

AMENDMENTS PROPOSED in PC&PNDT Act, 1994, BY THE EXPERT COMMITTEE CONSTITUTED TO RE-EXAMINE THE PROVISIONS OF THE ACT

	Existing provision of PC & PNDT Act	Proposed amendments	Suggestions from FOGSI
PREAMBLE:			
	Statement of Objects and Reason: Point No. (i): prohibition of the misuse of pre natal diagnostic techniques for determination of sex of the foetus, leading to female foeticide;	<u>Point No. (i): May read as</u> (i) prohibition of the misuse of pre natal diagnostic techniques for determination of sex of the foetus, leading to decline sex ratio at birth(Number of females born/ thousand boys)	The word disclosure is more binding than the word detection. Moreover in the course of an ultrasound, detection of gender may take place for purely medical reasons. the crime occurs when it is disclosed. therefore the word disclosure seems to serve the purpose better.
	Statement of Objects and Reason: Point No. (iii) permission and regulation of the use of Pre Natal Diagnostic Techniques for the purpose of detection of specific genetic abnormalities or disorders;	<u>Point No. (iii): May read as</u> (iii) prohibition and prevention of the misuse of Pre Natal Diagnostic Techniques for detection or determination of sex;	Appropriate change
	Use of appropriate terms for- “ leading to female foeticide ” and “ Abortion ”	<u>Terms to be replaced as</u> 1. “ decline in female child sex ratio at birth ” 2. “ sex selective termination of pregnancy ” respectively.	Appropriate change. This will help in dissipating the confabulation between the MTP and PC PNDT Act

CHAPTER I

	Existing provision of PC & PNDT Act	Proposed amendments	Suggestions from FOGSI
	<p>Section 2(g):</p> <p>“ medical geneticist” includes a person who possesses a degree or diploma in genetic science in the fields of sex selection and pre-natal diagnostic techniques or has experience of not less than two years in any of these fields after obtaining –</p> <p>(i) Any one of the medical qualifications recognised under the Indian Medical Council Act, 1956; or</p> <p>(ii) A post-graduate degree in biological sciences;</p>	<p>“medical geneticist" is defined as a person who has DM/ MD in Medical Genetics recognized by MCI or has worked/done research for not less than five years in a recognized university or institute or has obtained a doctorate degree in the area of clinical or medical or human genetics after obtaining:</p> <p>(i) Medical qualifications recognized under the Indian Medical Council Act, 1956 (102 of 1956); Or</p> <p>(ii)A recognized post graduate degree in subjects like Zoology/ Molecular Biology/ Human Genetics/ Bio-chemistry/ Bio-technology, Biomedical sciences and Biosciences /Life sciences</p>	<p>Although the DM / MD degree for medical genetics is hard to come by / non existent the clause has provision to also recognise reasonable qualifications. we feel it is an appropriate change. We however seek clarity on whether those currently practising genetics will be exempt.</p>

CHAPTER II			
	Existing provision of PC & PNDT Act	Proposed amendments	Suggestions from FOGSI
	<p>Section 3B: <i>Prohibition on sale of ultrasound machines, etc., to persons, laboratories, clinics, etc. not registered under the Act.</i> - No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.</p>	<p><i>Prohibition on sale <u>or otherwise transfer</u> of ultrasound machines, etc., to persons, laboratories, clinics, etc. not registered under the Act.</i>- No person shall sell <u>or in any other manner transfer</u> any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.</p>	<p>The change addresses the issues of transfer of machines. It seems to be appropriate.</p>

CHAPTER III			
	Existing provision of PC & PNDT Act	Proposed amendments	Suggestions from FOGSI
	Section 6: Determination of sex prohibited	<p><u>Insertion of Section 6 (1)</u> <u>as :-</u> Prevention of misuse of prenatal diagnostic techniques: (a) Every Appropriate Authority shall prevent and may interpose for the purpose of preventing, and shall to the best of his ability, prevent the misuse of pre-natal diagnostic techniques and commission of any offence under the Act. (b) Appropriate Authority may, if it thinks fit, for purpose of preventing commission of any offence under the Act, obtain a bond from the concerned person giving undertaking that he will not indulge into misuse of pre-natal diagnostic techniques.</p>	<p>(a) there is no need of this insertion. it will further abuse of the act and provides a re emphasis of the powers of authorities which to begin with are too many. in any case it seems to be a reiteration of the section which gives suo moto powers to the AA (b) we oppose the concept of a bond for this purpose. if the act anyway binds us all to not do sex determination it is understood that we have to follow it. In any case with every sonography we are declaring that we have not indulged in sex determination. the bond will serve no purpose except intimidation. Besides the above the format of the proposed bond is not available to us and with no knowledge of what we will have to sign we cannot agree to this.</p>

CHAPTER VII			
	Existing provision of PC & PNDT Act	Proposed amendments	Suggestions from FOGSI
	<p>Section 23: Offences and Penalties Section 23 (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 or render his professional or technical services to or at such a centre, laboratory or clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or Rule 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.</p>	<p>Section 23 (1):- <u>May read as</u> “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 or render his professional or technical services to or at such a centre, laboratory or clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or Rule made thereunder shall be punishable with imprisonment for a term which <i>*shall not be less than three years</i> and with fine which may extend to fifty thousand rupees and on any subsequent conviction, with imprisonment <i>**which shall not be less than five years</i> and with fine which may extend to one lakh rupees.</p> <p><u>Insertion of Section 23(1) (a).as :-</u> Any person who shall not abide by the following prescribed norms including: (a) Wearing apron with proper name plate while performing diagnostic procedure, (b) Putting up-sign board disclaiming sex selection at a prominent place in the clinic. (c) Copy of PNDT Act always present in the clinic shall be punishable with a fine of not less than one thousand rupees and in case of continuing contravention with an additional fine of not less than five hundred rupees for every day.</p>	<p>1 The concept of minimum punishment is not acceptable. It is taking away the discretion of the courts. the relevant sentences should read * shall not be MORE than three years ** which shall not be MORE than five years</p> <p>2 <i>As per the minutes of the expert committee meeting circulated and available on the website, The recommendation of the expert committee has been simply ignored in terms of qualifying the offence which is covered under this section.</i></p> <p>3 <i>23(1) (a) needs much more clarity.</i></p> <p>4 Benchmark Error rates. The act completely disregards the fact that minor error is inherent to human nature. It expects that Physicians should have zero error rate for filling forms. This is absurd. Even the most stringent quality systems in the world have margins for error. we ask that the Authorities consider benchmarking an error rate for the filling up of forms.</p>

Existing provision of PC & PNDT Act	Proposed amendments	Suggestions from FOGSI
<p>Section 25: Penalty for contravention of the provisions of the Act or Rules for which no specific punishment is provided: Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contraventions with and additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction of the first such contravention.</p>	<p>Section 25: <u>May read as</u> Penalty for contravention of the provisions of the Act or Rules for which no specific punishment is provided: Under Section 25, fine may extend to Rs10,000/- and in the case of continuous contravention, with an additional fine which may extend to Rs. 1,000/- for every day during which such contravention continues. Confiscation of sonography machine and other equipment used for commission of offence maybe provided as per provision of Section 55 of the Indian Forest Act, 1927. *</p>	<p>We are thankful for this change as it removes the provision for imprisonment for offences not specified.</p> <p>However we are also concerned about logistics of confiscating, storing, maintaining and returning the machines.</p> <p>We are also unaware of the provisions of punishment under the Indian Forest Act and would like clarity on them.</p>
<p>Section 26: Offences by the companies</p>	<p><u>Insertion of Section 26 (3) as:</u> When any offence punishable under this Act has been committed by a company it should be liable to a punishment of not less than 3 years and a fine not less than 25 lakhs</p>	<p>We appreciate that this provision is aimed at regulating companies who may have escaped scrutiny. we however would also like to caution about over enthusiasm in implementation causing a backlash whereby the availability of ultrasound machines becomes a problem.</p>

Existing provision of PC & PNDT Act	Proposed amendments	Suggestions from FOGSI
<p>Section 31:</p> <p><i>Protection of action taken in good faith.</i>- No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorized by the Central or State Government or by the Authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act</p>	<p>Section 31: <u>May read as</u></p> <p><i>Protection of action taken in good faith.</i>- No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorized by the Central or State Government or by Authority or by any person including social organization which has made complaint to the Court under Section 28 (1)(b) of the Act for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.</p>	<p>We cannot condemn this section enough. It reeks of some interested parties asking for immunity for actions which may be malicious in origin and nature.</p> <p>It will unleash a tsunami of boorish behaviour for which there will be no remedy and will surely cause many physicians to withdraw ultrasound services.</p> <p>In interest of women who seek care for reproductive health this cannot stand. It is untenable that “any person including social organisation” can be protected in this manner.</p> <p>This is inviting trouble for any one who provides any service under the act.</p>