



EVERYTHING YOU NEED TO KNOW ABOUT ABORTION IN INDIA

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The provision of safe and legal abortion is a crucial aspect of women's reproductive rights. Providers play a critical role in ensuring that women have accurate information about the choices available to them, in providing a safe environment for procedures like abortion and in improving access to safe services. This e newsletter will provide you with information on the law that regulates abortion in India as well as the processes and formalities associated with it.

The availability of diagnostic technology from the 1980s proved instrumental in helping providers identify foetal anomalies. However, misuse by some resulted in an increase in the incidence of sex determination and consequent selection in the second trimester of pregnancy. Although the sex ratio has been declining since the very first census in 1901, the issue caught the attention of Indian policymakers after the introduction of sex determination technology. To curb the practice of gender-biased sex selection, the Government of India passed the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PNDT) Act in 1994, which regulates pre-natal diagnostic techniques in India and prohibits their misuse for sex determination through ultrasonography.

Current Scenario

The child sex ratio of the country has also been consistently decreasing since 1991. The number of girls per 1000 boys (aged 0-6 years) dropped from 945 in 1991 to 927 in 2001 to 919 in 2011. The decreasing child sex ratio of the country led the policymakers to amend the title of the Act, to ensure the prohibition of sex selection before and after conception. As a result, the Act was renamed the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) (PCPNDT) Act in 2003. The Act aims to “provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto”.

The Act also “prohibits any advertisements relating to pre-natal determination of sex and prescribes punishment for its contravention. The person who contravenes the provisions of this Act is punishable with imprisonment and fine.”

Frequently Asked Questions

1. How does PCPDNT Act affect access to abortion services?

In recent times, availability of diagnostic technology has led to misuse by some of the technology for sex determination and selection. This has led to a misplaced belief that majority of second trimester abortions are for sex selective reasons and that restricting access to all abortions will help curb the instances of sex selection. Many qualified practitioners are guarded towards providing abortion services (especially during the second trimester) due to a fear of legal action and imprisonment. Additionally, misconceptions about when the sex of the foetus can be determined have led to a clamp down on the availability of medication abortion drugs, which are indicated for use only up to nine weeks of gestation (first trimester). As a result, many women resort to unsafe methods that pose a greater risk to their health and in some cases, can even cost them their lives.

2. Are all second trimester abortions sex selective?

- Sex of the foetus can be determined through ultrasonography only after the first twelve weeks of pregnancy, that is, in the second trimester of pregnancy. However, an overwhelming majority of second trimester abortions are not sex selective. According to the Ministry of Health & Family Welfare, only 9% of all abortions in India are sex selective. Additionally, according to the United Nations Population Fund (UNFPA) and IDF, 80-90% of reported abortions in India take place in the first trimester (when sex of the foetus cannot be determined through ultrasonography).

3. What are the ways in which both the issues of sex selection and lack of access to abortions may be addressed?

- There is an urgent need to de-link the issues of gender-biased sex selection and abortion. There is a need to adopt strategies to raise awareness about the provisions of both MTP and PCPNDT Acts and address the underlying cause of sex selection and gender inequality through education, awareness and empowerment of women. Some of the steps that can be taken to address these challenges include:
- Educating all stakeholders – including policymakers, and public and private sector providers on the ways in which MTP and PCPNDT Acts may be implemented without impinging on one another.
- Operationalising district-level committees under the MTP Act so that entry of private abortion providers are brought into the legal framework of the Act is facilitated. This will help regular reporting of MTP cases, including second-trimester abortions
- Spreading awareness about the legal status of abortion and the prohibition of sex determination.
- Supporting implementation of programmes and initiatives that seek to reduce gender discrimination.

4. How can a provider challenge the arbitrary seizure of premise/sealing of premise by state authorities under PCPNDT?

- The records are required to be maintained only when the procedure or tests are conducted on pregnant woman or when the patient may have been advised to use preconception diagnostic tools to conceive a child. Supreme Court upholds the same as per para 60 of a recent judgement (May 2019). Any procedure that cannot or does not have the potential to determine the sex of the foetus does not seem to fall under the purview of the PCPNDT regulation as far as record keeping for these procedures goes.

Further, cases without compliance of Section 20 of the PCPNDT Act can also be challenged. Various safeguards including the procedural safeguards provided under Section 20 as well as aid and advice of the Advisory Committee exists under the Act to prevent arbitrary seizure of machine/sealing of premise. Every such action has to be in accordance with the Standard Operational Procedure developed by MoHFW. (Paras 88, 89 & 90) Any action in contravention of the said safeguards and procedures, same can be challenged.

Reporting requirements and record keeping under PCPNDT act

(Forms are samples. Download state specific forms from respective state websites)

[Form A](#) - Form of application for registration or renewal of registration of a genetic counselling centre/genetic laboratory/genetic clinic/ultrasound clinic/imaging centre

[Form B](#) Certificate of registration

[Form D](#). Form for maintenance of records by the **genetic counselling centre** (Also in case MTP is advised).

[Form E](#). Form for maintenance of records by **genetic laboratory**

[Form F](#). Form for maintenance of record in case of prenatal diagnostic test / procedure by genetic clinic / ultrasound clinic / imaging centre

[Form G](#). Form of consent (For invasive techniques)

Key Takeaways

1. A lack of awareness on the MTP and PCPND Acts contributes to the misconception that abortions are illegal in India. This is compounded by the stringent implementation of the PCPNDT Act and clamping down of legal MTP Centres. However, under the MTP Act abortion is legal up to 20 weeks under certain conditions. Additionally, PCPNDT Act criminalizes sex-determination and sex-selective abortions.
2. Safe abortion should not be jeopardised in preventing sex selection. Estimates indicate that only about 9% of total abortions that occur in India are sex selective, and 80-90% of abortions take place in the first trimester when sex of the foetus cannot be determined through ultrasonography.

Key points to remember

1. The PCPNDT Act is a regulatory Act that governs sex determination, while the MTP Act focuses on abortion, women's rights and safety.
2. Statistically, half of the legal abortions will involve female foetuses. This will be true irrespective of the sex ratio of an area/state or the level of compliance with the law.
3. Use of terminologies such as "foeticide" further reinforce the notion that all second trimester abortions are sex-selective in nature. This misconception creates a negative environment for women seeking access to safe abortion.

Quick links

1. [Ministry of Health & Family Welfare Handbook on Pre- Conception & Pre- Natal Diagnostic Techniques Act, 1994 and Rules with Amendments.](#)
2. [The Medical Termination of Pregnancy \(MTP\) Act, 1971](#)
3. [Ministry of Health & Family Welfare. \(2015\). Guidance: Ensuring Access to safe Abortion and Addressing Gender Biased Sex Selection.](#)
4. [UNFPA and Ipas Development Foundation, Gender Biased Sex Selection and Access to Safe Abortions](#)
5. [UNFPA and Ipas Development Foundation, Gender biased sex selection and access to safe abortion: Frequently asked questions on interlinkages.](#)