her 24th week of pregnancy, approached the Supreme Court, and filed a petition before the Hon'ble Court with a plea to

undergo a medical termination of pregnancy. The Supreme Court directed a medical board to be set up and the board thought that continuation of the pregnancy would not only result in grave injury to the physical and mental health of the woman, but the fetus would not be able to survive “extra-uterine life” due to abnormalities. Based on the expert opinion the Supreme Court directed that the woman can undergo medical termination of pregnancy as per the provisions of the MTP Act. The Court allowed the abortion, citing the mother's health and the fetus's severe abnormalities, and reiterated the importance of considering individual circumstances.

**4. *Sarmishtha Chakraborty v. Union of India,*
(2018) 13 SCC 339**

The petitioner approached the Supreme Court seeking the termination of her pregnancy. As per the direction of the Supreme Court, a medical board was set up and the board concluded that the case justified termination of the pregnancy due to the woman's risk of serious mental harm if the pregnancy were to continue, the child's need for complex cardiac corrective surgery if born alive, and the high rate of death and morbidity linked with these staged surgeries. As a result, the woman was permitted to have a medical pregnancy abortion and the Supreme Court approved the petitions requested in the case.

**5. *Savitha Sachin Patel v. Union of India, (2017)*
*13 SCC 436***

The petitioner approached the Supreme Court to seek the medical termination of pregnancy in her 26th week of pregnancy. Under the direction given by the Supreme Court, a medical board was set up and according to the evaluation made by the medical board it was opined that there was no physical risk to the mother for the continuation of pregnancy and if the baby is born with 'Trisomy 21', it is 'likely' to have mental and physical challenges. The Supreme Court held the view that since the medical report does not observe that this particular fetus will have severe mental and physical challenges and simply states that

it is 'likely' to have these challenges and also because there was no danger to the life of the woman, the prayer to undergo medical termination was declined by the Supreme Court.

6. *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi, (2023) 9 SCC 433*

In this landmark case, the apex Court laid down the principle of autonomy of every woman in accessing medical termination of her pregnancy. The Supreme Court allowed the termination of a pregnancy beyond 24 weeks for an unmarried woman, expanding the interpretation of the MTP Act to include all women, regardless of their marital status. The Court

emphasized the need for gender equality and reproductive autonomy for all women, removing the distinction between married and unmarried women in accessing abortion services.

The Supreme Court in its interim order dated 21 July 2022 noted that as per the MTP (Amendment) Act 2021, “the phrase ‘married woman’ was replaced by ‘any woman’ and the word ‘husband’ was replaced by ‘partner’”. But evidently, there is a gap in the law: while Section 3 travels beyond conventional relationships based on marriage, Rule 3B of the MTP Rules does not envisage a situation involving unmarried women..... Parliament by amending the MTP Act through Act 8 of 2021 intended to include

unmarried women and single women within the ambit of the Act”. The apex court accordingly plugged the deficiency in the interpretation of the MTP Act.

7. Dr. Mangla Dogra and Others Vs. Anil Kumar Malhotra and Others CR No. 6337 of 2011 29th November, 2011

In this case the husband filed a civil suit for the recovery of Rs. 30 lacs towards damages on account of mental pain, agony and harassment against the wife, her parents, brother and doctors who had conducted medical termination of pregnancy, for getting the pregnancy terminated. The question before the Punjab and Haryana High Court was “whether the express consent of the husband is required for unwanted

pregnancy to be terminated by a wife?” High Court had dismissed husband’s plea saying termination of pregnancy was the sole prerogative of woman On 28th Oct 2017, a three member bench of the Hon’ble Supreme Court upheld the decision of the High Court and dismissed the husband's petition seeking damages from his estranged wife for undergoing abortion without his consent, and ruled that an adult woman had an unimpeachable right to give birth or terminate pregnancy.

8. *High Court on its own motion vs. State of Maharashtra, 2017 Cri LJ 218*

In this PIL, permission was sought for termination of pregnancy of an under-trial prisoner based on a

requisition given by her. In the requisition, she has stated that she already has a baby who is five months old. The baby was suffering from convulsion/epilepsy, hernia, loose motion as well as fever. Her health was also not good and she was suffering from repeated bleeding. she was four months pregnant. In all these circumstances, it was very difficult for her to maintain and take care of her five months old baby and herself and in addition, the baby which she was expecting, hence, she requested that she be allowed to medically terminate her pregnancy. Bombay High Court endorsed women's sole right over her own body and her consequent right to choose or not to choose motherhood and that she should be allowed to opt out

of an unwanted pregnancy irrespective of the reason. “According to international human rights law, a person is vested with human rights only at birth; an unborn foetus is not an entity with human rights. The pregnancy takes place within the body of a woman and has profound effects on her health, mental well-being and life. Thus, how she wants to deal with this pregnancy must be a decision she and she alone can make. The right to control their own body and fertility and motherhood choices should be left to the women alone.”

9. *Hallo Bi @ Halima V.s State of Madhya Pradesh and others, 2013 Cri LJ 2868 (M.P.)*

In this case the petitioner who is in Jail has asked for issuance of a direction to terminate her pregnancy, which she says was caused on account of her being forced into prostitution and her being subject to forced sex/rape. Her plea for termination was rejected at first. High Court of Madhya Pradesh affirmed the importance of providing victims of forced sex/rape access to abortion. A victim of forced sex/ violent rape cannot be forced to give birth to a child of a rapist. The anguish and humiliation which the petitioner is suffering will certainly cause grave injury to her mental health.

10. *ABC v. State of Chhattisgarh Through Secretary, 2024 SCC OnLine Chh 3358*

The accused on the pretext of marriage sexually assaulted the petitioner/victim, and gave threat to life to not reveal about the incident to anyone. On report being lodged to the above effect, the Police registered the offence of rape against the accused. In the FIR, the petitioner/victim stated that she has missed her menstrual cycle for the last 2 months. The petitioner approached the police authority, who in turn, advised her to approach this Court seeking permission for termination of unwanted pregnancy.

Taking into consideration the law laid down by the Hon'ble Supreme Court and amended provisions

contained in Section 3 of MTP Act, 1971, which permits termination of pregnancy up to 24 weeks and further considering the fact that the petitioner was pregnant of 15 weeks, the Hon'ble High Court of Chhattisgarh allowed the petition as the petitioner was a victim of rape and she must be given liberty and right to decide as to whether she should continue with the pregnancy or she should be permitted to terminate the pregnancy.

11. ABC v. State of Chhattisgarh Through Secretary, Ministry of Public Health And Welfare and Others, 2024 SCC OnLine Chh 66

In this case, the Hon'ble High Court of Chhattisgarh permitted terminating the pregnancy of a minor rape

victim and also directed that The petitioner will be allowed all medical and requisite facilities till she is medically fit even after the termination of pregnancy.

Right of Mother and Foetus

This is a very debatable topic as it has continued till now. There were several research papers carried out on this topic from both points of view. Women have rights that everyone has but this was one of the opinions whether a fetus in the womb can be considered as a human being or whether rights are available to them. There are many perspectives to this opinion, one of the opinions that, “The detection of individual DNA after only a few days of fertilization, according to researchers, incontrovertibly indicates

that the offspring, no difference how tiny, 'is human life; it is potential life or potentially human life'. As per this concept, the fetus in the womb is also entitled to have the same legal right that everyone holds.

Another perspective towards this opinion is that an 'embryo is not a legal person, it has no rights'. A fetus when it develops in the womb of the mother it is survived due to the placental and umbilical cord that connects the fetus and the mother. Therefore, it cannot be considered that the fetus is another entity, as it could not live without the mother. So, it should be the mother's right over her body and decide upon the matters related to abortions. It is her right to life; each

woman has the legal authority to decide on her own body.

Conclusion

MTP in India is a complex issue, balancing the rights of the mother and the fetus. The MTP Act has played a significant role in reducing maternal mortality related to unsafe abortions. By providing a legal and medical framework for abortion, the Act empowers women to make choices regarding their reproductive health. However, social stigma, lack of awareness, and accessibility issues remain significant barriers to fully realizing the Act's potential. Landmark case laws have expanded the scope of MTP, prioritizing the mother's health and well-being.

However, the implementation of MTP laws remains challenging, with varying interpretations and access to services across the country. The Courts have emphasized the need for a nuanced approach to MTP, considering individual circumstances and prioritizing the mother's health.

INTERPLAY BETWEEN THE ACTS

The PCPNDT Act and the MTP Act, though distinct in their objectives, share a common goal of promoting women's health and rights while addressing ethical issues related to reproduction.

1. Complementary Objectives: The PCPNDT Act seeks to prevent gender discrimination by banning sex-selective abortions, while the MTP Act focuses on

ensuring the safety and legality of abortions. Together, they work to address both the ethical and health-related concerns surrounding reproductive practices.

2. Contradictions and Challenges: At times, the Acts are seen to be at odds with each other. For instance, a woman might seek to terminate a pregnancy due to social pressures related to the sex of the fetus, which could blur the line between her legal right to abortion under the MTP Act and the restrictions placed by the PCPNDT Act. Ensuring proper enforcement and providing women with unbiased counseling can help mitigate these challenges.

3. Need for Stronger Implementation: Both laws require robust enforcement mechanisms, public awareness campaigns, and sensitive handling by medical professionals to ensure that women's rights are protected while upholding the ethical framework set by these laws.

CONCLUSION

The PCPNDT and MTP Acts represent significant strides in safeguarding women's reproductive rights and health in India. While the PCPNDT Act aims to eradicate gender bias in reproductive choices, the MTP Act ensures that women have access to safe and legal abortion services. However, both laws face challenges in terms of enforcement, accessibility, and societal

attitudes, which need to be addressed through improved awareness, better healthcare infrastructure, and more stringent legal action.

By understanding the critical role these laws play, it is essential for stakeholders—lawmakers, medical professionals, and the public—to work together in creating a society where women’s health and rights are respected and protected, free from discrimination and undue pressure.