

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

Mains: GS II - Governance

Why in News?

Recently, the Supreme Court's has clarified an important question of criminal procedure: who is competent to investigate offences relating to illegal prenatal sex determination?

What is the PC&PNDT Act, 1994?

- **PC&PNDT Act** - The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 was enacted to address the declining sex ratio and prevent the misuse of medical technology for sex determination and sex-selective abortions.
- **Background** - India's sex ratio declined from 972 in 1901 to 927 in 1991, raising concerns about female foeticide.
- Earlier laws addressed female infanticide and offences relating to miscarriage, but technological advances such as amniocentesis and ultrasound created new avenues for sex selection.
- In 1978, the Government restricted the misuse of prenatal diagnostic techniques in government facilities.
- Maharashtra became the first State to regulate prenatal diagnostic techniques in 1988.
- The Central Government enacted the PNDT Act in 1994, which came into force in 1996.
- Following a PIL and the Census 2001 findings on the declining child sex ratio, the Act was amended in 2003 and renamed the PC&PNDT Act with effect from February 14, 2003.
- **Objectives** - The Act primarily seeks to, Prohibit sex selection before and after conception.
- Prevent misuse of prenatal diagnostic techniques for sex determination and sex-selective abortion.
- Regulate the legitimate use of prenatal diagnostic techniques for detecting specified medical abnormalities and disorders.
- Prevent advertisements promoting sex determination or sex selection.
- **Major 2003 Amendments** - The amendments, brought pre-conception sex selection within the Act.
- Explicitly regulated the use of ultrasound machines.

- Strengthened the Central Supervisory Board.
- Created State/UT Supervisory Boards and multi-member Appropriate Authorities.
- Increased penalties.
- Gave Appropriate Authorities powers relating to search, seizure and sealing of equipment, records and premises.
- Made maintenance of ultrasound and other prescribed records mandatory.
- Regulated the sale of ultrasound machines to registered bodies only.
- **Institutional Framework** - Implementation involves, Central Supervisory Board (CSB),
 - State/UT Supervisory Boards,
 - Appropriate Authorities (AA) at different levels,
 - State/UT Advisory Committees,
 - District and Sub-District Appropriate Authorities,
 - Other designated Advisory Committees.
- The Appropriate Authority plays the key enforcement role, including investigating complaints, conducting inspections and taking action against violations.

What are the key provisions of the act?

- **Mandatory registration** - Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics must be registered before they can legally operate.
- **Prohibition of sex selection** - Sex selection before or after conception and disclosure/determination of the sex of the foetus through prohibited means are banned.
- **Regulation of prenatal diagnosis** - Prenatal diagnostic techniques can be used only for legally permitted medical purposes, such as detecting specified genetic, chromosomal or congenital abnormalities.
- **Record maintenance** - Clinics must maintain prescribed records. Failure to maintain records can itself indicate non-compliance and facilitate enforcement action.
- **Search, seizure and sealing** - Appropriate Authorities and authorised officers can search suspected premises and seize or seal machines, equipment and records when there are reasonable grounds to believe that an offence has been committed.
- **Major Offences** - The Act penalises:
 - Conducting prenatal diagnostic procedures in unregistered centres.
 - Sex selection of a woman, man, embryo, foetus, gametes or related material.
 - Employing or assisting unqualified persons.
 - Conducting prenatal diagnostic tests for purposes not permitted by law.
 - Supplying ultrasound or other sex-detection equipment to unregistered facilities.
 - Advertising or communicating the availability of sex determination or sex-selection services, including through print, electronic media and the internet.
- **Penalties** - Service providers violating the Act can face imprisonment and fines, with enhanced punishment for subsequent offences.
- Medical professionals may face action by the State Medical Council, including suspension and removal from the medical register following conviction.
- Persons seeking sex determination can also be punished, although the law provides protection to a woman who is presumed to have been compelled by her husband or relatives.

- Persons involved in prohibited advertisements can face imprisonment and fines.
- Contraventions for which no specific penalty is provided can attract separate punishment, including for continuing violations.
- **Nature of Offences** - Offences under the PC&PNDT Act are, Cognisable, Non-bailable and Non-compoundable.

What is the recent Supreme Court's ruling?

- **Background of the Case** - The case originated in Bulandshahr, Uttar Pradesh, following allegations of illegal sex determination of a foetus at a hospital.
- The District Magistrate, acting as the Appropriate Authority under the Act, received information about the alleged practice and authorised a Tehsildar to conduct a decoy operation.
- A subsequent raid resulted in the registration of an FIR against the doctor and others.
- The FIR invoked provisions of the Indian Penal Code as well as the PC&PNDT Act.
- The accused approached the Allahabad High Court seeking quashing of the charge sheet.
- Since different High Courts had taken divergent views regarding the power of the police to register FIRs and investigate offences under the Act, the issue reached the Supreme Court.
- **Questions raised by the Court** - The Supreme Court raised 3 important questions:
 - Whether the police could register an FIR for an offence under the Act?
 - Whether they could independently investigate such an offence?
 - Whether a Magistrate could take cognisance on the basis of a police charge sheet?
- **Role of the Appropriate Authority** - The **Appropriate Authority** is the specialised enforcement mechanism established under Section 17 of the PC&PNDT Act.
- Its purpose is to ensure effective implementation of the prohibition on sex selection and regulate the use of prenatal diagnostic techniques.
- The Appropriate Authority is empowered to grant, suspend or cancel the registration of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics; enforce prescribed standards;
- He/She can investigate complaints regarding violations of the Act or its rules; take immediate action; and seek the advice of the Advisory Committee.
- Its composition also reflects the **specialised nature of the legislation**.
- At the State or Union Territory level, it includes a senior health and family welfare officer, an eminent woman representing a women's organisation, and an officer of the Law Department.
- The Supreme Court therefore held that Parliament had deliberately entrusted investigation under the special law to this specialised authority, considering the medical, technical and social dimensions of The Court concluded that **the police are not the investigators for offences under the PC&PNDT Act**. Allowing an independent police investigation would undermine the specialised mechanism created by Parliament.
- **Limited Role of the Police** - The judgment does not completely exclude the police from PC&PNDT-related cases.
- Rule 18A(3)(iv) provides that police involvement should be avoided "as far as

possible”.

- The Supreme Court recognised that police assistance may sometimes be necessary.
- However, such involvement must remain **supplementary and supportive**.
- The police may assist the Appropriate Authority when required, but cannot assume control of the investigation under the special law.
- This distinction is significant because enforcement may sometimes require police assistance for maintaining public order, executing searches or providing logistical support.
- Such assistance does not transform the police into the primary investigating agency under the PC&PNDT Act.

Can a magistrate take cognisance of a police charge sheet?

- The answer to the third question was equally clear: **No**.
- Section 28 of the PC&PNDT Act specifies the manner in which a court may take cognisance of an offence under the Act.
- The statutory scheme does not permit a police charge sheet, by itself, to confer jurisdiction on a Magistrate to take cognisance of a PC&PNDT offence.
- Consequently, even if the police have conducted an investigation and submitted a charge sheet concerning an offence under the Act, that charge sheet cannot independently form the basis for judicial cognisance of the PC&PNDT offence.
- The Appropriate Authority must follow the procedure prescribed by Section 28 for bringing the matter before the court.
- The Supreme Court therefore found a **complete statutory embargo** on cognisance except through the routes specifically authorised by the Act.

What could be done?

- **Coordination** - Effective implementation will require close coordination between Appropriate Authorities, health departments, laboratories, clinics and the police.
- **Expertise** - Appropriate Authorities must possess adequate technical expertise, manpower and investigative capacity to discharge their statutory responsibilities.
- **Prompt action** - The police, on their part, should promptly forward information concerning PC&PNDT violations to the competent authority while independently investigating any separate offence disclosed by the facts.
- **Awareness** - Greater awareness among medical professionals and stronger monitoring of diagnostic facilities are also essential.
- **Other measures** - Technology-based record keeping, regular inspections and strict enforcement of registration requirements can strengthen preventive action.

What lies ahead?

- The judgment therefore strengthens procedural clarity without weakening the substantive prohibition on sex selection.
- Its broader significance lies in reaffirming that when Parliament creates a specialised enforcement mechanism, statutory powers must be exercised through that mechanism and in accordance with the procedure prescribed by the special law.

Reference

[The Hindu| PC&PNDT Act](#)

