



PUBLIC  
HEALTH  
FOUNDATION  
OF INDIA

# IMPLEMENTATION OF THE PCPNDT ACT IN INDIA

## Perspectives and Challenges



**SUPPORTED BY:**

THE NATIONAL HUMAN RIGHTS COMMISSION, NEW DELHI & UNFPA

CENTRE FOR YOUTH DEVELOPMENT & ACTIVITIES, PUNE  
PRAYATN, JAIPUR  
ADITHI, BIHAR  
VIMOCANA, BANGALORE  
PUBLIC HEALTH FOUNDATION OF INDIA, NEW DELHI



# IMPLEMENTATION OF THE PCPNDT ACT IN INDIA

## Perspectives and Challenges

April 2010

---

**CENTRE FOR YOUTH DEVELOPMENT AND ACTIVITIES (CYDA)**, Flat No. 4, Vasanttara, Above Udyam Vikas Sahakari Bank, Off Ghole Road, Deccan, Pune 411004

**PRAYATN**, Pratap Nagar, Sanganer, Jaipur

**ADITHI**, 2/30, State Bank Colony II, Bailey Road, Patna 800014

**VIMUCHANA**, Forum for Women's Rights, 33/1-9, Thyagaraja Layout, Jaibharath Nagar, Bangalore 560033

**PUBLIC HEALTH FOUNDATION OF INDIA**, PHD House, Second Floor, 4/2, Siri Fort Institutional Area, August Kranti Marg, New Delhi 110016, India.

# TABLE OF CONTENTS

---

LIST OF ABBREVIATIONS	8
EXECUTIVE SUMMARY	10
INTRODUCTION AND REVIEW OF LITERATURE	17
CURRENT STUDY AND ITS SCOPE	33
PROVISIONS OF THE ACT	38
FIELD OBSERVATIONS AND KEY FINDINGS	52
RECOMMENDATIONS	114

## ANNEXURES

Annexure 1: Registered bodies under Act	119
Annexure 2: Research tools	120
Annexure 3: List of interviewees	133
Annexure 4: Case law documentation	146
Annexure 5: Checklists for filing cases under the Act	226

*Disclaimer: The views expressed directly in quotes are those of respondents interviewed. Some of the experiences of the research team are also shared in the report. PHFI and partner NGOs have only shared the information collected as part of the study and do not endorse the views of respective respondents.*

# LIST OF TABLES

Table No.	Legend	Page
1.	Child sex ratio in 0-6 years by residence: 1991 & 2001.....	19
2.	Number of districts covered .....	35
3.	Important sections in the Act .....	39
4.	Study respondents .....	53
5.	Constitution of the Central Supervisory Board .....	54
6.	Source of PCPNDT knowledge among AAs .....	66
7.	Awareness of processes under the Act .....	66
8.	AAs not handling any PCPNDT related case.....	80
9.	Types of violations as cited by the AAs .....	81
10.	Type of action taken by AAs against violators .....	82
11.	Relationship between types of violations and action taken .....	82
12.	Measures to strengthen implementation as per AAs .....	83
13.	Reasons for dismissal of cases as cited by PP .....	88
14.	Types of violations as cited by PPs .....	88
15.	Comparison of PCPNDT cases with other cases .....	89
16.	Level and extent of interaction of PPs with PCPNDT cell .....	89

17.	Number of ongoing PCPNDT court cases in India .....	94
18.	State-wise distribution of cases related to sex determination .....	95
19.	State-wise distribution of cases related to illegal advertisement .....	101
20.	Cases filed under section 18 of the Act (non-registration of clinics) .....	103

# LIST OF FIGURES

<b>Figure No.</b>	<b>Title</b>	<b>Page</b>
1.	India's declining sex ratio .....	18
2.	Child sex ratio in Indian districts (1991 and 2001) .....	20
3.	Study area and partner organizations .....	34
4.	Implementation structure as per the Act .....	49
5.	Process of filing of cases by AAs .....	50
6.	Legal procedure for a court complaint.....	51
7.	Awareness among AAs .....	67
8.	Record maintenance by AAs (statewise).....	74
9.	Offences under the Act and cases filed so far .....	95

# LIST OF ABBREVIATIONS

AA	Appropriate Authority
AC	Advisory Committee
CJM	Chief Judicial Magistrate
CMO	Chief Medical Officer
CrPC	Criminal Procedure Code (Indian)
CSB	Central Supervisory Board
CSR	Child Sex Ratio
CYDA	Centre for Youth Development and Activities
DAA	District Appropriate Authority
DAC	District Advisory Committee
DIMC	District Inspection and Monitoring Committee
GC	Genetic clinic
GCC	Genetic counseling centre
GL	Genetic laboratory
IMA	Indian Medical Association
IPC	Indian Penal Code
IVF	<i>In-vitro</i> fertilization
MCI	Medical Council of India
MoHFW	Ministry of Health and Family Welfare
MTP Act	Medical Termination of Pregnancy Act, 1971
NCW	National Commission for Women
NGO	Non-governmental organization
NHRC	National Human Rights Commission
NIMC	National Inspection and Monitoring Committee
PCPNDT Act	Pre-Conception and Pre-Natal Diagnostic Techniques Act, 2001
PNDT Act	Pre-Natal Diagnostic Techniques Act, 1994
PHFI	Public Health Foundation of India
PIGD	Pre-implantation genetic diagnosis

PIL	Public interest litigation
PP	Public Prosecutor
SAA	State Appropriate Authority
SAC	State Advisory Committee
SIMC	State Inspection and Monitoring Committee
SRB	Sex ratio at birth
SSB	State Supervisory Board
SSD	Sex selection drugs
UNFPA	United Nations Population Fund

## EXECUTIVE SUMMARY

---

*“It is no exaggeration to call this gendercide. Women are missing in their millions—aborted, killed neglected to death.”*

~ The Economist, Leaders, Gendercide, March 6<sup>th</sup>, 2010

The practice of sex selective abortion (or social sex selection) has been a critical influencer of skewed sex ratios. It has, therefore, been sought to be legally regulated or termed illegal in some countries of the world, and India is one of them. There is little doubt that strong socio-cultural and religious biases and a preference for sons in some communities have shaped societal attitudes in favour of the son.<sup>1</sup> In many parts of India, community customs such as the practice of dowry are perceived as a financial burden on the bride's family during and after marriage. Women bearing male children are treated with respect in the community and a son is considered as a security for old age.

That son preference is a common, widespread social characteristic is not new. But the last few decades have witnessed the unfolding of a disturbing, and now alarming trend – to give son preference that tiny, sleek, technological nudge through the misuse of prenatal diagnostic technologies. This technological assistance – from the mid-1980s onwards – created such a powerful opportunity for people who wanted to somehow not have a baby girl that a medical boon soon transformed into its other avatar, of a sinister machinery, even industry, that started to show the negative impact unnatural, human-aided sex selection could have on sex ratios in different parts of the country.

Government and its several partners, civil society, and a plethora of organizations responded to this trend by first acknowledging that prenatal diagnostic technologies – a vital pillar of women's sexual and reproductive health and rights – needed some watching because sex selection was fast catching up, surely as a serious fallout of the low status overall of women in society over the years. The first legal response from the Government of India came in the form of the Pre-natal Diagnostic Techniques Act (PNDT) in 1994, and the same was further amended into the Pre-Conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act in 2004 as a powerful legal instrument to foster positive change in this modern sociological trend. But, as shown by several studies, its implementation has been weak. In the more than 15 years of the law being in place, a little over 600 cases have been lodged using the law across India, and – although official, accurate figures are hard to come by -- the total number of convictions using the Act is roughly 20, according to official sources. It is

---

<sup>1</sup> Centre for Youth and Development Activities. Reflections against the campaign under sex selection and exploring ways forward. 2007

important to add that publications/formal documentation of such data is not freely available in the public domain. The number of cases that have led to convictions is so low that it makes essential an investigation of the impediments in the functionality of an effective legal instrument originally conceived as a serious tool to catalyse positive social change.

As part of an effort to understand the reasons for such lax implementation of a crucial social legislation, the National Human Rights Commission (NHRC) and the United Nations Population Fund (UNFPA) jointly requested the Public Health Foundation of India (PHFI) to undertake a study to assess the status of implementation of the PCPNDT Act (hereafter referred to as the Act) across 18 states in the country where skewed sex ratios are a major problem and interventions are required on priority, as recognized by NHRC and UNFPA. The 18-state study aimed to understand the barriers to this legal process by reviewing available cases registered by the states under the Act and identify bottlenecks in the implementation of the Act, with the idea that remedial measures to make the law more effective may be found through a more in-depth understanding of these bottlenecks and impediments.

Specifically, the study has attempted to address the following key objectives:

- To identify difficulties faced by implementing authorities in their actions with regard to implementing the Act, including understanding current levels of knowledge as regards legal processes involved in effective management of cases and taking necessary steps to ensure conviction.
- To map challenges of effective case law documentation, including loopholes/weaknesses from the evidentiary and prosecution side that contribute to non-conviction
- To better understand processes that lead to successful convictions.

The study was carried out by a partnership of organizations: The Centre for Youth Development and Activities (CYDA), Pune, Prayatn, Jaipur, Adithi, Patna, Vimochana, Bangalore, and PHFI, New Delhi, in Andhra Pradesh, Assam, Bihar, Delhi, Goa, Gujarat, Haryana, Jharkand, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal between 2008-2009. . This report summarises the key findings of this study and includes an effort to present an analysis of case law documentation around available cases within the law.

The structure of this report is described below:

- I. An **Introduction & Review of Literature** that sketches an overview of Child Sex Ratios (CSR) in India and the overall background of sex selection that necessitated the enactment of the Act. It also touches upon the under-used nature of this legal framework, besides providing

a rapid scan and desk review of some of the existing literature on the subject to set out the broader perspective

- II. The **Scope and Methodology** of the current study is described by highlighting the universe of the study and its broad approach, tools and protocol used for data collection and finalization.
- III. The **Provisions under the Act** chapter briefly lays out the framework of the Act and enlists the legal provisions therein, describing implementing structures and systems that should be in place and procedures to be followed at various levels, such as national, state, district and sub-district, to implement the Act.
- IV. **Observations and Key Findings** is the main chapter that carries all the detail of data collected from the field through interviews with 176 respondents and the analysis of case law documents besides presenting the research team's analysis and inferences from the same
- V. **Recommendations and Way Forward** is the last chapter that shares major ideas for positive action and better implementation of the law as evident from and relevant to the findings from this study.

This study has made an attempt to examine the implementation of the Act from a legal and administrative perspective. Acknowledging that laws often have loopholes and gaps, the remit of this particular study has not been to go into those details of this Act. The study is based on the assumption that the current law as in place ought to be resulting in a much greater number of successful convictions than as is now the case, and therefore has not gone into the details of inadequacies in the law. The methodology was simple and focused on interviews with implementing and supervisory authorities of the Act in the states of concern besides analyzing available case law documentation through court files. The data collected were analyzed using SPSS software. . The partner organizations have been known for their work in the field on the subject, and brought a sharpened district and state-level focus to the effort. PHFI coordinated the study.

While noting several interesting findings and trends, the study report focuses on two major aspects that are often the most significant of successful implementation of any law. One is the whole administrative set-up that is on offer to implement a law (both in terms of structures and systems, and in terms of the human resource available to operationalise the system). This study has therefore sought to understand the status of implementation structures and the current system of implementation being followed, with a

specific focus on functionality. The second aspect of this study is the legal perspective and current status of legal activity in terms of case law documentation and legal rigour in reaching logical ends to an original complaint. Right through the effort, bottlenecks and barriers as identified have been mapped with the hope that they can be addressed and remedial measures rapidly brought into force.

Findings of this study that are noteworthy for their potential in contributing to the country's effort to make the Act as real and as viable on the ground as possible, within the larger framework of social determinants, are:

## **IMPLEMENTATION STRUCTURES, SYSTEMS AND PRACTICES**

1. In most states under study, implementation structures have been constituted as per the Act; the identified gap however lies in their optimal functioning and effective delivery of operations as mandated. This is made evident through several findings of the report, salient among them being:
  - Relevant bodies/authorities do not meet regularly as mandated; the level of rigour of these meetings in terms of content and thoroughness with a focus on the task at hand is also sub-optimal
  - The responsibility of handling the Act and all activities as required is invariably an additional duty for individuals within implementing authorities, particularly AAs; it is commonly perceived as difficult to handle against overlapping and conflicting priorities
  - There is a gap between the availability of funds and their effective utilization because of lack of clarity/awareness about the exact procedure involved in utilization
  - It is mandatory to include NGO representatives in the committees constituted under the Act. However, in some states, inappropriate NGO representatives, i.e. those who do not have relevant knowledge, are sometimes included as members of the committees.
2. Respondents have expressed how -- despite broad awareness and knowledge about the Act, and their duties as under -- in-depth and accurate knowledge related to details of processes of filing complaints, collecting evidence, conducting decoy operations, conducting searches and maintaining records is a major gap and a felt need. This is often reflected in the slack, even incomplete, maintenance of all paper work related to the Act, from clinic records, case-related documents, minutes of meetings to details of manufacturers of ultrasound machines

3. The authorities are unable to employ decoy operations (which are considered useful for strengthening the implementation of the Act) due to several challenges such as unavailability of pregnant women to pose as decoys.
4. The entire implementation system is insufficiently monitored. This is reflected in findings such as infrequent/inadequate monitoring of clinics at both the state and district levels and in most states not having formal and detailed plans for strict and frequent inspections.

## **CASE LAW DOCUMENTATION AND LEGAL RIGOUR**

1. The Act is inadequately used while drafting court complaints and the full force of the law is often not brought to bear in prosecution. A total of 196 cases have been filed under the offence of 'non-registration' of the Act, 153 under non-maintenance of records, 126 under communication of sex of the foetus and 37 under illegal advertisement.
2. Inadequate case preparation and gaps in legal documentation characterize many complaints filed before the courts by AAs.
3. Lack of witnesses and insufficient evidence are cited as major reasons that result in cases falling through, thereby resulting in low conviction rates.
  - An offence under Sections 5 and 6 of the Act (i.e. determination and communication of sex of foetus) can be committed by a 'word' or a 'sign' for which there is no physical proof. This makes it difficult for the authorities to collect evidence in support of the court complaints and the evidence collected is often weak and is unable to establish beyond reasonable doubt the crime committed by the accused.
  - In several decoy cases, witnesses turned hostile – thus weakening the case – perhaps due to inadequate protection provided by the state.
4. As prescribed under the law, these cases are non-compoundable in nature, but they are still withdrawn by AAs for a variety of reasons

5. Respondents have expressed how the minimal punishment of a maximum of three years of imprisonment and a maximum fine of Rs 10,000/- is not a serious enough deterrent, especially when viewed against the high demand for and profit margin in such services
6. The authorities find it difficult to follow up with different magistrates and public prosecutors for each case; this is exacerbated by the lack of a designated court for the Act and violations under it.
7. In the current scenario, cases under the Act are few and far between, leading to inadequate awareness about the Act among the judiciary and public prosecutors.
8. Women are often unaware of their rights under the Act; they also do not know which authorities to approach for help if coerced into a sex determination test.
9. There is ambiguity about the qualifications of medical professionals/service providers recognized in the Act; and medical professionals are not always aware which practices are considered unethical as mentioned in the Act

Building on the study and its observations and key findings, a broad set of recommendations have been framed and suggested by the partners, aimed at improving effectiveness in implementation and monitoring activities, strengthening case law documentation and increasing legal rigour in the application of this law. These are points for future action by relevant authorities. The recommendations can be shaped into a national action plan to enhance effectiveness of the Act and are presented in detail in the last chapter of this report. In the broader framework of reform, key thematic areas of an agenda for change, as suggested through this study, are:

- **Enhance the effectiveness of existing implementation structures and systems through a prioritized plan of action; push for extensive reform in current practices among implementing authorities and concerned stakeholders with a focus on efficiency and monitoring**
- **Work towards greater engagement with and empowerment of implementing authorities, and the same can be achieved through intensified training and sensitization with a focus on follow-up and impact of training/sensitisation**
- **Strengthen case law documentation, legal processes and rigour through a set of actions and therefore contribute significantly to a much more robust legal approach**
- **Raise the discourse through advocacy and campaigns, mobilize civil society as agents of change, and community-level watchdogs of malpractice**

- **Design and implement exhaustive legal research with a view towards detailed analysis of case law and judgements under the Act so as to contribute to a better understanding of the Act and its implementation**

It is evident that there are many actionable measures that can foster positive change in the way the law is currently implemented. Given the basic characteristics of all social legislation, there is considerable acknowledgement of the fact that there are complex social behaviours and attitudes that deeply influence sex ratios in India, and that legislation alone cannot provide all the support. However, the pressing imperative is that the law must work and become a major tool in the hands of those who want to bring change. If the current reality of an available but grossly under-used legal framework can be altered, it is bound to contribute significantly to the overall response to falling sex ratios and the undeterred misuse of prenatal diagnostic technologies.

# INTRODUCTION AND REVIEW OF LITERATURE

*One of the biggest challenges in combating this problem has been the implementation of the Act from the time of its inception in 1994. Even though the Supreme Court directive in 2002 activated state governments, there is still scope for its proper implementation.*

*~ Activity Report of the National Support and Monitoring Cell, 2006, Government of India*

Over the past few decades, a declining child sex ratio favourable to males has become a characteristic of India's population pattern. This trend has been recorded in the country since the early 1980s and has not reversed since then.<sup>2</sup> Sex ratios have declined in China and India for three decades, with no significant improvement.<sup>3</sup> The last Census of India in 2001 revealed that the child sex ratio had reduced to 927 (per 1000 boys) in 2001 from 945 in 1991. The child sex ratio (0 to 6 years) is showing a continuous decline in Punjab, Haryana, Himachal Pradesh, Delhi and Gujarat and Fatehgarh Sahib (a district in Punjab) had the lowest child sex ratio in the country i.e. 766.<sup>4</sup>

The influence of widespread availability and use of sex selection and determination techniques on sex ratios is well-documented and acknowledged, and the Indian government's response to this trend in the mid-nineties was to introduce what is now called the Act to control sex selective abortion. Effective implementation of the law however, has been a challenge and extensive discourse has been focused on the issue.

In July 2008, the National Human Rights Commission (NHRC) and the United Nations Population Fund (UNFPA) requested the Public Health Foundation of India (PHFI) to undertake an assessment of the status of implementation of the Act. This study has been conducted across 18 states of India during 2008-2009. The research study was commissioned with the view that it would contribute to the larger effort being made by several organizations and individuals, both government and non-government, to strengthen the implementation of the Act. The focus of the study, as requested, has been on implementation machinery under the Act, and a review of available cases under the same. The identification of barriers to effective implementation, it is hoped, can contribute to "enhance the NHRC's

<sup>2</sup> Guilмото CZ. Characteristics of Sex-Ratio Imbalance in India, and Future Scenarios. The Fourth Asia Pacific Conference on Reproductive and Sexual Health and Rights, October 2007, Hyderabad. UNFPA and APCRS

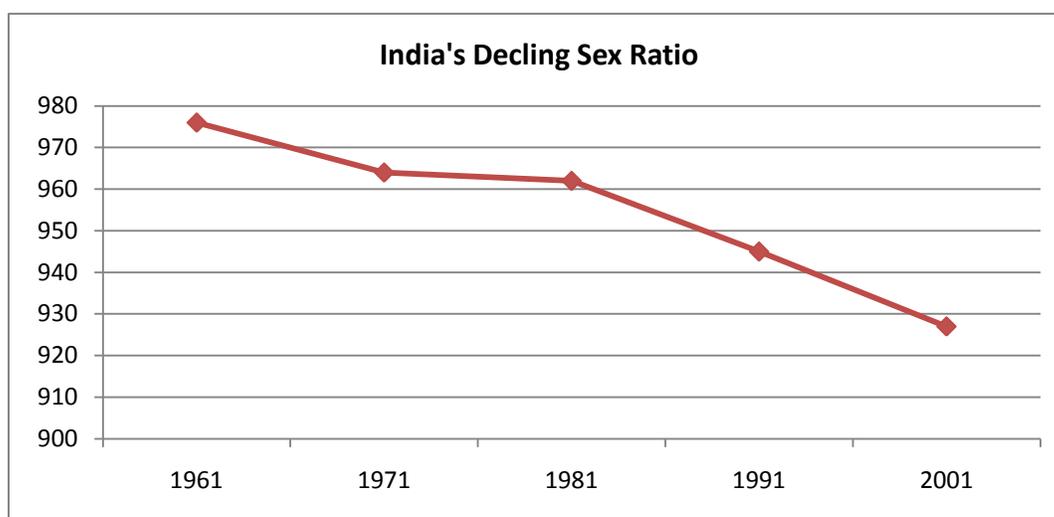
<sup>3</sup> Guilмото CZ, Attane I. Watering the neighbour's garden: the growing demographic female deficit in Asia.- a report. Published by Committee for International Cooperation in National Research in Demography Paris 2007.

<sup>4</sup> Accessed from [http://www.jsk.gov.in/child\\_sex\\_ratio.asp](http://www.jsk.gov.in/child_sex_ratio.asp)

understanding of the current scenario and enable its intervention in monitoring the Centre and States' performance in improving implementation of the Act"<sup>5</sup>. The background to the Act coming into place is well-documented, and the effort here is to provide a summary and current perspective to the problem and the legal tool that was conceived as a solution.

According to the Census of India, the number of females for every 1000 males has been steadily declining decade after decade since 1961 (Figure 1).<sup>6</sup> Sex ratio at birth is the relative number of male and female births in a population. Worldwide, the normal SRB is measured as the number of boys born per 100 girls born in a population. However, India measures the SRB on a higher denominator, i.e. the number of female births per 1000 male births. The sex ratio for the age group of 0–6 years is called the Child Sex Ratio or juvenile sex ratio.

**Figure 1: India's declining sex ratio**



Source: Census of India, 1961, 1971, 1981, 1991 and 2001

The declining Child Sex Ratio (Table 1 and Figure 2) in 1991 and 2001, as recorded by the Census, 1991 and 2001, demands attention. The general sex ratio for the population is the other measurement of long-term changes in the relative number of men and women in a population; this, too, has decreased substantially in India, from 946 in 1951 to 933 in 2001. These figures are obviously reflective of strong, deep-rooted discriminatory practices. The reasons for such discrimination are manifold. It is doubtless that most communities in India have historically exhibited a strong socio-cultural preference for a son, leading to the brutal practice of female infanticide, and a grave neglect of girls. Social customs and religious rituals also underscore the importance of a son over a daughter, shaping societal attitudes in

<sup>5</sup> Agreement for the Project "Research and Review to Strengthen Act's Implementation across Key States" undertaken by the National Human Rights Commission with PHFI, 2008

<sup>6</sup> Census data from 1961, 1971, 1981, 1991 and 2001

favour of the male child.<sup>7</sup> Similarly, customs such as the practice of dowry pose financial burdens on the bride's family during and after marriage. Women bearing male children are treated with respect in the community and a son is considered as a security for old age.<sup>7</sup>

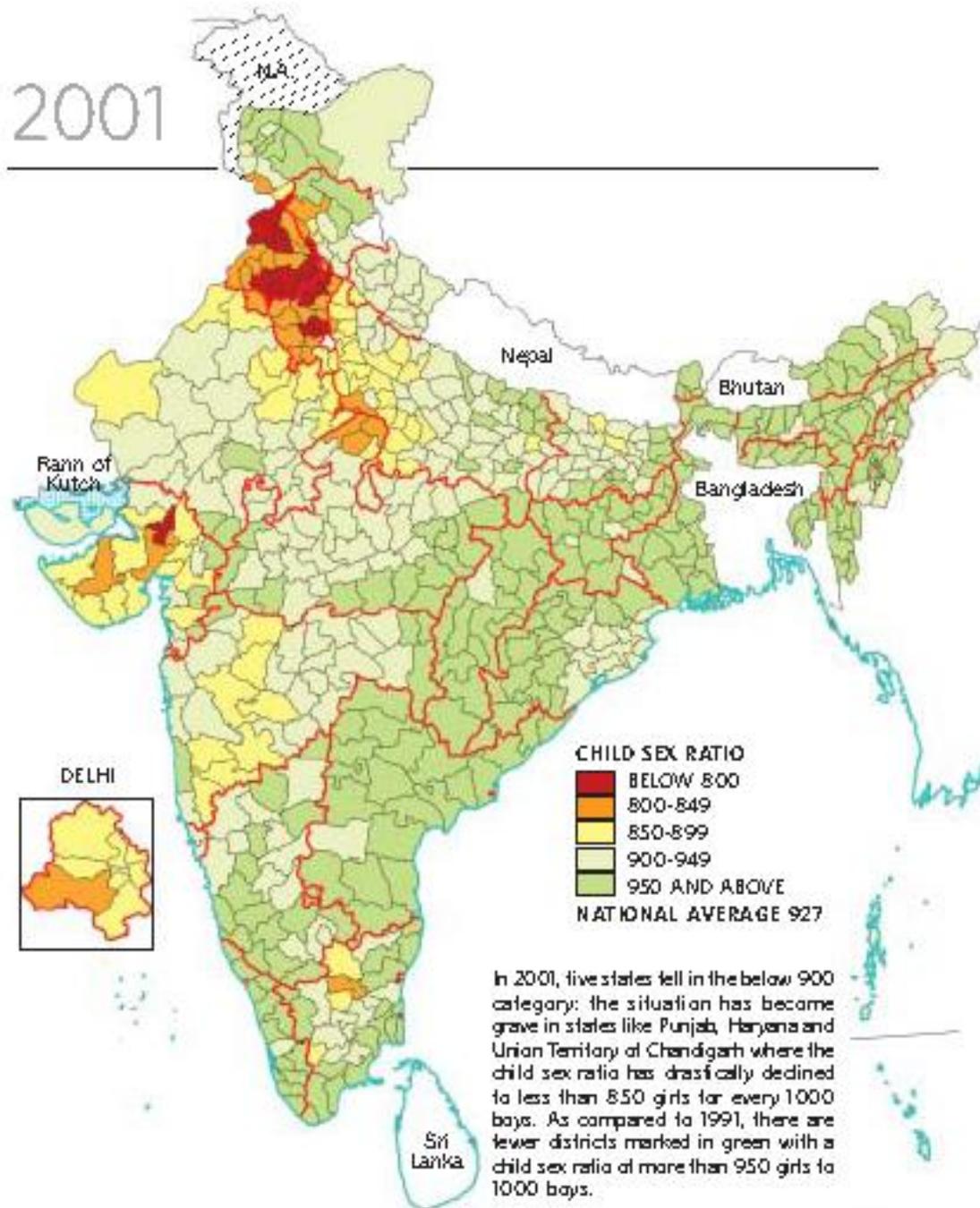
**Table 1: Child sex ratio in the age group 0-6 years by residence : 1991 & 2001**

S.No.	State / UT	2001			1991			Difference (2001-1991)		
		Total	Rural	Urban	Total	Rural	Urban	Total	Rural	Urban
	INDIA	927	934	906	945	948	935	-18	-15	-29
01	Jammu & Kashmir	941	957	873	census not held			-	-	-
02	Himachal Pradesh	896	900	844	951	955	904	-56	-55	-60
03	Punjab	798	799	796	875	878	866	-77	-79	-70
04	Chandigarh	845	847	845	899	910	897	-54	-63	-53
05	Uttaranchal	908	918	872	949	952	936	-41	-35	-64
06	Haryana	819	823	808	879	877	884	-60	-54	-76
07	Delhi	868	850	870	915	900	917	-47	-50	-47
08	Rajasthan	909	914	887	916	919	909	-8	-4	-21
09	Uttar Pradesh	916	921	890	927	926	928	-11	-6	-38
10	Bihar	942	944	924	953	953	950	-11	-9	-26
11	Sikkim	963	966	922	965	967	936	-2	-1	-15
12	Arunachal Pradesh	964	960	980	982	986	946	-18	-26	35
13	Nagaland	964	969	939	993	1001	959	-30	-32	-21
14	Manipur	957	956	961	974	975	972	-17	-19	-11
15	Mizoram	964	965	963	969	973	965	-5	-7	-2
16	Tripura	966	968	948	967	968	959	-1	0	-11
17	Meghalaya	973	973	969	986	989	968	-13	-16	1
18	Assam	965	967	943	975	977	955	-10	-10	-12
19	West Bengal	960	963	948	967	969	955	-7	-7	-7
20	Jharkhand	965	973	930	979	985	950	-14	-13	-20
21	Orissa	953	955	933	967	969	949	-14	-14	-16
22	Chhattisgarh	975	982	938	984	988	960	-9	-6	-22
23	Madhya Pradesh	932	939	907	941	944	931	-9	-5	-24
24	Gujarat	883	906	837	928	936	909	-45	-30	-72
25	Daman & Diu	926	916	943	958	933	996	-32	-17	-53
26	Dadra & Nagar Haveli	979	1003	888	1013	1015	977	-33	-13	-89
27	Maharashtra	913	916	908	946	953	934	-33	-36	-26
28	Andhra Pradesh	961	963	955	975	979	962	-14	-16	-7
29	Karnataka	946	949	940	960	963	951	-14	-14	-11
30	Goa	938	952	924	964	972	953	-27	-20	-29
31	Lakshadweep	959	999	900	941	951	932	18	48	-32
32	Kerala	960	961	958	958	958	958	2	3	0
33	Tamil Nadu	942	933	955	948	945	955	-6	-12	0
34	Pondicherry	967	967	967	963	963	962	4	4	5
35	Andaman & Nicobar Islands	957	966	936	973	973	970	-16	-7	-34

Source: Census 1991 & 2001, Office of the Registrar General and Census Commissioner, Ministry of Home Affairs  
 Note: <sup>1</sup> - Excludes Mao-Maram, Paomata and Purul sub-divisions of Senapati district of Manipur

<sup>7</sup> Centre for Youth and Development Activities. Reflections against the campaign under sex selection and exploring ways forward. 2007





3

Source: Mapping the adverse Child Sex Ratio in India. Office of Registrar General and Census Commissioner, India, Ministry of Health and Family Welfare and UNFPA. November 2005. Accessed from [www.pndt.gov.in/writereaddata/mainlinkfile/File104.pdf](http://www.pndt.gov.in/writereaddata/mainlinkfile/File104.pdf) on 17 February 2010

## REASONS FOR THIS DECLINING TREND

Approximately 50 million women are 'missing' in the Indian population.<sup>8</sup> While female mortality and sex selective infanticide have contributed to skewed sex distribution in the past, the imbalance in the sex ratios today is also attributed to pre-natal sex determination and sex selection. The link between skewed sex ratios and the growing trend of misuse of increasingly sophisticated diagnostic techniques for pre-natal sex determination and pre-conception sex selection<sup>9</sup> has been widely documented, researched and evidenced in the past few decades. Though meant for legitimate medical purposes and aimed at strengthening sexual and reproductive health choices of women, some of these technologies are commonly being used to identify the sex of the foetus, sometimes even before it is conceived or in the second trimester of pregnancy.

There are several studies on the alarming nature of the trend in the sex ratio and its long-term demographic impact on communities and society. UNFPA conducted a study on the issue of fertility decline and female foeticide in Haryana and Punjab and this study highlighted that there is inter-linkages between the two.<sup>10</sup> This study stated that it may be possible to consider sex selective abortions as a subset of total induced abortions since it is likely that illegal induced abortions could be sex selective in intent. This study also illustrated that since sex selective abortions are conducted illegally, it is near impossible to get the actual figures for such abortions conducted in India. Quoted in a recent article in *The Economist*, Nick Eberstadt, a demographer at the American Enterprise Institute, has said that this global trend of sex discrimination is the "fateful collision between overweening son preference, the use of rapidly spreading prenatal sex determination technology and declining fertility".<sup>11</sup>

There are also positive linkages between abnormal sex ratio and better socio-economic status and literacy. This contradicts any hypotheses that may suggest that sex selection is an archaic practice which takes place among uneducated and poor sections of the society. These realities – together as a body of gender discriminatory practices – have kept women disempowered, leading to skewed sex ratios over the years in many parts of the country.

---

<sup>8</sup> Allahbadia GN. The 50 million missing women. *J Assist Reprod Genet* 2002;19(9): 411–6.

<sup>9</sup> Christopher Z Guilmoto, LPED/IRD and Isabelle Attane, INED, The geography of deteriorating Child Sex Ratio in China and India. Available at: [www.iussp2005.princeton.edu](http://www.iussp2005.princeton.edu)

<sup>10</sup> Sex selective abortions and fertility decline: the case of Haryana and Punjab- a report, UNFPA, September 2001.

<sup>11</sup> *Gendercide. The Worldwide War on Baby Girls*. Page 65, *The Economist*, March 6<sup>th</sup>, 2010

## MODERN AND TRADITIONAL TECHNOLOGIES

The preference for a son has suddenly become easier to exercise. The Economist has reported<sup>11</sup>: *Until the 1980s, people in poor countries could do little about this preference: before birth, nature took its course. But in that decade, ultrasound scanning and other methods of detecting the sex of a child before birth began to make their appearance. These technologies changed everything. Doctors in India started advertising ultrasound scans with the slogan “Pay 5,000 rupees today and save 50,000 rupees tomorrow” (the saving was on the cost of a daughter’s dowry). Parents who wanted a son, but balked at killing baby daughters, chose abortion in their millions.*

Modern medical diagnostics have made sex determination and selection much easier. With the availability of pre-sex selection techniques such as *in-vitro* fertilization (IVF), Ericsson’s technique of semen separation or the latest pre-implantation genetic diagnosis (PIGD), people can look to the gynaecologist next door for sex selection rather than relying on quacks.<sup>12</sup> Though it is believed that traditional practices belong to ancient times, these are common too. A study conducted in rural north India reveals that indigenous practices are still in vogue.<sup>13</sup> Some rely on observing the time and date of intercourse. Besides, medicines known as ‘*su badalne ki dawai*’ (medicine to alter the reproductive system in females to favour male conception), which researchers call ‘sex selection drugs’ (SSD), are consumed by a number of people (>40%) who want a son. These medicines are freely available at grocery stores, chemists’ shops and with people practising traditional systems of medicine. They are prepared using some herbal ingredients, like *shivlingi* (*Bryonia laciniosa*), and *majuphal* (*Gluercus infectoria*), i.e. peacock feather. Different manufactures recommend different dosages, but the prescribed period of consumption remains the same—one-and-a-half to two months of pregnancy. A similar product by the name of ‘Select’ was popular in Gujarat. It was supposed to be taken for 45 days following the last menstrual period. The Government of India eventually banned it in 1991.<sup>14</sup>

## AN AVAILABLE, UNDER-USED LEGAL FRAMEWORK

Today, pre-natal sex selection as a manifestation and cause of the devalued and subordinate status of women in our society has been recognized as grave enough to merit a dedicated legislative intervention. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PNDT) Act, 1994,

---

<sup>12</sup> Khanna R. Punjab, Haryana continue to love sons- not daughters. The Tribune, Chandigarh. August 5, 2003.

<sup>13</sup> Bandyopadhyay S, Singh AJ. Sex Selection through traditional drugs in rural north India. Indian Journal of Community Medicine 2007;32: 32-34.

<sup>14</sup> Unnikrishnan PV. Banned- Select: a drug to alter the sex of the fetus”. Health Millions 1993;1(2): 29-30.

amended and renamed as the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) (PCPNDT) Act in 2003, is a legal tool based on the principle of deterrence. As the name suggests, the PNDT Act aimed to regulate and prevent the misuse of diagnostic techniques to detect the sex of the foetus by means of confining the use of the technology to the detection of abnormal and pathological conditions of the foetus, and to the protection of the health of the mother and child. The erstwhile legislation did not take into account technological advances which made sex selection possible both before and after conception. The Act was enacted to address this gap in the earlier legislation. Hence, the amended 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 genetic 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*'.<sup>15</sup>

The first ban on sex determination was imposed in 1978 on all government institutions, following the alarming findings of an All India Institute of Medical Sciences (AIIMS) survey (1974) on the demand for sex selective abortions.<sup>16</sup> Through the 1980s and 1990s, NGOs and social activists engaged in intensive campaigning on the issue. In 1988, the state of Maharashtra became the first in the country to ban pre-natal sex determination through a state Act. The PNDT Act, which prohibited sex selection across the country, came into force only in January 1996.

When the 2001 Census revealed a decline in the sex ratios in the country, a Public Interest Litigation (PIL) was filed by the Centre for Enquiry into Health and Allied Themes (CEHAT), an NGO, and others versus the Government of India, in an appeal to the judicial system to strengthen the enforcement of the Act. In its judgment, the Supreme Court issued detailed guidelines to the Central and state governments for strengthening of the implementation of the Act. Key directions given by the Supreme Court in this landmark judgment are briefly described below:<sup>17</sup>

1. The Government was directed to create public awareness against the practice of pre-natal determination of sex through appropriate releases/programmes in the electronic media. It was also directed to implement the Act and the Rules framed in 1996 with all vigour and zeal.

2. The Central Supervisory Board (CSB) was directed to examine the necessity of amending the Act, keeping in mind the emerging technologies and difficulties encountered in the implementation of the Act, and to make recommendations to the Central Government. It was asked to lay down a code of

---

<sup>15</sup> Long title of the Act. Accessed from [http://www.mohfw.nic.in/PNDT%20-%20%20\(act%202002\).htm](http://www.mohfw.nic.in/PNDT%20-%20%20(act%202002).htm)

<sup>16</sup> Sarojini NB et al. Women's right to health. National Human Rights Commission, New Delhi, 2006.

<sup>17</sup> Handbook on Preconception and Prenatal Diagnostic Techniques Act, Ministry of Health and Family Welfare, Government of India, 2006.

conduct under Section 16(iv) of the Act to be observed by persons working in bodies specified therein and also for this code to be published for the public at large. The CSB was also directed to require medical professional bodies/associations to create awareness against the practice of pre-natal determination of sex.

3. All state governments/Union Territory administrations were directed to appoint by notification fully empowered appropriate authorities (AAs) at the district and subdistrict levels, and also, Advisory Committees (ACs) to aid and advise the AA. They were directed to create public awareness against the practice of pre-natal determination of sex and female foeticide through advertisement in the print and electronic media, hoardings and other appropriate means. They were also directed to ensure that all the AAs furnish quarterly returns to the SSB and CSB, giving a report on the implementation and working of the Act and publish these reports for the public.

4. The AAs were directed to take prompt action against any person or body that issues or causes to be issued any advertisement in violation of Section 22 of the Act. They were also directed to take action against all bodies specified in Section 3 of the Act, as also against persons operating without a valid certificate of registration under the Act. All state/Union Territory AAs were directed to furnish quarterly reports to the CSB, giving an update on the implementation and working of the Act.

The Supreme Court also issued directives to increase people's access to information related to the Act. The state governments were ordered to publish the names of the members of the ACs in various districts so that if there is any complaint, any citizen can approach them. It was ordered that a National Inspection and Monitoring Committee (NIMC) should be set up for the implementation of the Act and the NIMC should inspect clinics across the country and submit reports to CSB and SSBs for further action. As provided under Rule 17(3), the public should have access to the records maintained by different bodies constituted under the Act.

This extraordinary ruling has been quoted in various cases wherein state governments have been instructed to follow the Act strictly. It also heralded the amendment of the Act in 2003. This amended Act banned sex selection before and after conception and further regulated the use of pre-natal diagnostic techniques for strictly medical purposes and regulated practices of medical professional engaging in unethical practices.<sup>18</sup>

---

<sup>18</sup> Annual report on implementation of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2005, PNDD division, Ministry of Health and Family Welfare, Government of India.

It is important to note that the Medical Termination of Pregnancy (MTP) Act, 1971, legalizes abortion,<sup>19</sup> but sex selective abortion is not a stipulated condition for obtaining a legal abortion under the MTP Act. Sex selective abortions are punishable under Sections 312 and 315 of the Indian Penal Code.<sup>20</sup> However, sex determination/sex selection and abortion are not as clearly distinguished in the minds of the people as they are in law, and the fact that these two practices are regulated under two separate legislations, the Act and the MTP Act, is not as comprehensively understood as it ought to be. In the past few decades, the MTP Act has become synonymous with reproductive choice and the health rights of women. Therefore, it is crucial that the difference between these two legislations be understood by the authorities responsible for implementing them.

Since its creation, the Act has been a legal tool fraught with convolutions in terms of its application and implementation. For a number of diverse reasons (extensively documented in past years), societal adherence to this legal instrument has not been achieved. Back in 2005, the former Union Minister for Health and Family Welfare, Dr Anbumani Ramadoss, participating in a parliamentary debate on the alarming decline in the CSR, commented on how despite strict penal provisions, the law had failed to check this decline. As on June 2009, there were 606 cases pending under the Act. Data till 2006 reveal that as many as 22 of the 35 states in India had not reported a single case of violation of the Act since it came into force.<sup>21</sup> Securing convictions against doctors for conducting sex determination tests is considered difficult<sup>22</sup> because producing evidence for a crime that can be committed by a word or a 'sign' and without physical proof of the same is difficult. Cases such as the famous Palwal case of 2006 from Haryana and more recent cases of conviction, such as the Mumbai doctors' conviction of November 2009 for a violation committed in 2004, are exceptions rather than the norm.

Many experts view the Act as different from other social legislations, given the fact that it not only involves change in social behaviour and practices (as most social legislation would seek), but also requires a

---

<sup>19</sup> Section 3 (2) of the MTP Act provides the circumstances under which an MTP is permitted. These are as follows:

- Continuance of pregnancy will be at a great risk to the life of the mother or place her at great risk of physical or mental injury
- There is substantial risk that if the child is born, it would suffer from such physical or mental abnormalities so as to be seriously handicapped.

In an explanation provided to this provision, the term injury to mental health has been explained to include anguish caused for the following reasons: pregnancy due to rape and failure of contraceptive (only in case of married women)

<sup>20</sup> Jaising, Sathyamala and Basu. 'From the Abnormal to the Normal- Preventing Sex Selective Abortions Through The Law', Lawyers Collective, India, 2007.

<sup>21</sup> Annual report on implementation of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2006, PNDD division, Ministry of Health and Family Welfare, Government of India.

<sup>22</sup> Chaudhuri P. Banning sex determination tests is not enough. The Telegraph June 29, 2005.

strengthening of ethical medical practice and the regulation of medical technologies to avoid their misuse.<sup>23</sup>

### Hurdles in stringent implementation of the Act

The implementation of the Act has been mired by a wide range of factors, such as lack of awareness among stakeholders and concerned individuals, challenges faced by authorities, including lack of legal training, a casual attitude among many of the implementers, and failure on part of authorities and owners of diagnostic centres to maintain records properly in accordance with the Act. Numerous studies and media reports over the years have focused on understanding these hurdles and suggesting ways forward. The Lawyers' Collective undertook an intensive and a landmark study in an attempt to collate the opinions of main actors involved: providers (medical professionals associated with or engaged in performing pre-natal diagnostic techniques) and users (women who underwent pre-natal diagnostic techniques). The study found that 78% of the women were aware of the law against identifying the sex of the foetus. Most of them believed that the act of sex determination followed by abortion was punishable under the law. This may indicate that the respondents are not aware finding out the sex of the foetus itself is punishable under the law.<sup>20</sup> An all-India study by the Abortion Assessment Project<sup>24</sup> found that women and service providers were aware of the details of the Act; interestingly, they had a greater degree of awareness regarding this Act as compared to the MTP Act. The study concluded that almost all women are aware that they are indulging in an illegal act when they undergo sex selective abortions. However, studies also reveal high levels of ignorance among the general population as regards provisions of the Act. This ignorance seems to be prevalent even among groups which are working on the issue.<sup>25, 26</sup>

Under the Act, all medical professionals performing pre-natal diagnostic techniques have been vested with the responsibility of ensuring adherence to the Act/Rules. A study carried out by the Lawyers' Collective<sup>20</sup> noted that all gynaecologists interviewed in Delhi knew that sex determination and sex selective abortions were illegal under the Act. While they felt that such a law was required, 60% also felt that there could be other alternatives to the law, such as educating women, social movements for improving the status of women, banning dowry and providing old age security. The political clout of medical practitioners also often serves as an impediment to the effective enforcement of the Act.<sup>27</sup>

---

<sup>23</sup> Address by Dr Girija Vyas, Chairperson, National Commission for Women, at the All India Conference of State Secretaries (Health, WCD, DGPS) and NGOs on the Implementation of the Act on 11 August 2005, New Delhi. Available at: [www.ncw.nic.in/pdfreports/PNDT%20Report.pdf](http://www.ncw.nic.in/pdfreports/PNDT%20Report.pdf).

<sup>24</sup> Abortion Assessment Project- India. Available at: [www.cehat.org/aap1/index.html](http://www.cehat.org/aap1/index.html)

<sup>25</sup> Reflections On The Campaign Against Sex Selection And Exploring Ways Forward. Report by Centre for Youth Development and Activities (CYDA), Feb 2007.

<sup>26</sup> Mumbai clinics flout laws banning gender selection: survey. Indian Express Aug 28, 2007.

<sup>27</sup> Rajalakshmi TK. Small gain for the girl child. The Hindu, May 2006. Available at: [www.hinduonnet.com](http://www.hinduonnet.com).

While implementing bodies are generally aware that offences under the Act are criminal, most are unaware of their powers under the Act. A study undertaken by Prayatn in the state of Rajasthan highlighted that almost half of the AAs had not received training about the provisions of the Act and over one-third of the AC members expressed lack of power as a loophole.<sup>28</sup> This study also states that there is a lack of awareness among lawyers and judges, in addition to some of the frontline implementers and enablers. This study also called for political commitment, accountability and monitoring in order to make the implementation of the Act a success. A study by Ekatra, IFES and USAID on the extent of implementation of the Act highlighted the importance of training, workshops and sensitization of implementing authorities, judges and advocates.<sup>29</sup> Incidents such as the one in Nayagarh,<sup>30</sup> where female foetuses were discovered in a well, and similar instances in Gurgaon, Ratlam, Buldhana (Maharashtra) or Pattran (Punjab) speak of the poor implementation of the Act across the country.

Advertisements selling pre-conception technologies encouraging male child conception were a common observation a few years ago. A particular advertisement from two doctors in Jabalpur and Mandla in Madhya Pradesh appeared in a magazine (Life Positive)<sup>31</sup>. CEHAT had brought to the notice of the AA in BMC, Mumbai, an advertisement put up on infertility specialist Dr Anirudhha Malpani's website on sex selection. It also appealed to the Government of India to take appropriate action against a pharmacy company, Sandhya Pharma, Indore for advertising its *Genowonderkit* on the net. The kit is a one and a half months treatment for women aged 24-25, who are recently married and want a son.<sup>32</sup> In Haryana, printed cards advertising for a male conception was recovered from an Ayurvedic practitioner in Yamunanagar, Haryana and the District Appropriate Authorities had been directed to take legal action against the offenders under the provisions of the Act.<sup>33</sup> A recent newspaper advertisement for Gen select, apparently an American medical kit that ostensibly permits couples to select the sex of their child to be also brought widespread criticism of the publication of the offending ad prompted the daily to publish an editorial acknowledging the ethical questions involved but ultimately defending its decision to publish the advertisement. A protest demonstration spearheaded by Vimochana, a women's organization based in Bangalore and one of the partner organizations of this study, was staged in front of the newspaper office

---

<sup>28</sup> Sah P, Radhakrishnan EM. Status and effectiveness of Act in Rajasthan- a research report. Prayatn, Rajasthan, 2007.

<sup>29</sup> Guilimoto CZ. Characteristics of sex ratio imbalance in India and future scenarios. 4th Asia Pacific Conference on Reproductive and Sexual Health and rights. UNFPA, 2007.

<sup>30</sup> Female fetuses found buried across Orissa and Maharashtra, July 2007. Available at : [www.infochangeindia.org](http://www.infochangeindia.org)

<sup>31</sup> Katyal A. Sex test ads on despite ban. The Times of India May 14, 2003.

<sup>32</sup> CEHAT urges centre to take action against company promoting sex selection kit. Express Health Management Bureau, Mumbai, July 10, 2003.

<sup>33</sup> Action to follow on ad ensuring male child. Indian Express May 21, 2003.

and the legality of the ad and its publication has apparently been challenged through writ petition filed before courts in some parts of the country.<sup>34</sup>

District health officials in Hyderabad detected several irregularities in corporate hospitals and diagnostic centres. No hospital had properly maintained the medical records regarding the use of scanning machines, which is a violation of Section 27 of the Act.<sup>35</sup> Prayatn, an NGO based in Rajasthan, conducted medical audit at the pre-natal care facilities in Rajasthan. When they tried to trace the contact details of pregnant women who had undergone ultrasonography, the details were found to be fake. The investigators traced some women with the help of the district administration who had reported that their previous children were females. It was found that they were no longer pregnant and had not even delivered a baby. On further questioning the women revealed the names of the facilities/centres where they had undergone sex selection tests. The Lawyer's Collective study showed that a small segment (37%) of all radiologists surveyed preserved ultrasound reports, and those who did preserve them for less than the period stipulated under the Rules of the Act. The study also found that owners and practitioners are not clear about the kinds of forms to be maintained, especially about filling Form D.<sup>20</sup>

A study undertaken by Prayatn on the status and effectiveness of the Act in Rajasthan<sup>36</sup> revealed that no quarterly reports have been sent from the State Supervisory Board (SSB) to the Central Supervisory Board (CSB), and that the reports from the district and sub-division levels are also received irregularly. The SAAs, however, do report to the PCPNDT Director. The study found that record maintenance, i.e. books of minutes of meetings, records of applications for registration, records of registration or their renewal and records of letters of intimation, was poor. There was also some degree of confusion regarding the jurisdiction of the Chief Medical and Health Officer (CMHO) and the deputy CMHO with regard to record maintenance and managing registration. Though the Act stipulates that all diagnostic centres have to maintain detailed records of all pregnant women undergoing scans and submit these records for scrutiny, the AAs formed under the Act rarely conduct an audit of the records submitted by clinics or such centres. In the first case of its kind in the country, an audit of medical records resulted in 2 doctors in Madhya Pradesh being caught for violation of the Act. During this audit, as many as 7148 forms were examined and it was observed that almost all were incomplete in some respect or the other.<sup>37</sup> In a study conducted by Vatsalya on the status of implementation of the Act across Uttar Pradesh, maintenance of records, constitution and functioning of committees constituted under the Act, supervision of clinics and collection of Form Fs emerged as the major challenges in the implementing the Act.<sup>38</sup> Other than improving the implementation of the Act through activism and creation of awareness among civil society, the success of implementation depends on the maintenance and monitoring of records and

---

<sup>34</sup> Doing away with daughters. *The Hindu* Dec 09, 2001.

<sup>35</sup> Corporate hospitals ridden with irregularities. *The Hindu*, 23 August 2008.

<sup>36</sup> Study on the Status and Effectiveness of Act in Rajasthan. Prayatn

<sup>37</sup> First ever audit catches docs violating PNDT Act.

inspection of clinics (registered or otherwise). In March 2009<sup>38</sup>, the Solution Exchange for Gender Community and Solution Exchange for Maternal and Child Health Community in India initiated a discussion on the Act. The discussion drew attention to four key areas which are briefly described below – challenges in implementing the Act, strategies to implement it, citing of ‘live cases/evidences’ of abuse/violation of the Act and reviewing the Act.

- Challenges in implementing the Act: Multiple challenges exist and some of them are lack of awareness about the Act, inactive role of the Appropriate Authorities, ambiguity in monitoring the utilization facilities available in clinics for sex detection, lackadaisical attitude of the PCPNDT Committees at different levels, and the role of medical practitioners in perpetuating sex detection leading to female foeticide.
- Strategies to implement it: The two strategies identified were advocacy based campaigns and proper implementation of the Act. The focus was towards proper implementation of the Act.
- Citing of ‘live cases/evidences’ of abuse/violation of the Act: Several cases across the country, from Uttar Pradesh and Rajasthan to Bihar, were reported which reveal the loopholes, limitations and obstacles in the path of implementing the Act.
- Reviewing the Act: The discussion also revolved around reviewing specific sections of the Act such as utilization of Section 5 and 6, in order to ensure stringent implementation of the Act.

In September 2008<sup>38</sup>, a Right to Information (RTI) petition was filed by Dr. Mitu Khurana, a Delhi-based woman who is one of India’s few individual complainants under the Act, to learn about clinics sealed under the Act. It came to light that:

- Only those clinics caught violating the Act through the use of decoys and sting operations had court cases against them.
- Clinics sealed for incomplete filing of Form F and failure to maintain records properly were open at the time that the reply was given. They were opened after they submitted affidavits stating that these lapses would not be repeated in the future, or when they appealed that closure of the clinics is not in public interest as it denies medical treatment to society.

It was observed by Dr. Khurana in the response to her RTI query that the Act required the person conducting ultrasonography (USG) on a pregnant woman to keep a 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 the contrary is proved by the person conducting such USG. It is clear, according to the law, that any deficiency in record-keeping in the manner prescribed amounts to sex determination and all such clinics should be booked for sex

---

<sup>38</sup> The Act- Implementation and Implications. Available at: [www.solutionexchange-un.net.in](http://www.solutionexchange-un.net.in) (Gender community, Maternal and Child Health community)

determination. When faced with such a serious crime, there is no scope of taking affidavits or imposing fines. Also, since it is a court of law which conducts trial on complaints against clinics - the district implementing bodies should not resolve complaints against clinics. Also, the Act makes no mention of the value of a women's statement testifying that she has undergone tests for sex determination. Since sex determination can occur in cases where there is no record of USG having been performed (no report, no forms, no receipt), if a woman says that her in-laws forced her to undergo tests for sex determination, her statement should be given due cognizance.

## ONGOING AWARENESS GENERATION EFFORTS

There is little doubt that creating awareness about the illegality of sex selection, and urging communities to question outdated rituals and social behaviour are a critical component of this struggle. The Ministry of Health and Family Welfare (MoHFW) works with a variety of partners, including civil society groups, the National Commission for Women (NCW), the Centre for Social Research, CEHAT, the Population Foundation of India (PFI), NGOs, as well as UN agencies such as the UNFPA, among others, to raise the level of public discourse and build alliances to highlight the issue of sex selection.

Recognizing the key role of the medical community, the Government has been making special efforts to reach out and seek its involvement. In 2003, a special issue on activities related to the Act was published by the *Journal of the Indian Medical Association*, which has a readership of nearly 1.2 lakh professionals and this issue was sponsored by the MoHFW. Both the UNFPA and MoHFW have supported many conferences and workshops which have served to highlight the issue of the missing girl child, even led to the design of a targeted response from within the medical community to curb sex selection. In addition, the UNFPA and Government of India have been working with the media and entertainment industries to create awareness among the people. To promote community approaches to reduce the demand for pre-natal sex selection, the UNFPA is supporting NGOs in Madhya Pradesh, Gujarat and Rajasthan to work with health workers, community workers, self-help groups and *panchayats*.

The Indian Medical Association (IMA) also has developed its own strategy for the prevention of sex selection and implementation of the Act. In an attempt to sensitize its members, the IMA gives its members badges saying 'Beti Bachao' (save the daughter) during all its meetings and conferences. The association has completed the first phase of its initiative, Stop Sex Selection: Doctors Can Make a Difference, and a forum, Doctors against Sex Selection (DASS), has been formed. DASS comprises members from the medical profession who are motivated and dedicated to the cause, and are ready to act as staff for monitoring and implementing the initiative.

It is evident that the issue is being highlighted – through the media, through studies and interventions, and through active publication – with a focus on lax implementation of the Act. It is also evident from this body of literature that much still needs to be done. For instance, detailed studies targeted at understanding case law documentation and the robustness of the legal framework may aid the building of a factual perspective on why, in 15 years, only 606 cases have been filed, and a miniscule number of convictions recorded.

## CURRENT STUDY: SCOPE & METHODOLOGY

---

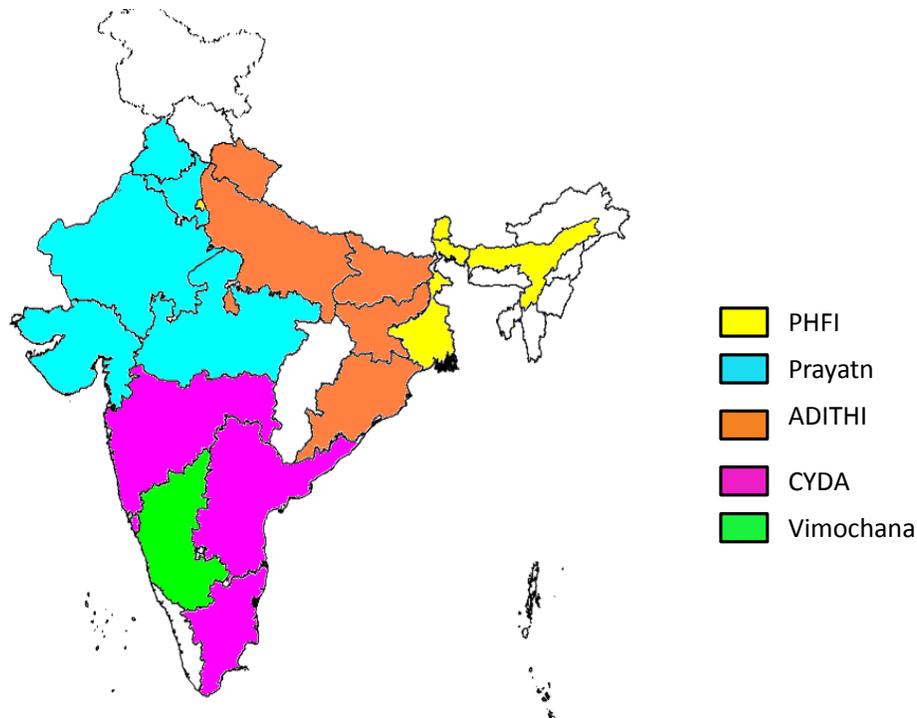
This is an effort to develop a strong legal perspective of implementation of the Act in terms of cases filed under it so as to enhance the understanding of efficiency of a legal tool in checking a malpractice that is rampant. It focuses on mapping the current scenario regarding the status of implementation of the Act and conducts a review of cases filed by authorities under the Act to identify the hurdles faced in filing these cases. Although socio-cultural factors deeply influence child sex ratios they are outside the scope of the present study, and the entire focus is on legal and administrative barriers to the effective implementation of the Act. The rationale of this study therefore has been to:

- Identify difficulties faced by implementing authorities in their actions with regard to implementing the Act, including understanding current levels of knowledge as regards legal processes involved in effective management of cases and taking necessary steps to ensure conviction.
- Map challenges of effective case law documentation, including loopholes/weaknesses from the evidentiary and prosecution side that contribute to non-conviction
- Develop better understand processes that lead to successful convictions.

### PARTNERS & GEOGRAPHICAL DETAIL

The study was carried out during 2008-09 by a partnership of organizations: The Centre for Youth Development and Activities (CYDA), Pune; Prayatn, Jaipur; Adithi, Patna; Vimochana, Bangalore, and PHFI, New Delhi. The areas selected for this study are the 18 high-burden states and Union Territories where sex ratios are a major cause for alarm, and where interventions are required on priority. These are Andhra Pradesh, Assam, Bihar, Delhi, Goa, Gujarat, Haryana, Jharkand, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal. The states assigned to each organization for conducting field research and reporting are as follows (Figure 3):

**Figure 3: Study areas and partner organizations**



## **RESEARCH DESIGN: METHODOLOGY, RESPONDENTS, PROJECT MANAGEMENT**

- ❖ First, a desk-based research of secondary data, such as published reports, journal and newspaper articles and commentaries, was undertaken to analyze the loopholes and problems in implementing the Act. This part of the research continued till the end of the study.
- ❖ After the initial phase of desk-based research, a pilot study was undertaken in Delhi by the PHFI. The purpose of this study was to map the existing structures related to the implementation of the Act, get an idea of the existing scenario in the capital city and analyze the feasibility of collecting case-related documents. Delhi was selected because of its low Child Sex Ratio as per the 2001 Census and also because the main coordinating agencies (PHFI, NHRC and UNFPA), were all located in Delhi. Field visits were undertaken to collect data and conduct in-depth interviews of identified respondents.
- ❖ On the basis of the findings of the Delhi study, all the partner organizations identified key respondents to be interviewed, depending on their involvement and responsibility in effectively implementing the Act and developed the interview questionnaires.

The number of districts covered till date in each state during this study is as follows:

**Table 2: Number of districts covered**

<b>State</b>	<b>Districts covered</b>
Gujarat	Gandhinagar & Mehsana. Additional documents have been obtained from Ahmedabad.
Haryana	Chandigarh, Sonipat & Kurukshetra
Karnataka	Bangalore rural, Bangalore Urban
Madhya Pradesh	Bhopal, Morena & Bhind. Additional documents have been obtained from Shivpuri and Indore
Maharashtra	Kolhapur, Sangli, Satara, Pune
Punjab	Chandigarh, Fatehgarh Sahib & Patiala
Rajasthan	Jaipur, Shriganganagar & Dhaulpur
West Bengal	Howrah, Kolkata
Assam	Kamrup, Nagaon
Jharkhand	Ranchi, Dhanbad
Orissa	Cuttack, Nayagarh, Khurda
Bihar	Patna, Sitamarhi
Andhra Pradesh	Hyderabad, Nalgonda
Tamil Nadu	Salem, Krishnapuri
Goa	North Goa, South Goa
UP	Lucknow, Meerut
Uttarakhand	Dehradun, Haridwar
Delhi	North, South, East, West, North-West, North-East, Central, NDMC, South-West
<b>Total districts covered</b>	<b>52</b>

The project was initiated in 2008 and the below mentioned phases were followed in this study:

1. Phase 1: In this phase of the study, PHFI initiated the pilot study in Delhi across 9 districts and a report on the pilot study was developed and submitted to NHRC and UNFPA. This report was accepted as a template for reports from the remaining 17 states.
2. Phase 2: PHFI worked towards identifying the partner NGOs for conducting this study across remaining 17 states. Upon finalization of partner NGOs, the study methodology was evolved jointly and study tools were developed and finalized. Upon finalization, data was collected across 17 states and 2-3 districts in each state. The primary data so collected was analyzed for state reports and transferred to PHFI. On the basis of the primary data collected and state reports authored by partner NGOs, PHFI developed the first draft of the national report. A partner

meeting was held to finalize the key findings and recommendations emerging from the study. The national report was submitted to NHRC in October 2009. On receiving feedback on the national report, it was revised and submitted in April 2010.

Research tools adopted for the study were:

1. Interviews with authorities responsible for implementing the Act. As mentioned earlier, the questionnaires for the various categories of respondents were developed on the basis of the pilot study. These questionnaires were both qualitative and quantitative in nature. Data collected through the interviews were submitted by the partners in data sheets and sent to PHFI from time to time. These data were compiled and analysed using SPSS Version 15 and stored by PHFI.
2. Analysis of cases filed under the Act

The respondent universe for this study was determined keeping in mind their influence on implementation of the Act. They included:

- CSB and SSB respondents at the policy level
- At the implementation level, respondents identified were the State Appropriate Authorities (SAAs), District Appropriate Authorities (DAAs); members of the State Advisory Committees (SACs) and DACs; and National, State and District Inspection and Monitoring Committees (NIMC, SIMC and DIMC).
- Other stakeholders interviewed included public prosecutors and Chief Judicial Magistrates to get an idea of the viewpoint of the judiciary; NGO and civil society representatives to cover the civil voice and acknowledge the impact of activist groups in positive societal change; and medical practitioners, and members of the IMA and Medical Council of India (MCI) to understand the viewpoint of the medical fraternity.

This study has been supported through a Technical Advisory Group (TAG) constituted by the NHRC and UNFPA. The interview questionnaires were developed by the PHFI in consultation with its partners, the NHRC and UNFPA. These were pilot tested and the final versions were endorsed by the TAG (the questionnaires are attached in Annexure 2). The methodology to be adopted was finalized by all study partners, NHRC and UNFPA during an orientation meeting organized by the NHRC.

### **Analysis of cases**

Case records and case files obtained from district authorities and/or designated courts were used for this part of the research. While analyzing the cases, issues such as the number and nature of cases filed, the progress in each case and the judicial outcomes in cases disposed were studied. In all, 15 cases have

been analyzed in detail in Chapter 4 of this study (Observations and Key Findings). Certified copies of these cases were collected to ensure the authenticity of the documents. Since most of these cases are sub-judice, the specific details of the cases have not been disclosed. The analysis of these cases has been made purely for the study and not with the intention of influencing judicial processes or encroaching on the privacy of the parties involved. A deliberate attempt has been made in this report to take an impartial stand in cases which are pending in courts.

### **Project Monitoring**

The entire research team met thrice during the study period. A monitoring system was in built in the process of data collection. Research partners provided regular feedback to PHFI as the coordinating agency, as regards progress of the study. Reports that were obtained from partners were reviewed by the team at PHFI, and feedback provided. The coordinating team made supervisory visits to three field sites and independently contacted a randomly selected group of AAs to verify reliability of data collected.

### **Ethical concerns**

All essential steps were taken to address the possible ethical concerns. Informed consent was taken from respondents after explaining to them the relevance and purpose of the study. Confidentiality was assured and maintained during the course of the study.

### **Key limitations of the study**

1. Non-availability of case documents: Certified court copies of complete case files were also not available with the AAs both at the state or district levels. AAs generally provided only copies of the original complaints filed. Requests for additional documents, such as evidence, statements of witnesses, copies of investigation reports and order sheets, could not be accessed.
2. Geographical limitations: The study covers only two or three districts of the 18 states selected.
3. Time and resource constraints: The time-frame of the field work and the monetary resources available were the limiting factors that prevented in-depth coverage of the area under study. The announcement of parliamentary elections also affected the study as the state machinery was busy with preparations for the elections and, consequently, field visits had to be delayed.

## PROVISIONS UNDER THE ACT

---

### PURPOSE AND DEFINITIONS

The basic purpose of the Act is three-fold, with a focus on averting further decline in sex ratio:

- Regulation of Pre Natal Diagnostic Techniques only for legitimate uses as prescribed under the Act
- Complete ban on misuse of 'pre-conception diagnostic techniques' (PCDT) and 'pre-natal diagnostic techniques' (PNDT) for sex selection / determination
- Absolute prohibition of selection of sex of the foetus, both before and after conception, except for detecting sex-linked diseases

The term "pre-natal diagnostic techniques" (PNDT) includes all pre-natal diagnostic 'procedures' and pre-natal diagnostic 'tests'.

- ❖ "Pre-natal diagnostic procedures" means all gynaecological, obstetrical or medical procedures, both invasive and non-invasive, for sex selection, both before and after conception:
  - invasive pre-natal diagnostic procedures are utilized to remove samples from a woman or a man, both before and after conception, of amniotic fluid, chorionic villi, embryo, blood or any other tissue or fluid, for conducting any type of analysis or test like: amniocentesis, chorionic villi biopsy, foetal skin or organ biopsy, cordocentesis,
  - non-invasive pre-natal diagnostic procedures include ultrasonography, foetoscopy
- ❖ "Pre-natal diagnostic tests" means test or analysis conducted on the samples received by the conduct of pre-natal diagnostic procedures such as amniotic fluid, chorionic villi, blood, conceptus or any tissue removed from a woman or a man, both before and after conception to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases.

The term Sex selection includes: technique, administration, prescription and provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex.

### Offences under the Act

All the following are categorized as amounting to committing offences under the Act. Every offence under the Act is cognizable (do not need warrant of arrest for arrest to be made), non-bailable (bail cannot be

granted except on court's order), and non-compoundable (cannot be privately compromised or settled monetarily or in any other way by or between parties):

**Table 3: Important Sections in the Act**

<b>Section No.</b>	<b>Remarks</b>
<b>Section 5</b>	deals with the prohibition of communicating the sex of the foetus. Misuse of PC & PNDT, even by a qualified person, solely for sex-determination and in conditions not falling under the exceptions under the Act
<b>Section 6</b>	deals with prohibition of determination of sex. Sex selection which would include any technique, procedure, test, administration, prescription or provision of anything, before or after conception, for the purpose of ensuring or increasing the probability of birth of male child. This would include even Ayurvedic pills or any alternative therapy claiming to be effective for this purpose.
<b>Section 18</b>	deals with registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics: Genetic Counseling Centre (advising PNDT of both kinds: procedures or tests), Genetic Clinic (conducting PNDT procedures), Genetic Laboratory (conducting PNDT tests), including the vehicle used as Genetic Clinic.
<b>Section 22</b>	deals with prohibition of advertisement relating to pre-natal determination of sex. Issue, publication or circulation of any advertisement of facilities or any means of selecting or determining sex of the foetus before or after conception. The advertisement may be in any form: notice, circular, label, wrapper or any other document, advertisement through internet or any other media in electronic or print form, hoarding, wall-painting, signal, light, sound, smoke or gas.
<b>Section 29</b>	deals with maintenance of records by Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics. Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre is required to maintain a register showing, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or tests, the names of their spouses or fathers and the date on which they first reported for such counselling, procedure or test.
<b>Rule 3A</b>	deals with sale of ultrasound machines/imaging machines. No organization including a commercial organization or a person, including manufacturer, importer, dealer or supplier of ultrasound machines/ imaging machines or any other equipment, capable of detecting sex of foetus, shall sell, distribute, supply, rent, allow or authorize the use of any such machine or equipment in any manner, whether on payment or otherwise to any GCC, GL, Genetic Clinic, Ultrasound Clinic, Imaging Centre or any

other body or person unless such Centre, Laboratory, Clinic, body or person is registered under the Act.

### **Punishments for the offences**

The punishments for major offences involving sex selection or sex determination and non-maintenance of records (violation of section 5 and 6 of Act) are:

- Imprisonment of up to 3 years (5 years in case of subsequent offence) and fine of Rs 50,000 (Rs 1 lakh in case of subsequent offence). However, this does not apply to any woman who was compelled by anyone to undergo such diagnostic techniques or such selection.
- Name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of, and on conviction, for removal of his name from the register of the Council for a period of five years for the first offence, and permanently for the subsequent offence.

For registration related offences, the Appropriate Authority (AA) may:

- Suspend or cancel the registration, as per the magnitude of the violation.
- During the period of suspension of registration, the equipment will be sealed and signed and kept with the owner.
- After cancellation of the registration, the equipment has to be sealed and seized.
- For non-registration, 5 times the registration fee may be charged as penalty and an undertaking shall have to be furnished as per the PNDT Rules.

For advertisement related offences, the prescribed punishment is Imprisonment which may extend to 3 years; and fine which may extend to Rs 10,000. For other offences, the prescribed punishment is: Imprisonment which may extend to 3 months; and fine which may extend to Rs 1,000 for first offence and additional fine up to Rs 500 per day may be levied for the period of contravention for subsequent offence.

### **Legitimate uses of PNDT under the Act**

The Act allows use of PNDT only to detect chromosomal abnormalities, genetic metabolic disease, haemoglobinopathies, sex-linked genetic diseases, congenital anomalies, or other abnormalities/diseases

in the foetus as<sup>39</sup> may be specified by the CSB. But the use of PNDT to detect these abnormalities is permitted only in registered places/units (including vehicles) and by qualified persons only:

When the pregnant woman:

- Is above 35 years of age or
- Has undergone two or more spontaneous abortions or foetal losses or
- Has been exposed to potentially hazardous teratogenic agents such as drugs, radiation, infection or chemicals or
- Has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease<sup>40</sup>

In addition, all the above are subject to mandatory informed consent in writing by the woman<sup>41</sup>.

OR ► Under any other condition specified under the Act (such as ultrasound tests can be conducted in 23 conditions added in Form F under the Act, subject to strict record maintenance).

### **Registration and qualification requirements for places and professionals**

Genetic Counselling Centre (GCC) means: an institute, hospital, nursing home, or any other place by whatever name called which provides genetic counselling to patients. Genetic Clinic (GC) means: any clinic, institute, hospital, nursing home, or any other place by whatever name called which is used for conducting pre-natal diagnostic procedures. Genetic Laboratory (GL) means: any laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic test.

For a genetic counselling centre, the gynaecologist or paediatrician practising there must have 6 months experience or 4 weeks training in genetic counselling. For a genetic clinic, the gynaecologist should have adequate experience in prenatal diagnostic procedures i.e. should have performed at least 20 procedures in chorionic villi aspirations per vagina or per abdomen, chorionic villi biopsy, amniocentesis, cordocentesis foetoscopy, foetal skin or organ biopsy or foetal blood sampling etc. under supervision of an experienced gynaecologist in these fields.

A registered medical practitioner (who possesses any recognized medical qualification as defined in the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register) practising in a genetic clinic should have a postgraduate degree or diploma or six months training or one year experience in sonography or image scanning.

---

<sup>39</sup> Section 4 (2)

<sup>40</sup> Section 4 (3)

<sup>41</sup> Section 5

Medical Geneticist includes a person who possesses 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 any one of the medical qualifications recognized under the Indian Medical Council Act, 1956; or a postgraduate degree in biological sciences, but merely possessing a certificate does not make one a qualified medical geneticist.

### Who can be the complainant?

- The AA concerned under whose jurisdiction the offence is committed; or any officer authorized by the Central Government or State Government or the Appropriate Authority for filing complaints;
- If the AA fails to act on the complaint within 15 days, the person who has made the complaint to the Appropriate Authority of the alleged offence and of his intention given 15 days notice to make a complaint in the court, after the lapse of 15 days, that person can directly approach the court;
- Any person can invoke the PC & PNDT law for the violation of the same and he /she can seek the assistance of a lawyer, an NGO and even a group of persons can file a complaint together since “person” includes a social organization.

### Requirements of record keeping by GCC, GC and GL

Under Section 9 of the PCPNDT Rules, 1996, every GCC, GL, GC shall send a complete report in respect of all pre-conception or pregnancy related procedures/techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority and keep the record of Form F with them for three years. It is pertinent to mention that every sonologist is required to fill Form F before conducting an ultrasound on a pregnant mother. The form has 19 questions including the reason for conducting the sonography, along with patient detail. As per the Act, the following records are to be maintained by any GCC, GC or GL, under the Act:

- Form D – i.e. the form regarding maintenance of records by GCC
- Form E – i.e. the form for maintenance of records by GL
- Form F – i.e. the form for maintenance of record in respect of pregnant woman by GL/ ultrasound clinic/ Imaging Centre, including declaration of pregnant woman and doctors
- Form G – i.e. the form of consent for invasive techniques
- All case related records, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters

## Implementation agencies

All the states of India, except Jammu and Kashmir, are expected to provide for an enabling structure, system and approach for the effective implementation of the Act. This section describes the same in the 18 states studies. It is important that the findings of the report be inferred against this basic framework as is available.

The organizational framework of the implementing agencies as per Chapters 4 and 5 of the Act has been illustrated below.

## Statutory Authorities under the Act

### At the Policy Level:

A Board is required to be constituted by the Central Government which is known as the Central Supervisory Board. The Act makes provision for inclusion of government officials, specialists as well as representatives of welfare organizations in this Board.

Section 7(2) of the Act states that the Central Supervisory Board shall consist of:-

- (a) The Minister in charge of the Ministry or Department of Family Welfare, who shall be the Chairman, ex officio;
- (b) The Secretary to the Government of India in charge of the Department of Family Welfare, who shall be the Vice-Chairman, ex officio;
- (c) Three members to be appointed by the Central Government to represent the Ministries of Central Government in charge of Women and Child Development, Department of Legal Affairs or Legislative Department in the Ministry of Law and Justice, and Indian System of Medicine and Homeopathy, ex officio;
- (d) The Director General of Health Services of the Central Government, ex officio;
- (e) Ten members to be appointed by the Central Government, two each from amongst –
  - i. Eminent medical geneticists
  - ii. Eminent gynaecologist and obstetrician or expert of stri-roga or prasuti-tantra
  - iii. Eminent paediatricians
  - iv. Eminent social scientists
  - v. Representatives of women welfare organizations
- (f) Three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States;
- (g) Four members to be appointed by the Central Government by rotation to represent the States and the Union territories; two in the alphabetical order and two in the reverse

alphabetical order: Provided that no appointment under this clause shall be made except on the recommendation of the State Government or, as the case may be, the Union Territory;

- (h) An officer, not below the rank of a Joint Secretary or equivalent of the Central Government, in charge of family Welfare, who shall be the Member-Secretary, ex officio.

Section 9 of the Act states that the Board shall meet at least once in six months and its functions under Section 16 of the Act are specified below:

- i) To advise the Central Government on policy matters relating to use of pre-natal diagnostic techniques, sex selection techniques and against their misuse;
- ii) To review and monitor implementation of the Act and the rules made there under and to recommend to the Central Government changes in both;
- iii) To create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide;
- iv) To lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics;
- v) To oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation.

The Board is also to perform any other functions as may be specified under the Act such as specifying abnormalities or diseases for which pre-natal diagnostic techniques can be conducted or the conditions which are necessary to exist before the conduct of these techniques. Thus the Act envisages the Board as the main body which is to make recommendations on policy makers and on amendments that are necessary in the Act.

Under the amended provisions of the Act, a State Supervisory Board or the Union Territory Supervisory Board is also required to be constituted by each State and Union Territory having a Legislature with a constitution similar to the Central Board, and similar advisory functions.

The SSB's composition is<sup>42</sup>:

- (a) The Minister in charge of Health and Family Welfare in the State, who shall be the Chairperson, ex officio;
- (b) Secretary in charge of the Department of Health and Family Welfare who shall be the Vice-Chairperson, ex officio;

---

<sup>42</sup> Section 16(2) of the Act

- (c) Secretaries or Commissioners in charge of Departments of Women and Child Development, Social Welfare, Law and Indian Systems of Medicine and Homeopathy, ex officio, or their representatives;
- (d) Director of Health and Family Welfare or Indian Systems of Medicine and Homeopathy of the State Government, ex officio;
- (e) Three women members of the Legislative Assembly or Legislative Council;
- (f) Ten members to be appointed by the State Government out of which two each shall be from the following categories:-
  - a. Eminent social scientists and legal experts;
  - b. Eminent women activists from non-governmental organizations or otherwise;
  - c. Eminent gynecologists and obstetricians or experts of stri-roga or prasuti-tantra;
  - d. Eminent pediatricians or medical geneticists;
  - e. Eminent radiologists or sonologists;
- (g) An officer not below the rank of Joint Director in charge of Family Welfare, who shall be the Member Secretary, ex officio.

The State Supervisory Board is mandated to meet at least once in four months and its functions are :

- (i) To create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide in the State;<sup>43</sup>
- (ii) To review the activities of the Appropriate Authorities functioning in the State and recommend appropriate action against them;<sup>44</sup>
- (iii) To monitor the implementation of provisions of the Act and the rules and to make suitable recommendations relating thereto, to the Board;<sup>45</sup>
- (iv) To send such consolidated reports as may be prescribed in respect of the various activities undertaken in the State under the Act to the Board and the Central Government; and<sup>46</sup>
- (v) any other functions as may be prescribed under the Act. <sup>47</sup>

#### At the Level of Implementation

The role of implementation of the Act has been assigned to the “Appropriate Authorities” (AA) which must function with the aid and advice of an Advisory Committee.

- The Central Government is required to appoint one or more Appropriate Authorities for each of the Union Territories;

---

<sup>43</sup> Section 16 A (i) of the Act

<sup>44</sup> Section 16 A (ii) of the Act

<sup>45</sup> Section 16 A (iii) of the Act

<sup>46</sup> Section 16 A (iv) of the Act

<sup>47</sup> Section 16 A (v) of the Act

- Under the amendments, a multi-member body has been provided as the State Appropriate Authority consisting of:
  - i) an officer of or above the rank of the Joint Director of Health and Family Welfare-Chairperson;
  - ii) an eminent woman representing women's organization; and
  - iii) an officer of Law Department of the State or the Union Territory concerned.
    - Under the directions of the Supreme Court, Appropriate Authorities are to be appointed at district and sub-district levels as well. At the District level, the Chief Medical Officers or the Civil Surgeons have been designated as the Appropriate Authorities.
    - Recently the Union Government has recommended making the District Magistrate the Appropriate Authority and many states have followed this us. At the sub-district level, the practice varies from State to State.

Functions of the Appropriate Authority are:

- To receive applications for registration (in duplicate in Form A accompanied by an Affidavit with undertaking of not carrying out sex-determination or sex selection and displaying notice to that effect)
- To grant, suspend or cancel the registration
- Enforce the standards for genetic counseling centre, genetic clinic and genetic laboratory
- To investigate complaints of breach of provisions of the Act and the Rules
- To follow up complaints by initiating legal action in court
- To examine all Form Fs filled in for each ultrasound, giving full details of the reasons for doing the ultrasound and its result
- To send decoys to medical practitioners under suspicion and raid the premises or inspect the premises and collect the evidence on the spot
- To ensure accurate recording of any sex determination carried out
- 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
- To create public awareness against the practice of sex selection or pre-natal determination of sex
- To supervise the implementation of the provisions of the Act and rules
- To recommend to the CSB and State Boards modifications required in the rules in accordance with changes in technology or social conditions
- To take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

#### Powers of Appropriate Authority:

The Appropriate Authority has been invested with the following powers:

- a) Summoning of any person who is in possession of any information relating to violation of the provisions of this Act or its rules
- b) Production of any document or material object relating to violations
- 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.

Advisory Committees: According to Section 17(5) of the Act the Central Government or State Government, as the case may be, shall constitute an Advisory Committee to aid and advise the AA in the discharge of its functions. The Advisory Committee shall be headed by the Chairperson, one of its own members. Section 17(6) of the Act states that the Advisory Committee shall consist of:

- (a) three medical experts from amongst gynecologists, obstetricians, paediatricians and medical geneticists;
- (b) one legal expert
- (c) one officer to represent the department dealing with information and publicity of the State Government or the Union Territory, as the case may be;
- (d) three eminent social workers of whom at least one shall be from amongst representatives of women's organizations.

The Advisory Committee may meet as and when it thinks fit or at the request of the AA for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon. Once the complaint is made in the court the public prosecutor will prosecute it there and the complainant need not be present on every date of hearing.

National Inspection and Monitoring Committee: Although not provided for in the Act, a National Inspection and Monitoring Committee has been constituted at the Centre to assess ground realities through field visits. The NIMC is the link between the Central Supervisory Board and the State Supervisory Board. It was set up to assess the implementation of the Act at national level. The Committee visits vulnerable states/districts and submits a report to the Centre and the concerned state authorities. It also monitors the cases filed against unregistered bodies and those violating provisions of the Act/ Rules, and the directions of the Supreme Court of India in this matter. The Committee was reconstituted in March 2005 to include representatives from the Department of Women and Child Development, the National Commission for Women and the Indian Council for Medical Research. NIMC initiates investigation for the Act on two

grounds: (a) Upon receipt of a direct complaint (b) As routine inspection, where priority is given to areas with low sex ratios. The procedure followed is outlined below:

- Plan an inspection
- Consult the respective DAA and make district PCPNDT personnel accompany on the visit
- Action is taken by the DAA, as they are vested with the authority to seal/seize documents
- Issue letters from NIMC/ MoHFW from Joint Secretary level or Secretary to the SSB, which then contacts the DAA for follow up on action, requesting for a detailed response on the current status of that particular operation
- Inspection involves a thorough examination of all records.
- NIMC members refrain from testifying as witnesses for inspections conducted.

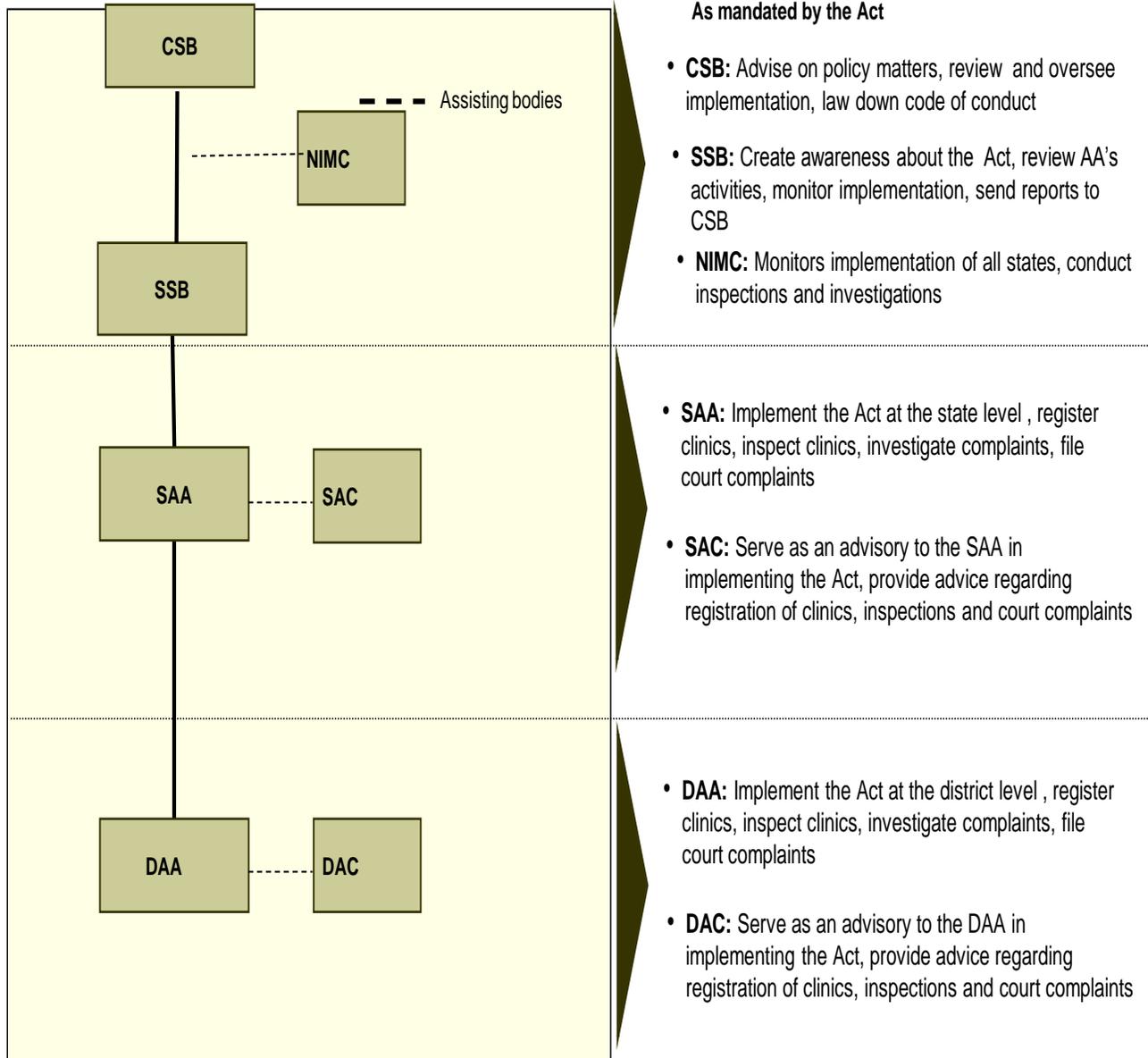
Post-inspection, the functions of NIMC are to:

- Prepare reports of visits and observations at each premise, action taken and recommendations for the respective district AA.
- Draft and send letters requesting for details of follow up action.
- Receive Quarterly Reports from districts, which are collected by the state appropriate authorities from districts. NIMC presents this to the Centre as updates and progress from around the country.
- Monitor cases filed under the Act

The flowchart below (Figure 4) highlights that implementation of the Act can be effective if the systems and structures work in coordination with each other. It charts the implementation structure across the national, state and district levels, for a comprehensive overview of the provisions available for effective implementation of the Act.

Figure 4: Implementation structure as per the Act

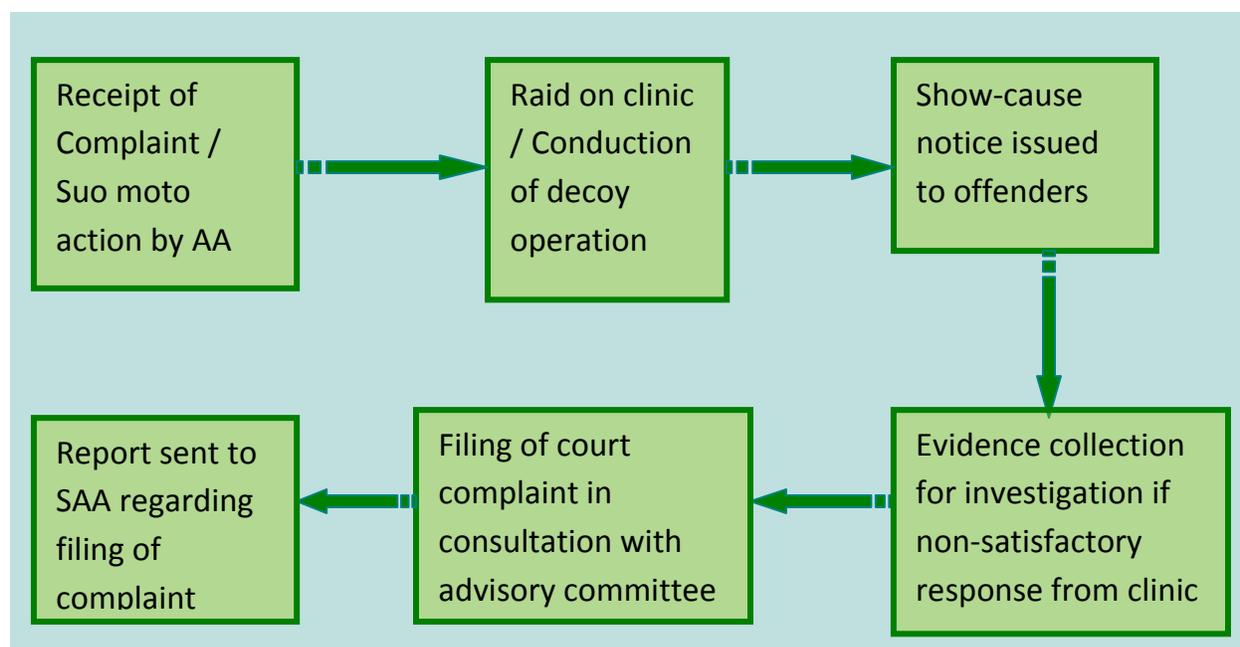
## IMPLEMENTATION CAN BE EFFECTIVE IF STRUCTURES WORK IN TANDEM WITH EACH OTHER



## Complaint Mechanism and State/District Processes

Presented below is the flow chart of the processes followed by appropriate authorities while dealing with violations of the Act (Figure 5). It may please be noted that all steps are not necessarily always followed or followed in the same sequence.

**Figure 5: Process of filing cases by the AAs**



**Receipt of complaint/ Suo moto:** The process of filing of complaints against violators of the Act starts with either a receipt of complaint by the AA or a suo moto action against violators. The initiator of a complaint may be the Appropriate Authority (AA), Directorate of Family Welfare, private parties, NGOs, social activists, individuals who may or may not be victims themselves. For instance, in Delhi, 55% of the court cases were initiated by the Directorate of Family Welfare and only 10% of the cases were initiated by the district AAs. Only one case was initiated by an individual complainant. For almost 32% of the cases, the initiator of the cases could not be confirmed by the District AAs due to lack of documentation.

**Raid on clinic / Conduction of decoy operation:** After receipt of complaint, AAs authorize an investigation by constituting an Investigation Committee. While conducting investigations, records of clinics, notice boards stating that 'sex determination is illegal' and other relevant receipts are inspected.

**Show cause notices issued to offenders:** Show cause notices are sent to all accused to appear at the office of the AA and present all relevant records and documents under the Act.

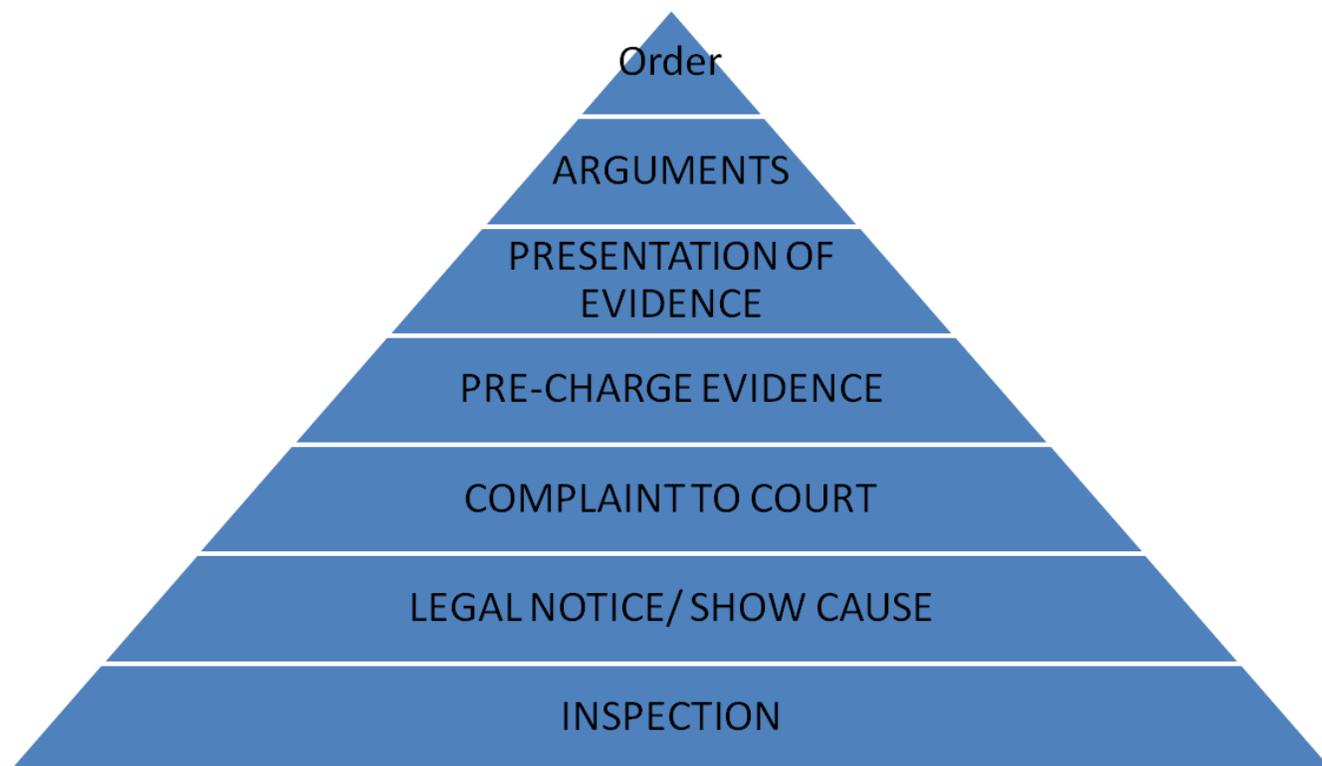
Evidence collection: Documents and other evidence are collected by the DAA if the show-cause notice, which is issued to the violator, is not satisfactorily responded to by the clinics.

Filing of court complaint after consultation with advisory committee: The AAs consults its advisory committee before filing a complaint in the court against the violators of the Act. The authorities draw up a list of witnesses and evidence and the court complaint is filed. The Public Prosecutor files a court complaint at the Chief Metropolitan Magistrate's court, on behalf of the AA. Thereafter, the case follows the usual procedure applicable to all other cases. After filing the case, it is the duty of the Appropriate Authorities to actively pursue the cases filed and maintain order sheets from every hearing.

Report sent to SAA regarding filing of complaint: The AAs then send a detailed report regarding filing of the court complaint to the State AA.

Once a complaint is filed in court, the public prosecutor handles it and the complainant (AA) need not be present on every date of hearing. The figure below presents the usual legal procedure which is adopted for a court complaint filed under the Act:

**Figure 6: Legal procedure for a court complaint**



This chapter highlighted the provisions of the Act and the following chapters deal with the observations, key findings and recommendations of the study.

## FIELD OBSERVATIONS AND KEY FINDINGS

---

*Legal instruments and litigation as a way to enforce the rights to life and to health is a relatively new strategy that is increasingly common.*

~ Jerome Amir Singh, Michelle Govender and Edward J Mills, *Do Human Rights Matter to Health?* *Lancet*, Vol 370, 11 August 2007

Social legislation as a tool that is an important part of the agenda for change is clearly acknowledged world over. That it is often fraught with challenges of implementation is also appreciated by many, given the complex web of social determinants that influence its effectiveness and confound its legal characteristics. With India's effort to address the problem of skewed sex ratios and the impact of misuse of pre-natal diagnostic techniques, this is a clear challenge. In fact, effective implementation of the Act hinges on two major factors – the machinery that implements it (structures, systems, authorities, their awareness levels and the practices followed by the system) and the extent of legal rigour and discipline followed under case law. The findings of this study have also been presented keeping these two factors in mind. The chapter, therefore, is divided into two sections.

As explained earlier, the state of Delhi was studied as a pilot, and the same utilized by the research team to finalise study questionnaires. This chapter however presents data from all 18 states. A total of 207 respondents were interviewed for this study (Annexure 3: List of interviewees), spread out in over 30 districts of the country and at the level of central government. One of the limitations of the data is that only 2-3 districts were covered in each state therefore may be viewed as a broad analysis of existing trends rather than an in-depth study of diverse issues.

### SECTION 1: IMPLEMENTATION MACHINERY AND PRACTICES

#### Dimensions of the study

Various authorities and other stakeholders involved in implementation of the PCPNDT Act were interviewed at national, state and district level. Table 3 displays the categories and actual number of respondents interviewed by the researchers in all 18 states during the study. The information sought from the respondents included structure of the Boards or Committees they represent, their own awareness

about the Act and practices followed including monitoring and involvement of government representatives and those from medical and legal fraternity and civil society.

**Table 4: Study respondents**

Categories of respondent	Sub-category of respondents	Number of respondents	Total respondents
CSB	CSB member secretary	1	1
SSB	SSB	11	11
AA		60	60
	SAA	11	
	DAA	46	
	BAA	3	
AC		32	32
	SAC	8	
	DAC	24	
IMC		12	12
	NIMC	1	
	SIMC	4	
	DIMC	7	
PP		25	25
Judicial Magistrate		10	10
NGO		28	28
CSR		23	23
Individual complainant		1	1
MCI		1	1
MoHFW/DFW (Delhi)		3	3
<b>Total respondents</b>			<b>207</b>

#### COMPOSITION OF STRUCTURES/ BODIES UNDER THE ACT

Each body constituted under the Act has a clear structure, organizational framework and the overall terms of reference. This detailed framework at various levels is to ensure smooth implementation of the Act. Several committees have members from diverse stakeholder groups. Major observations related to this framework and its composition at the central, state and district levels are described below. It is important to note that findings related to composition and structure (including membership) is significant when

viewed within the larger perspective of common practices as observed through this study. However, for the sake of convenience, practices are detailed in a separate section.

### Central Supervisory Board (CSB)

The Central Supervisory Board (CSB) is the highest policy-making body under the Act. The CSB is entrusted with the task of making recommendations to policy-makers and, if required, suggest amendments to the Act. The following is based on the interview with one member of the CSB during the study period. The CSB (Table 5) comprises five categories of members, viz., *ex-officio* members (7), non-official members (10), women representatives—members of Parliament (3), state/ UT representatives (4) and special invitees (7). These members come from various backgrounds, such as ministers, secretaries, directors of health, Family Welfare and Women and Child Development; legal advisors; practitioners of AYUSH; gynaecologists; paediatricians and the Secretary-General of the IMA.

**Table 5: Constitution of the Central Supervisory Board**

Authority	Constitution of the Central Supervisory Board as per the Act	Actual constitution of the existing Central Supervisory Board
• Minister of Health & Family Welfare	1	1
• Secretary, Department of Family Welfare	1	1
• Department of Women & Child Development representative	1	1
• Department of Legal Affairs representative	1	1
• Department of Indian Systems of Medicine & Homeopathy representative	1	1
• Director General Health Services, Central Government	1	1
• Eminent members to be appointed by central government, 2 each from amongst:		
– Medical Geneticist	2	} 10
– Gynaecologist / Obstetrician	2	
– Paediatrician	2	

– Social Scientist	2	
– Women welfare organization representative	2	
• Women Member of Parliament	3	3
• Members representing state or Union Territory	4	4
• Joint Director or above rank, Family Welfare	1	1
• Special invitees	-	7

**Key Finding: The composition of the CSB is as mandated by the Act. In addition to the members, there were seven special invitees to the Board. These invitees included a Member of Parliament, three Secretaries (Health and Family Welfare) from Governments of Punjab, Gujarat and Rajasthan, and representatives from the Indian Radiological and Imaging Association, the Indian Medical Association (IMA), the Federation of Obstetric and Gynaecological Societies of India (FOGSI).**

### **State Supervisory Board (SSB)**

As mandated by the Act, SSBs have been formed at state level. Availability of SSB members resulted in conduction of 10 interviews, one from each SSB. The states where SSB interviews were conducted are: Assam, Delhi, Goa, Gujarat, Jharkhand, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. No SSB member was available for interview in Andhra Pradesh, Bihar, Haryana, Jharkhand, Karnataka, Maharashtra, Punjab, and Uttarakhand.

In accordance with the Act, an SSB comprises the Minister (Health and Family Welfare), Secretary, Department of Health and Family Welfare, representatives from the Departments of Women and Child Development, Social Welfare, and Law and the Indian Systems of Medicine and Homeopathy and three women members of the Legislative Council or Legislative Assembly. It also has 10 members appointed from among social scientists, legal experts, women activists and medical practitioners.

It was observed that there are gaps in the constitution of the SSB. For instance, in three states i.e. Jharkhand, Orissa and Uttar Pradesh, the Department of Indian Systems of Medicine and Homeopathy did not have representatives from this department and two states i.e. Goa and Tamil Nadu did not respond at all when asked whether they had representatives from this department. A majority of the respondents (70%–80%) said that their boards had women representatives from Legislative Assembly/Legislative Council, social scientists, doctors (gynaecologists, paediatricians, radiologists),

legal experts and women activists. In Goa, the SSB representative said that only one woman representative of the Legislative Assembly has been appointed to the SSB despite the mandatory requirement of three representatives. In Orissa, there was no radiologist appointed as a member of the SSB.

**Key finding: There are gaps in the composition of the SSBs, particularly in representation from the Department of Indian Systems of Medicine and Homeopathy, women representatives of the Legislative Assembly and radiologists were observed when the constitution was compared to the mandatory composition as required by the Act.**

### **Appropriate Authority (AA)**

Appropriate Authorities (AAs) have been appointed at the state and district levels in all 18 states. SAAs and/or DAAs were interviewed by the research team in all these states. Block/sub-district AAs exist in many states as learnt by research team, however, since the proposed numbers of AAs to be interviewed were met at state and district level in all the study states except in Maharashtra, it is only in this latter state that BAAs were interviewed.

#### **- State Appropriate Authority**

SAAs are multi-member bodies chaired by the Director/ Joint Director of the Department of Health and Family Welfare. A woman representative from a women's organization and a representative from the Law Department are also required to be members of SAAs.

SAA representatives were interviewed from Orissa, Assam, West Bengal, Haryana, Punjab, Rajasthan, Jharkhand, Andhra Pradesh, Tamil Nadu and Uttar Pradesh. It was observed that in majority of the states, it was a multi-member body and in some states, a single individual was appointed as the SAA. A brief description of the same is provided below:

- In Haryana, a three member SAA has been constituted and the Director General Health Services has been appointed as its Chairperson. It was noted that instead of inducting an eminent woman representing women's organization, the Joint Director (Women and Child Development Department) has been made a member of the SAA representing women's organization.
- In Andhra Pradesh, the Additional Director, Family Welfare Department is the chairperson of the SAA.
- In West Bengal, the SAA comprises the Joint Director of Health Services; the Chairperson, West Bengal Commission for Women; Joint Secretary, Law; and Health and Family Welfare representative.

- In Jharkhand, the SAA is headed by the Director, Reproductive and Child Health (RCH), but the responsibility of implementing the Act has been assigned to the Additional Director, RCH.
- In Punjab, SAA is chaired by the Director of Health and Family Welfare, Government of Punjab. Additional Advocate General has been inducted as the representative of the Law Department and a woman social activist from Jalandhar has been made a member of the SAA representing women's organization.
- In Rajasthan, SAA comprises Secretary Family Welfare as chairperson, Deputy Legal Remembrancer, Law Department as representative of law department and a social worker cum woman activist.
- In Gujarat, SAA comprises Joint Secretary Department of Health and Family Welfare, Director Gender Resource Centre and Under Secretary Legal department.
- In Goa, the SAA comprises of the Secretary Health, Secretary Law, a social worker.
- In Maharashtra, the SAA comprises of the Additional Director of Health Services, State Family Welfare Bureau and two additional members

In six states, single individuals are handling the position of the SAA. In Assam, the Director of Health Services (Family Welfare), is the SAA. In Tamil Nadu, an official appointed as AA at the state level is designated 'Director of Medical and Rural Health and SAA'. Additional Director, Family Welfare functions as the State Appropriate Authority in Uttarakhand. The Director in Chief – Department of Health and Family Welfare is the SAA in Bihar. The State AA in Delhi reports to the Department of Health Services, Government of Delhi. The Secretary of Health & Family Welfare Department is the SAA for the state Orissa. The Director Health and Family Welfare has been made as SAA at Madhya Pradesh.

In Haryana, the provision of the Act to include an eminent woman activist from a women's organization has been circumvented by inducting the Joint Director, Women and Child Development Department, thus closing the window for an independent non-government representative in the body. Delay in formation/ appointment of SAA could be one of the reasons for less number of court cases. For e.g., in UP, the SAA was formed as recently as November 30, 2007 and its first meeting was convened on March 18, 2008.

**Key Finding: The SAA has been constituted as either a multi-member or a single member body across the study states. However, in case of a multi member body, it is not uniformly constituted as mandated by the Act. Also, that single-member SAAs are existing and carrying out functions may have adverse impact on effectiveness of duties discharged by the body, considering it was originally designed as a multi-member body.**

- District Appropriate Authority (DAA)

District Collectors (DC)/ District Magistrate (DM) have been appointed as the DAAs at the district level. However, it has to be noted that the operational work relating to implementation of the Act is generally

delegated to the Civil Surgeon or the Chief Medical (& Health) Officer (CMO/ CMHO) and a Senior Medical Officer (SMO) at the sub-district/ block level. The sub-district AA reports to the DAA, who reports to the State Nodal Officer or SAA as the case may be.

In most of the states it was observed that the **DC/DM is functioning as the DAA**. In Madhya Pradesh, Uttarakhand, UP and Rajasthan, DC/DM are the DAAs, while CMHO are still the nodal officers. In Uttar Pradesh, the Additional CMO has been delegated the responsibility of conducting all the activities related to implementation of the Act by the CMHO in all the districts of the state. In Orissa, the DM of each district has been appointed as the DAA. In Tamil Nadu, though the DC/DM is the DAA, the responsibility of implementing the Act has been delegated to the CMO. The DCs are intensely involved in the District Coordination Committees (a structure provided for improving the sex ratio in favour of females) constituted well before the Act came into force. These committees work in tandem with the PCPNDT machinery. Often though, there is an overlap of efforts between the DCCs and the District Advisory Committees (DAC). In Maharashtra, a Revenue Department official at district level viz. Additional DC is the DAA while the Municipal Commissioner and Deputy Municipal Commissioner are the DAA in the municipal corporation limits and the Chief Executive Officer of *Nagarpalika* is the DAA for non-municipal corporation areas within the district. In practice, the Civil Surgeon executes the function of DAA at district level.

It was noted with interest that in Gujarat, the **DAA is a 2-member body** comprising the DC/ DM and the Chief District Health Officer (CDHO). The primary responsibility of implementation rests with the CDHO. In Goa, the DC is not the DAA in both the study districts. While the DC of North Goa has been appointed as DAA for North Goa district, the Medical Superintendent of South Goa District Hospital has been appointed as DAA of South Goa district.

However, in some states, the **DCs/DMs have not yet been appointed as the DAA**, but CMO/ CMHO or Civil Surgeon act as DAA. For instance, in West Bengal, the CMO (Health) has been designated the DAA. In Karnataka, in all the three study districts, the District Health Officer (DHO), Family Welfare act as the DAA. In Jharkhand, Civil Surgeon cum CMO of the district has been designated as DAA who conducts activities of implementation directly with the help of one Medical Officer whereas at Dhanbad an Additional CMO (ACMO) has been assigned to delegate responsibilities of implementation. In Bihar, the Civil Surgeon acts as the DAA. In Punjab, Civil Surgeon is designated as DAA. In Rajasthan, the Chief Medical and Health Officer (CMHO) has been appointed as the DAA.

**AAs at the block/sub-district levels** exist in 3 states, as per the available data. These three states are Andhra Pradesh, Rajasthan and Maharashtra. For instance, additional District Medical and Health Officers act as sub-district AAs in all the districts of Andhra Pradesh. In Rajasthan, decentralization has

been carried out partially in the case of sub-districts which have the same headquarters as the districts they belong to.

**Key finding: In most states the DC/DM was functioning as the AAs and there have been observations that point to improvement in the implementation of the Act in those districts. This must of course be viewed against the related observation that duties are still delegated to nodal medical officers. Also, there are some states where the DCs have not yet started functioning as the AAs.**

### **Advisory Committees (AC)**

The Advisory Committee (AC) draws representatives from various sectors like law, government officials, social workers, and medical fraternity. These committees exist both at the state and district levels (SAC and DAC).

The ACs across the states were constituted with the required number of legal experts as mentioned by 29 (93.5%) respondents; adequate number of medical experts and social workers as pointed out by 28 (90.3%) respondents. In all 27 (87.0%) respondents said that there was adequate representation of government officers from information and publicity department. Public Prosecutors constitute part of the DAC in Goa. The decision of the Haryana Government is debatable in this case which states that if gynaecologists or paediatricians are not available at district level, a physician can be included. It raises question whether or not a private medical expert be included if government expert is not available in the district. Another question which arises is whether inclusion of physician instead of gynaecological, or paediatric expert legal.

#### **- State Advisory Committee (SAC)**

According to the Act, a State Advisory Committee (SAC) should comprise three medical experts out of gynaecologist, obstetrician, medical geneticist and paediatrician, one legal expert, one officer representing information and publicity department, three eminent social workers with at least one women's group representative. This section examines composition of SAC in different states vis-à-vis provisions of the Act.

In some states, the SAC has been properly constituted. For instance, in Punjab, there is an adequate representation of various experts in the SAC. In Jharkhand, the SAC has been constituted as mandated by the Act and they have the required representation from all groups of stakeholders – such as medical experts, legal experts, government officials and social workers. In Orissa, the SAC comprises of 11 members with representation from government Health and Family Welfare departments, law department, medical experts and social workers.

**SAC as per the Act:** In Madhya Pradesh, SAC comprised of government officials, gynaecologist, pathologist, representative from IEC Bureau, State Medical Association, representatives from the State Women Commission and NGOs.

However, there are **gaps in the SAC's constitution** in several states. In Haryana, the SAC has been constituted with representatives of the Red Cross Society which, although an NGO, does not work in the field of sex selection or child health, and the State Council for Child Welfare as eminent social workers. In this state, a representative of the Communications Department has also been inducted not as a member but as a special invitee. In Rajasthan, the composition of the SAC compared to as stipulated under the Act shows a gap in the actual representation -- there is no Medical Geneticist in the committee.

**ACs are not functional in every state.** For instance, Goa did not have a functioning AC till the date of interview. In Gujarat, advisory bodies have not been constituted properly. No notifications regarding the constitution of AC have been issued by the state and there is no AC at state level at all.

**Improper representation:** In Maharashtra, the 10 member SAC comprises entirely of non-official members, who are mainly representatives of civil society organizations and legal experts. However, the details of the SAC were not accessible.

**Others:** In Andhra Pradesh, an SAC was constituted but the details of the members were not accessible. In Tamil Nadu, no SAC representative could be interviewed.

**Key finding: The SAC has not been properly constituted in several states and the representation of all groups (as mandated by the Act) is not adequate, or sometimes not appropriate.**

- **District Advisory Committee (DAC)**

District Advisory Committees (DACs) have been constituted in the study districts of almost all the states. A brief description of the status in each state is provided below:

Some of the DACs have been formed with **appropriate composition as per the Act**. For instance, in Maharashtra, DAC has been constituted in all districts and it consists of 8 members each, fulfilling the mandate of the Act. There are three medical experts and three social workers in addition to one legal experts and one government officer. DACs have been constituted in Goa and each DAC consists of 8 members. In Tamil Nadu, ACs have been constituted only at district level in the state and they generally consist of 8 members. However, the member of AC interviewed from Krishnagiri district was not even

aware about the members comprising this committee. In Bihar, the DAC is presided over by the Civil Surgeon and consists of government officials, a public prosecutor, paediatrician, a gynaecologist and NGO representative. In Jharkhand, the DC has been included and has been designated as the President of DAC at Dhanbad. In Uttar Pradesh, the DACs have been constituted and the DM usually presides over the meeting. In Uttarakhand, DACs have been constituted.

In some districts, DACs have **under-representation or over-representation** of committee members. For instance, in Gujarat, Gandhinagar DAC does not have any paediatrician and has only one social worker. However, Hyderabad DAC has over representation and has 22 members. All other DACs in Andhra Pradesh, though consist of 9 members. DC is the chairperson of DAC in Hyderabad. Sub-district AC in Andhra Pradesh comprises of 8 members. In West Bengal, while the Act mandates only one government representative dealing with information and publicity of the State Government to be a member of the AC, both state and district ACs are predominantly composed of representatives from government departments.

In Rajasthan DC plays **two roles** i.e., heading both DAA and DAC, initially the senior most among the Gynaecologist or Paediatrician was notified as chairperson of DACs, however later on, DC, who is also the DAA, has been made its chairperson. Further, Public Prosecutor or Assistant Public Prosecutor of the district has been nominated as the legal expert in the committee, who is not mandated in DAC under the Act. It was observed that in Dhaulpur, no legal expert has been appointed as a member of the DAC. Similarly, Kolkata district in West Bengal does not have a DAC and the **SAC** based in Kolkata **doubles up as the DAC**. District authorities did not express any specific need for a DAC for Kolkata or that there is any intention to set it up in the near future.

A **good practice** observed in Punjab is that a representative of IMA has been included as member in the DAC. IMA can take regulatory actions like suspension or cancellation of the registration of the culprit practitioners and the inclusion of its representative in the DAC makes the action smooth.

**Some DACs have committee members who may not be so relevant.** In Haryana, the DACs have been constituted in the districts. On comparing it with the requisites of the Act, it was observed that while the Act mandated membership of at least 8 members, the Haryana government vide a notification stated that the DAC membership shall be restricted to 7 and stated that in the category of medical experts that if paediatrician /gynaecologist is not available in the District Hospital, a physician may be included. However, this is in contravention of the Act. Also, inclusion of a representative from the Red Cross Society was mandated in this notification.

**Delay in formation of DAC in one state:** In Assam, DACs were formed in the two districts covered. While in Kamrup, the DAC was formed in 2004, it was surprising to note that the DAC in Nagaon district in Assam was created only in Feb 2009.

**Composition not known:** In Madhya Pradesh, DAC does exist at the district level but in the absence of documentary evidence and unavailability of any DAC member for interview, their composition could not be found out.

Overall, regarding the composition of the DACs, 29 (93.5%) respondents from the advisory councils mentioned that there was adequate representation of legal experts, while 28 (90.3%) said there was adequate representation of social workers and medical experts. Twenty-seven (87.0%) respondents said that there was adequate representation of government officers from the publicity department.

**Key finding: While DACs are present in almost all states, there are variations in their constitution/membership. In some DACs there is over representation of government committee members, and in others there is under- or mis-representation of certain groups.**

#### - Inspection and Monitoring Committees

Although not provided for in the Act, the central government established the National Inspection and Monitoring Committee (NIMC) to strengthen the monitoring of the implementation of the Act.

As part of the study, the research team was able to conduct interviews, depending upon the availability of respondents, with 12 SIMC members from eight states, namely, Assam, Haryana, Jharkhand, MP, Orissa, UP, West Bengal and Delhi. However, data of other state IMCs was also collected from secondary sources. These committees were formed two years ago in most of the states, but the SIMC does not exist in some states, while in others the IMC at state or district level is very new.

Some SIMCs have been formed very recently, so they are **new** and may lack skills to conduct inspections. The SIMC in Delhi was created in 2008 and DAAs were directed by SAC to create DIMC at district level. In Uttar Pradesh, the SIMC and DIMC were constituted in February 2009. The state nodal officer from West Bengal highlighted that the SIMC was formed in 2007, but in an effort to improve monitoring efforts in the state, the size of the committee was extended from six to 30 in 2009. SIMC in Jharkhand was formed in 2007 and comprises of 10 members. SIMC in Maharashtra, comparatively old, was formed in 2003 and comprises 20 members. The DIMC at Nagaon was formed only in February'09, after the team had informed the state authorities about the visit for purposes of this project.

In some states, SIMCs/ DIMCs have **not** been **formed** yet or are non-functional. This may reduce the opportunity for inspections of clinics. For instance, in Karnataka, the SIMC was said to have been formed (on papers) however it was not functional. None of the authorities contacted were even aware of existence of such a body. In Assam, no SIMC has been formed yet. Instead, every district has its own DIMC. No inspection and monitoring committee has been formed either at state or district level in Andhra Pradesh and in Goa. In Punjab, Haryana, Gujarat and Uttarakhand there is no SIMC formed.

Some states have **proper multi-member IMC structures**. For example, in Madhya Pradesh, there is a three-member SIMC which includes Deputy Convener Family Welfare & In-charge PCPNDT, a social activist and a doctor-cum-social worker. In Rajasthan, the three-member SIMC consists of the Deputy Director RCH and In-charge PCPNDT cell, Health Manager – PCPNDT Cell and Legal Advisor –PCPNDT Cell. It also has a member of the SAC representing State AC as one of its members.

**Key Finding: In some states the SIMC and /or DIMC are very newly constituted and not fully functional. In 8 states either SIMC or both SIMC and DIMC have not been formed yet. Therefore, there can be lack of inspections. In some states the SIMC is a multi-member body (generally 3 members) but the composition varies.**

#### **Special Initiatives by states for better monitoring of implementation of the Act:**

Various initiatives have been taken by state and national authorities in order to strengthen the implementation of the Act. These special initiatives have been taken due to several reasons cited in the activity report of Government of India (15<sup>th</sup> May-14<sup>th</sup> October 2006), such as lack of interest among authorities in conducting inspections against and penalizing members of their fraternity (the medical fraternity), casual approach of advocates, weakness of case law documentation and the concern expressed by some political leaders and authorities over a declining sex ratio. Some examples of such initiatives are as follows:

- The **NIMC** was constituted as a special effort by the Government of India to make enforcement of the provisions of the Act more effective. The cell was envisaged to play the role of providing technical support to the AAs and to monitor, evaluate and follow up actions taken by the AAs at the state level under the Act so that proper and unbiased implementation of the Act can be ensured. Its overall observations in the Activity Report of the Government of India (dated 15<sup>th</sup> May – 14<sup>th</sup> October, 2006) were that administration did not seem to be interested in conducting inspections and initiate action against their fraternity members. Even the advocates had a casual approach towards cases filed under the Act and were non-cooperative. Case law documentation was observed to be poor. Lack of transparency and clarity in the functioning of the officials or authorities under the Act was observed. At the time of interview, the NIMC was said to be non-

functional and the Director, PNDT said that it was due to lack of funding.

- In Punjab, a broader body namely, the **PNDT Cell** has been constituted in the office of the Directorate of Family Welfare. The Cell includes 2 more members in addition to all the members of the SAA. These are – Assistant Director, Health and Family Welfare and a Senior Assistant in the office of Health & Family Welfare. The Assistant Director, Health and Family Welfare have been made the State Nodal Officer for the Act.
- PCPNDT cells have also been constituted in Rajasthan, Madhya Pradesh and Gujarat. The cell at state level in Rajasthan consists of a legal expert, a data entry operator and a health manager. In Rajasthan, the cell is lead by the PCPNDT coordinator, who is a medical expert. The responsibility of executing inspections, filing complaints and issuing notices as well as organizing awareness programmes has been delegated to the PCPNDT coordinator by the AA. The district-level PCPNDT cells in these states have legal experts as coordinators who report to PCPNDT Coordinators at the state-level cells.
- The PNDT Cell in Delhi is headed by CMO and is assisted by pharmacist/ Public Health Nurse which is unique feature of Delhi PNDT Cell. The PNDT Cell Delhi is responsible for collecting and preparing a database of Form Fs from private gynaecologists. It also scrutinizes these forms.
- A task force has been constituted in Haryana under the leadership of SAA to conduct raids of ultrasound centres with the help of media, NGOs and local health officials. In Bihar, Indian Medical Association has created a committee which attempts to spread awareness about the Act among doctors who own clinics or use ultrasound machines.
- Orissa has a District Level Task Force Committee functioning at every district. The formation of the committee was triggered by the detection of manufacturing of spurious/fake medicine in the district of Bolangir and female foeticide in the district of Nayagarh. District level Task Force committee is chaired by DC/ DM and the members comprise Superintendent of Police, Chief Medical Officer, and District Social Welfare Officer. Both the AC and the Task Force Committee meet under the chairmanship of the DM who is the DAA.
- In West Bengal, the state nodal officer (PNDT affairs) is in charge of regularly organizing meetings and following up on the activities undertaken by the implementing agencies. This officer is also a member of the SAC.
- In Uttar Pradesh, there is high political mobilization for stabilizing the sex ratio. For instance, the Chief Minister has issued a letter to all parliamentarians, members of state assembly, PRIs and chief functionaries from village level to district level to provide help in checking sex determination in their respective areas.

## AWARENESS AND KNOWLEDGE

It is only natural that mandated structures and systems, the composition and membership of official bodies and other such operational framework can be effective only if awareness levels and knowledge to aid effective action is present among key functionaries and implementers of the system.

It has been well documented by earlier studies that detailed, accurate and functional knowledge implementing authorities of all the steps involved in utilizing the Act is poor. The findings of this study reiterate this. The data on awareness level of the authorities (as given below) reveal that although almost all of them were apparently aware about the Act, some of the respondents could not detail the procedures to be followed under the Act. For instance, some did not have legal knowledge or did not know how to file a *panchnama*. The AA and AC members from Punjab said that they were well aware of the Act, and that they had a detailed knowledge of processes such as filing court complaints, collecting evidence, conducting decoy operations and conducting searches. However, in some of the cases that were analysed, the authorities failed to issue show cause notices before filing complaints in court, for example, in *State of Punjab vs Pushpa Maternity Home*.

### Appropriate Authorities

Source of knowledge of the Act: Almost all AAs (95.2%) obtained knowledge of the Act from the documents. A good percentage of AAs (76.2%) also received training on the Act leading to enhanced awareness. However, it is to be noted that the workshops were conducted more at state level as 7 out of 8 (87.5%) SAAs said that they had attended workshops whereas the numbers of DAAs who got training were 22 out of 30 (73.3%) as given in Table 6. This indicates that more training workshops are organized at the state level than at the district level. For instance, a one-day orientation programme was organized in Lucknow in which senior-level functionaries participated. Such initiatives have not percolated down to the grassroots level as mentioned by the respondent from Uttar Pradesh. The CMO in Lucknow said he had not attended any training programme, though he had been working in the capacity of AA since June 2007. In Orissa, it was observed that the source of knowledge is the Act and the handbook of frequently asked questions developed by the Ministry of Health and Family Welfare and the UNFPA. The DAA from Bihar mentioned that most of the functionaries received their knowledge from workshops organized by the NGOs that are working to sensitize the community on the Act. No documents from the Central Government or SAA describing the Act were reported to have reached the DAAs till the time of the interviews in Bihar. The AA in Patna, Bihar said that he had attended only one workshop held initially when the district cell was formed, and no workshops had been organized since then. Thus, it is clear that training workshops are not regularly organized at the district and sub-district levels across the country.

**Table 6: Source of PCPNDT knowledge among AAs**

	SAA	DAA	BAA
Workshop	7 (87.5%)	22 (73.3%)	3 (100%)
Document	8 (88.9%)	29 (96.7%)	3 (100%)

Block level AAs received information about the Act equally from documents and workshops as shown in table 6 above.

### **Awareness of the processes under the Act**

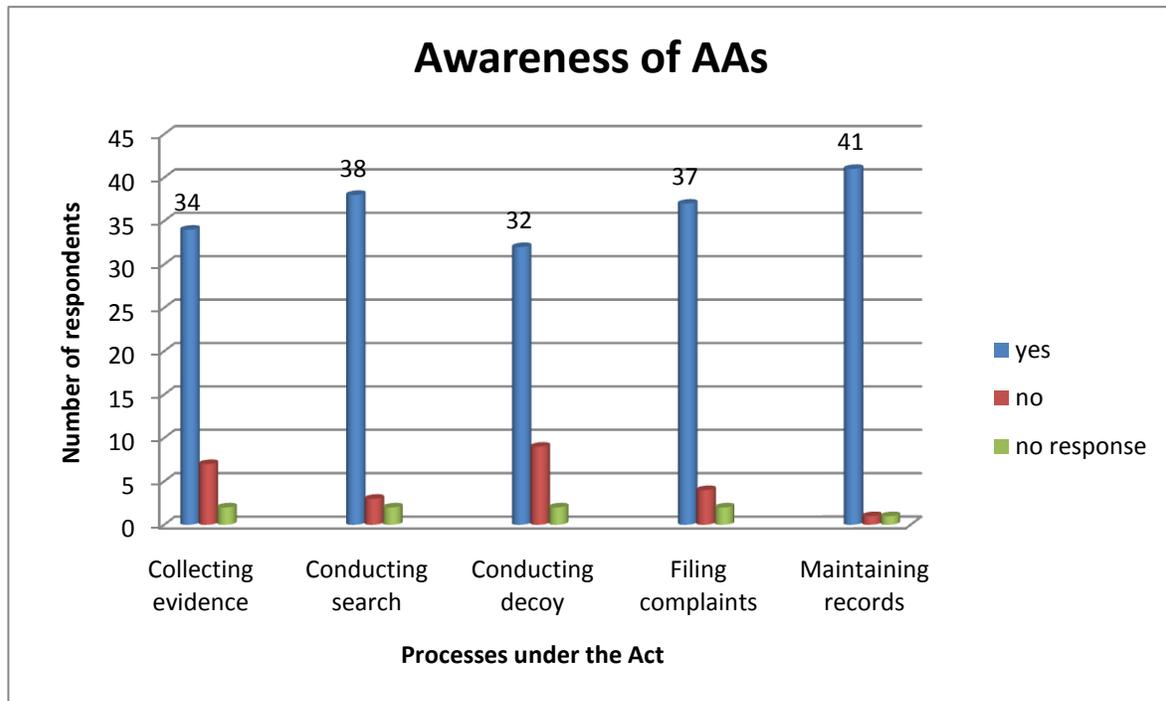
Most AAs claimed that they were aware about the processes related to the Act. Almost all the AAs -- 41 (95.3%) -- knew that records have to be maintained. Around 32 (74.4%) AAs expressed awareness about the conduction of decoy operations.

**Table 7: Awareness of processes under the Act**

<b>Process</b>	<b>Number (Percentage)</b>
How to collect evidence	34 (79.1%)
Conducting search and seizure	38 (88.4%)
Conducting decoy operation	32 (74.4%)
Filing complaints	37 (86.0%)
Maintaining records	41 (95.3%)

Based on the information highlighted above in Table 7, AAs claimed to be well-informed not only about the issue and the existence of the Act but also the legal processes to be followed and responsibilities to be undertaken.

Figure 7: Awareness among AAs



It can be inferred from Figure 7, that general processes under the Act are known to most of AAs. Especially, almost all the AAs said that they were aware about maintaining records.

When compared to the IMC respondents (45.5%), a high percentage of SAC members (63%) have their knowledge enhanced by attending workshops.

Documents may serve to inform the authorities about their responsibilities in the sphere of implementation, but generally fail to impart the specific skills required for effective implementation. The most popular and effective mode of imparting information which emerged to be skills building training/workshops could be suggested for increasing awareness of and skills related to implementing the processes under the Act among the authorities.

### Other Stakeholders

Public Prosecutors (PPs):

When PPs were asked about the level of awareness of the Act within the judiciary, 2 (8.7%) said that it was good, while 9 (39.1%) said that it is average and 8 (34.8%) said it was poor. Remaining respondents

did not give any definite answers. Some PPs said that awareness may be increased among judiciary when more cases are filed under this Act.

#### Judicial Magistrates (JMs):

One third (33.3%) of the Magistrates, felt that the level of awareness regarding the Act among judiciary is poor while only one Magistrate felt that awareness was average. A Magistrate from Karnataka commented that while the judiciary is aware that sex selection is prohibited, magistrates do not have complete knowledge of the Act and have not had the opportunity to explore the issue since not many PCPNDT cases reach their courts.

There is lack of knowledge of the Act even among legal fraternity as many PPS and JMs said that the knowledge among judiciary ranged from poor to average. As some respondents said that not many PCPNDT cases reach the court, which decreases the opportunity for judiciary to increase their knowledge on the subject, therefore, there is lack of knowledge among judiciary.

#### NGO Representatives:

NGO representatives were asked whether the medical practitioners were aware of the Act. Twelve (42.9%) NGO representatives said that medical practitioners had good level of awareness of the Act. According to 9 (32.1%) NGO representatives, the awareness of the Act among medical practitioners is average, 4 (14.3%) NGO representatives quoted that the awareness was poor among medical practitioners.

Similarly, awareness of the Act among the community members was reported to be average by 13 (46.4%) respondents; an equal number (13 respondents; 46.4%) of NGO representatives said that the awareness among community was poor. Only one (3.6%) NGO representative said that the awareness in the community was good. One (3.6%) NGO representative was not sure about the awareness level.

Twenty seven (96.4%) respondents quoted workshops as the main source of spreading awareness of the Act among community members; twenty (72.4%) respondents mentioned documents as additional source for generating awareness among community members. In addition to documents and workshops, some NGO representatives mentioned other sources of awareness generation such as rallies (4 respondents), mass media (2 respondents), street plays (2 respondents), community camps (1 respondent) and religious programs (1 respondent).

### Civil Society Representative:

Members of civil society generally felt that the level of awareness of the Act among medical practitioners was good to average according to 6 (31.6%) and 7 (36.8%) representatives, respectively. Only two (10.5%) of them felt that the awareness among medical practitioners was low. Regarding awareness level among community, eight (42.1%) felt it was poor. However, a fair number also felt the awareness in the community was average (6 respondents; 31.6%). Only two (10.5%) reported that the level of awareness among community members was good. When asked how the community becomes aware of the Act, documents or IEC material as source of awareness was quoted by 13 (68.4%). Many also felt that awareness generation regarding the Act among community happens through various sources such as media (1 respondent; 5.3%); movies and radio (1 respondent; 5.3%); rally (2 respondents; 10.6%); and other sources (9 respondents; 47.4%).

The response to the question if any efforts to generate awareness were made by civil society was given in affirmative by 14 (73.7%) out of 19 interviewed. The kinds of efforts made included discussion in meetings (13 respondents; 68.4%); regular circulars (5 respondents; 26.3%); organization/ conduction/ participation in workshops/ meetings (15 respondents; 78.9%) and other means such as research (1 respondent; 5.3%); street plays (1 respondent; 5.3%); work with state women's commission (1 respondent; 5.3%). The NGOs have been involved in a range of awareness generation activities especially among community members, which is very essential to have an impact on reversing the declining sex ratio as community members represent the demand side of the Act and where clinicians represent the supply side.

Sensitization workshops for other groups, such as medical practitioners, the judiciary and the lawyers, are also not organized regularly. There are 606 cases still pending in Indian courts<sup>48</sup> and more may be filed in the future. It is essential to organize sensitization workshops both for lawyers and judges to strengthen the awareness and practices of stakeholders so that the offenders in these cases are brought to book. Efforts to raise awareness among medical practitioners and the community have increased in the past few years. For instance, the Central Government has been coordinating with FOGSI to organize training programmes for medical practitioners regularly.

---

<sup>48</sup> As on June 2009 based on the data shared by the PCPNDT Division, Ministry of Health and Family Welfare, Government of India

**Key Findings: Majority of functionaries interviewed said that they were aware of the processes in the Act. However, further discussions revealed that there is considerable scope to enhance their detailed knowledge and expertise so as to improve effectiveness of the Act.**

**Documents proved to be the key source of information among authorities across the states but these were told to be less effective than workshops. Workshops were found to be conducted more frequently at the state rather than at the district level. This is an important observation that can easily be addressed through a greater focus on capacity building at the district level.**

**NGO involvement is an effective means for generating awareness among the community members. NGOs in different states have been involved in various kinds of awareness generation activities.**

## **PRACTICES**

This section presents the findings related to practices shared by stakeholders under the Act such as meetings of boards and committees, inspections, maintenance of records, conducting decoy operations, handling PCPNDT cases and involvement of legal experts, social activists.

### **Central Supervisory Board**

The CSB has not held any meetings in the past one year (2008-2009) due to the non-availability of its members. The Central Government plans to revive the CSB soon. Currently, the Centre has sent a request to Parliament to appoint the Members of Parliament to the Board, as mandated by the Act.

Sharing a future plan of action, the CSB representative interviewed shared how the Board plans to recommend an amendment to the Act whereby punishments for offences conducted under the Act are made more stringent. The CSB plans to recommend a minimum punishment (both in terms of penalty and imprisonment) for offenders under the Act, to ensure that culprits are adequately punished. It is also understood that the Centre was planning to undertake a pilot initiative through which selected areas with low sex ratios will be zeroed in on and monitored closely. Such in-depth monitoring efforts may include raiding of clinics and tracking pregnant women.

The CSB representative interviewed felt that the implementation structure currently has several loopholes. For instance, while it is useful to have the DC function as the AA since he/she is not part of the medical fraternity, he/she has several other responsibilities and implementation of the Act remains low on

priority. But the CSB representative opined that despite these loopholes, the existing mechanism is viable and can still work to successfully implement the Act.

The interviewee confirmed that the Centre received quarterly reports from the states regularly but these are not usually shared with the CSB members. The interviewee also said that the NIMC reports back to the Centre after their visits and the Centre, then, follows up with the respective states to initiate action against the reported violators.

**Key Findings: At the national level, the CSB has been defunct for the past one year, not having met even once. The CSB representative interviewed said that no meetings of the board had been held in the past year. The reason cited for this was that its members were not available. The lack of functioning of the highest policy-making body constituted by the Act speaks of a huge gap in the implementation of the Act. It is evident that action focused on revitalizing the CSB can have positive impact.**

### **State Supervisory Board**

The SSB has a wide-ranging role to play, and its criticality lies in the fact that it is the main body at the state level that reports to the Centre's PCPNDT Cell in the MoHFW on progress made in the implementation of the Act at state level. With its functions of creating awareness about child sex ratio and the Act, monitoring the activities of the AAs and recommending appropriate action against them when required, implementing the provisions of the Act and sending consolidated progress reports to the Centre, the SSB has much to do and has plenty of opportunity to bring about change.

*Regularity and content of meetings:* Though the Act provides that the SSB is mandated to meet at least once in four months to review the implementation of the Act, but either one meeting in the past year or irregular meetings have been reported by 50% of SSB respondents. Two respondents did not respond to the question on meetings. Difficulty in completing the quorum was reasoned by respondents from five states.

The UP SSB representative mentioned four meetings conducted in the past year as mandated by the Act. Goa and Maharashtra had frequent meetings. As shared during the interviews with some of the SSB members, the Goa SSB has met three times in the last year which is relatively better than many states. SSB in Karnataka has met only once in two and a half years. In fact, one of the members met said that he did not even know who the other members of the Board were. In Bihar too, SSB meetings are not a regular feature.

Major discussions at these meetings are about monitoring of the Act and activities of AAs as mentioned by the respondents. 90% SSB respondents mentioned that the issues to be discussed in the meetings pertain to public awareness against sex selection, activities of AAs, monitoring implementation of the Act and cases filed under the Act. Only 4 out of 10 SSB members said that they discuss cases filed under the Act, a reflection of the fact that not too many cases come up for discussion in the first place.

It is also noted that some of the SSB meetings are more to do with issues regarding increasing the level of awareness of the Act. There is less focus on weighty issues such as results of monitoring/review of activities of DAAs. This, according to one of the SSB member (Assam), made the SSB meetings less productive than what they could be. He also mentioned that SSB did not interact with State Medical Councils or IMCs.

Reporting and reviewing AAs activities: 90% of the SSB respondents claimed to have reviewed activities of the AAs and sent consolidated reports to the central government. Almost all respondents mentioned that they send quarterly reports regularly to the central government. Only two SSB respondents (Gujarat and Punjab) said that the central government had taken some action on their reports.

The irregularity of meetings of the SSB is a matter of serious concern. Five of the SSB members cited lack of quorum as a reason for the meetings not being held. While this could be a reason, other possible reasons could be that meetings are not scheduled or called, adequate notice is not given or that not much importance is attached to such meetings. The case of UP illustrates that for the authorities to function effectively, political commitment and mobilization are necessary. The state's Chief Minister issued letters to all parliamentarians, members of the state assembly, Panchayati Raj Institutions and chief functionaries from the village level to the district level, exhorting them to help check sex determination in their respective areas. This may be a reason why four meetings of the SSB were held in the state in the past one year, as mentioned earlier.

Many of these meetings do not have a proper structured agenda and minutes of the meetings are often not kept. Minutes of the meetings could not be obtained in many states, such as West Bengal. However, respondents from Gujarat, Orissa, did share the minutes of meetings. The SSBs were found to be active only in a few states. In Madhya Pradesh, the meetings of the SSB usually did not last beyond 10 minutes. In Tamil Nadu one of the SSB members, who was the representative of an NGO, was very active, taking regular stock of the AA's activities during meetings.

**Key Finding: There are grave issues related to the regularity and content of meetings of the SSB. Lack of quorum and the fact that not enough lead time is given to the members have been cited as common reasons for this laxity. Even if convened, the content of many of these meetings is not as in-depth as the seriousness of the issue at hand demands. More often than**

**not, proceedings of the meetings are not recorded and maintained. Strong political will can make a difference and ensure regularity of meetings.**

## **Appropriate Authorities**

### **Maintenance of records**

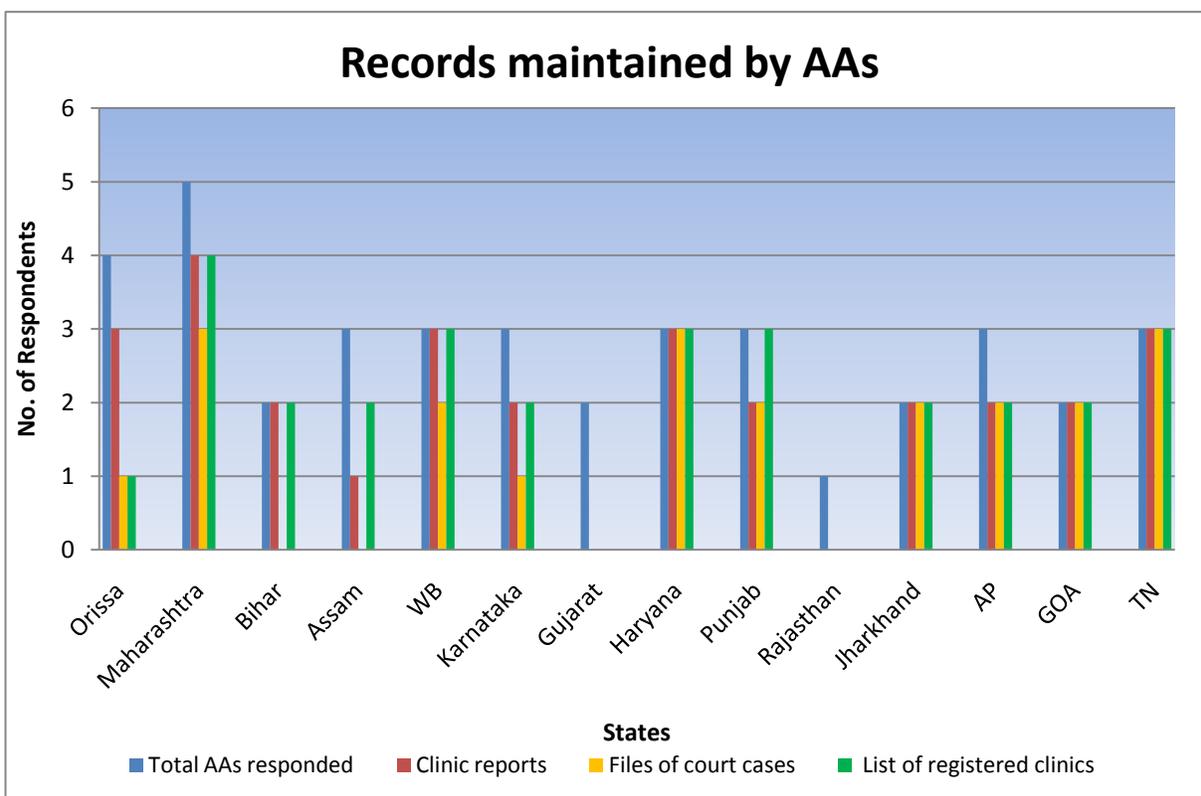
The usual records maintained by AAs relate to reports received from clinics, original complaint and list of registered clinics. Of the total respondents 32 (74.4%) mentioned that they maintained reports received from clinics. Three respondents could not provide any information about the records maintained.

About 53% (23) of the respondents mentioned that they maintained files of complaints. They were from the states of West Bengal, Haryana, Punjab, AP, Goa, Tamil Nadu, UP and Uttarakhand. Respondents from the states of Bihar, Orissa, Gujarat and Rajasthan and Karnataka mentioned that they do not have files of complaints. A total of 33 (76.7%) respondents stated that they maintained list of registered clinics. These lists are maintained mostly by the DAAs as pointed out by 35 (81.3%) respondents.

Only 15 (35%) mentioned that they maintain a list of manufacturers of ultrasound machines. List of those manufacturers of ultrasound machines who sell to clinics are not maintained by SAAs interviewed in Karnataka, Gujarat, Assam Rajasthan, Goa and AP. In Maharashtra, it is not maintained in the prescribed format although the list is available. In Punjab one of the three respondents maintained the list of manufacturers. Since the list of manufacturers of ultrasound machine is to be maintained at the state level, most of the functionaries at the district level and below do not have the list.

Approximately 40% (17) AAs mentioned that they also maintain other records such as Forms F, H, B and minutes of meetings. The interviewees in Delhi said that deficiency of human resource was one of the reasons for lack of complete scrutinizing of form F in Delhi.

**Figure 8: Records maintained by AAs (state-wise)**



The graph above (Figure 8) depicts state-wise the number of respondents who received reports from clinics, who maintained files of court cases and list of registered clinics. However, respondents from Rajasthan and Gujarat could not tell about any record maintenance. It also shows that the respondents in Bihar and Assam did not maintain any file of court cases. Fewer respondents in Orissa, Maharashtra, Karnataka and West Bengal said that they maintained files of court cases.

Despite DM being the DAA in UP, all documents are kept at CMO's office and routine affairs are also dealt through CMO's office. Additional Chief Medical Officers in all districts of the state have been delegated responsibilities by the CMO to conduct all activities as per the provisions of the Act.

Reports coming in from clinics were maintained better by the AAs than records of files of complaints and court cases and records of the minutes of meetings. Records seemed to be maintained more meticulously by AAs who had acquired knowledge through workshops/meetings, irrespective of their duration in service.

There were more AAs who gained knowledge of the Act from the workshops and maintained records related to manufacturers of ultrasound machine (13% more) and those who maintained records related to

registered clinics than the AAs who gained knowledge of the Act from the documents and maintained similar records. However, almost same number of AAs, who gained knowledge of the Act from documents and those who gained knowledge of the Act from workshops maintained files of court cases.

**Key Finding: Records maintained by AAs include reports received from clinics, forms F, H and B, court complaints and lists of registered clinics. There are gaps in this record-keeping, for example, complete files of court cases are not maintained. Despite the DC/DM being in-charge, such records are maintained at the CMO's office. AAs, who receive training through workshops rather than enhancing their knowledge through documents, seem to be more meticulous with records maintenance.**

## Inspections

Inspections are generally done by AAs, however, sometimes there is an inspection team. In most of the states, 29 (67.4%) respondents said that AAs and 20 (46.5%) respondents said that Program Officers are responsible for investigation of complaints. In Delhi (being an exception) pharmacists or the Public Health Nurse assist AAs in the investigation of complaints.

Almost half of the DAAs interviewed had conducted some inspection. A total of 8 (18.6%) respondents said that they did not inspect any clinic. Rest of them mentioned that they inspected clinics, nonetheless no definite figure was given by 16 (37.2%) AAs. The number of inspections ranged from less than one clinic per month to slightly more than 15 clinics per month.

In Punjab, inspections are planned in such a way that almost all the clinics are inspected during the year. The responsibility of investigation rests with the AAs. However, the nodal officer provides assistance. As far as possible, a multi-member team is constituted and authorized for inspection. Spot inspection report is prepared and complaint is filed if any irregularity is discovered as observed by the research team. In Rajasthan, minimum targets for monthly inspections by the DAAs are set.

Routine inspections of clinics in Delhi are done by DAAs who cover 10% - 30% of clinics per month in their jurisdiction. However, the DAAs in Delhi pointed out that due to lack of human resources, scrutiny of form Fs is not proper.

In Karnataka, AAs consider the charge of implementing the Act important enough, but often find it impossible to perform the job efficiently because of their workload. For instance, the AAs find it impossible to inspect all clinics in one year.

The DAAs (Assam) said that they usually do not interact with the State Medical Councils during inspection of clinics. The DAAs also said that in both districts, it is the DIMC which is in charge of

inspecting and monitoring clinics in their respective districts. The Director of Health Services (Family Welfare) who has been appointed as the SAA in Assam said that no inspections of clinics have been conducted so far nor decoy operations organized in the state. In fact, he admitted that the implementation of the Act was not given importance till date and the matter will be addressed and revived in the coming financial year (April 2009-10).

One of the respondents from Bihar said that even when they carried out inspections, they did so with prior information to the clinics. Also, there is evidence from the states that often a fine is imposed on violators of the Act and the matter is not taken to the court. To check the efficiency with which clinics are monitored, the research team visited a few ultrasound centres in Bihar. In one clinic, Form F and other records were not maintained properly. The complete addresses of the clients were not mentioned. There is a huge gap in the auditing of the records of clinics, which is hampering the effective implementation of the Act.

More than 80% (35) respondents across the states mentioned that they scrutinize the records during inspections to monitor the implementation of the Act. In West Bengal, since regular scrutiny of records submitted by the clinics to the AAs does not take place at the district PCPNDT cells, the state authorities plan to conduct audits of these records with assistance from the West Bengal Commission for Women or NGOs.

Registration of clinics is an indirect means of assessing how effective the implementation of the Act is. There has been an increase in the number of registrations across the country since 2001. However, as mentioned earlier, there has been no corresponding increase in the frequency and conduct of inspections in most states. Despite an overall increase in the registration of clinics, a decline has been observed in Delhi. When asked about the reason for this trend, the DAAs and SAC were of the opinion that as most clinics had already been registered, there were very few unregistered clinics left and hence, the number of registrations was declining. However, social activists believe otherwise and suggested a declining interest in implementing the Act.

In Orissa, the AAs have submitted 72 proposals for registration and renewal of registration under the Orissa Clinical Establishment (OCE) Act to the Director of Medical Education and Training, Bhubaneswar. However, the Director of Medical Education and Training has not provided the registration/renewal certificates, because of which the DAAs are facing problems from the proprietors.

**Key Findings: Responsibility of monitoring and inspection of clinics lies primarily with the AAs.**

**Most of the respondents had conducted some inspections but that was insufficient given the number of clinics to cover, and other commitments.**

**Number of clinic registrations across the country has increased. However, number of inspections has not increased correspondingly. Increasing number of registration of clinics is an indirect measure of implementation of the Act.**

### **Conducting decoy operations**

A total of 15 (35%) respondents mentioned that they consider conducting decoy operation a useful step in implementing the Act. However, some challenges were mentioned in conducting decoy operations such as high awareness of clinics and people about decoy operations; clinics reluctant to disclose sex of the foetus to new patients therefore decoys are found difficult to be conducted. An important observation was that while some AAs mentioned decoy operations are important, they needed supportive measures as they cannot be effective in isolation.

Out of 15 who find decoy operations important step in implementing the Act, only 9 had conducted decoy operation. Karnataka has highest number of decoy operations, followed by Gujarat, Haryana, Punjab, Rajasthan, Uttarakhand, Maharashtra and UP. Those who conducted decoy operations felt that resources to conduct decoy operations were sufficient. Challenges faced for not being able to conduct decoy operations including insufficient funds was mentioned by 8 (18.6%) respondents, not able to convince pregnant women to pose as decoys was given as a reason by 20 (46.5%) respondents.

Investment of efforts in decoy operations was not considered useful enough as compared to strengthening of monitoring of clinics; a lack of faith in the adjudication process, time spent in courts were also cited as some of the challenges for not conducting decoys. Involvement of police in decoy operations is minimal. The reasons cited for non involvement of police included – no role of police felt by AAs, enough capacity of AAs to conduct decoy operations.

Around 16.7% of the respondents involve police in search and seizure operations and in collecting evidence. This was a feature mainly in Orissa and also in Bihar, Punjab and Uttaranchal as emerged in few respondents' interview. AAs in West Bengal doubted the success of decoy operations, therefore not employed the technique yet. NGOs interviewed in Bihar reported telecast of a decoy operation on a TV channel which did not result into any action by the AAs about which the NGOs were concerned.

Despite these challenges, in Rajasthan, 14 doctors and one auxiliary nurse midwife were suspended after a decoy operation was conducted by a television channel. Six sonography machines and instruments of four medical institutions were seized. Five operation theatres were sealed and seized under the MTP Act

and nine MTP registrations were cancelled. In Gujarat, three decoy operations have been reported till date. In one of the cases, the doctor was arrested and imprisoned for three days.

NGO representatives and Civil Society Representatives were also asked about their involvement in decoy operations and filing of complaints to learn if their involvement made any difference. However, negligible number of NGOs and Civil Society Representatives were involved in decoy operations or filing of complaints. Therefore, it was difficult to draw inferences about impact of involvement of NGOs and Civil Society Representatives.

**Key Finding: Majority of the respondents agreed that conducting decoy operations is an essential step towards effective implementation of the Act. However, challenges involved in the process outweigh the benefits, as cited by most of them.**

### **Funds under PCPNDT**

Satisfactory use of funds: Funds are usually not a problem as far as implementation of the Act is concerned in most states as mentioned by many respondents. Funds generated from registration are used for monitoring purposes as stated by DAA from Goa. In Maharashtra 50% of the funds generated through registration of clinics are used for monitoring purposes. In Rajasthan, Punjab, Haryana, Madhya Pradesh and Gujarat too funds generated through registration fees and those available under Beti Bachao Campaign of the National Rural Health Mission are used for the purpose of monitoring clinics.

Incumbent AA from Tamil Nadu was of the opinion that the present level of resources allocated is sufficient to undertake and fulfil the responsibilities of the AA as expected under the Act. Reason attributed by the AA for sufficient level of resources is the large quantum of money collected through registration (of clinics and hospitals) in the state. These funds are also used for monitoring purpose by the AA, however the AA was neither able to share the data regarding number of clinics inspected nor the nature of records inspected by him (and / or his office) in the year prior to interview.

Lack of funds: In Maharashtra, AAs expressed the need for additional resources at district level for better implementation of the Act. The SAA (Assam) reported at the time of the interview that funds for implementing the Act had been 'frozen' by the Joint Director of NRHM (Assam). He said that such non-availability of funds affected the effective implementation process.

Division of funds: Respondents from AP said that 50% of the total funds collected through registration of clinics are kept at the district level and the remaining is sent to the state. AAs from Orissa and Maharashtra said that they plan to develop IEC material related to the Act from the funds collected through registration of clinics.

Lack of clarity on use of funds: In West Bengal, a serious issue about utilization of funds under the Act was highlighted during interviews. District officials were unsure whether funds generated through registration of clinics under the Act are to be used for implementation and awareness generation activities. Therefore, such funds remain unutilized by the authorities.

**Key Finding: Funds are usually not a problem as far as the Act goes but lack of clarity on use of funds exists at all levels.**

#### Involvement with other agencies (IMA, State Medical Council)

Involvement with other agencies was equivocal as far as AAs interviewed is concerned. There is no interaction with State Medical Council (SMC) or Indian Medical Association (IMA) in states like Maharashtra, Tamil Nadu, and West Bengal. Twenty-three (55%) respondents were in touch with SMC. Two of them are also in touch with IMA but not in relation to the implementation of the Act. Those respondents not in touch with SMC or IMA reasoned that sex determination acts are not carried out by doctors, therefore involvement of IMA or SMC is not necessary. Four of the respondents mentioned that SMC took action against the reported violators.

SAA in West Bengal mentioned that he has no contact with SMC. Whereas in Goa, there is a regular interaction with the State Medical Council as regards the implementation of the Act.

The low level of interaction between the district authorities and the prosecutors may be a reason for incomplete and low quality of evidence collected from the field, as mentioned by an AA in Orissa. In AP, DAAs were in contact with IMA. DAA of Hyderabad was in contact with SMC.

**Key Finding: The involvement of other agencies like Indian Medical Association and State Medical Council is ambiguous.**

#### **Handling of PCPNDT cases**

As to whether they were handling any PCPNDT cases, a little over one-third (17) of the AAs interviewed mentioned that they were not, while four did not respond to the question. The remaining AAs (25) had handled some cases at the time of interview or earlier. The number of cases handled by the 25 AAs responding in the affirmative ranged between 1 and 17. 64.3% of the DAA respondents and 42.9% of the SAA respondents said that they were handling PCPNDT cases. AAs from Assam and Tamil Nadu had not handled any case at all.

**Table 8: AAs not handling any PCPNDT related case**

<b>State</b>	<b>Total AAs interviewed</b>	<b>Not handling any case</b>
Orissa	4	3
Maharashtra	5	2
Bihar	2	1
West Bengal	2	1
Karnataka	3	1
Gujarat	2	0
Haryana	3	0
Punjab	3	1
Rajasthan	1	0
Jharkhand	2	1
Andhra Pradesh	3	1
Goa	2	0
Tamil Nadu	3	3
Uttar Pradesh	2	0
Uttaranchal	1	0
Assam	3	3

The Salem district DAA, at the time of the interview, was not handling any cases of violation of the Act. However, the earlier DAA had filed three cases, on the charge of non-maintenance of records. These cases have already been disposed off by the High Court. The PP had assisted the erstwhile DAA.

Out of four AAs who were not aware of the Act, three were handling cases. Of the total AAs who were aware of the process of filing complaints, 62% were handling cases, while of the AAs who were unaware of the process of filing complaints, 75% were handling cases. Poor awareness of the processes related to the implementation of the Act may be weakening the handling of cases.

Filing a case is still a challenge for the AA as well as the dealing assistant, as mentioned by an AA in Orissa. The authorities are from the medical profession and lack skills in filing a case. Though the PP is authorized to file a case, if he happens to be busy with other court hearings, the dealing assistant has to wait for a long time to file a case and initiate other proceedings. Most of the time, the dealing assistant has to go to the court frequently. The money spent on filing a case is adjusted from the fund of the NRHM or from other sources. Managing the cost of travel was one of the concerns raised during the interviews.

Status of cases: A total of 16 AAs mentioned that their cases were pending, while four said their cases had been disposed. Respondents from Orissa, Maharashtra, Bihar, West Bengal, Karnataka, Haryana, Andhra Pradesh, Goa, Uttar Pradesh and Uttaranchal mentioned that their cases were pending.

Initiation of complaint: Most of the complaints were initiated by the DAAs (15), followed by the SAAs (3) and NGOs (3). NGOs lodged complaints in Maharashtra (2) and Uttaranchal (1).

Types of violations: According to the AAs, the violations that occur most commonly are related to sex determination, communication of the sex of the foetus and non-maintenance of records.

**Table 9: Types of violations as cited by AAs**

Types of violation	Number of respondents (n=24)	Percentage
Sex determination and communication of sex of foetus	12	50%
Advertisement	5	21%
Non-registration	11	46%
Non-maintenance of records	12	50%

AS depicted in table 7, Fifty per cent of the respondents said that sex determination and communication of the sex of the foetus are violations that occur very often. An equal number said non-maintenance of records was an important violation. Only 5 respondents said that advertisement related to sex determination was an important violation. Almost 50% of the respondents mentioned non-registration of clinics as a frequent violation.

Almost 50% of the AAs took the help of the DAC, 62.5% took help from the PP and 25% took some help from NGOs or social activists while preparing cases. The interaction between the AAs and the committees/individuals who help in the preparation of cases is not regular, but need-based; it takes place as and when any case-related situation arises.

Fifteen (34.8%) of the AAs said that their cases were handled by PPs, while 8 (18.6%) said their cases were handled by private legal practitioners.

Case related meetings with AC: The respondents maintained that meetings with the AC are held before filing of cases as and when required, in line with the Act. The documents shared in these meetings include the draft court complaint, list of evidence and list of witnesses. However, four AAs said that none of the documents were shared in the meetings with the AC. The research team had an opportunity to

attend one of the SAC meetings (Delhi), and it was observed that there was no discussion on the cases filed under the Act.

### Action taken against violators

As depicted in Table 10, the majority (66.7%) of the respondents stated that by way of action against violators of the Act, they sealed the ultrasound machines. Fewer of them suspended licenses and imposed fines.

**Table 10: Type of action taken by AAs against violators**

Types of action taken	Number (Percentage)
Sealing machines	16 (66.7%)
Imposing fines	7 (29.2%)
Suspending licenses	11 (45.8%)

Table 11 is a cross-tabulation of the number of respondents who informed about the types of violations committed by the clinics and the number of respondents who mentioned the particular type of action taken against the violators. The data illustrate that the number of respondents who took strict action, such as suspending licenses, against serious violations such as sex determination and communication of the sex of the foetus was less than that of those who took milder action, such as sealing machines.

**Table 11: Relationship between types of violations and action taken**

Type of action taken	Types of violation			
	Sex determination and communication of sex of foetus	Advertisement	Non-registration	Non-maintenance of records
Sealing machines	10	2	8	9
Imposing fines	4	3	7	5
Suspending licenses	7	2	5	7

Any action against erring medical practitioners/clinics is taken with the tacit approval of the SAA, a practice followed by government system in general. Although the Act is suggestive about the powers and responsibilities of each AA at different levels, it is not practised because of the conventional style of government machinery as mentioned by one of the AAs.

**Key Finding: More than half the AAs interviewed gave a history of handling at least 1 case. Yet there were AAs who had not handled any case. The most common violation appears to be sex determination and communication and poor maintenance of records. Sealing of machines was the most common action taken against the violators. Majority sought help of AC members or PPs while handling a case.**

### Handling the Act an additional burden

Almost 80% of the AAs (33) felt that handling the Act was an additional responsibility, while 17 (almost 40%) felt it was cumbersome. Thirty-five (83%) AAs felt that there should be a dedicated task force to make the implementation of the Act more convenient. Thirty-one (73.8%) AAs felt that AAs should be allowed to engage private legal practitioners. The AAs also felt that detailed guidelines should be provided on how they should carry out their responsibilities as per the requirements of the Act. States like Punjab, Rajasthan and Gujarat are a step ahead in this respect. They have additional dedicated human resources, in the form of PCPNDT Cells, at the district and state levels. Further, Rajasthan and Gujarat have been engaging private practitioners for dealing with cases, wherever required.

### Strengthening implementation

**Table 12: Measures to strengthen implementation as per AAs**

Measures to strengthen implementation	Number of AAs in favour
Increasing manpower	31 (72.1%)
Increasing awareness	37 (86.0%)
More funds	27 (65.1%)
Guidelines on how to collect evidence	33 (76.7%)
Guidelines on how to conduct investigations	32 (74.4%)

Table 12 presents the AAs' views on the measures that could strengthen the implementation of the Act and the number of AAs in favour of the measures mentioned. The AAs also felt there was a need to coordinate efforts for the Clinical Establishment Act, MTP Act and PCPNDT Act. The NGO representatives interviewed felt that doctors are usually not ready to implicate others from the medical fraternity, which is a hindrance to the proper implementation of the Act. It was also felt that sensitization of the judiciary is required at all levels.

Another major problem is that the authorities are unaware of the legal processes involved in the filing of cases under the Act. Training/awareness programmes are not organized on a regular basis. Due to this, the authorities may not be aware of the nature of evidence to be collected to ensure conviction of the accused and they have to rely heavily on PPs.

The required efforts for effective implementation of the Act are not initiated at the directorate level, as mentioned by an AA respondent from Jharkhand. Except for organizing a training programme for CMOs on how to conduct investigations, nothing has been done in this regard. The necessary guidelines are not issued to the district level.

The West Bengal Commission for Women, in collaboration with the government, had undertaken an audit for six months during 2006–2007. It is proposed that such auditing be regularized. In Andhra Pradesh, AAs provide support to PPs who appear in the court on behalf of the state government (in 19 cases at the time of the study).

**Key Findings: Major factors that have contributed to creating barriers in the effective implementation of the Act include the fact that authorities and concerned officials see this as a troublesome and additional responsibility, the lack of guidelines, the lack of a dedicated task force, and insufficient legal knowledge and skills to take the Act to action. Each of these challenges can be easily addressed through a set of simple actions/solutions.**

### **Advisory Committees**

It was learnt that most of the AC meetings including both at state and district level were conducted irregularly. The topics discussed involved registration of clinics, suspension or cancellation of registrations, IEC activities and generating awareness among various categories of implementers and sometimes monitoring plan. Lack of regular meetings, weak discussions and lack of decisions often due to deficiency in quorum emerged as major issues from the AC respondents.

Some meetings were held as per the Act as mentioned by some of the AC respondents however 2 ACs said that no meeting have been held and 8 ACs did not respond. The analysis is drawn from the data collected from remaining 21 ACs. SAC members of Delhi informed that there were so far 7 meetings of SAC in Delhi ever since its establishment.

In AC meetings, topics discussed commonly focused on complaint for suspension or cancellation of registration and complaints received for offences under the Act. However, 4 (19%) AC respondents said that they also discussed issues related to registration of clinics. Other issues discussed involved IEC activities related to sex ratio, initiatives to increase awareness among different stakeholders and plan of monitoring.

No definite answer was provided when asked about the average number of cases discussed in AC meetings. The answers were very vague and included responses such as '*all cases*', '*depends on agenda*'. There was no well-defined agenda related to the Act for most AC meetings (felt by some AC respondents).

When asked if the AC faced difficulty in completing the quorum of the meeting, 15 (48.4%) respondents answered in affirmative. When asked if the ACs regularly reviewed the activities undertaken by AAs, 14 (45.2%) answered in the positive.

Irregularity of meetings was the key issue that emerged from discussions with most ACs barring few states like Goa and Maharashtra. ACs from Jharkhand and Orissa mentioned that there were no meetings held in the 6 months prior to the date of interview.

In Tamil Nadu, except for a few meetings after the formation of AC, no meetings have been held. In Salem, however, the Committee meets once every year. Discussion focuses only on registration of clinics with hardly any discussion regarding complaints received. In both districts surveyed in Tamil Nadu, the usual practice is not to circulate any documents or case files pertaining to the violation of the Act or complaints received, except for the agenda, prior to the AC meeting. Earlier (i.e. in the initial years after constitution of AC) case files or pertinent documents would be circulated along with the meeting agenda of AC in Krishangiri district only.

While one member from Punjab said that the DAC reviews the actions taken by the DAA, the other respondent denied any such review. Both of them said that case related papers are circulated in advance.

The DAC interviewed from West Bengal said that the SAC had not initiated any activities to increase effectiveness of implementation of the Act. Their primary concern revolved around registration of clinics and/or suspension of licenses. It was also observed that the DAC does not review the activities of the DAA independently.

DACs from Maharashtra and Goa meet 4-5 times in a year. Apart from the usual agenda, activities undertaken by DAA are reviewed in Maharashtra while in Goa no review is generally conducted. In both these states, the respondents were aware of the Act but not of cases.

A DAC member from Assam however had a different perspective. She said that discrimination against the girl child was not as pronounced in north east India as it is in north India. Despite working at Government Hospital for over a decade, the respondent said that she has not witnessed cases of sex determination let

alone sex selective abortions. DAC in one district that was formed in Feb 2009 focuses more on actions like inspections and creating awareness among clinic.

In AP, out of the 2 districts surveyed, the DAC had not met till the time of the interview in one district. In Hyderabad, the DAC had met 6 times in the past one year. Cases are usually not discussed in meetings. Registration of clinics is usually discussed but complaints received for cancellation of registration are usually not discussed.

**Key Findings: Meetings of the AC are held as and when required by AAs as mandated under the Act. In some districts, no meetings were ever held. It is evident that this happens when there are no complaints or cases filed.**

**Relevant documents are not circulated prior to AC meetings which weakens the discussion during meetings and thus cases.**

### **Inspection and Monitoring Committees**

The IMCs were formed two years ago in most states except in Assam, UP and MP where it has been functional for less than a year as reported by the respondents.

Most of the respondents reported that the number of members varied, however in most cases it ranged between 3 and 10. The number of meetings held in the past year was reported in between 2 and 4. A respondent from UP said that they met 14 times in the past 1 year. The number of inspections also was reported widely ranging from 0 to 145. Most of them said that they had conducted 1 to 10 inspections in the past year. However, some reported as many as 145 inspections in the previous year.

Tamil Nadu and Goa do not have any SIMC in place.

The respondents from Jharkhand and Bihar said that IMCs were formed at the district level two years ago. It appears that meetings of these committees are not organized on regular basis. This inference is made because minutes of the meetings were not made available to the research team. Monitoring is weak in these two states. As per provision inspection of clinics should be done on quarterly basis and of them 1/3 should be covered in one month but it appears this process was not followed accordingly. Both members who were interviewed in Ranchi and Dhanbad spoke of problems, such as leakage of information about inspections and interference by influential persons.

In Maharashtra though the SIMC has been constituted, there is no clear-cut plan for inspection and monitoring of registered (as well as unregistered) clinics as discussed with the SIMC members. There are

no targets or deadlines to be followed. They have 20 members and they meet 2-3 times in a year. These meetings focus on discussion of plans to undertake monitoring visits and the results thereof. Only few members appeared to be proactive in undertaking inspections and monitoring visits. Till date there have been 70 monitoring visits of SIMC members though there is not much clarity regarding action taken by either SAA or DAA.

The SIMC in West Bengal has been formally strengthened with an increased number of members in 2009. The inspections have also now been planned in a regular manner to strengthen the implementation. Kolkata district does not have a DIMC and the SIMC provides it the requisite advice. In Howrah, the DIMC member (Howrah) interviewed was four months into the job at the time. The Committee was formed in 2007. It comprises eight members and meets every two months. A clear monitoring plan is lacking.

In Uttarakhand, a monitoring mechanism has not been built at the district level. To some extent, the monitoring work is done at Dehradun by members of DAC. It has also been observed that District Appropriate Authority of Dehradun takes personal interest in expedition of effective implementation of the Act whereas at Haridwar monitoring is completely defunct (as noted by local NGOs)

**Key Findings: Meetings of IMC are held irregularly. Minutes of the meetings not maintained. Considering the mandate of the IMCs, this is a serious gap.**

### Other stakeholders

#### Public Prosecutors

PPs are responsible for presenting the case filed by the Appropriate Authorities. When asked about the number of complaints lodged under the PCPNDT Act since 2003, 14 respondents said that at least one case had been filed under their supervision. One PP from West Bengal mentioned that he had filed 12 cases under the PCPNDT Act and another PP from Hyderabad had filed 10 cases. These number of cases filed are among the highest number of cases filed under the PCPNDT Act by one PP.

Many PPs handle the PCPNDT cases only as an additional responsibility. For instance, in Orissa, one of the barriers in filing of cases was stated to be the unavailability of PP because he was handling other cases. The reasons for dismissal of cases varied (Table 13). Lack of evidence was given as the main reason for dismissal of cases by 14 (60.9%) PPs.

**Table 13: Reasons for dismissal of cases as cited by PP**

<b>Reasons for dismissal of cases</b>	<b>Respondents (percentage)</b>
Lack of evidence	14 (60.9%)
Out of court settlement	5 (21.7%)
Clinics registered mid-trial	9 (39.1%)

Regarding the amount of time spent on handling cases under the Act, five prosecutors said that they worked only for cases under the PCPNDT Act. These respondents belonged to Punjab, Haryana, Rajasthan and Uttar Pradesh. Most of the respondents said that they spend as much time as required by a particular pending case and some commented that they spend around 10% of their time on handling PCPNDT cases. Only three PPs said that they are not devoting any time for PCPNDT cases. These respondents belong to Uttar Pradesh, Madhya Pradesh and Gujarat.

The types of offences under which the cases were filed were non-registration of clinics, advertisements and sex determination and communication (Table 14).

**Table 14: Types of violations as cited by PPs**

<b>Types of violations</b>	<b>Respondents (percentage)</b>
Non-registration of clinics	9 (39.1%)
Advertisements	4 (17.4%)
Sex determination and communication	11 (47.8%)

Data triangulation suggests that the types of violations cited by PPs are similar to those mentioned by AAs.

When asked about the difficulties they faced in handling cases, 8 (34.8%) cited lack of witness; 7 (30.4%) cited lack of evidence and 3 (13%) cited lack of proper documentation for drafting of cases. For instance, a PP at Delhi felt that many investigation officers are not aware of the legal requirements of investigation reports to be prepared while conducting inspections or raids at clinics. Often reports are submitted which are not admissible as evidence in court. An instance was cited where an investigation report prepared on site was discarded after the report was transcribed and formally typed and presented with the court complaint. This reduced the strength of the report, since its authenticity and accurateness was questioned when produced by the prosecution in court.

When the PPs were asked if they were involved or approached by the Appropriate Authorities before drafting complaint or only during filing complaints, seven PPs said that they were involved before complaints were filed. These respondents belonged to Haryana, Punjab, Jharkhand, Andhra Pradesh and Goa.

While comparing cases under the PCPNDT Act with those under other legislations, eight (34.8%) PP respondents felt that PCPNDT cases took more time than cases under other Acts.

**Table 15: Comparison of PCPNDT cases with other cases**

Type of comparison	Good	Average	Poor
Involvement of parties	4 (17.4%)	5 (21.7%)	6 (26.1%)
Strength & availability of evidence	4 (17.4%)	6 (26.1%)	3 (13.0%)

The respondents were also asked specific questions about the cases they handled. For instance, when asked if they got closer hearing dates in PCPNDT cases as compared to other cases, 11 (47.8%) of them replied in negative. When asked if the PPs faced any interference while handling PCPNDT cases, 5 (21.7%) of them replied in affirmative. Regarding the level and extent of interaction with PCPNDT cell, 10 (43.5%) of the respondents felt it was satisfactory.

**Table 16: Level and extent of interaction of PP with PCPNDT Cell**

Level & extent of interaction with PCPNDT cell	Respondents (percentage)
Satisfactory	10 (43.5%)
Unsatisfactory	7 (30.4%)
Can't say	1 (4.3%)

### Judicial Magistrates

Interviewees were asked specific questions relating to cases filed under the Act. When asked whether any case was filed under the PCPNDT Act in their courts, only one Magistrate replied in affirmative but he commented that the trial of the case is yet to commence.

The reasons for low rate of conviction were reported as follows: lack of witness (2 respondents; 22.2%); lack of evidence (2 respondents; 22.2%); lack of documentation during seizure (*Panchnama* filing) (2 respondents; 22.2%); lack of documentation during case drafting or pleading (1 respondent; 11.1%); any

other reason included less or no complaint against doctors. A Magistrate from Delhi said that one of the main reasons for lack of convictions and low quality of trial is non-interestedness of parties.

Cases get dismissed due to lack of evidence and poor drafting. Two interviewees also said that there were out of court settlements in case of some cases or accused clinics were registered mid-trial, after which cases were not pursued. When asked about interferences while deciding cases, none of the magistrates said that they have faced any interference while handling or passing a judgment on PCPNDT related cases.

**Key Findings: The low rate of convictions can be because of lack of proper documentation, lack of witness, lack of evidence, lack of complaints. Cases get dismissed due to poor drafting of cases and lack of evidence.**

### **NGO representatives**

The response to the question if the NGOs had conducted any sting/ decoy operations was answered by 16 NGO representatives, out of whom 4 (14.3%) had conducted decoy operations.

### **Civil Society Representatives**

If any Civil Society Representative has conducted any decoy operations, most of them replied in negative (11; 57.9% respondents), only 2 (10.5% respondents) had been involved in decoy operations. Six (31.6%) Civil Society Representative did not reply to the question asked.

Regarding filing a complaint to the AAs before or after decoy operation was conducted, one (5.3%) of them said yes whereas 5 (26.3%) said no. One (5.3%) of the Civil Society Representative reported that the action was initiated by AAs after the complaint was lodged. Seven (36.8%) Civil Society Representative replied in negative saying no action was taken. Six (31.6%) Civil Society Representative mentioned that they maintained contact with district AAs and PPs to forward any case or to collect evidence.

**Key Findings: The involvement of NGOs and Civil Society Representatives in the conduct of decoy operations is minimal. They have been largely involved in awareness generation activities. The Act mandates involvement of the NGO representative in ACs, however it can be inferred that NGOs are under-utilized, or inappropriately involved.**

### **Initiatives by NGOs**

Several NGOs have adopted unique and innovative approaches to fight against sex determination. Some examples are provided below.

- Prayatn has played a major role by undertaking grassroots level advocacy for stopping violence against women and girls in Rajasthan and Madhya Pradesh, with particular emphasis on effective implementation of the PCPNDT Act. It took the following initiatives:
  1. A novel research study on implementation of the Act in Rajasthan in 2005.
  2. Refresher training on gender sensitization, for assistant public prosecutors. This was institutionalized with the submission of a Training and Training-of-Trainers module to the Rajasthan State Institute of Public Administration and Directorate of Prosecution, Government of Rajasthan.
  3. The organization has developed a grassroots-level network against gender discrimination and violence against women under the banner of Jago Sakhi to curb the declining sex ratio in the Dhaulpur, Karauli and Jhalawar districts of Rajasthan and the Morena district of Madhya Pradesh, where the sex ratio is very low.
  4. The organization filed and won a PIL with respect to PCPNDT Act in the Madhya Pradesh High Court against the Government of Madhya Pradesh. As a result of the PIL, the court issued strict directions to the state government to ensure proper establishment and functioning of the machinery.
- CHETNA: Chetna has been working on the health of women and children in Gujarat. It has developed a lot of IEC material in Gujarati to mobilize the community against sex selection and gender discrimination. It has also worked with the state government to sensitize health officials on the issue.
- Human Rights Law Network (HRLN): The HRLN plays an important role in promoting effective implementation of the Act, since it is involved in generating awareness of the Act among the legal fraternity. It was involved in the Judicial Colloquium organized by the governments of Haryana and Gujarat.
- Vimochana: Concerned with the dramatic drop in the sex ratio from 976 in 1961 to 945 in 1991 and 927 in 2001, Vimochana initiated the Campaign against Sex Selective Abortion in 2001. Its main concern is the misuse of new reproductive technologies by sections of the medical profession. The campaign is focused primarily in Bangalore and the district of Mandya (Karnataka), some of the towns of which have among the lowest sex ratios in the country.

## **SALIENT FINDINGS AS REGARDS IMPLEMENTATION STRUCTURES, SYSTEMS AND PRACTICES**

1. In most states under study, implementation structures have been constituted as per the Act; the identified gap however lies in their optimal functioning and effective delivery of operations as mandated. This is made evident through several findings of the report, salient among them being:
  - a. Relevant bodies/authorities do not meet regularly as mandated; the level of rigour of these meetings in terms of content and thoroughness with a focus on the task at hand is also sub-optimal
  - b. The responsibility of handling the Act and all activities as required is invariably an additional duty for individuals within implementing authorities, particularly AAs; it is commonly perceived as difficult to handle against overlapping and conflicting priorities
  - c. There is a gap between the availability of funds and their effective utilization because of lack of clarity/awareness about the exact procedure involved in utilization
  - d. It is mandatory to include NGO representatives in the committees constituted under the Act. However, in some states, inappropriate NGO representatives, i.e. those who do not have relevant knowledge, are sometimes included as members of the committees.
2. Respondents have expressed how -- despite broad awareness and knowledge about the Act, and their duties as under -- in-depth and accurate knowledge related to details of processes of filing complaints, collecting evidence, conducting decoy operations, conducting searches and maintaining records is a major gap and a felt need. This is often reflected in the slack, even incomplete, maintenance of all paper work related to the Act, from clinic records, case-related documents, minutes of meetings to details of manufacturers of ultrasound machines.
3. The authorities are unable to employ decoy operations (which are considered useful for strengthening the implementation of the Act) due to several challenges such as unavailability of pregnant women to pose as decoys.
4. The entire implementation system is insufficiently monitored. This is reflected in findings such as infrequent/inadequate monitoring of clinics at both the state and district levels and in most states not having formal and detailed plans for strict and frequent inspections.

## SECTION 2: CASE ANALYSIS

The Act is still stuck in its infancy.<sup>49</sup> Even after 15 years of its existence, only 606 cases have been filed under the Act. Out of these, 196 cases have been filed under non-registration, 153 under non-maintenance of records, 126 for communication of sex, 37 for advertisement and 94 for other violations under the Act (as on June 2009). Based on the dismal rate of convictions and continuing decline of child sex ratios, this study was undertaken to understand the reasons behind low conviction rates, loopholes in cases reaching courts and overall implementation of the Act.

Lack of access to case law documents was a major constraint faced during the study in all the 18 states. There is a huge gap in case law documentation in the country. Complete records and details of the cases are not maintained by the relevant state and/or district authorities. For instance, case order sheets were not available with the AAs. Therefore, many crucial documents like copies of letters, FIRs (wherever lodged) and relevant correspondence between districts PCPNDT cells and PPs could not be examined to gain a clear picture of the current scenario of court cases. The following examples provide an insight into the difficulties faced by the research team in collecting the appropriate documents.

**Uttar Pradesh:** At Lucknow, the Additional Chief Medical Officer did not cooperate with the research team and provide copies of case records despite written permission to access records from the Chief Medical Officer.

**Delhi:** For a pending case titled State vs. Life Positive Magazine, no documents were available at the South district office of Delhi. It was claimed by the officials that the file is available with the Directorate of Family Welfare (DFW), Delhi Government. On the other hand, the CMO, (PCPNDT cell, DFW, Delhi Government) countered this claim by saying that the documents were unavailable with them.

**West Bengal:** At Kolkata district, authorities did not maintain complete documentation for pending cases and could provide only copies of the original complaints. The authorities said that the PP maintains a detailed file for each case. However, the PP claimed that it was the responsibility of the authorities to maintain these files and that he did not maintain any case files.

**National statistics:** The following table shows the number of ongoing cases under the Act, as maintained by the Director, PNDT, Ministry of Health, Government of India (as on June, 2009).

---

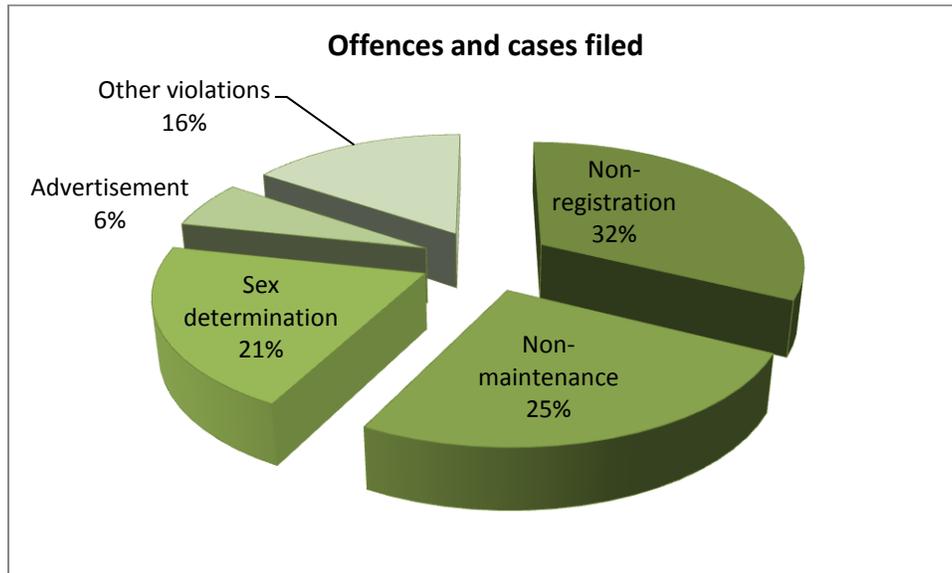
<sup>49</sup> Accessed from <http://www.indianexpress.com/news/66-cases-so-far-pndt-act-still-stuck-in-womb/266096/>

**Table 17: Number of ongoing PCPNDT court cases<sup>50</sup>**

<b>S. No</b>	<b>State/UT</b>	<b>No. of ongoing court/police cases</b>
1	Andhra Pradesh	19
2	Arunachal Pradesh	-
3	Assam	-
4	Bihar	10
5	Chattisgarh	5
6	Goa	0
7	Gujarat	95
8	Haryana	58
9	Himachal Pradesh	7
10	Jammu & Kashmir	-
11	Jharkhand	3
12	Karnataka	13
13	Kerala	-
14	Madhya Pradesh	11
15	Maharashtra	38
16	Manipur	-
17	Meghalaya	-
18	Mizoram	-
19	Nagaland	0
20	Orissa	-
21	Punjab	104
22	Rajasthan	54
23	Sikkim	-
24	Tamil Nadu	72
25	Tripura	0
26	Uttarakhand	3
27	Uttar Pradesh	49
28	West Bengal	7
29	A & N Island	-
30	Chandigarh	-
31	D&N Haveli	0
32	Daman & Diu	-
33	Delhi	58
34	Lakhadweep	-
35	Puducherry	-
<b>TOTAL</b>		<b>606</b>

<sup>50</sup> Source: List provided by Director, PCPNDT Division, Ministry of Health and Family Welfare in June 2009

**Figure 9: Offences under the Act and cases filed so far**



### CASE JUDGMENTS UNDER THE ACT

During the course of the study, it was decided that only certified court documents will be recorded to ensure authenticity of data. The research team collected certified court records for 14 cases which have been recorded and analyzed as part of the study, with the aim of achieving better understanding of success or failure in cases filed under the Act. The details of these cases are presented in Annexure 4, what follows here is a summary of the same, and key, relevant observations from the analysis.

#### Cases related to sex determination and communication

**Table 18: State-wise distribution of cases related to sex determination**

STATE	NUMBER OF CASES FILED
1. Bihar	3
2. Haryana	21
3. Karnataka	1
4. Madhya Pradesh	1
5. Maharashtra	13
6. Punjab	21

7. Rajasthan	52
8. Tamil Nadu	1
9. Uttarakhand	2
10. UP	3
11. Delhi	5
12. Jharkhand	3
<b>TOTAL</b>	<b>126</b>

No cases have been filed under this offence in the states of Gujarat, West Bengal, Orissa, Goa Andhra Pradesh and Assam.

The landmark Palwal judgment which resulted in the first conviction under this Act has been cited as the first case under this category of offence, though its case records were not collected under this study.

***State through DAA, Faridabad vs 1. Dr Anil Sabhani, Prop. M/s Dr Anil's Ultrasound 2. Sh. Kartar Singh Technician M/s Dr Anil Ultrasound, 3. Anil Ultrasound, through Dr Anil Sabhani***

This case is significant because it resulted in the first conviction under the Act. The facts of this case are set in 2001, when the two accused, a doctor by profession and his assistant, a lab technician, conducted a pre-natal diagnostic test on a woman and communicated the sex of the foetus to her. This was in contravention of Sections 4, 5 and 6 of the Act. The court found both the accused guilty and punished both with imprisonment of 2 years and a fine of Rs 5000 each. (Please refer to Annexure 4 for further details.)

This case was initiated through the efforts of Dr Baljit Singh Dahiya, who retired as Haryana's Director General of Health in 2005. He, along with a small team, launched a campaign against unscrupulous doctors in a state which has the second lowest sex ratio in the country. He was the first to use the provisions of the Act to raid and charge-sheet doctors willing to abort female foetuses for a hefty fee. When asked how he conducted decoy operations against doctors, he said that it took months of planning and intelligence gathering. He had banded together a committed team to raid clinics suspected of conducting sex determination. Even after retirement, Dr Dahiya continues to travel and motivate others to keep up the pressure against violators of the Act.

The research team collected certified court case documents for 8 cases related to this offence from Gujarat, Rajasthan, Delhi and Haryana and these documents were analyzed in detail.

**Case 1: Harish G. Thakkar (Hari X-ray & Colour Doppler Sonography Clinic, Ahmedabad vs State of Gujarat & ors.**

---

In this case, the Gujarat High Court provided a detailed judgment regarding the sale of ultrasound machines seized by the DAA for being used for sex determination. The court opined that the sale of a machine made after court orders would fetch less than the reasonable value and this would cause sufficient annoyance to the owner of the machines. This, according to the court, would serve as a deterrent. It ordered that before such sale, the accused should give full information about the sale of the machine in a newspaper and invite inspections. It also directed the accused to request the AA or his authorized representative to de-seal the machines for inspection by prospective buyers. Should the prospective buyer agree to buy the machine, the accused owner would be required to inform the court and request it to issue orders for sale of the said machine. Thereupon, the applicant would be required to file an undertaking that the machine would be sold to only a person with the necessary authorizations, permits and licenses. The applicant-petitioner would also furnish a personal bond of an amount equal to the consideration of the machine and file an undertaking before the court within a period of one week and execute the personal bond of the said amount before the court.

**Key observations:** This is an important judgment as it **lays down the steps to be followed by an owner of an ultrasound machine who is desirous of selling the said machine**, after it is suspected of having been used for prohibitive purposes. The High Court acknowledged the AA's claim that there should be deterrence for doctors using sonography machines for determining the sex of foetuses so that they cannot easily sell off the machines. Accordingly, it placed a burden on the accused owner to advertise the fact that the machine was a part of the evidence related to a trial and that the sale of the machine could take place only after orders from the court. The High Court stated that this would cause sufficient annoyance to the owner and would act as a deterrent for others.

**Case 2: Dr Kaushik Babulal Shah vs DAA, Ahmedabad**

---

In this case, a decoy operation was conducted by the AA on receiving complaints against the clinic of the accused. During the operation, a pregnant woman posed as a decoy, and the money paid to the accused during the decoy operation was marked and photocopied. Two independent witnesses and a woman posing as the decoy's sister-in-law accompanied the decoy when she visited the clinic. An employee of the clinic then took them to the imaging centre of accused, where the sex determination test was performed. The decoy paid the fees that had been agreed upon and the employee communicated the sex of the foetus to her in the presence of the witnesses. The centre was immediately raided and the ultrasonography machine was seized in the presence of the decoy and the witnesses. The Form F and marked currency notes were also seized and an FIR was lodged for missing notes. Subsequently, a

complaint was filed in court. Documentary evidence presented by the AA included the *panchnama* (*rojkam*), Form F seized from the clinic, statements of the decoy and the witnesses, list of notes recovered with photographs and a copy of the FIR. The accused pleaded for release of the machines and prayed for relief since he did not personally disclose the test result to the decoy. But the AA contested that the person who revealed the result was a non-medico who could not have checked the sex of the foetus and must have only communicated the results determined by the accused. A single-judge bench of the Gujarat High Court quashed the case and ordered the release of the machine. However, the AA appealed to a larger bench on the grounds that the judgment did not conform to the provisions of the Act. The AA claimed that the court acknowledged that the machine and the currency notes were recovered after a decoy operation that proved without doubt that an offence under the Act had been committed.

**Key observations:** This case has been recorded to highlight **the level of preparedness of the authorities in the decoy operation conducted**, as presented in the case documents. The sting operation was well planned, with due consideration being given to preparations like getting currency note issued from the treasury, marking and photocopying them in advance; readying a decoy and witnesses in advance and taking prior appointment from the receptionist. All the necessary processes - for example, seizure of currency notes and lodging of FIR for missing ones, and sealing and seizure of the ultrasound machine and records in front of witnesses – were duly followed. Also, the presentation of the case before the single-member bench of the High Court and the appeal to the larger bench were well prepared.

### **Case 3: State of Rajasthan and others vs D .Naini Maiyyar, Coordinator, Pariwaar Sewa Clinic**

This case was based on the telecast of a sting operation conducted by the Sahara Samay Channel. The Government of Rajasthan (Department of Medical and Health Services) issued an order to the DAA to seal the clinic and seize the records. Upon receipt of this order, the DAA sealed the clinic and filed a complaint in the court of the Additional Chief Judicial Magistrate under the Act. The accused-petitioner filed a writ of *mandamus* petition in the Rajasthan High Court under Article 226 of the Constitution, requesting the court to quash the DAA's order to seal the clinic. The petitioner submitted that the clinic was not a genetic clinic and therefore did not come within the purview of the Act. The petitioner also contended that the Department of Medical and Health Services had no power or jurisdiction to issue the impugned order and that the AA did not inspect the clinic prior to issuing the order. The complaint by the DAA and the writ petition in the High Court are currently pending.

**Key observations;** This case has been mentioned to highlight **gaps in case preparation**. The present case was filed under Section 3A of the Act, but the section was not duly quoted in the complaint while praying for punishment under Section 23 of the Act. This reflects an inadequacy in case preparation at the stage of filing complaints. Also, though the petitioner prayed for the quashing of the DAA's order

stating that it was not in conformity with the MTP Act, the DAA could have also argued that the petitioner had violated the Act (i.e. the PCPNDT Act) and that the order had been passed in conformity with this fact.

#### **Case 4: Dr (Mrs) Shashi Mehta, CDMO, Delhi and DAA vs Dr Pawandeep Singh Kohli**

In this case, the DAA conducted a search and seizure operation at the clinic of the accused following a sting operation conducted by a television channel at the clinic. During the search operation, the DAA suspended the registration of the clinic and sealed two ultrasound machines. A complaint was filed in court and the CD of the sting operation was submitted as part of the evidence. However, at the trial court, the accused was discharged because the magistrate opined that the complainant had not produced the requisite evidence despite being provided several opportunities. A revision petition was filed before the Additional Sessions Judge (ASJ) by the DAA, pleading that the magistrate's order was an evasion of the exercise of his jurisdiction and had resulted in a serious miscarriage of justice. The ASJ noted that the magistrate could have dealt with the case differently. The DAA's statement should have been placed on record as preliminary evidence. The CD of the sting operation should have been examined and observations should have been taken on record. The complainant, who was the prescribed authority under the Act, could have been given the necessary directions on how to produce the required evidence. The ASJ opined that once the magistrate had found a *prima facie* case made out for an alleged offence, the enquiry and the trial should have ended with some logical consequences. It held that it was the duty of the court to secure evidence which appeared from the material placed by the complainant before the court.

**Key observations:** This is a powerful order because it **urges the judiciary to provide guidance** to the complainant. It was a lapse on the part of the complainant (DAA) that he was unable to produce the required evidence, such as a list of witnesses and the original recording of the sting operation, even after six hearing dates (i.e. 21 months after the complaint was filed). Even three-and-a-half years after the case was initially filed, it is still at the 'pre-charge evidence' stage. Some other operational observations emerged while collecting documents for this case and these are highlighted below. The officials at the district PCPNDT cell handling this case said that there was only one APP who was appointed in one district court to represent the complainant i.e. the DAA. However, now every Magistrate within a district court (such as Patiala House, a district court at Delhi) has a designated APP in his own court. This implies that every time a case is transferred to a new Magistrate, there is a new APP who handles the case on behalf of the complainant. However, there is also a possibility that these APPs are transferred within the life of the case, which implies that no single prosecutor handles the case from the beginning till the end of

the trail. The authorities handling this case also felt that the designated APP has drafted the complaint better than the private practitioner who was earlier appointed to draft the original court complaint.

#### **Case 5: Dr P.K. Bansal, CDMO vs Dr Sartaj Ahmad**

---

In this case, the NIMC along with the DAA raided the premises of the clinic of the accused. It was discovered during the raid that the clinic was not registered under the Act or the MTP Act, though activities prohibited under these legislations were being conducted in the clinic. The relevant documents, such as Form Fs, OPD slips and registers were seized and instruments/machines were sealed. A complaint was filed in court against the owner of the clinic and the medical practitioners practicing in the clinic. The complaint was accompanied by evidence, which included the inspection reports and the statement of the accused admitting that the ultrasound machines seized were being used in his clinic. Cognizance against the accused was taken for the offence and summons were issued.

**Key observation:** In this case, it was observed the DAA filed a complaint against not only the owner of the clinic but also **against all the medical practitioners practicing at the clinic**. This practice may be adopted by implementing authorities for other cases as well.

#### **Case 6: State of Haryana vs Dr Ved Prakash Agrawal, proprietor, Agrawal Nursing Home, Ultrasound & X-ray Clinic, Kurukshetra**

---

In this case, a decoy operation was conducted at the clinic of the accused by the State Task Force and the DAA. After the operation, the inspection team sealed the ultrasound machines and seized relevant documents. A scrutiny of these documents revealed several irregularities. A complaint was filed in court by the DAA and all the relevant records and inspection reports were submitted along with it. A list of witnesses was also provided. However, the decoy turned hostile after the complaint was filed. The case is still pending.

**Key observations:** In this case, the decoy turning hostile was a big set-back. However, the **decoy operation was video recorded and inadequacies in record maintenance were presented as evidence** which strengthens the prosecution's case. However, there were certain gaps in the preparation/presentation of evidence. The currency notes used for the decoy operation should have been photocopied and marked for evidence. A copy of the show cause notice issued by the DAA and the response of the clinic to the notice should have been filed as documentary evidences with the complaint. Formal orders for the decoy operation and the constitution of the team should have been issued and submitted as evidence.

### **Case 7: State of Haryana vs Sunita Nursing Home, Kurukshetra**

This case was based on a sting operation conducted by the DAA, an inspection team and a media reporter. The inspection team found that a termination of pregnancy was being conducted though the clinic had not obtained a license under the MTP Act. The records of the clinics also revealed several irregularities. A complaint was filed in court by the DAA and all the relevant records were submitted as evidence. The accused countered the charge by stating that the inspection team was not authorized and that the DAA and media agency had colluded against the accused and submitted a false report. This was dismissed by the court. The case is currently pending at the stage of examination of evidence at the court and one of the independent witnesses has turned hostile.

**Key observations:** This case has been recorded to highlight the **need to present strong evidence despite setbacks** such as witnesses turning hostile. The chances of conviction in this case are high though one of the independent witnesses has turned hostile because the other witnesses and documentary evidences are adequate enough to establish the charge and the presentation of the case is effective. However, there was scope to further strengthen the case. The case would have been stronger had the recording of the raid by the media reporter been submitted as evidence. The complainant should also have filed an affidavit in support of the complaint which was submitted in this case.

### **Case 8: DAA Sonipat, Haryana vs Dr Pradeep Mukhi, Mukhi Hospital and Nursing Home, Sonipat**

In this case, too, a complaint was filed against the accused on the basis of a decoy operation conducted by the DAA. The DAA sealed the ultrasound machine being used, seized Form Fs and registers, and prepared a spot inspection memo. The case is currently pending but exact analysis of the trial proceedings could not be done since the order sheets and other case documents could not be accessed.

### **Cases related to illegal advertisement**

**Table 19: State-wise distribution of cases related to illegal advertisement**

STATE	NUMBER OF CASES FILED
1. Gujarat	3
2. Haryana	5
3. Madhya Pradesh	2
4. Maharashtra	6
5. Punjab	6
6. Rajasthan	2

7. Tamil Nadu	1
8. Uttarakhand	1
9. UP	3
10. Delhi	8
<b>TOTAL</b>	<b>37</b>

A total of 37 cases have been filed related to this offence in the 18 states under this study.

Available details of a pending case in this category were collected from Gujarat. A summary of the facts and findings follows.

**Case 9: Dr Puran Chand Parmar, DAA vs Dr Gaurang Bhatt and Dr Meena Bhatt**

In this case, the DAA filed a complaint under Section 25 against the accused for allegedly advertising medication to conceive a boy child through pamphlets, visiting cards and letter heads. The DAA presented documents, such as pamphlets, visiting cards, letter heads and *panchnama* seized from the medical establishment as evidence. Statements of witnesses to the search and seizure were also included as evidence.

Though this case was related to illegal advertisements, punishments for which are specified in Section 22(3), the complaint was filed praying for punishment under Section 25 of the Act. The difference between the two sections is highlighted below:

Section 23(3) states that in case a person, organization, GCC, GC or GL issues or causes to be issued any advertisement in any manner regarding facilities for the pre-natal determination of sex, they shall be punishable with imprisonment for a term which may extend to three years and with a fine which may extend to Rs 10,000.

Section 25 states that anyone who contravenes any of the provisions of the Act or any rules made thereunder, for which no penalty has been provided elsewhere in the Act, shall be punishable with imprisonment for a term which may extend to three months or with a fine which may extend to Rs 1000 or with both, and in case of continuing contravention, with an additional fine which may extend to Rs 500 for each day during which such contravention continues after conviction for the first such contravention.

**Key observation: Cases should be drafted under the specific section related to the offence, as prescribed in the Act. Cases related to illegal advertisements, for example, should be filed under Section 22(3) rather than Section 25, as happened in this case.**

## Cases related to non-maintenance of records

**Table 20: State-wise distribution of cases related to non-maintenance of records**

STATE	NUMBER OF CASES
1. Bihar	6
2. Gujarat	89
3. Haryana	10
4. MP	5
5. Maharashtra	3
6. Punjab	30
7. Tamil Nadu	3
8. UP	3
9. Delhi	5
10. Andhra Pradesh	5
<b>TOTAL</b>	<b>153</b>

A total of 153 cases have been filed in this category in the states covered by this study.

### **Case 10: Dr Manish C. Dave vs State of Gujarat**

The facts of the case are that an authorized representative of the DAA carried out surprise inspections of 12 sonography centres and found that the required records, especially Form Fs, had not been duly maintained by them. He, therefore, filed separate complaints for each clinic in the court of the metropolitan magistrate, Ahmedabad under Sections 4, 5 and 6 of the Act. All the accused filed criminal miscellaneous applications against the complaints in the Gujarat High Court, pleading that the cases had not been filed in a proper manner and should be dismissed. A single-member bench of the court dismissed the cases saying that lapses in record maintenance did not constitute a serious offence under the Act. Thereafter, a three-member bench of the Gujarat High Court took up the case *suo moto* and raised the following issues for consideration:

- Whether under the provisions of Section 8 of the Act, a court can take cognizance of a complaint made by any officer authorized in this behalf by the AA
- Whether the proviso to Section (3) of sub-section 4 of the Act require that the complaint should contain specific allegations regarding the contravention of the provisions of Sections 5 and 6 of the Act

- Whether the burden lies on the authority to prove that there was contravention of the provisions of Sections 5 or 6 of the Act
- Whether any deficiency or inaccuracy in filling Form Fs as required under the statutory provisions is merely a procedural lapse

The opinion of the bench on these issues is sequentially presented as under:

- Under the provisions of Section 28 of the Act, a court can take cognizance of an offence under the Act on a complaint made by an officer authorized in that behalf by the AA
- In a case based upon an allegation of deficiency or inaccuracy in maintaining of records in the prescribed manner as required under sub-section (3) of Section 4 of the Act, the burden of proof that there was in contravention of the provisions of Section 5 or 6 does not lie with the prosecution.
- Any deficiency or inaccuracy in filling Form Fs prescribed under Rule 9 of the Act, being a deficiency or inaccuracy in keeping records in the prescribed manner, is not simple a procedural lapse on the part of the clinic owners/ practitioners but an independent offence amounting to contravention of the provisions of Sections 5 and 6 of the Act and has to be treated and tried accordingly. It does not, however, mean that each inaccuracy or deficiency in maintaining records may be a serious violation of the provisions of Sections 5 or 6 of the Act and the court would be justified, while imposing punishment upon conviction, in taking a lenient view in cases of only technical, formal or insignificant lapses. For example, not maintaining the record of conducting an ultrasonography on a pregnant woman at all or filling up incorrect particulars may be taken in all seriousness as if the provisions of Sections 5 or 6 were violated, but failing to fill up the full name and address of a pregnant woman may be treated leniently if her identity and address were mentioned in a manner sufficient to identify and trace her.

**Key observation:** This is a **landmark judgment on record maintenance** and may be referred to in any case related to record maintenance under the Act. It highlights that record maintenance cannot be treated as a 'non-serious' offence, as it is a violation of Section 5 or 6 of the Act and must be treated accordingly.

**CASE 11: *Brar Ultrasound Clinic, Sri Ganganagar vs State of Rajasthan and others***

---

In this case, DAA conducted an inspection of the clinic of the accused and cancelled the registration of the clinic on the ground that the proprietor of the clinic was not a qualified medical practitioner. The

accused filed a writ petition in the Rajasthan High Court pleading that the DAA's order be quashed as it was illegal, and violated the fundamental rights of the petitioner. He also pleaded that the cancellation of the registration of the centre without due notice and fair hearing was in violation of Section 20 of the Act and Article 14 and 21 of the Constitution of India. The DAA filed a reply stating that according to Section 2 (m) of the Act, the proprietor of the clinic did not qualify as a doctor and that the Act empowers the AA to cancel the registration of an establishment without providing an opportunity for a hearing. A rejoinder to the reply was filed by the petitioner wherein the petitioner stated that the AA had the power to only suspend the registration and not to cancel it. It also included pleas regarding qualifications for medical practitioners. The case is currently pending at the Rajasthan High Court.

**Key observations:** The non-submission of monthly reports by the clinic was a clear violation of Rule 9(8) of the Act. There are certain **procedural errors committed before filing the complaint**. For instance, in not consulting the Advisory Committee before cancelling registration of the clinic, the DAA committed a procedural error. Section 20(3) speaks only of suspension of registration. Cancellation of registration is addressed in Section 20(2) of the Act, which mandates consultation with the Advisory Committee and providing due chance for hearing before the cancellation of registration.

#### **CASE 12: DAA PK Bansal vs KP Singh**

---

In this case, the NIMC raided the premises of the clinic of the accused, Lokpriya Nursing Home and Maternity Centre at Delhi, on 4 May 2006. The DAA accompanying the inspection team seized certain documents and on inspection of the records, found that the accused was using ultrasound machines illegally and for purposes not permissible under the Act. On the basis of the seized records, the NIMC revisited the clinic of the accused and sealed all the ultrasound machines and relevant documents and suspended the registration of the clinic. The DAA issued a legal notice against the accused and filed a complaint under Rule 9 of the Act. The accused then applied for the release of the ultrasound machines. The application was rejected since the court opined that the case was at an early stage where evidence had to be produced. The accused filed a revision petition to revoke the suspension of the registration of the clinic and to de-seal the ultrasound machines. The revision petition was dismissed on 20.09.2007 on the grounds that the machines were case property and could not be released while the case was pending as they were part of the evidence. The machines are shown to be used for purposes not permissible under law; therefore these cannot be released as it might lead to more illegal activities being performed.

**Key observations:** The order dismissing the revision petition to de-seal the machines stands **correct and is laudable** because as per Sections 3 and 4, no person shall conduct activities related with pre-natal diagnostic techniques except for the purposes listed in the Act and the accused was involved in

illegal activities in contravention to the Act. Therefore, the registration of the clinic was rightly suspended and the machines should have remained sealed until the disposal of the case.

In a case filed in Ahmedabad under non-maintenance of records, the AA issued a legal notice to the accused for not submitting Form F in time. The accused had submitted only one form in six months, whereas it is mandatory to submit Form Fs every month. The key observations of the research team in this case are highlighted below:

- The DAA should have conducted a sudden inspection of the clinic for checking whether the machine was non-functional and to check whether there were any other irregularities.
- Instead of using Section 25, the AA should have pleaded under Section 23, which states that “Any medical geneticist, gynaecologist, registered medical practitioner ..... 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 Rs 10,000...” Section 25 is applicable only where there is an ambiguity about the punishment. However, this was a clear violation of Rule 13 which mandates intimation to the authority within 30 days if a machine becomes non-operational. Also, for the irregularity under Rules 9(4) and 9(8), the plea for penalty should have been made under Section 23(1) and 23(2), and this plea should have been included in the complaint. It is important to draft a case carefully and pray for punishments under the most appropriate section.
- Also, suspension of registration of defaulting clinics by the State Medical Council is necessary as soon as the pleading under section 23(2) is taken cognizance of till the disposal of the case.

### **Case 13: State of Punjab vs Pushpa Maternity Home**

---

In this case, the DAA and his inspection team visited the clinic of the accused and inspected its records, which revealed several irregularities. Based on these findings, the DAA filed a complaint in the court of the Chief Judicial Magistrate of Mansa. The accused challenged the authority of the complainant by stating that the complaint was not filed by the DAA of the district where the clinic was located. The accused also stated that there were certain sections of the Form F, which stated that if they were left blank, no action would be taken. The court decided that cognizance could not be taken on the basis of the complaint and the perusal of the rules did not indicate that each and every column of the form needed to be filled. The salient points of the judgment are as follows:

- The pleas of the accused clinic and doctor were accepted by the court though the records of the clinic appeared incomplete *prima facie*

- The judgment detailed the extent and the modus operandi of the delegation of powers of the AA
- The court held that procedural gaps in the filing of complaints bring disgrace to the authorities and cause harassment to centres registered under the Act
- The judgment also highlighted the importance of Advisory Committees in handling of complaints.

**Key observations:** The case is an illustration of the **importance of consulting Advisory Committees before filing complaints**. Procedural lapses, such as the failure to issue a show cause notice, would have been averted if the complaint, a response of the clinic (which would have been received had due show cause notice been issued), and the corresponding action had been discussed duly in Advisory Committee in the presence of the legal expert.

### Cases filed against manufacturers under Rule 3(a)

**Case 14:** *Dr. Sanjeev G. Dalvi, Appropriate Authority of South Goa v 1. Philips Medical Systems India Pvt. Ltd. A-16, Ground Floor, Mohan Co-operative Indl. Mathura Road New Delhi 4-. 2. J. Sundarajan, Director, Philips Medical Systems India Pvt. Ltd. A-16, Ground Floor, Mohan Co-operative Mathura Road New Delhi*

This case filed in Goa is a unique case as only one case has been filed against a manufacturer so far. The accused had sold an ultrasound machine to an unregistered clinic. The DAA filed a case under Rule 3(a). However, the case is weak since the DAA had not included independent witnesses in the list of witnesses.

**Key observations:** This is **the only case filed against a manufacturer**. But this was filed only against the manufacturer of the ultrasound machine rather than the hospital / clinic where it was installed without proper registration. At the time of the study, the DAA who had filed the case had been transferred. The PP said that the 1st accused (the company) amalgamated with another company and therefore, it became difficult to pinpoint the blame. The second accused left the company, during the case, and thus managed to get absolved of the charge. The judge who was handling the case at the beginning was transferred mid-way. The public prosecutor who filed the case on behalf of the DAA was new to the job (it was her first case related to the Act). She claimed that she was overburdened with several other cases. The case is weak due to lack of independent witnesses.

Apart from these cases for which certified court documents could be analysed, details of several other cases for which records were collected from the AAs are provided in Annexure 4.

## FINDINGS FROM ANALYSIS OF CASE RELATED INTERVIEWS AND CASE LAW DOCUMENTATION

It is evident that although there are 606 cases pending at the courts till date<sup>51</sup> and most cases have been pending at the stage of 'pre-charge evidence' for years, there are significant findings from case law analysis that can be utilized to strengthen implementation by offering suggestions for remedial measures. Some of the key findings from the case law documentation have been highlighted below:

1. **Lack of witnesses and substantial evidence:** This is one of the major reasons that affect the conviction rates of cases under this Act. In most cases, the evidence produced by the AAs are not substantial and could not prove beyond reasonable doubt that the accused has committed an offence under the Act, which is a basic requirement to convict any offender. In order to produce sufficient evidence, it should conform to the standards of the Evidence Act, Code of Criminal Procedure and the Indian Penal Code. However, the AAs feel that producing strong evidence is difficult in the case of offences under the Act because of the nature of these offences. Many cases have been disposed off either due to inadequacy of evidence or lack of witnesses. Lack of independent witnesses is a serious gap which weakens the case of the authorities. In Maharashtra, three cases were analyzed and it was noted that the same department employee has been used as a witness in all the cases. This can seriously affect the credibility of the case. Also, all relevant documents are not submitted as evidence and often, photographs and other such methods to strengthen the case are not employed.
2. **Inadequate case preparation by AAs:** It was noted in some cases that the DAAs do not adequately prepare for a trial before filing a court complaint. For instance, in the case of the *CDMO and AA under the Act, Delhi Vs. Dr. Pawandeep Singh Kohli*, the DAA was unable to produce evidence (list of witnesses, other material evidence such as CDs) even after six hearing dates (i.e. even after one year nine months after the complaint was filed).
3. **Complex nature of crime:** An offence under Section 5 and 6 of the Act (i.e. determination and communication of sex of foetus) can be committed by a 'word' or a 'sign' and there is no physical proof of the same. This makes it difficult for the authorities to collect evidence in support of the court complaints and the evidence collected is often weak and is unable establish the crime committed by the accused beyond reasonable doubt. In one of the cases filed under Section 5 and 6 of the Act, a sting operation was conducted by a television channel and based on this, the DAA inspected the clinic of the accused and filed a case. However, the case was discharged at the district level because

---

<sup>51</sup> As on June 2009, based on the data shared by the Director, PNDD Division, Ministry of Health and Family Welfare, Government of India

the DAA was unable to obtain a copy of the CD of the sting operation from the television channel and could not present any evidence against the accused.

4. **Withdrawal of cases:** Another issue is the number of cases withdrawn by the DAAs, despite the cases being non-compoundable in nature. At Ranchi, two cases were withdrawn. In one of the cases the case was withdrawn because the authorities did not want to proceed with the case, though two independent witnesses were available and relevant evidences were also found. The second case was also withdrawn by plea-bargaining and on admonition despite availability of independent witnesses and incriminating evidence. It was claimed by the district PCPNDT cells that the complaints were filed by mistake and the clinics were either not conducting activities which would come within the purview of the Act or were registered after the complaint was filed. For 5 out of the 57 cases filed in Delhi have been withdrawn for various reasons: that the clinic did not have sex determination procedures available and a case was filed by mistake (*West District Mann Kaur Memorial Heart Clinic and Lab case*) or several cases filed at the south district were withdrawn because the initial allegation of non-registration was a mistake and the clinics were actually registered. But it is important to note that Section 27 of the Act states that offences under the Act are non-compoundable in nature i.e. the case once filed cannot be withdrawn by the party.
  
5. **Very few cases filed so far:** Since enforcement of the Act, very few cases have been filed till date. For instance, only five cases have been filed at Lucknow, which is the capital of the biggest state of the country. Of them, four cases have been filed in 2008 after inspection of a few clinics in the city by the team of Central Supervisory Board. At Meerut in Uttar Pradesh, only 12 cases have been filed till June, 2009. However, all these cases have been filed in 2002 and only one case was filed in 2008 through a decoy operation. In West Bengal, only 12 cases have been filed till date and all of them have been filed only in Kolkata. All these cases are still pending and have either been initiated in 2002 or 2006. The implications of this observation are serious. Infrequent and random spurts of legal activity cannot be termed as successful and robust usage of a legal instrument of social change
  
6. **Most cases filed under 'non-registration of clinics':** Highest number of cases in the country has been filed under this offence of the Act. A total of 196 cases have been filed under this offence in the country. Though this offence only requires evidence in the form of incomplete clinic records, often evidence of even this nature is not submitted. For instance, in West Bengal, all seven cases pending are filed for non-registration under the Act. The only evidence filed in support of all cases under this category was an inspection report and addresses of the accused. No other supporting documents were attached. It was observed that original complaints filed in the court stated that relevant records

like cash receipts, O.T. registers and consent forms were not made available for scrutiny of the inspection teams when visits to the clinics are conducted by the inspection teams.

7. **Witnesses turning hostile:** It was observed that in several decoy cases, witnesses turned hostile which weakened the case. The witnesses may have turned hostile due to inadequate state protection. Often, the raids or decoys conducted are not recorded and presented as evidence by the AAs.
8. **Discouragement among enthusiastic officials:** During the course of the study, the research team met several enthusiastic officials who said that they have often been discouraged while implementing the Act. For instance, at Lucknow committed staff members working at the district PCPNDT cell face discouragement. Even the hired legal practitioner at Lucknow shared how he has been discouraged, is not supported financially and is not provided access to requisite document.
9. **Awareness required among judiciary and public prosecutors:** During interviews with representatives from the judiciary or public prosecutors, the interviewees said that the level of awareness about the Act is low since they haven't handled many cases under the Act. There have been some workshops to sensitize the judiciary organized by the Delhi Legal Services, the last one being in December 2007.
10. **Awareness required among women:** Victims are often unaware of not only on the rights vested on them under the Act but also of which authorities they can turn to for help if coerced into a sex determination test. Moreover, the police also do not seem to be informed that the DAAs handle such cases. In the Dr. Mitu Khurana case at Delhi, the complainant came under pressure from her husband to undergo a sex determination test. Although she resisted, she was deceitfully made to take the test when she was admitted to the hospital for other complications. Unsure of which authorities to contact, she turned to the police as a measure of first resort, who failed to direct her to the district AA as they were unaware of the responsible governmental authority for such cases. She later found out through an NGO that the district AAs are the concerned agencies to contact.
11. **Inadequate use of the Act:** Full force of the law is not brought to bear in prosecution. Several cases analyzed do not raise a cause of action under section 23 (1) and (2). Section 23 (1) provides that any person who owns a genetic counseling center, laboratory or clinic or is employed at such a facility contravenes any of the provisions of this Act shall be punishable with imprisonment and a fine. Section 23 (2) provides that the name of the registered medical practitioner shall be reported the AA to the State Medical Council concerned for taking necessary action including suspension of the

registration if the charges are framed by the court till the case is disposed of. In particular, none of the cases filed under section 22 for advertising mention section 23 (1) and (2) in the complaint. Notably, in Rajasthan and Punjab the state medical councils have taken steps to suspend the medical licenses of practitioners while the cases are pending in court. The fact that these provisions are rarely used implies that improper maintenance of records or advertising are interpreted as lesser violations that are insufficient to raise a cause of action under sections 5 and 6 of the Act or invoke suspension of medical licenses or other punitive measures provided under the Act.

**12. Socio-cultural factors:** Offences such as conducting sex determination tests and advertising about such tests or medicines which are prohibited by the Act are driven by deep-seated socio-cultural factors and are very complex in nature. As NFHS-3 data indicates 1 in 5 women and men prefer sons to daughters.

**13. Qualification of professionals is ambiguous:** When the DAAs were questioned about the challenges faced during implementing the Act, they mentioned that there is ambiguity about the qualifications of medical professionals allowed in the Act. The Act stipulates that the persons qualified to conduct medical procedures regulated under the Act include:

- those with a degree or diploma in genetic science or at least two years of experience in these fields after obtaining a post-graduate degree in biological sciences.<sup>52</sup>
- Laboratory technicians having a B.Sc degree in Biological Sciences or a degree or diploma in a medical laboratory course and at least one years experience in conducting appropriate pre-natal diagnostic techniques, tests or procedures.<sup>53</sup>

The AAs felt that there is need further clarify the qualifications and also to ensure that the professionals are aware about the unethical practices which should be avoided.

**14. No designated court:** There are no designated court for cases under the Act, so cases are spread over different courts making it difficult for authorities to follow up with different magistrates and Public prosecutors for each case.

**15. Penalty not harsh enough:** Offenders under the Act might be faced with penalties including a maximum of three years of imprisonment and a fine which may extend to ten thousand rupees. Under Rule 11, the penalty that can be imposed on a clinic for not getting itself registered under the Act and continuing to use the machine is only five times the registration fee (i.e. Rs. 3000 X 5 = Rs. 15000). Many PCPNDT cell authorities were of the opinion that the penalties for offending parties under the

---

<sup>52</sup> Section 2 (g) of the Act

<sup>53</sup> Rule 3 9 (1) and Schedule II under the PCPNDT Rules.

Act were not commensurate with the nature of crime. Against the high profit margin in such services, this minimal punishment may not act as a serious deterrent.

In conclusion, the research team noted how structures and systems are in place but their functional efficacy leaves much to be desired, at the macro, country wide level. Respondents also suggest that the practice of sex selection and determination can be showed using a legal tool only to some extent. Experts strongly urge the understanding that social legislation can deter individuals from wrong acts, but social change alone can make a real difference.

### **SALIENT FINDINGS FROM CASE LAW DOCUMENTATION AS RELEVANT TO STRENGTHENING LEGAL RIGOUR**

1. The Act is inadequately used while drafting court complaints and the full force of the law is often not brought to bear in prosecution. A total of 196 cases have been filed under the offence of 'non-registration' of the Act, 153 under non-maintenance of records, 126 under communication of sex of the foetus and 37 under illegal advertisement.
2. Inadequate case preparation and gaps in legal documentation characterize many complaints filed before the courts by AAs.
3. Lack of witnesses and insufficient evidence are cited as major reasons that result in cases falling through, thereby resulting in low conviction rates.
  - An offence under Sections 5 and 6 of the Act (i.e. determination and communication of sex of foetus) can be committed by a 'word' or a 'sign' for which there is no physical proof. This makes it difficult for the authorities to collect evidence in support of the court complaints and the evidence collected is often weak and is unable to establish beyond reasonable doubt the crime committed by the accused.
  - In several decoy cases, witnesses turned hostile – thus weakening the case – perhaps due to inadequate protection provided by the state.
4. As prescribed under the law, these cases are non-compoundable in nature, but they are still withdrawn by AAs for a variety of reasons

5. Respondents have expressed how the minimal punishment of a maximum of three years of imprisonment and a maximum fine of Rs 10,000/- is not a serious enough deterrent, especially when viewed against the high demand for and profit margin in such services
6. The authorities find it difficult to follow up with different magistrates and public prosecutors for each case; this is exacerbated by the lack of a designated court for the Act and violations under it.
7. In the current scenario, cases under the Act are few and far between, leading to inadequate awareness about the Act among the judiciary and public prosecutors.
8. Women are often unaware of their rights under the Act; they also do not know which authorities to approach for help if coerced into a sex determination test.
9. There is ambiguity as regards the qualifications of medical professionals/service providers recognized in the Act; and medical professionals are not always aware which practices are considered unethical as mentioned in the Act

## RECOMMENDATIONS

---

This study has revealed that some of the most critical challenges of implementing the Act are well-known and understood. There have also been several initiatives in the past that have recommended key action points so as to help strengthen the law and therefore check indiscriminate sex selection and the consequent skewing of sex ratios. This study has led to a broad framework of suggestions and recommendations for future action, and the same have been arrived at through detailed analysis of the key observations and findings of the study at the conclusion of field work and group consultations in 18 Indian states. These recommendations are intended to serve as a reference point for future action by relevant authorities. They have been developed keeping in mind the fact that optimal efficiency and functionality of the existing administrative system is greatly desirable if the country is to witness stronger implementation of the Act. They also take cognizance of the fact that a tremendous improvement in legal practices is desirable too.

As a contribution to the broader body of knowledge that already exists in India as regards remedial measures that need to be implemented, this set of recommendations calls for an exhaustive and pragmatic review of existing implementation structures, systems and practices in the context of their efficacy in fulfilling the core mandate for which they have been set up. This study also recommends ongoing legal literacy drives among implementing authorities so as to ensure greater awareness, knowledge and therefore action to strengthen the legal approach to implementing this law.

Major recommendations are enlisted below. It is suggested that a broad, national plan of action be developed by all concerned stakeholders under the aegis of the Government of India, with specific initiatives mounted at the district and state-level by prioritizing action based on these recommendations.

**Enhance the effectiveness of existing implementation structures and systems; push for extensive reform in current practices among implementing authorities and concerned stakeholders**

1. There is an urgent need to review the existing structures and systems, including human resources and committees. Gaps in constitution of committees need to be specifically addressed and clear directions to ensure their active functioning are required. The CSB needs to be revived and strengthened to ensure effective implementation of the Act. Since the recent appointment of DCs as DAAs has led to an increase in implementation-related activities, it is recommended that such appointments be made in all states and the consequences of such appointments be studied

in detail. SIMCs should be constituted in each state and should be directed to regularly inspect the clinics (registered or otherwise) in their area.

2. Multiple responsibilities of AAs – if rationalized, prioritized and reduced – need to be addressed and resolved. There is a need to evolve a mechanism to ensure that regular meetings of the authorities are held and all relevant issues are discussed. The involvement of the civil society should be strengthened; more NGO representatives should be invited on the committees, so that these bodies are truly representative of the civil society and can act as watchdogs for the Act. Also NGO representatives should be appropriate, unlike the case in which a representative from the Red Cross Society, which does not focus on PCPNDT-related matters, was included as a member of a committee.
3. The maintenance of records (clinic records, minutes of meetings and court case documents) needs to be strengthened. Since it was observed that the maintenance of records was much better among those who acquired knowledge through workshops/meetings, organizing regular workshops is recommended.
4. Inspections and monitoring mechanisms, with a focus on regularity of action, are an imperative if the law must work. All authorities at the state, district and sub-district levels should be mandated to strengthen their monitoring activities and undertake regular inspection of clinic records and Form Fs. Monitoring plans to cover all clinics (registered or otherwise) need to be developed. Inspections may be undertaken by the AAs and Inspection and Monitoring Committees jointly, or by the Inspection and Monitoring Committees independently.
5. There is a need for dedicated personnel at the state, district and sub-district levels to monitor the implementation of the Act. Such personnel should be conversant with the law and should be able to assist the AAs in executing the functions prescribed in the Act.
6. The regular use of guidelines and user's manuals that can also include specialized information as regards the availability and utilization of funds could be encouraged to increase efficiency and reduce ad-hoc practices

**Greater engagement with and empowerment of implementing authorities is critical, and the same can be achieved through intensified training and sensitization with a focus on follow-up and periodic training**

7. In-depth and critical evaluation of training programmes may prove beneficial, if focused on providing suggestions regarding training methodologies at the national level. The entire training programme should be studied and modules must be prepared uniformly. On the basis of its field experience, the research team felt that the ethics component in the training programmes needs to be strengthened. It is recommended that regular training workshops be conducted at the district and block levels for AAs, ACs and Inspection and Monitoring Committees. The legal terminology

and language in the Act may be explained through simple user guides in local languages, if required. Efforts should also be made to regularly organize training workshops for medical practitioners, the judiciary and lawyers.

8. Focused capacity enhancement efforts that can encourage authorities to undertake decoy operations, besides receiving training on how to execute such operations, since decoy operations can contribute significantly to the implementation of the Act.
9. There is an urgent need to organize more workshops to sensitize the judiciary and PPs on the nature of the crimes under the Act since their level of awareness is low. Also, drafting is a serious barrier in getting convictions and complaints are often filed without properly highlighting the facts of the case or the nature of the crime. The prosecutors should be provided adequate training in this.

**Case law documentation, legal processes and rigour can be strengthened through a set of actions and therefore contribute significantly to a much more robust legal approach**

1. Intensive and regular training and orientation as a skills-enhancing exercise for implementation authorities should be provided regular training to acquaint them with the processes of law and gathering evidence, besides the availability of legal guidelines and checklists may strengthen the collection and submission of strong evidence, which is the basic requirement for ensuring conviction. They should also be provided with checklists detailing the types of evidence which should be collected for the offences under the Act. A checklist of the offences of conducting sex determination tests, illegal advertisements and non-maintenance of records is attached in Annexure 5.
2. AAs should ensure that before filing a court complaint, they have prepared adequately for the case. A full-time legal advisor for PNDT should be appointed in each state to give advice and draft and prepare cases under the Act for the authorities in every district. Such state-level legal support to the AAs would ensure the collection of adequate evidence, better drafting and proper follow-up, thereby strengthening the possibility of a speedy verdict.
3. Given the complex nature of crimes under the Act, the practice of referring to a user's guide on the Act (some of these are already available) should be encouraged. These guides should be published and translated in all local languages, and disseminated widely for usage in district PCPNDT cells across the country. This will help improve the collection of evidence, which, in turn, will improve the conviction rate.
4. Considering the number of cases withdrawn, instructions should be issued to the implementing authorities that cases should be filed after careful consideration and examination of all the facts. The guidelines should specify that once a complaint has been filed, the case should not be withdrawn since the offences under the Act are non-compoundable.

5. Since very few cases have been filed so far, there is a need to urge the authorities to undertake rigorous inspections of clinics (registered or otherwise) and conduct regular audit of records. The authorities should be encouraged to initiate action under the Act in case any irregularities are detected.
6. A reason why most cases are filed under 'non-registration of clinics' may be that the DAAs are familiar with the provisions related to this offence. Therefore, the AAs should be provided training on the other offences under the Act. This may increase the number of cases filed.
7. To get around the problem of witnesses turning hostile, it may be useful to record the raid or decoy operation. Also, whistleblower protection should be guaranteed to decoys so that there is a greater chance of having independent witnesses available in cases.
8. The efforts of enthusiastic officials must be recognized and applauded to ensure that the motivation to effectively implement the Act remains alive.
9. Lack of adequate use of law while drafting complaints results in weak court complaints. In order to address this gap, training workshops for prosecutors and relevant implementing authorities should be organized regularly. Guidelines on how to prepare court complaints for different offences could also be issued to the relevant authorities or prosecutors. Since there are no designated courts, magistrates or prosecutors who deal exclusively with cases under the Act, it is recommended that a special cell be created for this purpose. The cell should include magistrates and lawyers who are conversant with the Act. Currently, cases go to the courts as per territorial jurisdiction. Also, if a few of the regular courts at the district or state level could deal with only these cases on certain days of the week, the cases could be concluded speedily. This would facilitate better follow-up by the NGOs and AAs. Designated courts would also facilitate coordination between the complainant and the prosecutors. For instance, in Delhi, since there are different prosecutors and magistrates handling cases in different courts, the AA is required to brief the concerned prosecutor and magistrate every time it is due to be heard in the court of law.
10. In order to expedite the conclusion of cases, it is recommended that a provision for *ex parte* judgments or other commensurate punitive measures be made after a reasonable number of 'absences or no-shows' by the accused.
11. Though the issue of the penalties awarded under the Act was outside the scope of this study, taking into account the opinion of several implementing authorities that the penalties are not commensurate with the nature of the crime, it is recommended that the penalties be made harsher. Against the high profit margin in such services, harsher penalties may act as a deterrent.

**Advocacy and Campaigns to enhance awareness of the Act and its provisions, besides addressing larger social issues are critical**

12. Several respondents in this study have felt that social crimes such as sex determination and sex selection are difficult to curb solely with legal interventions. Legislations such as the Act can succeed only when supported by social advocacy. Studies should be undertaken to develop strategies for effective social advocacy, campaigns at district, state and national level may be undertaken to raise the discourse on the issue of lax implementation of the Act and therefore mobilize wide support to enable a law to walk on the ground
13. Further studies should be initiated to devise effective communication strategies to spread awareness of the Act among women, who are often unaware of their legal rights and the mechanisms available to access these rights.

Some states are already mounting state-wide action plans to strengthen implementation of the Act. A national plan of action with a focus on state-level revitalization of existing systems would be a viable way forward. The study has shown that there have been several initiatives in the past that have tried to address the need for better implementation of the Act, and it is therefore recommended that actionable suggestions from as many such initiatives as possible be pooled, and detailed state and national level action plans be created with a focus on measurable outputs and positive outcomes. Doubtless, there is an urgent need for legal activism in the states. Social crimes such as sex determination and sex selection are difficult to curb solely with legal interventions. Legislations such as the Act can succeed only when supported by social advocacy. However, effective social legislation can be a strong deterrent of negative social action and thereby bring about positive change. In conclusion, a powerful and actionable plan can make all the difference. There is no reason to believe it cannot.

# ANNEXURE 1

## REGISTERED BODIES UNDER ACT

Table 2. Year-wise number of bodies registered (up to June09)

S. No.	State/UT	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	TOTAL
1	Andhra Pradesh	1843	181	225	22	414	457	305	173		3620
2	Arunachal Pradesh	19	-	-	4	-					23
3	Assam	170	23	32	41	28	20	11			325
4	Bihar	327	35	47	87	43	40	7			586
5	Chhattisgarh	83	172	30	33	51	18	26	3		416
6	Goa	69	8	10	15	3		30	-3		132
7	Gujarat	1515	450	189	290	193	317	177	113		3244
8	Haryana	649	141	63	50	45	58	85			1091
9	Himachal Pradesh	107	39	14	20	13	13	1	5		212
10	Jammu & Kashmir	-	-	-	-	-	88				88
11	Jharkhand	116	-	-	132	68	49	79	24		468
12	Karnataka	728	434	96	427	213	219	197			2314
13	Kerala	533	208	161	97	52	126	98	46	42	1363
14	Madhya Pradesh	630	144	171	57	102	92	42	74		1312
15	Maharashtra	2861	663	713	592	604	364				5797
16	Manipur	20	1	3	1	8					33
17	Meghalaya	14	4	3	1		1				23
18	Mizoram	11	-	-	3	2	2	4	4		26
19	Nagaland	2	3	-	9			3	2	2	21
20	Orissa	114	80	43	42	9	83	65	61		497
21	Punjab	877	170	106	99	90	-10	23			1355
22	Rajasthan	663	152	145	80	232	37	102	89		1500
23	Sikkim	4	2	4	1	-	5	2	3		21
24	Tamil Nadu	1625	419	490	159	218	292	636	82		3921
25	Tripura	32	2	5	4	2	1	7	3		56
26	Uttarakhand	144	53	47	40	28	29	42	1		384
27	Uttar Pradesh	1085	824	336	436	332	476	436	115		4040
28	West Bengal	524	119	105	207	239	99	47	191		1531
29	A & N. Island	6	-	-	-	-	4				10
30	Chandigarh	45	8	9	3	5	4	4			78
31	D. & N. Haveli	3	-	3	2	-			3		11
32	Daman & Diu	5	3	3	1	-					12
33	Delhi	1098	337	239	196	146	-305	5	14	13	1743
34	Lakshadweep	9	-	-	-	-					9
35	Puducherry	29	3	4	2	2	4	9	3		56
	<b>Total</b>	<b>15960</b>	<b>4678</b>	<b>3296</b>	<b>3153</b>	<b>3142</b>	<b>2583</b>	<b>2443</b>	<b>1006</b>		<b>36261</b>

Note: The bodies registered include the following:

GCC- Genetic Counseling Centres; GL - Genetic Laboratories; GC -Genetic Clinics

USC/IC - Ultrasound Clinics/Imaging Centres; JAGCC/GLIGC- Jointly as Genetic Counseling Centres/Gen. Labs./Gen. Clinics.

MC(I) - Mobile Clinics (Vehicles); OBA/FC/IC- Other bodies/IVF Centres/Infertility Centres

The negative figures for Delhi and Punjab during 2006-07 are due to suspension / cancellation of registered bodies

# ANNEXURE 2

## RESEARCH TOOLS (QUESTIONNAIRES)

### USED FOR THE STUDY

#### Respondent : Appropriate Authority

State/ District/ Sub-district/ Block/ Taluka (Please specify)

Name:

Designation:

No. of years of Service:

Duration at Present Post:

Where did you get your knowledge of the Act?

*From documents (yes=1, no=2)*

*Training workshops (yes=1, no=2)*

Are you aware of the processes related to the Act?

*Filing court complaints (yes=1, no=2)*

*Conducting sting/ decoy operations (yes=1, no=2)*

*Collecting evidence (yes=1, no=2)*

*Conducting search and seizure (yes=1, no=2)*

*Maintaining records (yes=1, no=2)*

Who is responsible for investigating complaints under the Act?

*Program Officer (yes=1, no=2)*

*Pharmacist (yes=1, no=2)*

*Nurse (yes=1, no=2)*

*Any other, specify*

What records are maintained at your level?

*Reports received from clinics (yes=1, no=2)*

*Files of court cases (yes=1, no=2)*

List of registered clinics(yes=1, no=2)

Manufacturers of ultrasound machines(yes=1, no=2)

Any other, specify

Investigator's comments

What are the steps undertaken to implement the Act?

Scrutiny of records(yes=1, no=2)

Conducting sting/ decoy operations(yes=1, no=2)

Do you think decoy operations are useful for implementing the Act?

Have you conducted decoy operations?

If yes, in how many cases have you conducted?

Do you think there are sufficient resources allocated?

What are the challenges you faced in conducting them?

Insufficient funds(yes=1, no=2)

Pregnant women to pose as decoys(yes=1, no=2)

Other witnesses(yes=1, no=2)

Any other, specify

Do you involve police in the following activities?

Sting operations(yes=1, no=2)

Search and seizure operation(yes=1, no=2)

Collecting evidence(yes=1, no=2)

If the answer to the above is no, then why?

Do you use funds generated through registration for monitoring activities under the Act?

Are you in contact with State Medical Council?

If yes, have they initiated any action against violators?

How many clinics do you inspect in a year?

What records do you inspect?

Investigator's comments

Are you handling any case related to PCPNDT?

How many Act-related cases are you handling at the moment?

---

What is the status of these cases?

---

*Pending*(yes=1, no=2)

---

*Disposed of*(yes=1, no=2)

---

*Withdrawn*(yes=1, no=2)

---

*Any other, specify*

---

Who initiated the complaint for these cases?

---

*DAA, by regular visits*(yes=1, no=2)

---

*DAA, by surprise visits and search operations*(yes=1, no=2)

---

*DAA, by scrutinizing forms submitted by clinics*(yes=1, no=2)

---

*SAA*(yes=1, no=2)

---

*Individual*(yes=1, no=2)

---

*NGO*(yes=1, no=2)

---

*Media*(yes=1, no=2)

---

What are the types of violation in these cases?

---

*Sex determination and communication*(yes=1, no=2)

---

*Advertisement*(yes=1, no=2)

---

*Non registration*(yes=1, no=2)

---

*Non maintenance of records*(yes=1, no=2)

---

*Any other, specify*(yes=1, no=2)

---

With whose help did you prepare these court cases?

---

*DAC*(yes=1, no=2)

---

*PP*(yes=1, no=2)

---

*NGO/ social activist*(yes=1, no=2)

---

*Any other, specify*

---

How often do you interact with them to coordinate efforts in investigation and building a case?

---

Investigator's comments

---

What is the average number of meetings with Advisory Committees before filing a case?

Are these documents shared in the meetings?

*Draft court complaint(yes=1, no=2)*

*List of evidence(yes=1, no=2)*

*List of witnesses(yes=1, no=2)*

*Any other, specify*

Who is/ was handling these cases?

*PP(yes=1, no=2)*

*Private legal practitioner(yes=1, no=2)*

What actions have been taken by you regarding these cases?

*Sealing of machines(yes=1, no=2)*

*Imposing fines(yes=1, no=2)*

*Suspending licences(yes=1, no=2)*

*Any other, specify*

Is handling the Act an additional responsibility for you?

Do you find this additional responsibility cumbersome?

Should there be a dedicated task force handling the activities under this Act?

Should AAs be free to engage private legal practitioners?

What measures do you think are needed to strengthen the implementation of the Act?

*Increased manpower(yes=1, no=2)*

*Increased awareness(yes=1, no=2)*

*More funds(yes=1, no=2)*

*Guidelines on how to collect evidence(yes=1, no=2)*

*Guidelines on how to conduct investigations(yes=1, no=2)*

*Any other, specify*

Investigator's comments

What is the process followed in filing cases?

What are the challenges/ difficulties you faced while filing cases?

What is the time frame between receipt of a complaint and filing of a case in the court?

What is your experience with the courts and the handling of cases?

Any other questions asked?

**Respondent: Member – Advisory Committee**

State/ District/ Sub-district/ Block/ Taluka (Please specify)

Name:

Designation:

No. of years of Service:

Duration at Present Post:

Where did you get your knowledge of the Act?

*From documents(yes=1, no=2)*

*Training workshops(yes=1, no=2)*

Are the following persons part of the Advisory Committee?

*3 medical experts(yes=1, no=2)*

*1 legal expert(yes=1, no=2)*

*1 govt officer(yes=1, no=2)*

*3 social workers(yes=1, no=2)*

How many meetings have been held by your committee during the last year?

What issues are discussed in your meetings?

*Registration of clinics(yes=1, no=2)*

*Complaint for suspension or cancellation of registration(yes=1, no=2)*

*Complaints received for offences under the Act(yes=1, no=2)*

*Any other (Specify)*

Investigator's comments

What is the average number of cases discussed per meeting?

Are complaint/case related documents circulated prior to the meetings?(yes=1, no=2)

Is there difficulty in completing the quorum of the Committee? (yes=1, no=2)

Do you regularly review the activities undertaken by Appropriate Authorities (yes=1, no=2)

What is the result of these meetings and can you describe any action taken?

Who are the other authorities (eg. Central Supervisory Board, Medical Councils, Inspection and Monitoring Committees) you interact with? Do you interact with them on a regular basis?

What are the challenges you face as a part of the Committee?

What are the steps that can be taken to implementation and monitoring of the PCPDNCT Act?

What future plans has the your Committee envisaged to expedite the implementation process?

Any other questions asked?

**Respondent: Member – State Supervisory Board**

Name:

Designation:

No. of years of Service:

Duration at Present Post:

Where did you get your knowledge of the Act?

*From documents (yes=1, no=2)*

*Training workshops(yes=1, no=2)*

Are the following persons part of the Board?

*Minister (Health and Family Welfare)(yes=1, no=2)*

*Secretary (Dept. Of Health and Family Welfare)(yes=1, no=2)*

*Representative from Dept of Women and Child Development(yes=1, no=2)*

*Representative from Dept of Social Welfare(yes=1, no=2)*

*Representative from Dept of Law(yes=1, no=2)*

*Representative from Dept of Indian System of Medicines and Homeopathy(yes=1, no=2)*

*3 women members from Legislative Assembly/ Legislative Council(yes=1, no=2)*

*Social Scientists(yes=1, no=2)*

*Legal Experts(yes=1, no=2)*

*Women Activists(yes=1, no=2)*

*Gynaecologists and Obstetricians(yes=1, no=2)*

*Paediatricians or medical geneticists(yes=1, no=2)*

*Radiologists or Sonologists(yes=1, no=2)*

How many meetings have been held by your Board during the last year?

Investigator's comments

Do you review activities of Appropriate Authorities?(yes=1, no=2)

Do you send consolidated reports to Central Government? (yes=1, no=2)

How many reports have to sent to the Central Government this year?

Was there any action taken by Central Government on your reports? (yes=1, no=2)

What was the nature of these actions?

Investigator's comments

What issues are discussed in your meetings?

*Public awareness related activities(yes=1, no=2)*

*Activities of Appropriate Authorities(yes=1, no=2)*

*Monitoring implementation of the Act(yes=1, no=2)*

*Any other (Specify)*

*Cases filed under the Act*

Is there difficulty in completing the quorum of the Committee? (yes=1, no=2)

What is the result of these meetings and can you describe any action taken?

Who are the other authorities (eg. Central Supervisory Board, Medical Councils, Inspection and Monitoring Committees) you interact with? Do you interact with them on a regular basis?

What are the challenges you face as a part of the Board?

What are the steps that can be taken to implementation and monitoring of the PCPDNCT Act?

What future plans has the your Board envisaged to expedite the implementation process?

Any other questions asked?

**Respondent: Member – Inspection and Monitoring Committee**

State/ District (Please specify)

Name:

Designation:

No. of years of Service:

Duration at Present Post:

Where did you get your knowledge of the Act?

*From documents(yes=1, no=2)*

*Training workshops(yes=1, no=2)*

When was your Committee formed?

How many members does the Committee have?

How often does the Committee meet?

How many meeting did you have last year?

What are the responsibilities of your Committee?

What is the yearly target of inspections?

How many inspections have you conducted so far?

What are the challenges that you have while conducting inspections?

What steps do you take before you conduct an inspection?

What steps do you take after you conduct an inspection?

What measures are needed to implement the Act effectively?

What are the steps envisaged by your Committee to strengthen the implementation of the Act?

**Respondent: Public Prosecutor**

Name:

Name of Court:

Duration in office:

Districts handled:

Since 2003, how many complaints have been filed under the Act in the court?

How many complaints have been filed under your supervision?

Overall, how many cases are you currently handling?

What per cent of your time is devoted to PCPNDT cases?

At what stage are you involved by the district PCPNDT cell- at the time of complaint or before?

*At the time of complaint(yes=1, no=2)*

*Before the complaint(yes=1, no=2)*

Under what offences are the cases usually filed?

*Non registration of clinics(yes=1, no=2)*

*Advertisement(yes=1, no=2)*

*Sex-determination and comminucation(yes=1, no=2)*

*any other (specify)*

What is the procedure followed after a court complaint is filed?

Do you face any difficulties in producing evidence at court for these cases? (Y/N)

If yes, what difficulties do you face?

*Lack of witness(yes=1, no=2)*

*Lack of evidence(yes=1, no=2)*

*Lack of proper drafting or documentation of the cases.(yes=1, no=2)*

*any other (specify)*

What is the level of awareness regarding the Act within the judiciary? (Good, average, poor, Can't say)

What are the common arguments at hearings (in court) opposing your stance in cases booked under different offences?

Compare your experience in PCPDNT Act cases with other court cases fought in terms of:

*time taken (more=1/ less=2)*

*involvement of parties preparing the case (Good=1, average=2, poor=3, Can't say=9)*

*strength and availability of evidence (Good=1, average=2, poor=3, Can't say=9)*

*getting witnesses(Good=1, average=2, poor=3, Can't say=9)*

*closer hearing dates (Yes=1/No=2)*

Have you faced any interference while handling a case? (Yes=1/No=2)

Why do cases get dismissed?

*when evidence is not available(Yes=1/No=2)*

*out of court settlement(Yes=1/No=2)*

*when accused clinics get itself registered mid-trial(Yes=1/No=2)*

*any other (specify)*

---

What per cent of Act-related cases would these be?

---

What is the level and extent of your interaction with the PCPNDT cell? (satisfactory=1, not satisfactory=2, can't say=9)

---

Should a special court be created to handle cases filed under Act? What are the pros and cons?

---

What is the usual life of a court case? What are the main sources of delay?

---

Sex selection and sex determination are crimes that are not very visible and detecting offenders is therefore difficult. How can the visibility of this crime be increased?

---

Do you think that this law is potent enough to put a check on female foeticide and adverse sex ratio?

---

What steps should be undertaken to make its implementation more effective?

---

Any other questions asked?

### **Respondent: Chief Judicial Magistrate**

Name:

Name of Court:

Duration in office:

Since 2003, how many complaints have been filed under the Act in your court?

Overall, how many cases are you currently hearing on the Act?

Under what offences are the cases usually filed?

*Non registration of clinics (Yes=1/No=2)*

*Advertisement(Yes=1/No=2)*

*Sex-determination and comminucation(Yes=1/No=2)*

*any other (specify)*

What is the procedure followed after a court complaint is filed?

There are not many convictions under the Act? Why? Is it due to:

*Lack of witness(Yes=1/No=2)*

*Lack of evidence(Yes=1/No=2)*

*Lack of documentation during seizure - "Panchnama" filing(Yes=1/No=2)*

*Lack of documentation during Case Drafting or "Pleading"(Yes=1/No=2)*

*any other (specify)*

What is the level of awareness regarding the Act within the judiciary? (Good=1, average=2, poor=3, Can't say=9)

Have you faced any interference while handling a case? (Yes=1/No=2)

Why do cases get dismissed?

*when evidence is not available(Yes=1/No=2)*

*out of court settlement(Yes=1/No=2)*

*when accused clinics get itself registered mid-trial(Yes=1/No=2)*

*any other (specify)*

What per cent of Act-related cases would these be?

Should a special court be created to handle cases filed under Act? What are the pros and cons?

What is the usual life of a court case? What are the main sources of delay?

Sex selection and sex determination are crimes that are not very visible and detecting offenders is therefore difficult. How can the visibility of this crime be increased?

Do you think that this law is potent enough to put a check on female foeticide and adverse sex ratio?

What steps should be undertaken to make its implementation more effective?

Any other questions asked?

**Respondent: NGO**

Name:

Designation:

Address:

What is the level of awareness among medical practitioners about the Act?  
(good=1, average=2, poor=3, can't say=9)

What is the level of awareness in the community about the Act? (good=1,  
average=2, poor=3, can't say=9)

What is the main sources of spreading information about the provisions of the  
Act?

*Documents(Yes=1/No=2)*

*Workshops/ meetings(Yes=1/No=2)*

*Any other (specify)*

Have there been any efforts on your organization's behalf ? (Yes=1/No=2)

If yes, what efforts have been taken?

*Discussion in meetings(Yes=1/No=2)*

*Regular circulars(Yes=1/No=2)*

*Workshops/ meetings(Yes=1/No=2)*

*Any other (specify)*

Has your organization ever conducted sting operations? (Y/N)

If yes, how many?

Did you file a complaint to the Appropriate Authority before/after such a sting  
operation was conducted?

Investigator's comments

Was action initiated by Appropriate Authorities after you lodged complaint/s?

Are you in touch with District AAs and APPs to forward any cases or collect  
evidence?(Yes=1/No=2)

Who are the other authorities (eg. Central Supervisory Board, Medical Councils, Inspection and Monitoring Committees) you interact with? Do you interact with them on a regular basis?

Sex selection and sex determination are crimes that are not very visible and detecting offenders is therefore difficult. How can the visibility of this crime be increased?

Do you think that this law is potent enough to put a check on female foeticide and adverse sex ratio?

What steps should be undertaken to make its implementation more effective?

Any other questions asked?

**Respondent: Civil Society Representative**

Name:

Designation:

Address:

What is the level of awareness among medical practitioners about the Act?  
(good=1, average=2, poor=3, can't say=9)

What is the level of awareness in the community about the Act? (good=1, average=2, poor=3, can't say=9)

What is the main sources of spreading information about the provisions of the Act?

*Documents(Yes=1/No=2)*

*Workshops/ meetings(Yes=1/No=2)*

*Any other (specify)*

Have there been any efforts on your behalf ? (Yes=1/No=2)

If yes, what efforts have been taken?

*Discussion in meetings(Yes=1/No=2)*

*Regular circulars(Yes=1/No=2)*

*Workshops/ meetings(Yes=1/No=2)*

*Any other (specify)*

Has you ever conducted sting operations? (Y/N)

If yes, how many?

Did you file a complaint to the Appropriate Authority before/after such a sting operation was conducted?

Investigator's comments

---

Was action initiated by Appropriate Authorities after you lodged complaint/s?(Yes=1/No=2)

---

Are you in touch with District AAs and APPs to forward any cases or collect evidence?(Yes=1/No=2)

## ANNEXURE 3

### LIST OF INTERVIEWEES

Officials interviewed in Delhi as part of the study

S.no.	Name	Designation	Date of interview
<b>Directorate of Family Welfare, Government of Delhi</b>			
1.	Dr. Poornima Wanchoo	CMO, PCPNDT Cell, Directorate of Family Welfare, Government of Delhi	21.08.08 And 25.11.08
2.	Ms. Kamaljeet Kaur	Medical Officer, PNDDT, Directorate of Family Welfare	25.11.08
<b>State Supervisory Board</b>			
3.	Asmita Basu	Former member, State Supervisory Board	28.11.08
<b>State Appropriate Authority</b>			
4.	Dr. A.K. Jena	State Appropriate Authority, Act	25.11.08
<b>State Advisory Committee</b>			
5.	Dr. N.B. Vaid	Chairperson, State Advisory Committee	25.11.08
<b>Ministry of Health and Family Welfare</b>			
6.	Mr. Kal Singh	Director, PCPNDT, Ministry of Health and Family Welfare, Government of India	7.11.08 and 26.11.08
7.	Dr. I.P. Kaur,	Deputy Commissioner, Training and PCPNDT, Ministry of Health and Family Welfare, Government of India	29.08.08
<b>District Appropriate Authorities</b>			
8.	Dr. B.N. Acharya	CDMO, North District	15.09.08
9.	Dr. Meera Hajjal	CDMO, South District	12.09.08
10.	Gajendra	Public Health Nurse, South District	12.09.08
11.	Dr. Asha Malviya	CDMO, East District	10.09.08
12.	Rohit	Pharmacist, East District	10.09.08
13.	Dr. Senapati	CDMO, West District	22.09.08
14.	Dr. B. K. Sharma	CMO in charge of PCPNDT/MTP, West District	22.09.08
15.	Dr. P.C Sahoo	CDMO, North East District	18.09.08
16.	Dr. Subramaniam	CMO, North East District	18.09.08
17.	Gitanjali Singh	Public Health Nurse, North East District	18.09.08
18.	Ravinder Kaur	Public Health Nurse, North East District	18.09.08
19.	Dr.V. Kapoor	CDMO, Charak Palika Hospital, NDMC	27.08.08

		District	
20.	Dr. J. Sharma	CDMO, South West district	25.09.08
21.	Dr. G.P. Sahoo	CDMO, North West district	25.09.08
22.	Dr. Bansal	CMO, Central District	23.09.08
23.	Dr. Ashok Khurana	CDMO, Central District	23.09.08
<b>Additional Public Prosecutors</b>			
24.	Rajat Kalra	Additional Public Prosecutor, North West District Court, Rohini	1.10.08
25.	Praveen Kumar	Additional Public Prosecutor, Tees Hazari Court	23.09.08
<b>NGOs and social activists</b>			
26.	Dr. Sabu George	Social Activist who filed PIL	8.10.08
27.	Dr. Sonal Randhawa	Founder member of the Sonological Society of India and a medical practitioner in Delhi	28.09.08
<b>Individual complainant</b>			
28.	Dr. Mitu Khurana	Individual complainant under the Act	3.10.08
<b>Medical Council of India</b>			
29.	Dr. G.S. Rana	Member of General Body of the Medical Council of India (MCI), Head of Department of Nephrology, Sri Ganga Ram Hospital	26.11.08
<b>Central Supervisory Board</b>			
30.	Shalini Prasad	Joint Secretary, PNDD, MoHFW, New Delhi	29.10.09
31.	Gitanjali Goel	Metropolitan Magistrate, Patiala House, New Delhi	23.10.09

## List of Interviewees in 17 States

### Appropriate Authorities interviewees

State (1=Orissa, 2=Maharashtra, 3=Bihar, 4=Assam, 5=WB, 6=Karnataka, 7=Gujarat, 8=Haryana, 10=Punjab, 11=Rajasthan, 12=Jharkhand, 13=AP, 14=Goa, 15=Tamil Nadu, 16= UP, 17=Uttaranchal)	Respondent : Appropriate Authority (1=DAA, 2=SAA, 3=Block AA)	State/ District/ Sub-district/ Block/ Taluka	Name	Designation
1	1	District-Cuttack	Dr. Shishir Kr. Swain (MS. Gen.Surgery)	CDMO- Cuttack
1	1	Nayagarh	Dr. Sudhir Kumar Kar	CDMO- Nayagarh
1	1	Khurda	Dr. S.S.Kar(MD Med. )	CDMO- Khurda
1	2	Orissa	Dr. Dushasan Muduli	Director Health and Family Welfare
2	1	Kolhapur	Dr.V.V. Yadav.	Civil Surgeon and D.A.A
2	3	Shirol	Dr.Ashok Dada Killedar	Medical officer (Grade II) & Acting Supdt. ,Block AA
2	3	WALVA	Dr. A.T.Shende	Medical Officer,Grade I
2	3	SHIRALA	Dr.R.D.Shrivast av. (Ex-AA)	Medical Officer,Grade II
3	1	District-Patna	Dr. Pranab Kumar	Civil Surgeon
3	1	District- Sitamarhi	Dr. Vijay Kumar Prasad	Civil Surgeon
4	1	State	Dr. Motilal Nunisa	Director of Health Services (FW), Assam
4	1	District- Kamrup	Dr. N.N. Deka	District Appropriate Authority

4	1	District- Nagaon	Dr. Babul Saikia	District Appropriate Authority
5	2	State	Dr. Malini Bhattacharya	Chairperson, West Bengal Commission for Women
5	1	District: Kolkata	Dr. S. Chakroborty	DA, DHS Admin and Program assistant, PNDDT division
5	1	District-Howrah	Shri. C. Dev	CMOH
6	1	Bangalore Rural District{ Devanahalli, Hoskote, Nelamangala and Doddaballapur taluks)	Dr. Chanmalliah	District Health and Family Welfare Officer
6	1	Bangalore Urban District	Dr. Shiv Ram	DHO and Family Welfare Officer
6	1	Mandya District	Dr. H.L. Krishne Gowda	District Health and Family Welfare Officer
7	1	District-Gandhi nagar	Sanjeev kumar	DC/DM
7	1	Distt.-Mehsana	Ajay Bhadoo	DC/DM
8	2	Haryana	Dr. Narveer Singh	DGH
8	1	Dist. - Kurukshetra	Dr. Parveen k Garg	Civil surgeon cum district appropriate authority
8	1	Dist.-Sonipat	Dr. Maha Singh Ahlawal	Civil Sargean
10	1	Distt.-Fatehgarh Sahib	Dr. Satwant Bhalla	Civil Surgeon
10	1	Distt.- Patiala	Dr. Kuldip kumar	Civil Surgeon
10	2	State- Punjab	Dr. J. P. Singh	Director Family Welfare

11	2	State - Rajasthan	Shri B. K. Gupta	DLR, Law Deptt.
12	2	Jharkhand	Dr. Anjali Das & Dr. D. N. Pandey	Director- Health, jharkhand
12	1	Jharkhand	Dr. uday Pratap Singh	Civil Surgeon, dhanbad
13	1	Hyderabad	Dr.Jayakumari MBBS,DGO	Dist.Medical & Health Officer (DM&HO)And DAA
13	1	Nalgonda	Dr.D.Champa Naik	Dist.Medical & Health Officer
13	2	Andhra Pradesh	Dr M S Srinivas Rao MD	Add.Director, Family Welfare And SAA
14	1	South Goa	Dr.Sanjeev G Dalvi	Medical Supd/Deputy DirectorNorth goa dist And Ex AA South Goa
14	1	South Goa	Dr.Ruando E Desa	Med Supdt/Deputy Dir And Present AA South Goa Dist
2	1	Sangli	Dr Vilasrao Nikam	Civil Surgeon And DAA Sangli
15	1	Krishnapuri	Dr V.Devaraju.	Joint Direcort of Health Services And AA on Behalf of Collector
15	2	Tamilnad	Dr P.Nandagopals amy.	Director of medical and rural health services and SAA
15	1	Salem	Dr.C.Mani	Joint director Of Health Services and DAA on Behalf of collector
16	1	Meerut	Mr. Amit Kumar Ghosh	District Magistrate, Meerut.

17	1	Haridwar	R.Meenakshi Sundaram	District Magistrate
17	1	Dehradun	Shri Amit Negi	District Magistrate
16	2	Lucknow, UP	Dr. Gyan Singh	Joint Director, Family Welfare, PCPNDT under jurisdiction.

#### Advisory Committee member interviewees

State	Respondent: Member – Advisory Committee (1=SAC, 2=DAC)	State/ District/ Sub-district/ Block/ Taluka (	Name	Designation
1	1		Mrs.Amrita Patel	Mrs.Amrita Patel
2	2	Sangli	Dr.Hemlata M. Kothari,Ph.D	Member DAC
3	2	PATNA District	Dr. Sibani Mukharjee	District Advisory Committee Member
4	1	State	Dr. Motilal Nunisa	Chairperson, SAC
4	2	District - Nagaon	Dr. Bijoya Dutta Baruah	Member and Gynecologist
4	2	District - Kamrup	Dr. Malati Baruah	NGO representative to DAC
5	1	State	Dr. A.K. Banerjee	State Nodal Officer, PNDT
5	2	District-Howrah	Dr. Debashish Ghosh	MMIC, Howrah Municipal Corporation
6	2	B'lore Urban Dist	Dr. Prakash Gupta	Chairman
6	2	Mandya Dist	Dr. Somashekar	Member Secretary and the RCH officer
6	2	B'lore Rural District	Dr. Shivraj Hegde	Member

7	2	District-Gandhi nagar	Dr. Dinkar Rawal	CDHO
7	2	Distt.-Magsana	Dr. Jana	CDHO
8	2	Dist. - Kurukshetra	Dr. Jagram	Deputy civil surgeon (family welfare)
8	2	Dist.- Sonipat	Dr. Chandra Prakesh Arora	Civil Surgean
9	1	Madhya Pradesh	Dr. Veena Sinha	Deputi Director
10	2	Distt.-Farehgarh Sahib	Dr. Gurinder kaur Brar	Dy. M.C. FGS
10	2	Distt.- Patiala	Jagbir Singh	Member of Distt. Advisory committee, Patiala
11	1	State- Rajasthan	Dr. Kanta Chajer	Akhil Bharatiya Mahila Mandal
11	2	Distt.-Shrigaganagr	Dr. Ratan lal Agrawal	Chief Medical & Health Officer
12	1	Ranchi	Mr. Shyamsundar Ojha	secretary, Bar Association, Civil Court, Ranchi
12	1	Ranchi	Mr. Shankar Rawani	Member, District Advisory Committee & Social Worker
13	2	Hyderabad	Dr.Balamba Puranam MD DGO	Retd.Gyaenac
13	2	Nalgonda	Ram Mohan Rao Pulijala	Advocate
14	2	Goa	Ms Rama,Social Worker	
15	2	Krishnapuri	Dr.S.Rajalakshmi,DGO	Asst.Surgeon Dist.HQ Hospital
15	2	Salem	G . George	Director
16	2	Meerut	Dr.Devendra Kumar Singhal	Consultant Pediatrician
17	2	Haridwar, Uttarakhand	Dr. Ganga Mahesh	District Leprosy Officer

17	2	Dehradun	Dr.Prema Dimri	Chief Medical Superitendant Female Hospital, Dehradun. Secretary - DAC.
16	2	Lucknow	Dr. Alley Siddiqui.	Sr. consultant, Balram Hospital, Lucknow.

### Supervisory Board member interviewees

State	Name	Designation
1	Prof. Asha Hansh	member SB
4	Dr. Motilal Nunisa	Member, SSB
5	Dr. S.P.Banerjee	Joint Director, Health
7	Dr. Ranaut	PCPNDT State Consultat
9	Dr. A N Mittal	Joint Director Health (PCPNDT)
11	Smt. Shalu Hembrom	Senior Program coodinator
12	Mr.Arshad Hussain	
14	Dr.Rajnanda Dessai	Dir.of Health Services
15	Ms.M.Bargavi Devendra	Hon.Secretary,Women's indian Association
16	Dr. Neelam Singh	Member SMC, SAC

### Inspection and Monitoring member interviewees

State	State/ District (1= District, 2=State)	Name	Designation
1	District level task force for monitoring	Mr. Kishore Kumar Mohanty IAS	DM Cum Collector- cuttack
4	District- Kamrup	Dr. K.Pathak	District Immunization Officer and member of DIMC

4	District- Nagaon	Dr. Sushil Das	SDM and HO, DHS, Nagaon
5	State	Dr. A.K. Banerjee	Member, SIMC
5	District-Howrah	Dr. Papri Nayek	ACMOH
8	Distt.- Sonipat	Dr. Rajiv Selhi	President - IMA Sonipat (member IMC ex-officio)
9	State - Madhya Pradesh	Dr. Ashwini Syal	Sr. Paediatrician, Aysuhman Hospital, Bhopal
12	Jharkhand	Dr. V. B. Prasad	M. O. C.S. office
12	Dhanbad	Dr. Leena Singh	Tutor, Patliputra Medical College, Dhanbad & Vice President IMA, Jharkhand
16	Meerut	V.K.Gupta	ICC
16	lucknow	Dr. V. B. Prasad	M. O. C.S. office

#### Public Prosecutor interviewees

State	Name	Name of Court
1	Mr. Nimai charan Badjena(PP- CRIME)	SDJM
2	Vidyadhar G. Sardesai	Addl. Dist. & Sessions Court, Jaisinghpur, Kolhapur Dist.
3	Surendra Prasad Yadav	Civil Court - Patna
3	Arun Kumar Singh	Civil Court- Sitamarhi
4	Mr. Junaid Ahmed	Gauhati District Court and member of District Advisory Committee
5	Mr. Tapan Ghosh	CMM
7	Mr. S.I. Ghasuram	Session court
8	Manpal	CJM
9	Smt. Pratima Umaraiya	CJM
10	Ashok kumar Gupta	DJ. Court

10	Kuldip kausal	Distt. & session court patiala
11	Adv. Pramod kumar	MJM Court
11	Adv. Rajendra Soni	District & session court Shriganganagar
12	Mr. B. N. Sharma	J.C. Ranchi
12	Mr. Digvijay Mani Tripathi	Civil Court, Dhanbad
13	J.Prabhakar	Dist.Criminal court Namphally.
14	Ms.Savita	JMFC(D)Margao South Goa Dist
2	Advocate Rajesh N Mhadke	JFMC Islampur Shirala Block
15	Vidyadhar G. Sardesai	Addl. Dist. & Sessions Court,Jaisinghpur,Kolhapur Dist.
16	Deepak Raj Premi	CJM, Meerut
17	R.S.Bisnoi	Judicial Magistrate , Haridwar
17	Mr.Gunsola	Dehradun District Court (CJM Court)
16	Pradeep Kumar Mishra	C. J. M. Lucknow

#### Judicial Magistrates interviewees

State	Name	Name of Court
1	Mrs. Renuka Sharma	SDJM- Khurda, Bhubaneswar
3	Surendra Prasad Pandey	District Court
4	Mr. C.K. Bhuyan	DM's court
6	L.B.Jambagi	III Addl Chief Metropolitan Magistrate
6	Smt. Y. Kalpana	Pr. Civil Judge(jr. Div) & JMFC
12	Deepak Kumar	Chief Judicial Magistrate, Dhanbad
2	Hon. Justice SS gaikwad 1st class JMFC Jaisinghpur	JMFC DISTRICT
16	Shivanand Singh	CJM, Meerut.

**NGO Interviewees**

State	Name	Designation	Address
1	Mr. K.P. Baral	Secretatry	VJSS-Khurda
1	Dolly Das	Secretatry	Project Swaraj-Cuttack
1	Usha Pattnaik	Secretatry	Gania Unnayan Committee-Nayagarh
2	Aadhar Bahu Udheshiya Swayam Sevi Sanstha ( Shivaji Mali)	President	P.O- Herwad, Tal. Shirol, Dist. Kolhapur.
3	Mrs. Mansi	Secretatry	Naridhan- Sitamarhi
3	Ms.Sudha Varma	Secretatry	Shakti Vardhani- Patna
4	Ms. Jyotika Sharma	Senior Coordinator, Voluntary Health Association of Assam (state chapter of VHAI) and member of SAC	Guwahati
5	Ambalika Roy	HRLN	Kalighat, Kolkata
5	Sunita Dey	West Bengal Voluntary Association	Locate in Park Circus, Kolkata with offices in Howrah
6	Jagadeesh B N	Advocate and Member	
6	Gowri	Co-ordinator of the PNDD project	Mandya
7	Amarbhai	Secretary, young citizens	Mehsana
7	Ayesha ben	Dircetor, Mahila Sawa Mandal	Mehsana
8	Surjeet kaur	President-Bharti gramin vikas sumiti, pipli, Kurukshetra	Bagwan nagar colony, P.O.- Pipli, Kurukshetra, HR
8	Subhash Vasistha	Secretary Distt. Red cross socity	Sonipat
9	Sashikant Sharma	Secretary	Brahmapuri, Chandrvati Nagar, Bhind

9	Mukesh Kumar	Executive Director, Madhya Pradesh Voluntary Health Association	Indore-20, Madhya Pradesh
10	Gurinder Kholi	Chairman PNDT Act IMA Punjab	Ward No. 4 sarhind road, Farehgarh Sahib
11	Pratap Singh	Vivekanand Education Trust	5M8 Meera marg, Jawar Nagar, Shriganganagar
12	Sri Sachidanand	Secretary	Maharshi Mehi kalyan Kendra, Ratu Road, Indrapuri, Ranchi
12	Mr. Sheikh Anwar, Manav Utthan Chetna Kendra	Secretary	Phularitand, Navagarh, dist. Dhanbad
13	V. Rukimini Rao	President	12-13-440, St#1, Tarnaka, Secunderabad
14	Preeti	Co Ordinator	SANGATH GOA.
2	Prakash Jadhav	Director	Prakash Sikshan Sanstha tasgoan Sangli
15	P. Shanmugan	Secretary Administration	Indian Red cross Society, Krishna giri
15	Daivanadi	Co Ordinator Programe	AID, Omullur Salem
16	Smt. Atul Sharma	Secretary, Sankalp, Meerut.	F/12, Chetan Medical Complex, Chippi Tank, Meerut- 250001.
17	Smt. Geeta Balodi	Secretary, Kanya Jeevan Dayini Samiti.	43/1, Mohini Road, Dehradun- 248001

#### Civil Society Representative Interviewees

State	Name	Designation	Address
1	Dr. Parikshit	Councillor -Family Councelling Centre	VJSS-Khurda
1	swapna Kumari	coordinator	Santa Memorial Rehabilitation Centre - Bhubaneswar
2	Megha Pansrae	Lecturer in Russian	Department of Foreign Languages, Shivaji University, Kolhapur

3	Mrs. Madhuri	Social Worker	Sitamarhi- Bihar
3	Mrs. Sanju kumari	Lawyer and social activist	Patna
6	Sumithra Acharya	Advocate	G-02, Himavan Apartments II, Coconut Garden, Bangalore
6	Joby Jacob Verghese	Mangaing Trustee, Home for Destitutewomen with mental disabilities	Katamnellur, hosk taluk
7	Ms. Lataben Choksi	Director, Jyoti Mahila Mandal, Gandhinagar	
8	Smt. Saroj Saini	NGO	Vill.- Sunderpur, Kurukshetra
8	Smt. Shanta jain		Khoti No.-62, Sce. 15, Sonipat
9	Dr. Dev Singh Shekhawat	Convenor	Santosh Nagar, Gau Road Johar, Bhind
10	Dr. N. S. Bawa	Chairman Act	Bawa Nursing Home, Bassi pathanan, Distt.- Fatehgarh Sahib
10	Vijay kumar goyal	President-patiala welfear sociaty	18, Guman colony Near 22 No Phatak, patiala.
11	Smt. Manihakor Nanda	Chairman Nagar Parishad	Jasvant villa, Premnagar, Shriganganagar
12	Mr. Magadhesh	Member PUCL, Former State Secretary , Jharkhand	Murlinagar, near RNC Office, Water Tank, Phulatand, Saraidhela, Dhanbad.
12	Dr. Renu Dewan	Member, PUCL, Jharkhand	104, Kalinga Apartment, Main Road, Ranchi
13	Dr Meera Lal	Asst.Professor	Osmania University Campus Hyderabad
15	Mr Kulandei Francis	Director	IVDP 201-1 A ,Gandhi Nagar Krishna Giri
15	Uma Rani Salvaraj	Member Rotary Club	New No 14, Bharathiar street Subramaniya Nagar Salem 05
16	Mrs. Manju Gupata	Member, District Rotary Club, Meerut	
16	Bhaiyaji	Social Worker / Activist	Raghuvir Niwas, 48 Saket Palli, Lucknow

# ANNEXURE 4

## CASE LAW DOCUMENTATION

---

**CASE TITLE: *State through District Appropriate Authority-cum-Civil Surgeon, Faridabad (Complainant) VERSUS Accused:1. Dr. Anil Sabhani, Prop. M/s Dr. Anil's Ultrasound Opp. G.H. Palwal, Faridabad, 2. Sh. Kartar Singh son of Sh. Lakhi Singh, Technician M/s Dr. Anil Ultrasound, Opp. G.H. Palwal, Faridabad Mesident of V.P.O. Maheshpur, District Faridabad, 3. Ms. Dr. Anil Ultrasound, Opp. G.H. Palwal, Faridabad (H) through Dr. Anil Sabhani***

This judgment was passed wherein a doctor and his assistant at Palwal, Haryana, were convicted after four years of filing a complaint against the accused. The facts of the case are set in 2001 where the accused who was a doctor by profession and his assistant- a lab technician conducted a pre natal diagnostic test on a woman and communicated the sex of the foetus to her. This was in contravention of the provisions of the Act.

It was argued that the said offence contravened Section 4 of the Act because the section talks about regulation of the pre natal diagnostic techniques which essentially mean that the technique can be used only for the reasons given in the Act and the reason given in the Act is not to 'disclose the sex of the foetus'. It also contravened Section 5 of the Act which discusses that the written consent of the pregnant woman has to be taken before the doctor or the technician undertakes a diagnostic test on that woman. It also prohibits the communication of the sex of the foetus to the woman concerned or any of her relatives. In this case, the consent of the abovementioned woman was not taken and documented properly and the sex of the foetus was communicated to the family. The accused also violated Section 6 of the Act which again prohibits the determination of the sex of the foetus by any means.

The court found both the accused guilty of committing a heinous crime of sex determination and punished both under the Act with a sentence of two years and a fine of Rs 5000 each. The learned judge stated that a lenient view cannot be taken in such a situation where the accused have committed such a crime. The judge said that "to kill a person who may have the opportunity to defend himself is a very serious offence, but even more serious is the offence where a person kills someone who is not even in a stage to defend himself".<sup>52</sup> The judge said that "it is high time that everyone including the state governments realize that the sex ratio of the country and of particular states is getting worse every year. There are still some states where men at the age of 44 are still unmarried because there are fewer women to marry as compared to the number of marriageable men".

This is a landmark judgment which sets an example for all. It was Dr. Baljit Singh Dahiya, who retired as Haryana Director General of Health in 2005, and a small team who initiated efforts against unscrupulous doctors in a state which has the second lowest sex ratio in the country. He was the first to use in-built provisions in the Act to raid and charge-sheet doctors willing to abort female fetuses for a hefty fee. When he was asked about how the decoy operations were planned against doctors committing an offence under the Act<sup>54</sup>, he said that it took months of planning and intelligence gathering. He had raised a committed team to raid clinics suspected of conducting sex determination. Even after retirement, Dr. Dahiya continues to travel and motivate others like him to keep up the pressure.

---

<sup>54</sup> Accessed from <http://www.isidelhi.org.in/hrnews/isidownload/Women/women-2006.pdf> on 3 November, 2009

This section provides a description of the offences under the Act and the nature of cases filed under these offences:

### **SEX DETERMINATION AND COMMUNICATION:**

A total of 126 cases have been filed under this offence in the selected states in India

No cases have been filed under this offence in the states of Gujarat, West Bengal, Orissa, Goa Andhra Pradesh and Assam.

Certified court copies of case documents were collected from various states and analyzed in detail. Below is a summary of the analysis of these cases:

#### **Case 1: Harish G. Thakkar (Hari X-ray & colour Doppler Sonography Clinic Ahmedabad V/s State of Gujarat & ors. Case**

---

Facts of the case:- The Petitioner had two ultrasonography machines in the above mentioned clinic. The DAA at Ahmedabad found that one of the machines was being used for sex determination. The AA sealed both of the machines and filed a court complaint. The license of the petitioner for working as radiologist was also cancelled. The relevant data including thermal and X-ray print from the machine were extracted, sealed and kept with the AA.

The accused appealed in the Gujarat High Court requesting that sealed machines should immediately be released and his loss should be compensated at interest rate of 18% and his machine should be released and he should be allowed to practice. The AA countered by saying that the offence of sex selection is a serious offence and no order should be given to release the sealed machines. The Advocate General argued that any order of release of these sonography machines, can be said to be indirectly permitting the sale of the machines and shall take away the effect of deterrence, more particularly amongst the doctors having such sonography machines. The permission to sell the machine may result into serious prejudice to the purpose of the Act and to the sensitive cause take out by the State Government.

Judgment by Honourable Justice C.K.Buch of the Gujarat High Court rendered opinion which has been extracted as specified below:

1. Undisputedly, the petitioner is an accused and has to face a criminal trial for alleged wrong.
2. Undisputedly, one of the two machines was found to be used for sex detection when the alleged criminal wrong was being committed by the applicant-petitioner-accused. By the way of and abundant caution and to have an appropriate impact of the action taken by the competent officer, the second machine which was lying there in the same place (clinic) was also seized.
3. So far as the second machine is concerned, this court can easily pass the release order and permit the applicant petitioner for its sell because this even cannot be treated as muddmal.
4. The statute (Act) does not provide for confiscation of the muddamal seized and sealed at the conclusion of the trail, but as provided in the Code of Criminal Procedure, on termination of trial, the court is supposed to pass an order as to disposal of the muddamal and in this regard the law is settled.
5. The compulsion that has been fastened on the shoulders of the applicant-petitioner-doctor will have more deterrent effect. The release of machine is one thing and the sale of such machines under compulsion and that too under the orders of the court is materially different. On the contrary, such orders would obviously take an appropriate message in the field of the applicant-petitioner. A person selling sonography machine on account of orders passed by the Court would

obviously get less than reasonable resale value. This would be sufficient annoyance to the applicant-petitioner as well as similarly situated wrong doers who are yet to be caught.

Hon'able High Court, therefore, allowed the Civil Application but under following conditions:

1. Before sale of the machines, petitioners should give information about the sale of the machines in daily newspaper or Medical Journal in which it should be notified that machines will be inspected on 29/3/2008.
2. Petitioner has been given responsibilities to make the service engineer of the WIPRO company (machine manufacturer) present at the time of inspection of machines by buyers.
3. During investigation, an authorized AA will open the seal of the machine at 11a.m and again sealed it at 5p.m. A.A. has authority to collect and use information and data related with machines in form of soft copy or hard copy.
4. After the above mentioned processor if any buyer would like to do agreement with the petitioner to buy these machines than petitioner should inform the Court so that court can issue orders for the sale of machines.
5. The applicant-petitioner shall give the details of the purchasers including name and address to the District Appropriate Authority
6. The Applicant-petitioner shall file undertaking that the machine shall be sold to the person who is having registration and is authorized to use the same and having license of the same.
7. The applicant shall not directly/indirectly deal with the machines and/or help the purchaser for using the same
8. The applicant-petitioner shall give personal bond of the equal amount of the consideration of the machine which is allegedly found in the commission of offence and the applicant-petitioner shall file an undertaking before the court within a period of one week and shall execute the personal bond of Rs 20 lacs before the court.
9. On filing of the undertaking before the court and on execution of the bond as stated above, the applicant petitioner shall approach the competent authority with a request to open the seal and competent authority may permit the applicant-petitioners to remove the machines from the where they are sealed and lying so that the purchaser can take away those machines.
10. The competent officer if needed may seek approval of the Higher Officer or any other body by placing copy of the present court order and that exercise should be completed by the authority on receipt of this request within a week.

Honourable Justice Bhuj, however, accepted the request of the Advocate General to stay the operation of the order for 15 days considering the sensitivity of the dispute. The respondents moved to larger bench but no relief was granted. They have then filed appeal in the Supreme Court against the above order. Affidavit in this regard was filed on 19/9/08. On 29/9/08 in Supreme Court Special Leave to Appeal no. 23358/08 was presented on which Justice Arijeet Pasayat & Justice Mukundakam Sharma interim stay has been granted.

#### **KEY OBSERVATIONS**

1. The High Court acknowledged the AA's claim that there should be deterrence for the doctors using sonography machines for detecting sex of the fetuses so that they cannot easily sell off the machines. The High Court fastened a burden on the shoulders of the accused to advertise the fact that the machine was a part of evidence to a trial and that the sale of the machine can take place only after orders from the court. The High Court stated that this was sufficient annoyance and would take an appropriate message to wrong-doers.

**Case 2: "Dr. Kaushik Babulal Shah vs. District Appropriate Authority, Ahmedabad"**

---

Facts of the case: The AA had received some complaints against the accused's clinic and based on these complaints, planned a decoy operation. A pregnant woman Smt. Kailashben Nitin Kumar Parmar was readied. Smt. Parmar went to Dr. Kalpesh Patel's clinic for pre-natal ultrasonography on 23/5/09. Smt. Parmar met with the receptionist Mr. Vijaybhai Goswami, who gave her a number and asked her to call on the number if she wants to get the sex of the foetus checked. Dr. Vaidya and Smt. Parmar planned the decoy operation and withdrew 20 notes of Rs 500/- each and got them marked and photocopied. Another woman readied as her Jethani (elder sister-in-law) and for independent witness Dr. Balchand Waghela living nearby and Mr. Deepak K.Patel were called. On 26/5/09, the women went to the clinic of Dr. Kalpesh Patel after fixing up with Vijaibhai. Vijaibhai however took her to another nearby Manthan Imaging House which was owned by Dr. Kaushik Babulal Shah. Smt. Parmar was sonographed and was asked to sit outside for result. She was brought downstairs on road and was told by Vijaibhai that she has a male child. The accompanying woman paid Rs 5000/- to Vijaibhai and called up Dr. Vaidya. Rs 5000/- was paid to the Vijaibhai before the sonography. Dr. Vaidya raided the centre immediately and seized the ultrasonography machine in front of two witnesses. He also seized Form F and recovered 24 currency notes from Vijaibhai. However, only 12 marked notes of Rs 500 could be seized from Vijaibhai and FIR was lodged for the remaining on the same day.

Dr. Kaushik filed appeal in the Gujarat High Court against the action on 22/6/09. On 30/6/09, the case was quashed by the single member bench and release of machine was directed. The dissatisfied AA has filed Letter patent Appeal Number 1371/09 in front of a larger bench of Gujarat High Court.

Documentary evidences presented by the AA included Panchnama (Rojkam), Form F seized from the clinic, statement of the decoy, two witness statements, list of notes recovered with photographs and a copy of the F.I.R.

The accused pleaded the following at the High Court:

- (1) No complaint about the accused had been received by the Appropriate Authority before the incident.
- (2) The decoy operation was not planned for the accused.
- (3) The decoy had admitted that the accused did not disclose to her the sex of the foetus
- (4) The person who disclosed the sex of the foetus of the sex to the decoy was not an employee of the accused but of his rival. Hence, chances of a plot against the accused cannot be ruled out
- (5) No marked currency notes were recovered from the premises of Dr. Kaushik's centre.

- (6) Sex disclosure was not made in the centre
- (7) Ultrasonography machine should be released because there is no reason to believe that it may furnish any evidence of commission of any offence punishable under the Act.

The AA argued that the person who revealed the test results was a non-medico and therefore, could not have checked the sex of the foetus. Further, there is no possibility of rivalry between the AA and the accused. Two cases were quoted to support the case: The landmark judgment of the larger bench of Gujarat High Court in the Dr. Manish C. Dave vs State of Gujarat case and Dr. Harish Thakkar vs State of Gujrat case.

Judgment: The Gujarat High Court Single Bench quashed the case and directed release of the ultrasound machine. Based on this, the AA has currently appealed to the Supreme Court on following grounds:

- (1) The judgment of the single bench does not conform to the provisions of the law.
- (2) Sex determination, which is a punishable offence under the Act has occurred in this case.
- (3) Single bench has accepted that the machine was seized under the sting operation.
- (4) It has also accepted that currency notes have been recovered from the premises of the clinic and the person who revealed the sex of the foetus to the decoy, did so only after having heard about it from the doctor.

#### **Key observations:**

1. The process of sting operation was well planned with giving due consideration to preparations like currency note issuance from treasury, their marking and photocopying in advance; readying of decoy and witnesses in advance and fixing up with the receptionist in advance.
2. All the necessary processes - like seizure of currency notes and lodging of FIR for missing ones, and seal and seizure of ultrasound machine and records in front of witnesses – seem to have been duly followed.
3. Case presentation in High Court and the appeal to the larger bench appear to well prepared.

#### **Case 3: *State of Rajasthan and others vs. Dr.Naini Maiyyar, Coordinator, Pariwaar Sewa Clinic in the court of Additional Chief Judicial Magistrate***

---

Sections under which complaint has been filed: Sections 315, 116-511, Indian Penal Code and Section 23 of the Act

Facts of the case: In June 2006, Sahara Samay channel telecasted a news-series with title 'Kokh Mein Katla' in which glimpses of video recording of sting operation conducted by the channel against doctors involved in sex selection. In the same series glimpses of a recording were shown on 13/6/06, in which the accused advised the pregnant woman who came to her for abortion to go to Jaipur Nursing Home because the woman has come 'late' and 'sex test' is also not possible in her clinic. Upon knowing about the telecast and receiving directions from Director, Medical and Health Services, Government of Rajasthan, an order was issued by the CMHO regarding sealing of the clinic and furnishing of records. The State Appropriate Authority issued direction on 4/8/06 to the CMHO to file complaint in the court under Act directly and lodge FIR in the Medical Termination of Pregnancy Act in related police station.

Based on the direction, the CMHO Shri Ganganagar filed complaint in the court of Additional Chief Judicial Magistrate.

The following witnesses were used in the complaint: the DAA, two representatives from Sahara Towers and the decoy.

The list of documents submitted with the complaint

- 1) Copy of the registration of the Pariwaar Sewa Clinic under MTP Act
- 2) Written copy of the discussion recorded in the Sahara C.D.
- 3) C.D. of the Sahara Samay News Channel Sting Operation

The accused in protest has filed Civil Writ Petition No. 6140 of 2006 in the High Court of Rajasthan at Jodhpur under Article 226 of Constitution of India seeking writ in the nature of mandamus quashing the order dated 14/6/06 passed by CMHO.

Following facts and grounds were submitted by the petitioner:

1. The Petitioner is registered under MTP Act and is not a Genetic Clinic. None of its clinic all over the country has any ultrasound or imaging machine or scanner and therefore, PSS does not carry any pre-natal diagnostic procedures and its activities are limited to sterilization and abortion processes upto 12 weeks.
2. Rule 7 of the MTP Act provides for cancellation or suspension of certificate of approval under certain circumstances. It provides that if Chief Medical Officer of the district is satisfied that the place approved under Rule 5 of the Act is not being maintained properly therein and the termination of pregnancy is at such place cannot be made under safe and hygienic conditions, he shall make a report of the fact to the Committee giving the detail of the deficiencies or defects found at the place and the committee may, if it is satisfied, suspend or cancel the approval, provided that the committee shall give an opportunity of making representation to the owner of the place before the certificate of the place under Rule 5 is cancelled. The clinic of the petitioner was not inspected prior to the issue of the said order.
3. The said order in the case was not issued by the committee authorized in that behalf under Rule 5 of the MTP Act. Director of Medical and Health Services has no power or jurisdiction to issue the impugned order.
4. The provisions of the MTP Act do not provide for sealing of any place approved for termination of pregnancy.

The complaint filed by the DAA in the Additional CJM court, as well as, the petition in the High Court, is currently pending.

**Key observations:**

1. The present case is of violation of section 3A of the Act but the section does not seem to be duly quoted while praying punishment under section 23 of the Act. This reflects inadequacy in case preparation at the stage of complaint filing and is indicative of missing of an opportunity of imparting additional strength the complaint.

2. The petition filed in the High Court tries to achieve quashing of the order dated 14/6/06 saying that it is not in conformity with the MTP Act. The DAA should, however, argue that the petitioner has violated the

Act and order has been passed in conformity with the same. Punishment under Section 23(3) of the Act is applicable in the present case.

**Case 4: Dr. (Mrs. Shashi Mehta) CDMO and Appropriate Authority under the Act Vs. Dr. Pawandeep Singh Kohli.**

---

This has been filed under this offence, under Section 5(2) and Section 6 of the Act read with the Rules 1996 and Section 200 of the Code of Criminal Procedure

Relevant sections:

Section 5 (2) states that no person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs, or in any other manner.

Section 6 states that (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 or 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.

In this case, the accused was alleged to communicate the sex of the foetus to a pregnant woman. This is in contravention of Section 5(2) and 6 of the Act.

The facts of the case are described below:

- A sting operation conducted by a television channel at the accused's clinic i.e. Kohli Imaging & Diagnostic Centre, East of Kailash, New Delhi. The channel alleged that the accused had conducted a pre-natal sex determination test and conveyed sex of the foetus to the pregnant woman. This is in contravention of Section 5 (2) and Section 6 of the Act.
- Based on this sting operation, the Appropriate Authority (AA) of South District, New Delhi, conducted a search and seizure operation at the accused's centre. During this operation, they suspended registration of the centre under Section 20(3) of the Act and sealed two ultrasound machines of the centre. This information was furnished to the Hon'ble Additional Chief Magistrate at Patiala House Court, who accorded to the AA vide order dated 20.2.06, to seal the above said two ultrasound machines of the Centre and retain them under custody of the undersigned at the centre.
- The Editor of the television channel was requested by the AA to provide:
  - a video CD of the event
  - details of the patient involved in the sting operation
  - list of persons involved in the filming of the event

- a copy of the actual complete programme telecast.

After many efforts, the AA obtained a copy of the video CD. The video was shown to the Advisory Committee (a Committee constituted under the Act) and after viewing the contents, the Committee and the AA were of the opinion that a court complaint should be filed against the accused under the Act.

- The records submitted by the accused under PNMT maintained at the centre were called for by the AA. Scrutiny of the records received indicated several inconsistencies.
- On 16.5.06, the AA appeared before the court and filed the complaint.

The trial court closed the pre-charge evidence since the complainant because the complainant was given several chances to conclude the pre-charge evidence but to no effect. The accused was discharged under Section 245(i) Cr.P.C.

A Revision Petition under section 397, 399 and 401 Cr.P.C. for quashing the order dated 08.02.2008 was filed on 06.05.2008 by the complainant. The order of the Additional Sessions Judge on the revision petition is recorded below:

- The Additional Sessions Judge (ASJ) held that the Ld. MM while discharging accused was not in consonance with jurisdiction conferred U/S 245 CrPC. Rather, it was an evasion of exercise of jurisdiction which has resulted in serious miscarriage of justice and accordingly impugned order suffers from illegality.
- The ASJ noted that the Ld. MM could have dealt with the case differently:
  1. It is a matter of record that on 4.12.2008 the Chief Medical Officer was present before the court who was the complainant as a public servant having filed complaint in discharge of her official duties. The court could have taken up her examination on record the preliminary evidence.
  2. Since CD sting operation was part of judicial record, it could have been played and observations taken on record. Since Section 245(1) CrPC provide jurisdiction to court to summon any person to appear before it or to produce any document, the television channel which carried the alleged sting operation could have been summoned to know the details of the patient involved in the prenatal diagnostic for determination of sex.
  3. Complainant, who is the prescribed authority under the Act, could have been given a necessary direction on how to produce evidence during the trial. Complainant could have been directed to produce before the court result of those two ultrasound machines.

Closing the prosecution case after just two hearings simply with an observation that no complaint evidence was produced despite a final opportunity recorded for that day was not an exercise of jurisdiction stipulated under Section 244 of CrPC. Discharge of the respondent in the given circumstances was wrong and illegal and it is accordingly liable to set aside. Once Ld. MM found a prima facie case made out for the alleged offence, enquiry and trial must end up with some logical consequences wherein besides application of complainant to examine its evidence before the court, it is duty of the court to secure evidence which appeared from the material placed by the complainant before the court. Ld.

Defense counsel tried his best to convince this court that exercise of jurisdiction of Ld. Metropolitan Magistrate suffers from no illegality or serious irregularities, but Ld. Counsel could not convince the Additional Sessions Judge, who ordered that the impugned order be set aside and both parties were ordered to appear before Ld. Metropolitan Magistrate

**Key observations:**

- a) The DAA was unable to produce evidence such as list of witnesses, evidence such as a recording of the sting operation, even after six hearing dates (i.e. one year nine months after the complaint was filed).
- b) More than three and a half years later, the case is still at the 'pre-charge evidence' stage.
- c) Earlier, there was only one Additional/Assistant Public Prosecutor who was appointed in one district court to represent the complainant i.e. the District Appropriate Authority. However, now every Magistrate within a district court (such as Patiala House) has a designated APP in his own court. This implies that every time a case is transferred to a new Magistrate, there is a new APP who handles the case on behalf of the complainant. However, there is also a possibility that these APPs are transferred within the life of the case, which implies that no single prosecutor handles the case from the beginning till the end of the trail.
- d) The authorities handling the case felt that the designated APP has drafted the complaint better than the private practitioner who was earlier appointed to draft the original court complaint.
- e) This is a powerful order because it urges the MM to provide guidance to the complainant.

**Case 5: Dr. P.K. Bansal, CDMO vs. Dr. Sartaj Ahmad**

---

Complaint under Section 3(1) read with Section 23 of the Act and Section 4 & 5 of the Medical termination of Pregnancy Act, 1971 read with Section 200 of the CrPC.

Relevant sections:

Section 3 (1) of the Act states that on and from the commencement of this Act, no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques.

Section 23 of the Act states lists the offences and penalties under the Act

Section 4(1) of the MTP Act states that no place shall be approved to be used for termination of pregnancy unless the Government is satisfied that termination of pregnancies may be done there in under safe and hygienic conditions and provided it satisfies the requirements specified in the section.

Section 5 of the MTP Act states that a place approved under Section 4 mentioned above may be inspected by the Chief Medical Officer and may call for any information or may seize any article, medicine, ampule, admission register of other document, maintained, keep or found at the place.

Facts of the case are:

1. The National Monitoring Committee (PNMT) along with the then CDMO South and other officers of the South district raided premises of the accused where it was disclosed that MTP and ultrasound examination were both being done, without any registration of Centre for MTP as well as Ultrasound.

2. MTP/PNDT documents, OPD slips and registers were seized from the premises of the accused and instruments conducting MTP were sealed.
3. An application was moved from the court on 12.04.06 for retaining the sealed items which was allowed.
4. A notice dated 2.05.06 was served on the accused for conducting of MTP and ultrasound without getting his nursing home registered, but the reply filed by the accused was not satisfactory.
5. The Monitoring committee on close scrutiny found that MTP was conducted and there was enough evidence prima facie under the Act to file a complaint.
6. Evidence submitted: Copy of the notifications relating to Act and MTP Act, inspection reports prepared on the site of inspection and statements of accused admitting that ultrasound machines were being used in his clinic.

Status of the case: Cognizance against the accused for the offences was taken and summons were issued. But a revision petition was filed against the order alleging that the order was passed without considering the facts and without application of mind. The Ld.M.M. did not attempt to understand if the complaint made is prima facie or not. There is no evidence on record against the present revision petition. An application was made on behalf of the property owner for vacant possession of the premises. However, the MM dismissed the application by stating that there is no ground for desealment of the property in question. Regarding the undue hardship to the applicant – landlord, there is remedy available under law to enable her to recover payment of rent of her premises. The case is still at the stage of ‘pre-charge’ of the trial.

**Key observations:**

1. The DAA has performed its duty as prescribed by the Supreme Court of India through its order passed in Civil Writ petition No. 301/2000 dated 4.05.2001 where the Supreme Court specifically gave directions to all the appropriate authorities in the country to take specific actions for the effective implementation of the Act and also to act upon all the complaints received under the Act.
2. The DAA filed a complaint against not only against the owner of the clinic but also against the all medical practitioners practicing at the clinic.

In a case filed by the State of Rajasthan, CMHO (Shri Ganganagar) against a doctor in that area, a television channel showed clippings of the accused at the nursing home telling a woman that she has come late and the sex test will not be possible at her clinic. Based on this telecast and on receiving directions from the Director (Medical and Health Services) Government of Rajasthan, an order was issued by the CMHO regarding sealing of the clinic and furnishing of records. The DAA filed a complaint in the court of Additional Chief Judicial Magistrate under the MTP Act and the Section 23 of the Act. The list of documents submitted with the complaint included a copy of the registration of the accused clinic under the MTP Act, written copy of the discussion recorded by the television channel and the CD of the sting operation. The accused in protest filed a writ petition in the High Court of Rajasthan under Article 226 of the Constitution of India seeking writ in the nature of mandamus quashing the order passed by CMHO to seal the clinic. The grounds of the petition were that the petitioner is registered under the MTP Act and does not have any ultrasound clinics. Therefore, the clinic does not carry any pre-natal diagnostic procedures and its activities are limited to sterilization and abortion processes upto 12 weeks. The MTP Act provides for cancellation or suspension of certificate of approval under certain circumstances. It

provides that if Chief Medical Officer of the district is satisfied that the place approved under Rule 5 of the Act is not being maintained properly therein and the termination of pregnancy is at such place cannot be made under safe and hygienic conditions, he shall make a report of the fact to the Committee giving the detail of the deficiencies or defects found at the place and the committee may, if it is satisfied, suspend or cancel the approval, provided that the committee shall give an opportunity of making representation to the owner of the place before the certificate of the place under Rule 5 is cancelled. The clinic of the petitioner was not inspected prior to the issue of the said order. The said order in the case was not issued by the committee authorized in that behalf under Rule 5 of the MTP Act. Director of Medical and Health Services has no power or jurisdiction to issue the impugned order. The provisions of the MTP Act do not provide for sealing of any place approved for termination of pregnancy. An analysis is that the present case could have cited Section 3A of the Act but the section does not seem to be duly quoted while praying punishment under section 23 of the Act. This reflects inadequacy in case preparation at the stage of complaint filing and is indicative of missing of an opportunity of imparting additional strength the complaint. Though the petition at the High Court attempts to achieve quashing of the order by saying that it is not in conformity with the MTP Act, the complainant may argue that the petitioner has violated the Act and the order has been passed in conformity with the same.

**Case 6: *State of Haryana vs. Dr. Ved Prakash Agrawal, Proprietor, Agrawal Nursing Home, Ultrasound & X-ray Clinic, Kurukshetra, Haryana***

---

Case No. 127/06 in the court of Shri Naresh Kumar Singhal, Chief Judicial Magistrate, Kurukshetra

**Parties of the Case**

Complainant

State of Haryana through Civil Surgeon cum District Appropriate Authority, Kurukshetra

Accused

Dr. Ved Prakash Agrawal, Proprietor, Agrawal Nursing Home, Ultrasound & X-ray Clinic, Kurukshetra

**Sections under which complaint was filed**

Sections 5(1), 5(2), 6(a), 29 and Rules 9 and 10 punishable under section 23 of the Act.

**Cause of Action**

A sting operation was planned by the State Task Force and the District Appropriate Authority on 21/08/2006 against Dr. V.P. Agrawal of Agrawal Nursing Home. A decoy Smt. Gurmeet Kaur was readied as pregnant patient while a television channel correspondent Shri Pradeep Arya to record the operation though a spy camera, was made her husband with the help of an NGO member Mr. Puneet Choudhary. When the clinic was raided by the inspection team, Smt. Gurmeet gave the statement that the doctor has revealed her the sex of the foetus in her womb after ultrasonography. A mediator person named Surjit, who is compounder at Shah Nursing Home, was paid Rs 4000 for the purpose. The team sealed the ultrasound machine and seized documents which reflected following irregularities:

1. No entry about Smt. Gurmeet was found in the OPD register and Form F while an OPD slip was prepared and one female child and LMP - 3 months were written on it.

2. In most of the Form F column no. 18 and 19 were left blank.
3. Ultrasound of four ladies Smt. Sunita, Smt. Shalini, Smt. Kusum and Smt. Sulochana was done by Dr. Agrawal but signature on their referral slips of the doctor were missing.
4. The owner and the employee of center were not found having displayed prominently his/her name & designation on the dress worn by them, thus violating Rule 18 (viii) of the PCPNDT rules.

Dr. Agrawal was then issued a show cause notice on 24/08/2006 to which he replied and was given chance of personal hearing on 08/09/2006. His replies, during both the processes, were discussed in the PNDT Advisory Committee Meeting held on the same day. On 08/09/2006, as per the decision of the committee, registration of the center was suspended vide letter no. 376. Complaint was accordingly filed in the CJM court on 11/9/06.

#### **List of Documents submitted at the time of complaint**

1. Registration certificate of the clinic,
2. Form A of the clinic,
3. Referral slip for Smt. Gurmeet dated 21/08/06,
4. Statement of the decoy Smt. Gurmeet Kaur taken in front of the inspection team,
5. Inspection report,
6. Document Seizure form,
7. C.D. of the video recording done by the news channel correspondent,
8. Form F of Smt. Suneeta, Smt. Sulochana, Smt. Shalini and Smt. Kusum,

#### **List of witnesses attached with the complaint**

1. Complainant Dr. S.S. Saini, District Appropriate Authority cum Civil Surgeon, Kurukshetra;
2. Dr. K.K. Chawla, District Immunization Officer, Kurukshetra (inspection team member);
3. Dr. Parween Kumar, Medical Officer, CHC, Ladwa (inspection team member);
4. Dr. H.S. Saini, Medical Officer, CHC, Ladwa, (inspection team member);
5. Smt. Gurmeet (decoy woman);
6. Shri Pradeep Arya, correspondent Sudarshan channel, Kurukshetra;
7. Any other witness with the permission of the court.

#### **Nature of Pleadings by the accused (defense)**

1. There are no material facts in the complaint. No raid was carried out on 21/8/06. An inspection by the District Appropriate Authority was carried out on 18/8/06 in which all operation were found to be as per the Act.
2. The statement of the decoy is not believable as she has not been able to identify the doctor nor she uttered against him. Correspondingly, statement of other witnesses also become unbelievable;
3. The person, Surjeet, who was claimed to be mediator between the doctor and the patient who took Rs 4000 from the patient and disclosed sex of the clinic, has neither been included as accused or witness of the prosecution;
4. The claim that the clinic was given a chance of hearing on 8/9/06 is factless as no such chance was given.

5. There is discrepancy in the residential detail of the alleged decoy mentioned in her statement and the inspection report.
6. It is mentioned in the complaint that the raid was conducted by the State Task Force but no member of the State Task Force has been cited as witness to the complaint.
7. The name of Mr. Puneet Choudhary who has signed all the documents as a member of an NGO has not been mentioned in the witness list.
8. The contradictory reply of the application filed under Right to Information Act by a person Ravi Jagadhari in relation to the present case reflects that the allegations of the complainant are concocted.
9. The accused is a reputed doctor practicing since 1982 and has never been involved in any kind of criminal acts.

Following citations were quoted by the prosecution for pleadings for acceptance of charge-sheet:

- a. Section 228, 229 of CrPC
- b. Lalu Prasad vs. State of Bihar through CBI (AHD) Patna, 2007(1) ACJ, 507 (SC) of the Supreme Court.
- c. State of Orissa and another vs. Saroj Kumar Sahoo, 2006(1) RCR (Criminal), 324-325 of the Supreme Court
- d. Rajbir Singh vs. State of UP and another 2006(2) RCR (Criminal) 410-411 of the Supreme Court
- e. Balraj Kumar vs. Smt. Kuldeep Kaur 2006(4) RCR (Criminal) 185 of Haryana High Court
- f. Kanti Bhadrashah vs. State of West Bengal 2000 part 1RCR (Criminal) page 407 of the Supreme Court.

### **Status of the Case**

The accused applied for anticipatory bail u/s 438 Cr.P.C. on 30/10/06. **The decoy has turned hostile.**

On 15/4/08, chargesheet was accepted by the CJM court.

### **Analysis of trial proceedings**

1. Payment of fees should have been done through currency notes obtained from treasury.
2. No mention of name of the owner of the clinic in the initial statement of the decoy has been quoted as weakness of her statement. But it is a weakness but the court should be pleaded that the doctor was not wearing dress carrying his name.
3. Decoy turning hostile is a big set-back for the case. However CD of the video recording and inadequacies in record maintenance are strong evidences which can still lead to conviction in the case.
4. Copy of the show cause notice and corresponding response of the of the clinic should have been filed as documentary evidences with the complaint itself
5. Personal appearance of the center owner should also have been recorded and presented as documentary evidence.

6. Formal orders of the decoy operation of the clinic and constitution of the team should have been issued. A receipt of the order from the decoy would have helped in proving that the sting operation was carried out and would have acted as deterrent for her to turn hostile.

**Case 7: State of Haryana vs. Sunita Nursing Home, Kurukshetra**

---

Case No. 270/03 filed in the court of Chief Judicial Magistrate, Kurukshetra

**Parties to the Case:**

Complainant:

State of Haryana through District Appropriate Authority, Haryana

Accused:

1. Dr. Sunita Singh, BAMS, Proprietor, Sunita Nursing Home, Kurukshetra
2. Dr. Ajay Mundra, Ultrasonologist, Sunita Nursing Home, Kurukshetra
3. M/s Sunita Nursing Home, Kurukshetra

**Sections under which Complaint has been filed:**

Sections 6(a), 6(b), 5(1), 5(2), 4(3) and 29 of the Act and Rules 9 and 10 of the PCPNDT Rules punishable under section 23 read with section 27 of the Act. Charge-sheet has been filed under Sections 312 and 120B of the Indian Penal Code besides section 23 of the Act as mentioned in the complaint.

**Cause of Action:**

The District Appropriate Authority, Kurukshetra, along with his inspection team, a TV reporter and two public witnesses, raided Sunita Nursing Home on 18/9/2003 and found Dr. Sunita Singh performing medical termination of pregnancy (MTP) of Smt. Kuldeep Kaur in the delivery room of her Nursing Home although the same has not been approved under the MTP Act. The product of conception was found on the speculum and the D & C instruments were lying stained with blood. The team inspected the Ultrasound Center being operated by accused no. 2 in the Nursing Home and found following irregularities in record maintenance:

1. A number of Forms F attached with the consent forms of the patient were found blank while some of them had signatures of the Ultrasonologist only and a few had only the names and addresses of the patients in addition.
2. In most of the Forms F and consent forms, address of the patient was not mentioned at all or it was written incompletely
3. Date of diagnosis has also not been mentioned in some of the forms while in one of them, it was significantly deviating from corresponding referral slips.
4. The indications mentioned in the form F does not co-relate with results wherever written.
5. Declarations of the patients as well as ultrasonologist were not found maintained.
6. Referral slips were not maintained properly
7. OPD register mandated under the PNDT Act was not maintained
8. The owner and the employees of the center were not found having displayed their names and designations prominently on the dress worn by them.

The Appropriate Authority issued order of suspension of registration of the clinic with immediate effect on 22/9/03 along with show cause notice to the center for cancellation of the same. The reply of the show cause notice was received on 3/11/03.

#### **List of witnesses attached with the complaint**

1. Complainant Dr. S.S. Saini, District Appropriate Authority cum Civil Surgeon, Kurukshetra;
2. Dr. O.P. Gogia, District Family Welfare Officer, Kurukshetra (member of inspection team);
3. Dr Mrs. Sushma Saini, District Training Officer, Kurukshetra (member of inspection team);
4. Shri Ritesh Lakhi, Correspondent Zee Telefilms Limited, Mohali (Punjab);
5. Shri Omkar, s/o Ram Singh, r/o village Utshal, Kurukshetra (independent witness of inspection);
6. Shri Amarjeet Singh, s/o Shri Bachan Singh, r/o Jograkhera, Kurukshetra (independent witness of inspection).

#### **List of Documents submitted with the complaint**

1. Form B of the center
2. Registration Certificate of the Center
3. Form F along with referral slips dated 14/9/03
4. Seizure memo dated 18/9/03
5. Spot Inspection Report dated 18/9/03
6. G Form
7. Cash Receipt of the center
8. Sonography report of 5 women
9. Show Cause Notice for cancellation of registration
10. Reply of show cause notice by the center

#### **Nature of Pleadings by the defense**

1. The accused doctor placed revision petition in the court of the Additional District Judge under section 397 of the CrPC against charge-sheet saying that:
  - a. Inspection team is not authorized and complaint has not been filed by the Appropriate Authority
  - b. The case was not discussed in the Advisory Committee before filing of the complaint
  - c. The independent witnesses were not present on the occasion and have been added later
  - d. The fact that Kuldeep Kaur was brought to the Nursing Home in the condition of profuse bleeding has been ignored by the lower court.
2. No irregularity has been found against the accused in the past.
3. The District Appropriate Authority and the media person have colluded and submitted false report to gain cheap popularity.
4. Complaint has been filed under section 23 of the PCPNDT of the Act but charge has been framed under section 312 of IPC.

#### **Arguments submitted by defense counsel in response to the revision petition**

1. Inspection team has been formed duly and Civil Surgeon has duly been authorized as Appropriate Authority through Haryana Government notification dated 18/8/1997.

2. As per section 17(4)(d) of the Act, the Appropriate Authority shall have the functioning of seeking and consider the advice of the advisory committee on the applications for registration and on complaints for suspension or cancellation of registration. There is nowhere mentioned that before conducting the raid or before registration of FIR matter was required to be sent to advisory committee.
3. Non-joining of independent witness or absence of any complainant is not relevant at the time of framing of the charge.
4. There is no illegality in framing section 312 as the case relates to medical termination of pregnancy.

### **Status of the Case**

The ADJ court has dismissed the Revision petition of the accused. The case is pending in the court at the stage of evidence. Evidence of Prosecution Witnesses 1 & 2 is over while one of the independent witnesses has been declared hostile. The accused had applied for release of the seized ultrasonography machine under section 451 of the Cr.P.C. The application has been accepted and the machine has been de-sealed.

### **Analysis of Trial Proceedings**

1. The chances of conviction in the case are high though one of the independent witnesses has turned hostile because other witnesses and documentary evidences are relevant and adequate and the presentation of the case is effective.
2. The strength of the case would however have increased had the recording of the raid done by the media reporter been submitted as evidence. The complainant should also have filed affidavit in support of the complaint which presently seems to be missing.

### **Case 8: District Appropriate Authority Sonipat, Haryana vs. Dr. Pradeep Mukhi, Mukhi Hospital and Nursing Home, Sonipat**

---

Case no. 204/2007 filed in the court of Chief Judicial Magistrate, Sonipat on 5/11/2007

### **Parties to the case**

#### Complainant

Dr. Chander Prakash Arora, Authorized Officer, Sonipat

#### Accused

Dr. Pradeep Mukhi, Mukhi Hospital and Nursing Home, Sonipat

### **Sections under which complaint has been filed**

Section 28 of the PNDDT Act, 1994, read with the rules and Section 200 of the Cr.P.C.

### **Cause of Action:**

Smt. Rekha w/o Manish, resident of Bahadurgarh, Haryana had complained to the District Appropriate Authority, Dr. Maha Singh Ahlawat, that Dr. Pradeep Mukhi of Mukhi Hospital has done sex determination

on her foetus for Rs 3500/- and communicated her that the foetus was male on 10/10/07. She told that she can again get the sex determination done if any evidence is required. The District Appropriate Authority, as such, executed a decoy operation against the center taking Smt. Rekha as the decoy on 24/10/07. The team executing the raid reported following violations found during the raid:

1. Dr. Pradeep Mukhi was conducting ultrasonography on the decoy at the time of the raid although registration has been granted for Dr. Usha Mukhi only.
2. Form F of the patient Rekha was not prepared before the ultrasonography although it is mandatory under the Act.
3. No medical report of the patient Rekha was prepared and cause of doing ultrasound on the patient was not mentioned anywhere.
4. Smt. Rekha and her husband have given statement that Dr. Mukhi had disclosed the sex of the foetus as male after receiving Rs 3500/- for which he gave no receipt.

The team sealed the ultrasound machine and two Form F registers from the hospital and prepared spot inspection memo. The complaint was then filed in the court.

#### **Documentary Evidences presented at the time of complaint**

1. Statement of Smt. Rekha dated 24/10/07
2. Statement of Manish (Rekha's husband) dated 24/10/07
3. Statement of Dr. Naveen Goyal, independent witness, dated 24/10/07
4. Seizure Form dated 24/10/07
5. Spot Inspection Memo dated 24/10/07
6. Registration Certificate of the Clinic
7. Two Forms 'F'

#### **Pleadings by the defense (presented in the bail application)**

1. The accused is a respected person and has been falsely implicated in the present case at the behest of some political person and under some professional rivalry
2. The accused was not found operating the ultrasonography at the time of raid. The ultrasonography was to be conducted by Dr. Usha Mukhi who is wife of the accused.
3. The accused was preparing to fill up the required records but the team raided in the mean time.
4. Dr. Naveen Goyal has given the statement out of enmity that arose during a land deal with the accused.
5. Smt. Rekha had not revealed her pregnancy to the accused when she visited him 4-5 days back. Upper abdomen ultrasonography was prescribed to her upon her complaint of gastric pain but she said that she is in hurry and will get the ultrasonography done on any other day. She came back on 24/10/07 showed the slip hence no other OPD slip was prepared.
6. The original copy of the receipt of ultrasonography of the patient has been taken by the inspection team in their custody.

#### **Arguments of the prosecution against the bail application**

1. The petitioner could not present any OPD slip to establish that the ultrasonography was being done for the upper abdomen only.
2. The petitioner had a land deal with the Dr. Goyal whose sale deed is available but no evidence of any dispute has been provided. Hence, enmity of the witness with the accused cannot be established.

3. The copy of the outdoor patient ticket dated 17/10/07 indicates that Dr. Usha Mukhi had advised the ultrasound for foetal well-being.
4. The accused has accepted in his statement dated 24/10/07 that he was doing the ultrasound when the team raided.

### **Status of the case**

Bail application of the accused has been rejected. The case is now pending for framing of the charges.

### **Analysis of Trial Proceedings**

Relevance and strength of the evidences of the prosecution and adequate complaint and arguments have reflected that the chances of the conviction in the case are high. Exact analysis of the trial proceedings is however difficult in the absence of ordersheets and other documents.

### **ILLEGAL ADVERTISEMENT:**

Section 22 of the Act provides for the offence of illegal advertisement. A total of 37 cases have filed under this offence in 18 selected states under this study.

No cases have been filed under this offence in West Bengal, Assam, Bihar, Karnataka, Orissa, Goa, Andhra Pradesh and Jharkhand.

Details of a pending case under this offence were collected from Gujarat. The summary of the findings are highlighted below:

### **Case 9: Dr. Puran Chhand Parmar, Appropriate Authority vs Dr. Gurang Bhatt and Dr. Meena Bhatt**

Facts of the case: The DAA charged the accused for allegedly advertising medication to conceive a boy child through pamphlets, visiting cards and letter heads. The DAA included the following evidence:

- documents such as pamphlets, visiting cards letter heads seized from the medical establishment
- Witnesses of the search and seizure
- Panchnama

Key observation: The key observation from the analysis of the documents from this case is that prayers should be carefully drafted in court complaints and in case of illegal advertisements, Section 22(3) instead of Section 25, should have been prayed for.

Section 22(3) states that in case a person, organisation, GCC, GC or GL issues or cause to be issued any advertisement in any manner regarding facilities of pre-natal determination of sex available at such Centre, Laboratory, Clinic or any other place, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

Section 25 of the Act states that “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 case of continuing contravention with an additional fine which may extend to five hundred rupees for everyday during which such contravention continues after conviction for the first such contravention.

Since there is a specific punishment stated in Section 22(3) relating to illegal advertisements, the petitioner or the DAA should have prayed for punishment in accordance with Section 22(3) rather than Section 25.

### **NON REGISTRATION AND NON-MAINTENANCE OF RECORDS:**

Section 18 of the Act deals with registration of GCC, GL and GCs and Rule 9 of the Rules deals with the maintenance of records.

A total of 191 cases have been filed under this offence in the selected states of this study. No cases have been filed under this offence in states including Uttarakhand, Orissa, Goa, Jharkhand and Assam.

A landmark judgment on record maintenance is specified below:

#### **Case 10: Dr. Manish C. Dave Vs State of Gujarat Case**

---

Background of the complaint:

- The Appropriate Authority carried out surprise inspection of 12 sonography centers and found that the required records have not been duly maintained in them. He therefore filed complaint separately for each clinic in the court of Metropolitan Magistrate Ahmedabad under sections 4, 5 and 6 of the Act and prayed for punishment.
  - All the accused filed Criminal Miscellaneous application against these complaints in the Gujarat High Court and pleaded that the cases have not been filed in proper manner and therefore, should be dismissed. The lawyer advocating on their behalf stated that some of the columns of Form F have not been filled because the doctors felt them unnecessary and the report was handed over to the patients after the ultrasonography.
  - He also stated that prima facie, the Appropriate Authority has failed to prove that the accused have done ultrasonography on any women and disclosed the sex of the fetus to her or her relatives.
  - Further, the complaint has been submitted by a person who is not authorized to file the complaint.
- Sections under which the case was filed: Sections 4 and 5 Act

Documentary Evidences presented with the complaint:

1. Form F
2. Notice issued by the Appropriate Authority
3. Authorization letter of the Appropriate Authority
4. Gazette Notification of the issued by the state government
5. List of Witnesses
6. Registered address
7. Panchnama

Following facts have been mentioned in the 16 page judgment of the single bench jury:

- The District Appropriate Authority filed separate complaints for all the 12 accused under section 4(3) and 5 saying that the aforesaid centers are irregular in record keeping and should be punished under sections 5 and 6 as per the provision in section 4(3).
- On 7/2/09 the Justice K.S.Jhaveri of the honourable Gujarat High Court, considering that irregularities in record maintenance under section 4(3) is not a serious offence issued judgment that, commonly, there may be some mistakes in the filling up of Form F and they cannot be related with the violation of the section 5 or 6 of the Act.
- Appropriate Authority has not presented any women in its support to prove that sex selection has taken place and or that the sex of the fetus has been disclosed to her or her relatives orally.
- As such, no correlation of sections 4(3) with sections 5 and 6 was considered and the case was dismissed.

Analysis of Trial Proceedings:

- The District Appropriate Authority initiated action in the form of a legal notice regarding irregularities in filling up of Form F
- He submitted the complaint as per the provision of section 4(3) of the Act pleading guilty under sections 5 and 6 with due evidences.
- Form Fs, that were incompletely filled, were themselves strong enough documentary evidences through which deficiency in record keeping can be proved adequately.
- Dismissing the complaint stating it to be a 'Procedural Lapse' was a judicial mistake.

Landmark Judgment by the Bench:

The three member bench of Justice Mr. M.S. Shah, Justice Mr. D.H. Waghela and Justice Mr. Aqil Qureshi of the Gujarat High Court undertook the case suo motto and referred the following issues for consideration and opinion presented verbatim:

1. Whether under the provisions of section 8 of the Act, a court can take cognizance under the Act on a complaint made by any officer authorized in this behalf by the Appropriate Authority
2. Whether the provisions to the proviso to the section (3) of sub-section 4 of the PNDDT Act require that the complaint should contain specific allegations regarding the contravention of the provisions of sections 5 and 6 of the Act?
3. Whether the burden lies on the authority to prove that there was contravention of the provisions of sections 5 or 6 of the Act?
4. Whether any deficiency of inaccuracy in filling Form F as required under the statutory provisions is merely a procedural lapse?

The opinion reached by bench on the above issues is sequentially presented as under:

1. Under the provisions of section 28 of the Act, a court can take cognizance of an offence under the Act on a complaint made by an officer authorized in that behalf by the Appropriate Authority.
2. The proviso to sub-section (3) of section 4 of the PNDDT Act does not require that the alleging inaccuracy or deficiency in maintaining record in the prescribed manner should also contain allegation of contravention of the provisions of the section 5 or 6 of the PNDDT Act.
3. In a case based upon allegation of deficiency or inaccuracy in maintenance of record in the prescribed manner as required under sub-section (3) of section 4 of the Act, the burden to prove that there was contravention of the provisions of the section 5 or 6 does not lie upon the prosecution
4. Deficiency or inaccuracy in filling Form F prescribed under Rule 9 of the Rules made under the PNDDT Act, being a deficiency or inaccuracy in keeping record in prescribed manner, it is not a procedural lapse but an independent offence amounting to contravention of the provisions of sections 5 and 6 of the PNDDT Act and has to be treated and tried accordingly. It does not, however, mean that each inaccuracy or deficiency in maintaining the requisite record may be as serious as violation of the provisions of the sections 5 or 6 of the Act and the Court would be justified, while imposing punishment upon conviction, in taking lenient view in cases of only technical, formal or insignificant lapses in filling up the forms. For example, not maintaining the record of the conducting ultrasonography on a pregnant woman at all or filling up of incorrect particulars may be taken in all seriousness as if the provisions of sections 5 or 6 were violated, but filling up of the full name and address of the pregnant woman may be treated leniently if her identity and address were mentioned in a manner sufficient to identify and trace her.
5. The judgment in *Dr. Manish C. Dave v. State of Gujarat* reported in 2008(1) GLH 475 stands overruled to the extent it is inconsistent with the above opinion. The reference stand disposed accordingly.

The judgment is henceforth important and guiding for any record maintenance related case filed under the Act.

Another case from Rajasthan has been studied in detail under this offence:

**CASE 11: *Brar Ultrasound Clinic, Sri Ganganagar vs. State of Rajasthan and others***

---

Civil Writ Petition No. 2496/2006 filed under Article 226 & 227 of the Constitution of India in the matter of Articles 14, 19, 21 of the Constitution of India, and in the matter of Rajasthan Medical Act, 1952, Medical Council Act, 1956, Indian Medicine Central Council Act, 1970, and in the matter of Act, 1994 and PCPNDT Rules 1996

Background of complaint: An inspection of the Brar Ultrasound Clinic was conducted on 24/4/2006 after which the registration certificate of the petitioner was cancelled by the CMHO who was then the District Appropriate Authority for Sri Ganganagar vide order no. PNDDT/06/27 dated 29/4/2006 on the ground that the petitioner's proprietor Dr. Brar was not qualified M.B.B.S. and monthly report had also not been sent. Dr. Brar filed the Writ Petition in response with following objectives:

Interim Relief: To seek interim relief in the form of imposition of stay on the impugned order dated 29/4/2006

Prayer:

- Quash the above order by appropriate writ, direction or order

- In case it is required to grant the above relief, definition of registered medical practitioner given in Section 2(m) of 1994 Act as "Registered Medical Practitioner means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in State Medical Register" may be read down to include "medical practitioner registered under State Law pertaining to Indian Medicine" otherwise the definition given under section 2(m) of the Act of 1994 may be struck down being violative of fundamental rights guaranteed under Article 14 and 21 of the Constitution of India.

a. Cost of Litigation be awarded in favour of the petitioner

b. Any other relief which the Honourable court deems just and proper in favour of the petitioner.

Grounds pleaded by the Petitioner:

- A. DAA's order dated 29/4/2006 is grossly illegal and violates the fundamental rights of the petitioner and it is therefore liable to be quashed
- B. Cancellation of Registration of the center without due notice and hearing is illegal and violative of not only section 20 of the Act but also the fundamental rights of the petitioner under Article 14 and 21 of the Constitution of India. Following cases in this regard were cited:
  - a. Maneka Gandhi vs. Union of India case of Supreme Court, stating that procedure prescribed by law has to be just fair and reasonable by providing compliance with audi alteram partem rule otherwise the law or the executive action would be violative of Article 21 of the Constitution.
  - b. Central Inland Water Transport Companies case of the Supreme Court, stating that Principle of Natural Justice are read by way of implication under Article 14 of the constitution otherwise the law or executive action would be arbitrary and violative of Article 14 of the Constitution.

Dr. Brar also pleaded that record maintenance in the clinic was found to be regular during the inspection and no circular was issued by the government or any notice of authority requiring the petitioner to submit monthly report has been shared with him

- C. The certificate of the petitioner cannot be cancelled on the ground that he does not hold any medical qualification as defined under clause (h) of section 2 of Indian Medical Council Act. Following citations were presented in to prove that B.A.M.S. degree is a legally adequate qualification for the purpose:

Section 17(3) clause (b) of the Indian Medicine Central Council Act, 1970, which says the right of the persons registered under the Indian Medicine Law relating to the state to practice any system of medicine. The relevant provisions are as under:

Section 2(e): 'Indian Medicine' means system of Indian medicine is commonly known as Ashtang Ayurveda, Siddha or Unani whether supplemented or not by such medical advances as the Central Council may declare by notification from time to time.

Section 2(j): The expression "State Register of Indian Medicine " is defined to mean a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian medicine;

Section 17: Rights of persons possessing qualifications included in Second, Third and Fourth Schedules to be enrolled.

1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

2) Save as provided in section 28, no person other than a practitioner of Indian medicine who possesses a recognized medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine,-

a. shall hold office as Vaid, Siddha, Hakim or physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

b. shall practice Indian medicine in any State ;

c. shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

d. shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872, (1 of 1872) on any matter relating to Indian medicine.

(1) Nothing contained in sub-section (2) shall affect,

a. the right of a practitioner of Indian medicine enrolled on State Register of Indian Medicine to practice Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognized medical qualification;

b. the privileges (including the right to practice any system of medicine) conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine;

c. the right of a person to practice Indian medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement, he has been practicing Indian medicine for not less than five years ;

d. the rights conferred by or under the Indian Medical Council Act, 1956 (102 of 1956) (including the right to practice medicine as defined in clause (f) of section 2 of the said Act), on persons possessing any qualifications included in the Schedules to the said Act.

(2) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

The petitioner is an 'A' class practitioner under the 1953 Rajasthan Indian Medicine Act, 1953, for whom following privileges have been defined under the Rajasthan Medical Act, 1952 and Rajasthan Indian Medicine Act, 1953:

Section 50: Special privileges of "A" class registered practitioners – A registered practitioner of "A" calls alone shall be deemed to be qualified –

- i. For examining and investigating into cases and matters of medico-legal character and
  - ii. For giving expert evidence under section 45 of the Indian Evidence Act, 1872, at any inquest or in any court of law in respect of any such cases and matters relating to Indian system of medicine, surgery or midwifery.
- a. Dr. Mukhtiyar Chand & others vs. State of Punjab and others case of the Supreme Court reported in (1998) 7, in which the Apex court concluded that the State Act recognized the qualification of integrated course as sufficient qualification for registration in the State Medical Register of the State.
  - b. Circular of the Government of Rajasthan dated 6/1/86 that says that 'A' Class registered medical practitioners under the Rajasthan Indian Medicine Act, 1953, would be gave to be registered medical practitioner under the Drugs and Cosmetics Material Act, 1940 for treatment and modern medical methods.
  - c. Central Council for Indian Medicine notification dated 22/1/2004 that said that institutionally qualified practitioners of Ayurveda, Siddha, Unani, Tibb were eligible to practice respective systems with modern scientific medicine including surgery, gynaecology, obstetrics, anesthesiology, ENT, ophthalmology etc. based on the training and teaching.

Thus considering the provisions of the 1970 Act, the definition of registered medical practitioner given in section 2(m) of the 1994 Act as "Registered Medical Practitioner means a practitioner who posses any recognized medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register" is to be read down to include "medical practitioner registered under state law pertaining to Indian Medicine" otherwise the definition given under Section 2(m) of the Act of 1994 is liable to be struck down being violative of fundamental rights guaranteed under Article 14 and 21 of the Constitution of India.

The Petitioner is Bachelor of Medicines and Surgery (B.A.M.S.) and has 'A' Class registration under Punjab Ayurvedic and Unani Practitioners Act, 1963, and Board of Indian Medicine, Rajasthan, and has certificate of one year training and more than 100 case experience of conducting ultrasonography. The course of B.A.M.S. passed by the petitioner was an integrated course in Indian Medicine which included

modern advances in various sciences such as radiology report, X-ray, complete blood picture report, lipids report, ECG etc.

#### Reply to the Writ Petition by the Appropriate Authority

1. Preliminary Objection: The writ petition has been filed by the petitioner is not maintainable on the ground that the petitioner has not availed the alternate remedy available to him by filing appeal before the State Appropriate Authority.
2. Section 2 (m) of the Act clearly provides that prescribed qualification has been given in the schedule appended in section 2(h) of the Indian Medical Council Act, 1956 in which qualification is M.B.B.S. but it is an admitted fact that the Dr. Brar is not having M.B.B.S. degree and therefore, the registration of Brar Ultrasound Clinic was cancelled by the impugned order dated 29/4/06.
3. Section 20(3) of Act, 1994, provides that appropriate authority is empowered to cancellation of registration without providing opportunity of hearing. Under such circumstances the registration of the clinic has rightly been cancelled.
4. Rule 9(8) of the Rules 1996 imposed the duty on the registered clinic to send information every month to the authority concerned for which there was no requirement of issue of separate circular.

#### Rejoinder by the Petitioner to the Reply:

1. The preliminary objection that the petitioner has alternate remedy of appeal under Rule 19(2) of State Appropriate Authority is without substance because the present writ petition involves the interpretation and validity of section 2(m) of the Act in light of the judgment of Honourable Supreme Court in the case of Dr. Muktiyar Chand & others which cannot be examined by the administrative authorities.
2. Further, in case of Whirlpool Corporation's case as reported in (1998) Vol. 7 Judgments Today, the Supreme Court have exhaustively dealt with the bar of alternative remedy and have reached to the conclusion that writ petition cannot be dismissed on account of availability of alternate remedy in case the impugned order violates fundamental rights of the petitioner and has been passed in blatant violation of the principles of natural justice and/or is without jurisdiction
3. The requirement of registered medical practitioner cannot be heard in isolation and has to be read together with the section 17 of the Indian Medicine Central Council Act, 1970.
4. Section 20(3) of the Act applies to a situation of suspension of registration and not to the cancellation of the registration. Secondly, in order to make the power exercised under section 3, valid reasons are to be recorded in writing for not giving opportunity of being heard prior to the passing of the suspension order.

Status of the case: Pending in the Jodhpur High Court in front of the bench of Chief Justice S.N.Ojha and others

#### Documents submitted with the petition:

1. Bachelor of Ayurvedic Medicine and Surgery Certificate of Dr. Kanwaljeet S. Brar obtained from Maharishi Dayanand University, Rohtak;
2. Copy of Registration of Dr. Brar in the Part-I of the Register maintained under The Punjab Ayurvedic and Unani Practitioners Act, 1963 with registration no. 4313 dated 30/4/90;
3. Certificate of one year training of Ultrasonography of Dr. Brar dated 8/10/91 obtained from Mann Scanning and Diagnostic Center, Jalandhar;

4. Certificate of experience of handling more than 100 cases under supervision of Dr. Narindra Singh, Radiologist of Mann Scanning and Diagnostic Center dated 31/10/2001;
5. Copy of registration of Dr. Brar with Board of Indian Medicine, Rajasthan on 01/02/2002;
6. Copy of registration under Act obtained from CMHO for operating Genetic Clinic in Sri Ganganagar;
7. Copy of order of cancellation of registration no. PNNT/06/27 dated 29/4/2006.
8. Circular of Government of Rajasthan dated 6/1/86
9. Circular of Central Council for Indian Medicine dated 22/1/2004

**Key observations:**

a) Non submission of monthly report by the clinic is a clear violation of the Rule 9(8) of the Act on its part. However, in the absence of due consultation, District Appropriate Authority has committed a procedural error. Section 20(3) talks only of suspension of registration. Cancellation of registration has been addressed in section 20(2) of the Act which mandates consultation with Advisory Committee and providing due chance of hearing before cancellation.

b) The issue of qualification has been well presented by the petitioner and therefore detailed consideration is needed. The amendment proposed in prayer no. 2 of the petition seems to be necessary and the judgment of the court in this case will be important. Central Supervisory Board should also give thought to the concern and propose necessary action if required which may be in the form of amendment as well.

**CASE 12: PK Bansal vs KP Singh**

---

This was filed under Rule 9 of the Rules, 1996.

**Facts of the case:**

- The National Monitoring Committee formed under the Act for the Delhi state raided the premises of the accused's clinic- Lokpriya Nursing Home and Maternity Centre on 04.05.2006 where the Appropriate Authority seized certain documents and found that the accused was using the ultrasound machines illegally and for the purposes not permissible under the Act.
- On the basis of seized records and suspicion, the National Monitoring Committee revisited the accused's clinic on 05.05.2006. The Committee members sealed all the ultrasound machines and relevant documents and suspended the registration of the clinic. The District Appropriate Authority (DAA) issued a legal notice against the accused and filed a complaint under Section 17 (1) of the Act where it has power to file a complaint as a district appropriate authority.
- The accused admitted a request letter dated 20.04.2006 for revocation of suspension of registration and desealing of ultrasound machines. The DAA rejected the application submitted by the accused and issued a show cause notice stating the reason for suspension of registration of the clinic and desealing of the ultrasound machines.

Status of the case: After the DAA filed a complaint, the accused put up an application for the release of the ultrasound machines. The application was rejected by the court on 11.05.2007 on the basis of application being at the premature stage. The court said that the case is an early stage where evidence has to be produced, arguments have to be made and at this stage desealing of machines will not serve

any objective. The accused filed a revision petition to revoke the suspension of registration of the clinic and to de-seal the ultrasound machines. The revision petition was dismissed on 20.09.2007 on the grounds that the machines are case property which cannot be released during the case pendency and they are needed for the trial of the case as evidence. The machines are shown to be used for purposes not permissible under law, therefore these cannot be released. It might lead to more illegal activities being performed by those machines. A Delhi High Court order on 30.09.2008 has released the ultrasound machines of the accused and now the machines can be put to use. The order given for the revision petition has been reversed. Other details of the hon'ble court's order cannot be provided as the other case papers were not available.

**Key observations:** a) It is imperative to maintain appropriate records for better implementation of the act. The records are to be converted in a form of a report and submitted to the Appropriate Authority every month. This report will aid the government authorities and courts whenever there is a case under act. This will maintain record of each and every person who underwent pre natal diagnostic tests or counselling and which can be later be used by the government in case there are any legal proceedings.

b)The order dismissing the revision petition to deseal the machines stands correct because as per section 3 and section 4 no person shall conduct activities related with pre natal diagnostic techniques except listed in the act. As mentioned in the case, the accused was involved in illegal activities which were in contravention to the act and activities violating the act are mostly activities related to pre natal diagnostic techniques. Therefore, the registration of the clinic should remain suspended and the machines should be sealed as it is till the court passes any judgment.

In a case filed in Ahmedabad, the AA issued a legal notice to the accused for not submitting Form F in time. The AA issued this notice because he learnt that the accused had submitted only one form in six months. The key observations are:

1.He should have made sudden inspection to the clinic for checking whether the machine is non-functional or not or check if there are any other irregularities.

2.Instead of using section 25, the AA should have pleaded under Section 23 (1) because Section 25 is applicable only where there is ambiguity about punishment. However, this was not the situation in this case, which was a clear violation of rule 13 which mandates intimation to the authority within 30 days if machine becomes non-operational. Also, for the irregularity under rules 9(4) and 9(8), penalty should have been imposed under section 23(1) and 23(2) only. The prayer for penalty under section 23(1) and 23(2) should have been included in the complaint itself. It is important that prayers are carefully drafted and punishments which are applicable should be sought. For instance, Section 23 of the Act states that "Any medical geneticist, gynaecologist, registered medical practitioner ..... 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 rupees fifty thousand." It is necessary that pleading under Section 23(1) is made, instead of Section 25.

3. Similarly, suspension of registration from the State Medical Council till the disposal of the case is necessary as soon as the pleading under section 23(2) is taken cognizance of.

In Gujarat, the High Court gave a judgment that poor maintenance of records is not a serious violation. Eleven cases have been withdrawn after that. Also in many cases, it was observed that if the doctors did not maintain records, they are given a warning and let off while in few cases they are being charge-sheeted.

Nature of Pleadings: Following kind of defense pleadings have been seen in cases for which some documents were made available:

- In all these cases it was pleaded by the accused that they persons with reputation and philanthropic/religious bend of mind who are sensitive to the issue of sex selection.
- Further, none of the evidences establish their intention of sex selection. Deficiencies in record maintenance should not therefore be considered as serious offences and the case should be quashed.
- In *Dr. Paresh N. Shah vs District Appropriate Authority, Ahmedabad* case in which Form F was not submitted in time, the accused pleaded that the machine is not in running condition. The accused pleaded that he had got his machine registered for a period of 5 years in 2002. Accordingly, he used to submit Form F biannually. The amendment regarding monthly submission has been enacted in 2003. Therefore, he was unaware and claimed that he cannot be blamed for doing so.
- In *Zarina Shethwala vs District Appropriate Authority* case (Case 11) in which Form F was not submitted in time, the accused accepted the failure and pleaded that she was ignorant about the statute. The counter argument submitted prosecution in this case was the presumption that 'Every person knows the Law'.
- In *Dr. Manish Agrawal, Medilink Diagnostics, vs DAA Ahmedabad* case, (Case 12) (it is not a court case but an appeal in front of the State Appropriate Authority) in which deficiencies in Form F were found upon inspection by DAA, Dr. Agrawal pleaded that the Radiologist employed is a learned person and, therefore, the Form Fs filled by him were not checked out of faith. The person has been dissociated with with immediate effect. In this case, absence of record keeper was pleaded as excuse for not making patient register available to the DAA during inspection.

#### Counter Complaints

- (1) In some of the cases, the respondents have blamed that DAAs have taken the action in baseless manner reflecting their malicious intentions
- (2) They complained about the process of inspections in some cases.
- (3) They have moved to High Court as well.

Analysis of factors leading to success or failure of the prosecution:

In cases of faulty record maintenance, success of prosecution is not difficult if following points are considered:

- (1) Such cases are easiest to prove if documentary evidences are properly presented with the complaint itself. Difficulties arise if documents are not duly attached with the complaint or when complaint is not drafted properly as has happened in some of the cases.

- (2) In cases where ignorance about the Act is pleaded, it should be argued that ignorance does not mean innocence in the eyes of law.
- (3) Suspension orders should specify time-limits. In *Dr. Manish Agrawal, Medilink Diagnostics, vs DAA Ahmedabad* case, the Appropriate Authority had issued suspension order without specifying time limit. The mistake was corrected when the accused appealed against in it front of the State Appropriate Authority. But such mistakes do not give good impression and may be used by the accused to question the intentions and legal awareness of the DAA.
- (4) Deficiencies in record maintenance are not procedural lapses but serious offences. The recorded Judgment by the three member bench of the Gujrat High Court in the *Manish C. Dave vs State of Gujarat* case detailed in the following highlighted section clarifies the point more explicitly. It also establishes the highly important interpretation of the Act that deficiency in record maintenance automatically means violation of section 6 of the Act unless proved otherwise. Further it entails that the burden of proof of establishing violation of section 6 does not lie on the Appropriate Authority but it rests on the accused to prove that sex determination has not taken place in such a case.

### **Cases filed against manufacturers: Rule 3(a) of the Act**

**Case 13:** *Dr. Sanjeev G. Dalvi, Appropriate Authority of South Goa v 1. Philips Medical Systems India Pvt. Ltd. A-16, Ground Floor, Mohan Co-operative Indl. Mathura Road New Delhi 4-. 2. J. Sunddarajan, Director, Philips Medical Systems India Pvt. Ltd. A-16, Ground Floor, Mohan Co-operative Mathura Road New Delhi 4*

---

One case has been filed against a manufacturer in Goa. This is the unique case as it has been filed against manufacturer and seller of the ultra sound machine. But the AA has not included participation of the independent witnesses in this case. This offers an opportunity to the accused to weaken the AA's case and to get acquittal in this case.

Presented below are some facts and analysis of this case:

- The complaint has been filed against the manufacturer of ultrasound machine rather than the hospital / clinic where it was installed without proper registration.
- Complaint has been filed under Section 25 of the Act for installation of ultrasound machine despite non-registration of the hospital.
- Requisite evidence has been filed by DAA in the court during evidence stage of this case.
- At the time of study, the DAA who had filed the case was transferred.
- It was shared by the public prosecutor that 1st accused i.e. the company got amalgamated into another company hence it is now difficult to pin-point the blame.
- The 2nd accused has left the company, during the case, and has got his-self absolved from the case.
- The judge who was handling the case at the beginning has been transferred mid-way.
- The public prosecutor who filed the case on behalf of the DAA is new and it was her first case related to the Act. This lawyer claimed that she was quite overburdened with cases (more than 500 other cases).

## **Case 14: State of Punjab vs Pushpa Maternity Home**

---

This case was filed in the court of the Chief Judicial Magistrate of Mansa, was important because of the following reasons:

1. The judgment details out the extent and the modus operandi of delegation of powers of the Appropriate;
2. the medico-legal pleadings of the accused clinic and doctor were accepted by the Chief Judicial Magistrate although its records appeared incomplete prima facie;
3. It explains how procedural gaps in dealing of complaints brings disgrace to the authorities as well as harassment to centers registered under Act;
4. It spells out importance of Advisory Committees in complaint handling.

The case has been discussed in detail below:

### **Case Title: State of Punjab vs Pushpa Maternity and Nursing Home**

Criminal File no. 34 of 29/11/2005 in the court of Mrs. Dimple Walia, P.C.S., Chief Judicial Magistrate, Mansa

#### **Parties to the case:**

##### Complainant:

State of Punjab through Dr. V.S.Mohli, Civil Surgeon-cum-District APPROPRIATE AUTHORITY, Patiala.

##### Respondents (Accused):

1. Pushpa Maternity and Nursing Home, Mansa, through its proprietor Dr. Pushpa Bansal.
2. Dr. Pushpa Bansal, Proprietor of Pushpa Maternity & Nursing Home, Mansa

#### **Details of the complaint:**

On 22/11/2005, the complainant received most immediate and confidential category order from the SAA authorizing him to investigate cases of violation of PNDT Act in respect of Dr. Pushpa's Ultrasound Center and directing him to initiate action under sections 29 and 30 and Rules 9, 11 and 12 and start court proceedings under section 23. The complainant with his team members consisting of Dr. S.B. Pandhi, Dr. Navjot Sidhu, Dr. Aniljit Singh, Dr. OPS Khande and Social Worker Anil Mehta, visited the premises of Pushpa Maternity and Nursing Home and its ultrasound center on the same day. The team inspected records pertaining to period from 1/10/2005 to 22/11/2005 and found following irregularities:

1. In almost all Forms F, in column no. 9, i.e., history of genetic/medical disease in the family, sub-column (a) has been ticked, i.e., clinical (basis of diagnosis), thereby indicating that there is history of genetic/medical disease in all the cases.
2. That in almost all the forms F under column 11, non-invasive sub-column has been ticked. No specific purpose of doing ultrasound (as per the list of 23 indications for ultrasound during pregnancy) has been mentioned. Rather, non of the forms have the list of those indications printed on these forms (as part of Form F)
3. That in almost all the Forms F some of the columns have been left blank.

4. That the ultrasound center has not kept any record of the ultrasound plates/films in any form. All the forms F, which have been taken into custody, are without any ultrasound film except for one form. Ultrasonologist Dr. Pushpa Bansal could not produce these films in any form at the time of inspection. As per the rule 9(6) of PNDT Rules 1996, sonography plates/slides are to be preserved for a period of two years.
5. Four specific forms of Deepati Garg, Darshna, Mandeep Kaur and Suman were cited, all of whom and no male child previously and whose ultrasound was done for the common reason – pregnancy with abdomen pain - in second trimester. The referral in these cases was done by Dr. Pushpa Bansal herself and no other lab investigations were undertaken to ascertain the cause of the pain. Sub-columns A,B,C, D under column no. 10 of form F have been ignored by the ultrasonologist.

Dr. Mohli therefore filed complaint in the above court on 29/11/2005. The CJM court, however, dismissed the complaint and discharged the accused through its judgment dated 24/4/2009.

#### **Sections under which Complaint was filed**

Section 23 and 29 read with section 4(1)(2)[(3)-(i),(ii),(iii),(iv),(v)], 29 of Act and Rule 9(4)(6)

#### **List of Documents submitted at the time of complaint**

1. Notification copy dated 28.9.01
2. Registration certificate copy dated 28.9.01
3. Fax copy as well as office order/letter no. PA/DHS/Pb./2005/FW/465 issued by the State APPROPRIATE AUTHORITY on 22/11/2005.
4. Constitution of Inspection team
5. Form F of Deepati Garg
6. Form F of Darshna
7. Form F of Mandeep Kaur
8. Form F of Suman
9. Inspection Memo
10. Receipt of record

#### **List of Prosecution witnesses:**

1. Dr. V.S.Mohi, Civil Surgeon-cum-District APPROPRIATE AUTHORITY, Patiala
2. Dr. S.B.Pandhi, SMO, In-charge Civil Hospital Samana
3. Dr. O.P.S. Khande, President IMA, Patiala
4. Dr. Navjot Kaur, SMO, CHC, Model Town Patiala
5. Jagdish Raj Goyal, Chief Pharmacist, Civil Hospital, Mansa
6. Dr. Aniljit Singh, Medical Officer, CHC, Model Town Patiala
7. Dr. Anil Mehta, Social Worker, Patiala
8. Concerned clerk, Office of Civil Surgeon, Mansa, with complete record pertaining to issuance of registration certificate under Act to Pushpa Maternity and Nursing Home, Mansa.
9. Concerned clerk in the office of the Director Health and Family Welfare Punjab, Chandigarh, along with record pertaining to authorization order dated 22/11/2005.

## **Nature of Pleadings by Defense**

### 1. Challenging the Authority of the Complainant

a. Government of Punjab has appointed DAA at Mansa. Therefore, DAA Patiala cannot be termed as 'concerned AA' for Mansa District.

b. The Chairperson of the SAA alone could not further delegate his powers to authorize DAA Patiala to make complaint in Patiala as the law of delegation is unknown. The person could only be empowered by the State Government.

c. Section 4 (2) of CrPC was drawn attention to which is reproduced as under:

d. "All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiry into, trying or otherwise dealing with such offences."

e. The defense counsel also placed reliance on a reported decision in case '**AIR 1986 Supreme Court**' captioned as '**AK Roy vs State of Punjab**' and has emphasized that further delegation of authority is not possible when a person given to do a certain thing in a certain way. The intention of the legislature was to confer power and authority specified therein and which power has to be executed in and manner provided and not otherwise.

f. The reported decision of the Supreme Court in **1984(1) RCR 196** captioned as **Vishwa Mittar vs O.P. Poddar & others** which says that "Generally speaking, any one can put the criminal law in motion, unless there is specific provision to the contrary (para 4)...But where any special statute prescribes offences and makes any special provision for taking cognizance of such offence under the statute, the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute". The Apex Court judgment clearly illustrates that special law enacted will prevail on the general law". Section 17 of the PNDT Act has illustrated that Appellate Authority shall consist of 3 members and the powers could not be delegated. No Judicial Officer/State Government Officer can delegate his own power.

g. Even with regard to offences under the Indian Penal Code, ordinarily anyone can set the criminal law in motion, but the various provisions of Chapter XIV prescribes qualifications of the complainant, which would enable him or her to file a complaint in respect of specified offences unless the complainant satisfies the eligibility criterion. But in the absence of any such specification, no court can throw out the complaint or decline to take cognizance on the sole ground that complainant was not competent to file the complaint.

### 2. Response on accusations regarding record maintenance:

a. The center is registered under Act as ultrasound scan center.

b. The center was inspected after OPD hours of the doctor when doctor was not found working and the lab in the clinic was found locked. The doctor was called from upstairs. The records pertaining to the ultrasound scan were with the employee of the clinic while records in OPD, like OPD register, were available for perusal. Superintendent of the nursing home, Smt. Paramjit Kaur has made the records including ultrasound prints available later.

c. The missing 34 Forms F were duly filled and deposited with the Civil Surgeon-cum-District AA, Mansa and were produced to the Chief Pharmacist Shri Jagdish Raj.

d. The complainant had no material with him to contradict that the family of the person had any medical disease.

e. Each Form F was found accompanied by referral slips which is part and parcel of form F and the referral slips mentioned "USG (Ultrasonography) for fetal well being". The perusal of Forms F and referral slips and reports placed on file clearly convey that that what was necessary the same was filled and when the columns, which have been left blank, itself indicate that the said columns were not referable qua the patient and as such of leaving them blank, no action can be taken.

f. Form F itself indicates invasive and non-invasive and relevant columns are irrelevant with regard to "ultrasound scan center" as the accused has been registered only as center for conducting ultrasound and nothing more.

g. Anil Kumar Mehta, Prosecution Witness no. 6, during cross examination has placed birth certificates which establish that Deepati and Darshna gave birth to female child on 23/3/06 and 1/2/06 while Mandeep and Suman gave birth to male child on 3/3/06 and 30/3/06 respectively. Dr. Mohi was unaware of the births but had admitted the births were expected between January to March 2006.

h. Maintenance of Form F of cases of ultrasound scan at the Civil Hospital in the manner similar to that maintained by the accused was proved by the accused through 34 Forms obtained from the Civil Hospital and the corresponding statement of Shri Jagdish Rai, Prosecutor Witness No. 5.

i. Display board stating 'Sex is not determined' was found at the Gate as well as the OPD room. Copy of the Act was also available.

#### **Decision:**

1. In the view of the submissions regarding the authority of the complainant, no cognizance can be taken on the basis of the complaint and as such question of holding the accused guilty does not arise.

2. The accused was registered with regard to conducting ultrasound scan only and tests if any were liable to be made at Genetic Clinic or Genetic Laboratory. The perusal of Rules does not indicate that each and every column is to be filled. Other part of column 10 is irrelevant especially when the accused has indicated and filled that the ultrasound was conducted in view of reason "Pregnancy with pain abdomen". Column 11 was ticked as only ultrasound was performed.

In many states, certified court copies could not be collected of cases pending at the selected districts. However, the research team collected available information and below is a summary of their key findings:

#### **ORISSA**

In Orissa, eight cases are pending. Surprisingly, the national list states that there are no cases pending. Some key observations are highlighted below:

1. One unique case was found in which one non-allopathic practitioner was operating the machine during the time of supervision.

2. There are five cases filed in Nayagarh district of Orissa, pertaining to sex selection. The remaining cases are pending under offences relating to non-registration and non-maintenance of records

## JHARKHAND

In Jharkhand, only six cases have been filed in 24 districts across the state. Out of these six cases, three of them have been filed at Ranchi and one each at Dhanbad, Hazaribagh and Chaibasa (West Singhbhum) districts.

The research team collected details of the following cases from the selected districts at Jharkhand:

S. No.	District	No. of cases in court	No. of case files collected	Status of cases	
				Disposed off	Pending
1.	Ranchi	3	3	3	1
2.	Dhanbad	1	1		

Key observations from the case documents collected are highlighted below:

1. Very few cases filed: As mentioned earlier, only three cases have been lodged in Ranchi and only one case has been lodged at Dhanbad under the Act since its promulgation till date. All the cases at Ranchi were lodged when a lady IAS officer, serving as the Deputy Commissioner, raided three well known clinics of the city in 2007 and 2008 and found incriminating evidences to prove that the offenders were violating the provisions of the Act. However, after her tenure, not a single case has been filed in court under the Act. At Dhanbad, only one case exists under the Act. The research team found that even this case would not have been lodged by DAA if a member of SSB had not raised the concerned issue before Health Secretary of the state.
2. Cases disposed: Two cases were disposed in Jharkhand. One of the cases was filed against Dr. Manisha Choudhary, a renowned medical practitioner of Ranchi, on 20 December 2007 under the offences of running a clinic without registration since November 2002. This clinic also did not have a display board containing information regarding illegality of sex determination; did not maintain Form 'F' which is mandatory to be filled in during each pregnancy case; and not issuing money receipt to ultrasound service seekers. However, the case was disposed off on 23 February 2008 under plea bargaining. The court order commented that the informant did not want to proceed with the case though two independent witnesses and reliable evidences were available.

The second case is one which was filed against Dr. Rama Sharma on 13 July 2008 for non-maintenance of records such as Form "F" as mandated by the Act and for providing insufficient columns in the register of ultrasound examinations thus hampering collection of requisite information. The clinic was sealed on 12.06.08 because the Form 'F' with some related documents was not produced before the inspection team. The said nursing home had meanwhile deposited the Form 'F' but without other related documents. The DAA was requested to present a report regarding release of the seized ultra sound machine by the Judicial Magistrate and the

DAA issued a no objection to release of the sealed machine, provided the accused submitted an assurance before the court that all relevant documents will be submitted immediately. This case was finally disposed off since the documents were submitted and machine released.

## **ANDHRA PRADESH**

13 cases are pending at Andhra Pradesh and some key observations are mentioned below:

- In most of the cases same witnesses have been used by the government.
- In most cases, necessary papers like certificates have not been mentioned; photographs and other methods have not been used to strengthen the evidence of the case.
- Most of the cases filed by the government have been filed under Section 4, 5, 6, 18, 19(4), 23, 28, and 29 of the Act read with rule 4, 9, 10 of Section 25, 27 of the Rule- 10 of the Act.
- There are also three cases, which have been filed against the implementers of this Act. These cases have been filed under writ mandamus.
- In one of the cases, Advisory Board member is the person filing the case as well as fighting the case in court. So the accused could claim that there is “conflict of interest” as the Advocate is also an advisory board member.
- At the time of study, all thirteen cases were pending in the Court.
- It was shared by the public prosecutors handling these cases that the level of awareness regarding the Act is average amongst the judiciary.
- All public prosecutors handling these cases were handling more than 300 other cases and were hard pressed for time.
- Public prosecutors are involved in the cases before filing the complaints as legal experts.
- Lack of evidence and out of court settlement have been the main reasons for dismissal of cases.

## **MAHARASHTRA**

3 pending cases at Maharashtra were also studied and key observations are:

- All the three cases do not have independent witness and the same department employee has been used as witness (in each district). This can affect the credibility of the case leaving the accused with many loopholes to escape conviction.
- In all three cases, necessary papers were not found, certificates have not been mentioned; photographs and other methods have not been used to strengthen the evidence of the case.
- In all three cases, the complaint has been filed against the owner of the hospital / clinic for non-maintenance of proper records and documents.
- All the three cases came up from decoy operations and cases were filed under Section 23, 25, Rule 10(1), 10(1A), 9(1) and Section 29(1) (2) of the Act 1994 (Amended) Act 2003.
- At the time of study, the DAA who had filed the case in Sangli was transferred.
- At the time of this study, all three cases were pending in the Court.
- It was shared by the public prosecutors handling these cases that the level of awareness regarding the Act is quite poor even amongst the judiciary.
- All public prosecutors handling these cases were handling more than 150 other cases and were hard pressed for time.

- There was not enough clarity regarding the status of case if some unregistered clinic, on which a case has been filed under the non registration related section, got itself registered mid-way during a case.

## TAMIL NADU

In Tamil Nadu, it was shared, with the research team during this study, by the Krishnagiri District Authority that one case was pending in the High Court. This case was filed by the immediate predecessor of the incumbent District Authority on receipt of a complaint of violation of the Act on account of sex determination and communication about the same. The sex determination machine was sealed by the authorities.

It was shared, with the research team by the Salem District Authority that three cases were filed by the immediate predecessor of the incumbent District Authority on receipt of a complaint of violation of the Act on account of non maintenance of appropriate records. Licenses of the violators were suspended and cases were filed in the appropriate Court in consultation with the State Appropriate Authority. The Court has disposed off these three cases with a fine to the violators, which has been paid by the same.

Key observations from these cases are:

- a) Legal case framed in Krishnagiri district is due to maternal death and was filed by the local police. The AA had no role in it directly but had to follow it up within the ambit of Act along with the local police. The case is still not disposed of by the concerned court.
- b) In Salem district, the case was filed because of written instructions from the then state appropriate authority. The whole process was done in a hasty manner and non-professionally, and resulted in losing out to the accused. It was observed that the case was initiated to settle political scores between the then ruling party and another opposing one. Since the accused has won the case, he has now filed a defamation case against the AA (who is now no longer serving as the AA).

## UTTAR PRADESH

In Uttar Pradesh, From January 1996 to April, 2009 only 5 cases have been filed in court at Lucknow and from January 1996 to July 2009 only 12 cases have been filed in court at Meerut.

NO.	District	Number of cases in court	Number of case Files Collected	Status of Cases		
				Under Trial	Pending	Disposed of
1.	Lucknow	5	5	5		
2.	Meerut	12	12	10	2	

## UTTARAKHAND

In Uttarakhand, since enforcement of this Act from July 2009 only 4 cases had been filed in the state. These all cases are in the CJM court at Dehradun:

S.NO.	District	Number of cases in court	Number of Files Collected	Status of Cases		
				Under Trial	Pending	Disposed of
1.	Dehradun	4	4	4		
2.	Haridwar	-	-	-	-	

## PUNJAB

Status of Court complaints filed under Act

Type of case	No. of court complaints /FIRs	Conviction	Discharged	Pending
Sex Determination/Sex selection	19	1	3	15
Foeticide	7	0	1	6
Faulty Record keeping	29	3	3	23
Unregistered centres	15	2	1	12
Advertisement	6	2	0	4
Miscellaneous	23	0	6	17

List of cases filed under Act in Fatehgarh Sahib

S. No.	Defaulter	Violation	Category	Action taken	Current Status	Remarks
1.	1. Dr. R. P. Singh, Bela Chowk, Ropar, 2. Surinder Kaur W/o Gurmet Singh, Village Kale Majra, 3. Devinder Kaur, Village Kale Majra	Foeticide case detected.	Foeticide	FIR No. 18 registered for violation the MTP and the PNDDT Act on 08.03.2002. Case in the Court of the Additional Sessions Judge	Next date 22.1.07	Directions of the HQ
2.	Mahesh Nursing Home, Sirhind, Fatehgarh Sahib.	Irregularity in record keeping	Record Keeping	FIR registered on 18.04.2002, u/s 3(2) Next date 19-11-07	Court directed on 16.10.06 that protest petition may be filed by the AA.	

Accordingly protest petition filed on 16.11.06. On 19.12.06 court ordered re-investigation.

3.	Dr. V. K. Dharni, Ludhiana Clinic & Nursing Home, Khamano,	Case launched u/s 28 and violation of the rule No.9A,10, and section 5 & 29.	Record Keeping	Case launched in the court of CJM Fatehgarh Sahib on 27.03.03	Center fined Rs.1000/- on 22.05.04 by the court.
4.	Dr. Kiranjit Bajaj, Bajaj Nursing Home, Mandi Gobind Garh.	Gross irregularities and non maintenance of form 'f' & records, Violation of rule No. 9(6), Sec. 29, sec.4(5) u/ sec. 2(4) of the Act.	Misc.	Case launched in the court of SDJM Amloh on 13.06.2005.	Next date 13-10-07
5.	Dr. Ishwar Dass Shalley, Prop. Shalley Nursing Home, Sirhind	Incomplete record keeping. Violation of section 4(3)(v), section 29 & rule No.9	Record Keeping	Case launched in the court of CJM Fatehgarh Sahib on 14.06.2006	Next date 21.12.07

List of cases filed under Act in Patiala

S. No.	Defaulter	Violation	Category	Action taken	Current Status	Remarks
1.	Amar Clinic, Near Bus Stand, Patiala.	In-eligible person found doing U/s.	Misc.	DDR No. 32, registered for violation of the MTP and the PNDT Act on 29.04.2002. FIR No. 331 registered on 30.08.02	Registration temporarily suspended on 1-4-03 for 2 months as	FIR cancelled by CJM on 4.2.2003

2.	Neelam Nursing Home, Rajpura.	Violation of the PNDT Act.	Misc.	FIR No. 215 dated 21-8-02, challan on 4-9-02 in the court of Shri B.R. Garg, Magistrate, Rajpura.	Discharged in year 2004
3.	Bharat Ultrasound Centre, Chhoti Baradari, Patiala.	Violation of provisions of the PNDT Act.	Misc.	FIR No. 141 registered on 26.04.2002.	Witness on 4-2-03 Case dismissed by CJM on 4-2-03
4.	Mr. T.K. Chaudhary U/s Centre, Rajpura	In-Eligible person doing u/s. Violation of registration norms.	Misc.	Case launched on 17-4-03 at Rajpura, u/s 3(2), 23	Next date 26-11-07
5.	Vaid Ram Murti, Banur.	Sex-selection by giving Ayurvedic Medicine	SD/SS	Case launched on 17-4-03 at Rajpura, clause 2, sec. 6(2), 23	Case dropped due to death of Ram Murti,
6.	Vaid Mahesh Kumar Sharma, Banur.	Sex-selection by giving Ayurvedic Medicine	SD/SS	Case launched on 17-4-03 at Rajpura, clause 2, sec. 6(2), 23	Discharged on 12.07.06
7.	Garg Hospital and Maternity Centre, 7 Dhillon Marg, Model Town, Patiala	Major irregularities in record keeping.	Record Keeping	Case launched in the court of JMC1 Patiala on 27.4.04, u/s 4(3) & Rule No. 9(1)(6) read with sec. 29	Dr. Garg (accused) launched the case in the court. Next date 19.10.07
8.	Aggarwal Ultrasound Centre, Tehsil Road Samana	Irregularities in record keeping	Record Keeping	Case launched in the court of SDJM Samana on 11.01.06 & Aggarwal ultrasound v/s Pb. Govt.	Next Dated 16-02-08 On information by State HQ.
9.	Sahib Hospital, Patran, Patiala	Alleged female foeticide	Foeticide	FIR No.171 dated 08.08.06 u/s 5(4) MTP Act 1971, 15(2) IMC Act, section 23 PNDT Act, 27(b)(1),(2) Drug & Cosmetics Act, IPC 312,313 and 316.	Challan presented in the court

Out of these 14 cases, however, the investigation team was provided documents of only 6 cases - 3 each from Fatehgarh Sahib and Haryana. These have been summarized as follows:

<b>Case Title</b>	<b>State Vs Dr. Ishwar Das Shalley, Proprietor, Shalley Nursing Home, Sirhind, Fatehgarh Sahib</b>
Background of complaint	A 3-member team under the leadership of the AA inspected the clinic and found violation of the Act in record keeping. <ul style="list-style-type: none"> <li>Referral note was incomplete;</li> <li>diagnosis reports were incomplete and were not in record.</li> <li>Form F was also not on record and column 11 of Form F was not filled. Form F and Referral slips of 20 patients were seized.</li> </ul>
Category of violation & Sections under which complaint has been filed	Incomplete record keeping; Sec 4(3)(5), 29 and rule 9 of the Act Sections under which complaint has been filed
Documentary evidences presented with the complaint	C-1 : Gazette notification of Punjab State; C-2: Authority letter of the investigation team; C-3: Copy of Registration Certificate; C-4 to 23: Form F of 20 patients; C-24: Spot Memo
Other evidences presented with complaint	None
Documents missing at the time of complaint	No document of departmental action has been submitted
Documents not provided to the research team	No documentary evidence attached with the complaint has been provided; No court order sheets have been provided either; No documentary detail of nature of pleading has been provided
Abidance to court order by the responsible authorities	Court ordered to send the copy of the chargesheet to the Medical Council for suspension of registration, but abidance is not clear because of absence of documents.
Nature of pleadings	No comment can be made because of absence of documents
Analysis of trial proceedings	No comment can be made because of absence of documents
Status of complaint	Charges framed; Medical Council Intimated for action
<b>Case Title</b>	<b>State Vs Dr. Kiranjit Bajaj, Proprietor, Bajaj Nursing Home, Mandi Govindgarh, Fatehgarh Sahib</b>
Background of complaint	The AA and Dy. Medical Commissioner inspected the nursing home on 13/5/05 and found that Form Fs were not filled even of the 6 women who were present. The doctor accepted the irregularity in written. Calling of independent witnesses was tried but

	nobody turned up.
Category of violation & sections under which complaint has been filed	Rule 9(6) Sec. 29, Sec. 4
Documentary evidences presented with the complaint	1. Notification of the Punjab Govt. regarding inspections by AAs; 2. Confession by the accused; 3. Names of women whose Form Fs were not complete.
Other evidences presented with complaint	None
Documents missing at the time of complaint	The complaint does not enlist attachment of Inspection report, seizure report and writ of arbitration (panchnama)
Documents not provided to the research team	No document except copy of the complaint has been provided
Abidance to court order by the responsible authorities	No comment can be made because of absence of documents, particularly order sheets
Nature of pleadings	No comment can be made because of absence of documents, particularly order sheets
Analysis of trial proceedings	Proper analysis is not possible in the absence of required documents. A shortcoming, however, is that Show Cause Notice was not issued.
Status of complaint	Chargesheet has been presented in the court and the case is at the stage of evidence

<b>Case Title</b>	<b>State Vs Dr. Mahesh, Proprietor, Mahesh Nursing Home, Sirhind, Fatehgarh Sahib</b>
Background of complaint	<p>The Civil Surgeon received secret information Dr. Mahesh and Dr. Punam, working in the Mahesh Nursing Home are carrying out sex determination and abortion illegally. Both of them had Ayurveda degree which is not recognized under the PNDT Act for prenatal diagnosis. An investigation team was constituted and the clinic was raided on 16/4/02. Following irregularities were discovered:</p> <ol style="list-style-type: none"> <li>1. The center is not recognized for MTP yet the tools were reflecting that they have been used just before;</li> <li>2. Dr. Punam and Dr. Mahesh have GAMS degree which did not recognized for abortion;</li> <li>3. Form F were not duly filled.</li> </ol> <p>Their arrest was sought but stay was granted in their favour. Stay was rejected and the doctors were arrested. Later on, regular bail was granted in the court. The instruments were however taken in custody.</p>
Category of violation &	Sec 23 PNDT Act, Sec 312 IPC

sections under which complaint has been filed

Documentary evidences presented with the complaint	Seizure memo, degree certificate of Dr. Mahesh
Other evidences presented with complaint	
Documents missing at the time of complaint	
Documents not provided to the research team	Order sheets have not been provided
Abidance to court order by the responsible authorities	Deputy District Attorney opined that challan cannot be placed in the court because abortion cannot be proved. Therefore, police submitted FR. Protest petition was then filed by the AA on 16.11.06 and on 19.12.06 court ordered re-investigation; Protest petition is in evidence stage.
Nature of pleadings	No comment can be made because of absence of order sheets
Analysis of trial proceedings	No comment can be made because of absence of order sheets
Status of complaint	Court directed on 16.10.06 that protest petition may be filed by the AA. Accordingly protest petition filed on 16.11.06. On 19.12.06 court ordered re-investigation.

**Case Title** State Vs Agrawal Ultrasound Centre and Nursing Home, Tehsil Road, Samana, Patiala

Background of complaint	Complainant Appropriate Authority Dr. V.K.Goyal and Dr. G.V. Singh made surprise visit to the aforesaid clinic on 9/8/06. Following irregularities were found upon inspection: <ol style="list-style-type: none"><li>1. One USG machine was registered in the name of the clinic but 2 machines were found on site;</li><li>2. Form F related mandatory provisions were violated and there were serious mistakes in Sr. No. 3 to 52;</li><li>3. Referral note was also not maintained properly.</li></ol> Spot memo was prepared and a complaint was filed on 19/8/06
Category of violation & sections under which complaint has been filed	Sec 23 read with Sec 28, Act
Documentary evidences presented with the complaint	<ol style="list-style-type: none"><li>1. Gazette Notification of the state government;</li><li>2. Registration certificate of the center;</li><li>3. Form F of 1-50;</li><li>4. Spot Memo</li></ol>

Other evidences presented with complaint	Witness statements of Inspection team members Dr V. K. Goyal & Dr. G.B. Singh
Documents missing at the time of complaint	
Documents not provided to the research team	Copies of Form F and the Gazette Notification were not available in the provided letter chain. Further, statements of the witnesses, complaint letter etc. are not available
Abidance to court order by the responsible authorities	Ultrasonography machine was released after the order of the court. The accused applied for anticipatory bail u/s 438 CrPC. What decision was made is difficult to say as there are no following documents.
Nature of pleadings	The accused doctor pleaded that he had written a letter to the AA on 8/8/06 informing him about the shifting of the machine on 7/8/06
Analysis of trial proceedings	Proper analysis of the case is not possible in the absence of the necessary documents
Status of complaint	Pending

<b>Case Title</b>	<b>State Vs Dr. Prem Raj Goyal, Neelam Nursing Home, Rajpura, Patiala</b>
-------------------	---

Background of complaint	On 20/8/02, upon verbal instruction of ACS Dr. S.P. Sharma, a team consisting of two doctors went to the Civil Hospital to investigate the alleged case of sex determination of a patient Sunita w/o Shiv Kumar. Upon tracing the patient, it was found that she had visited an City Ultrasound to get the foetal well-being checked. The patient had 1 male child and 2 female children alive and had suffered congenital malformation during first pregnancy. When the patient was met, she flatly refused to have undergone ultrasonography. But on persistent questioning she said that she had undergone ultrasonography at City Ultrasound Centre and later got the foetus aborted at a private clinic run by Sudesh Rani. The sex of the foetus was not revealed at City Ultrasound but at the other centre which did give her any report. Sunita did not divulge the name of the centre. An FIR was therefore lodged against Sunita(the patient), Sudesh (the nurse) and Dr. Premraj Goyal (the owner of the clinic where sex selective abortion was alleged).
Category of violation & sections under which complaint has been filed	Alleged sex determination followed by sex selective abortion; Case filed under Sec 23 PCPNDT and 312 IPC, 120B
Documentary evidences presented with the complaint	Statements of the Police. Copies of records of City Ultrasound centre.
Other evidences presented with complaint	
Documents missing at the time of complaint	

Documents not provided to the research team	Order sheets have not been provided
Abidance to court order by the responsible authorities	The accused were initially arrested but bail was granted to them.
Nature of pleadings	Analysis not possible in the absence of order sheets
Analysis of trial proceedings	Analysis not possible in the absence of order sheets
Status of complaint	Discharged in 2004

<b>Case Title</b>	<b>State Vs</b>
	<ol style="list-style-type: none"> <li><b>Dr. Shanti Choudhary, Proprietor, Chaudhary Ultrasound Centre, Rajpura, Patiala</b></li> <li><b>Sanjiv Choudhary, nephew of Dr. Shanti Choudhary</b></li> </ol>

Background of complaint	<p>On 26/2/03, the District and the sub-division AA along with AC members, inspected premises of Chaudhary Ultrasound Centre and found following irregularities:</p> <ol style="list-style-type: none"> <li>Dr Shanti Choudhary is the owner and the qualified professional of the centre was not present. As per her statement and records, she rarely visited the centre.</li> <li>She was taking services of Sanjiv Choudhary who was not qualified for the purpose under Act</li> <li>Mandatory records like OPD Register, Form G, Form F, Referral Form and receipt book were not maintained properly.</li> <li>Copy of the Act was also not present in the clinic.</li> </ol>
-------------------------	---

Category of violation & sections under which complaint has been filed	In-eligible person doing ultrasonography (violation of registration norms); Complaint under Sec 3(2) & 23 PCPNDT read with rules 9(4), 9(6) & 10
---	--

Documentary evidences presented with the complaint	<ol style="list-style-type: none"> <li>Spot memo dt 26/2/03</li> <li>Spot memo dt 27/2/03</li> <li>Photocopy of Form F - 16 copies</li> <li>Photocopy of Form G – 16 copies</li> <li>Memo for sealing ultrasound machine</li> <li>Photocopy of Registration suspension letter</li> <li>Photocopy of OPD register</li> <li>Photocopy of Registration certificate of the centre</li> </ol>
--	--

Other evidences presented with complaint	Witnesses of 8 inspection team members who seemed to be from the sub-divisional Advisory Committee
--	--

Documents missing at the time of complaint	
--	--

Documents not provided to the	Ordersheets are missing, Statements of 5 witnesses
-------------------------------	--

research team

Abidance to court order by the responsible authorities	The accused applied u/s 91 Cr.P.C. for showing documents under the custody of the Appropriate Authority.
Nature of pleadings	Analysis is not possible in the absence of ordersheets.
Analysis of trial proceedings	Analysis is not possible in the absence of ordersheets.
Status of complaint	Pending

<b>Case Title</b>	<b>State Vs Vaid Ram Murti, Banur, Patiala</b>
-------------------	--

Background of complaint	The Sub-divisional Appropriate Authority sent an ANM as decoy to the Vaid Ram Murti who is known to have been giving medicines for having a boy. The Vaid gave her the medicines.
Category of violation & sections under which complaint has been filed	Sex Determination/Sex Selection; Sec 6(2), 23
Documentary evidences presented with the complaint	1. Affidavit of the decoy 2. Registration certificate of the Vaid 3. Identity proof of the Vaid 4. Copy of his OPD register
Other evidences presented with complaint	
Documents missing at the time of complaint	
Documents not provided to the research team	Order sheets
Abidance to court order by the responsible authorities	Analysis not possible in the absence of the order sheets
Nature of pleadings	Analysis not possible in the absence of the order sheets
Analysis of trial proceedings	Analysis not possible in the absence of the order sheets
Status of complaint	Dropped due to death of the Vaid Ram Murti

**JHARKHAND**

Name of the district	No of Cases filed	Type of violation	Initiator of complaint	Current status	Facts of the cases
Ranchi	Dr. Manju Chaudhari, women's Health care clinic, Ranium Road, Ranchi	1.. Unregistered since November, 2002 2 Display Board not found containing illegality of sex determination 3 Form 'F' not maintained 4 Money Receipts not issued to patients	Civil Surgeon Cum Chief Medical Officer in the capacity of DAA	Disposed off	Complaining Authority does not want proceed further
Ranchi	Dr. Manisha Chaudhary, Laxmi Nursing Home, Hinero, Ranchi	1 .. Unregistered since December 2006 2. Display Board not found containing illegality of sex determination 3. Form 'F' not maintained 4. Money Receipts not issued to patients	Civil Surgeon Cum Chief Medical Officer in the capacity of DAA	Disposed off	Complaining Authority does not want proceed further
Ranchi	Dr. (Mrs.) Rama Sharma, Rama Nursing Home, Main Road, Ranchi	1Could not produce form 'F' 2.. In sufficient columns in Register of ultrasound Exmination	Civil Surgeon Cum Chief Medical Officer in the capacity of DAA	Disposed off	DAA issued no objection report before the Judicial Magistrate for breaking the seal of USC.
Dhanbad	Mr. Subhas Chandra Barnwal, mAA TARA Ultrasound Dura, Harina Dhanbad	1. Machine found at unregistered centre whereas registered to be used at different place	Civil Surgeon Cum Chief Medical Officer in the capacity of DAA	Pending	Accused on bail

#### UTTAR PRADESH

Name of the district	No of Cases filed	Type of violation	Initiator of complaint	Current status	Facts of the cases
----------------------	-------------------	-------------------	------------------------	----------------	--------------------

Lucknow	Dr. Mayo Medical Centre, Vikas Khand -2, Gomati Nagar	1.. Form 'F' not maintained properly 2 Unregistered machine recovered. 3 Registered machine not shown during inspection. 4 Sign Board containing message regarding illegality of sex determination not displayed. 5.. Signature of the Doctor who did Ultrasound was not affixed	Add. Civil Surgeon Cum Chief Medical Officer in the capacity of DAA	Still pending in the court of CJM for final adjudication	Sealed machine released
Lucknow	Shekhar Hospital, B'block Indira Nagar	1. Form 'F' not maintained 2.No record of referral slips 3. Found using another unregistered machine 4. Registered machine not found at appropriate place 5. Sign Board containing message regarding illegality of sex determination not displayed. 6. Copy of the the Act not kept in the ultra sound room 7.Renewal certificate not displayed 8.Seized USG register shows incomplete details	Add. Civil Surgeon Cum Chief Medical Officer in the capacity of DAA	Pending	---
Lucknow	Maa Chandrika Devi Hospital, Sitapur Road	1.Machine registered to be used at one place but it was brought at another place through vehicle for conducting ultrasonography 2. Non maintenance of required records under the Act	ACMO	Pending	--
Lucknow	Vibgyor Clinic, Iekhraj Market-1	1. Advertisement of clinic in Dainik Jagran for conceiving male	ACMO	Pending	--

Indira nagar child

Lucknow	Adarsh Diagnostic Centre, Narayan Garden Hardoi Road	1.Registered machine was sent to other place for conducting ultrasonography 2. Only one Dr. was registered with DAA but another Dr. was also found conducting ultrasonography 3.Requiered records under the Act not maintained.	ACMO	Pending	--
---------	--	---	------	---------	----

**ORISSA**

*Cuttack District*

Name of the Ultrasound center/ violator	Name of Court /Authority/ any investigating team	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
1. Imagic Ultrasound , Manga labag, Cuttack	Under DAA	1. renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-Cuttack	During the visit of NIMC 3 cases were filed for non registration and non-maintenance of records rest cases are filed by DAA
2. Janas evak, Choudwar, Cuttack	Under DAA	Mismatch of Registration with machine chechis no	Asked for show cause and after receiving the causes the authority gave only warning	DAA-Cuttack	
3. Krisna Diagnostics, RanihatMedical Road, Cuttack	Under DAA	renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-Cuttack	

4.	Metro U/S Ranihat, Cuttack	Under DAA	non-maintenance of records	Asked for show cause and after receiving the causes the authority allowed the center to work and maintain the records properly	DAA-Cuttack
5.	Beam Diagnostics, Mangalabag, Cuttack	Under DAA	non-maintenance of records	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-Cuttack
6.	New life Mangalabag Cuttack	Under DAA	non-maintenance of records	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-Cuttack

After constitution of the Task Force Committee Collector & District Magistrate, Cuttack formed four numbers of squad to inspect all the Nursing Homes, Ultrasound Clinics & Medical Termination of Pregnancy (MTP) Centres of Cuttack district.

The said squad inspected 173 registered Clinical Establishments (Nursing Home/ Diagnostics Center Pathology Clinics.) 70 Ultrasound Centers available in the district during 02.08.2007. During inspection, 32 numbers of Clinical Establishments, 5 Ultrasound Clinics were sealed due to want of registration up to date records and pollution Clearance Certificate.

It may be noted here that during that period a Central Team of Health & Family Welfare Department, Govt. of India has sealed of two Ultrasound Clinics due to want of up to date records.

1. Beam Diagnostics, Mangalabag, Cuttack.
2. New Life Diagnostics, Mangalabag Cuttack.

3. Krishana Diagnostics, Ranihat, Medical Road, Cuttack
4. Jnasevak Clinic & Nursing Home (Ultrasound Unit) Choudwar, Cuttack
5. Imagic Ultrasound Mangalabag, Cuttack
6. Metrao Diagnostics, Ranihat, Cuttack

The advisory committee meeting was held on 25.07.2007 under the Chairmanship of Collector & District Magistrate, Cuttack under PNDDT Act. 1994 and in the said meeting it was decided to reopen the sealed Ultrasound Clinics if in the meantime they have complied all the requirements as per PNDDT Act-1994. After verification of the show cause reply submitted by the Ultrasound Clinic proprietors and after verification of records the squad again visited all the sealed Ultrasound Clinics and reported the matter to the Chairman District level Task Force Committee. Cuttack thereafter out of 6 Ultrasound Clinics 5 of Ultrasound /Clinics were permitted to open but one Ultrasound Clinic namely Metro Diagnostics, Ranihat, Cuttack was made to close down the unit.

Present position:

These cases are closed and a vide order is issued by the Collector and Appropriate Authority. All the clinics are reopened.

*Khurdha District*

Name of Ultrasound center/ violator	Name of Court /Authority/ any investigating team	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
1.ESI-Hospital Bhubaneswar	Under DAA	1. renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-Khurdha	In the Ultrasound center it was found that registration number was not renewed
2. Well Spring	Under DAA	Mismatch of Registration with machine chechis no	Asked for show cause and after receiving the causes the authority gave only warning	DAA-Khurdha	The chechis number of the machine was mismatched with the number mentioned in the registration
3. Global Health Care	Under DAA	renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration	DAA-Khurdha	In the Ultrasound center it was found that registration was not renewed

			with prior fine		
4. Ultrasound Clinic-BBSR	Under DAA	non-maintenance of records	Asked for show cause and after receiving the causes the authority allowed the center to work and maintain the records properly	DAA-Khurdha	the form 'F' & 'G' were not maintained properly and other records are not available during the time of supervision
5. Hi-Tech Medical college	Under DAA	non-maintenance of records	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-Khurdha	the form 'F' & 'G' were not maintained properly and other records are not available during the time of supervision

**Facts of these cases:** During supervision these ultra sound clinics found guilty under the Act. ESI Hospital, and Global Health Care found registration not renewed where as Ultrasound Clinic- and Hi-Tech Medical College had found the records are not properly maintained. In Well Spring it was found that the chechis number of the Ultrasound machine was mismatched with the number mentioned in the registration certificate.

**Present position:** These cases are closed and an order is issued by the Collector and Appropriate Authority. All the clinics are reopened.

Other two case files of Auro Diagnostic and Diagnostic Ultrasound were with the Appropriate Authority for further actions.

*Anugul District*

Case Title	Name of Court	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
State v/s Kalyani Diagnostics-Anugul	Under SDJM-Anugul	Under section 23/25 of the PNMT1994- Non Renewal of the machine used by the proprietor Dr. Maguni Charan Sahoo	Case filed under SDJM –Anugul on 22.11.2007 Till pending in the court of SDJM	DAA- CDMO-Anugul	The u/s machines registration was till 2004 and it was not renewed

Complainant: CDMO Anugul Appropriate Authority authorized by the Collector- Cum- Appropriate Authority under PNDD 1994

Vrs.

Dr. Maguni Charan Sahoo aged about 74 yrs – Proprietor – Kalyani Diagnostic Anugul

Date & place of occurrence: Dt. 05.08.2007 at Kalyani Diagnostic Centre, Anugul

**Witnesses:**

1. Dr. C. Sahoo, ADMO (Med.)
  2. Sri Abani kanta Sahu, Executive Magistrate District Office Anugul
  3. Sri Susil Kumar Senapati., O.I.C. Anugul Police Station
- Any other witnesses in the time of hearing of the case

**Case:** The case has been filed under the section 18 of chapter 6 of PNDD Act. Then accused have committed the offence under section 23 & 25 of the said Act and be punishable. The case is during survey and supervision of district authority on personal verification of relevant register maintained for that purpose in the office of the Appropriate Authority it was found that the duration of validity of the registration certificate have already been expired by 15.05.07 in relation to that Kalyani Diagnostic Centre Anugul.

To regularize the matter the complainant issued letter for renewal of the registration certificate to the accused, did not compiled the same. Again the authority visited and asked to submit the renewed registration but the accused had unable to produce the same. The authority was fully convinced that he accused had violated the provision of the PNDD act and rules and in due course of their inspection.

That said article was sealed after due compliance of the procedure which were used capable being used for the purposed of detection of sex of the foetus.

**Current position:** the case is still pending in the Honorable Court of SDJM- Anugul. The clinic Kalyani Diagnostic Centre is still closed.

*Nayagarh District*

Name of Ultrasound center/ violator	Name of Court/Authority/ any investigating team	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
1. Matrus hakti Clinic	Under Crime Branch – Orissa Investigation	U/s 6 and 22 – i.e under determination of sex and prohibition of advertisement	These cases are under Crime branch Investigation The Ultrasound machines are	National Inspection Monitoring Committee and District Appropriate Authority and	When the foetus of female found under a hill named Duburi in a polythene packets and seen by a cowboy and telecasted by the
2. Satkar	Under Crime	U/s 6 and 22 –			

Poly Clinic	Branch – Orissa Investigation	i.e under determination of sex and prohibition of advertisement	not yet opened	The then Health Secretary Shri Chinmay Basu-IAS	local Electronic media the case was became burning issue for the whole Orissa which force to activated the PNDD cell all over the state.
3.Rashmi Diagnostics	Under Crime Branch – Orissa Investigation	U/s 6 and 22 – i.e under determination of sex and prohibition of advertisement			
4. Patra Drug House	Under Crime Branch – Orissa Investigation	U/s 6 and 22 – i.e under determination of sex and prohibition of advertisement			
5.Sun-Appolo Diagnostics	Under Crime Branch – Orissa Investigation	U/s 6 and 22 – i.e under determination of sex and prohibition of advertisement			

The case is still pending and under the investigation of Crime Branch. In this regard the research coordinator tried to meet the Investigating officer in the State Crime Branch. Though the investigating officer met with the coordinator but not shared the progresses of the case. The coordinator tried to contact the IGP of Crime Branch but unable to meet him as per the busy schedule of the IGP.

*Puri District*

Name of the Ultrasound center/ violator	Name of Court /Authority/ any investigating team	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
1. Usha Memorial Clinic, Nimapada, Puri	Under DAA-Puri	1.maintenance of records and proper training certificate of the practitioner	Penalty collected and the u/s centers got registration no under PNDD act. and reopened.	DAA-CDMO Puri and the Task force in the presence of NIMC	During the visit to the district of NIMC it was found that the clinic is functioning unauthorized

2. Srikrishna Health care and reproductive research Centre- Puri	Under DAA- Puri	2.Ultra sound machine purchased in the name of city clinic but machine found in the above mentioned clinic	Penalty collected and the u/s centers got registration no under PNDDT act. and reopened.	DAA-CDMO Puri and the Task force in the presence of NIMC	The machine was used by the proprietor was having another registration no in the name of city clinic but was found in the Sri Krishna. HCR Rcentre -Puri
--	-----------------	--	--	--	--

The case is settled down by the Appropriate Authority – Puri. Penalty collected and the Ultrasound Centres got a registration no under PNDDT Act.

1. The Sri Krishna Health care and Reproductive Research Centre.

The doctor Arjun Charan Dash the proprietor of the above clinic has purchased one ultrasound machine. Machine in the name of City Clinic and it was found in the premises of above NH. So the authority has not allowed keeping the same in NH premises. That is why the Machine was sealed by the District Task Force, Puri in presence of NMIC.

The violator imposed five time penalty of registration amount i.e. Rs. 20,000/- & 4000/- for new registration in the name of Sri Krishna Health care and Reproductive Research Centre.

2. Usha Memorial Clinic- was registered under PNDDT rules. Due to lack of proper training certificate improper maintenance of form-F patient Register and money receipt the US machine was sealed. Dr. Raghunath Mishra, owner of the clinic asked to comply. After getting the causes authority gave permission to open the clinic.

*Balasore District*

Name of Ultrasound center/ violator	Name of Court /Authority/ any investigating team	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
1.Durga NH & US clinic	Under DAA – Balasore	1. renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration	DAA-CDMO Balasore and the Task force of the District	not renewed their certificates. The registrations were up to 2003-06.

			with prior fine		
2. Agrawal a US Clinic	Under DAA – Balasore	2.non maintenance of records(form F & G)	Asked for show cause and after receiving the causes the authority allowed the center to work and maintain the records properly	DAA-CDMO Balasore and the Task force of the District	shows the cause that there was no communication or not asked by the CDMO Office. Whatever it was asked before they were maintaining the records accordingly.
3. Sonoscan, Nayabazar	Under DAA – Balasore	3.renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-CDMO Balasore and the Task force of the District	not renewed their certificates. The registrations were up to 2003-06.
4. Parampara	Under DAA – Balasore	4. non maintenance of records	Asked for show cause and after receiving the causes the authority allowed the center to work and maintain the records properly	DAA-CDMO Balasore and the Task force of the District	shows the cause that there was no communication or not asked by the CDMO Office. Whatever it was asked before they were maintaining the records accordingly.
5. Sneha US Clinic	Under DAA – Balasore	5. Renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-CDMO Balasore and the Task force of the District	not renewed their certificates. The registrations were up to 2003-06.

After the Nayagarh female foeticide case, the Appropriate Authority of the Balasore district for PC& PNDDT was reconstituted and was asked to verify and check the Ultrasound Clinics and machines. During the supervision 5 clinics were found guilty under the 11(2) of the Act and Authority issued a show cause notice. Durga Nursing Home, Sonoscan & Sneha U/S clinics were found that the registration was in the year 2003 till 2006 but according to rules, registration is to be given for a period of 5 years which was also

mentioned in the certificate issued for these Ultrasounds consequently the expire of registrations were up to 2008.

The Agrawalla Ultrasound Clinic and Parampara Clinics both are the violator of the section under 9 (4) 10 (1A) respectively of non maintenance of form 'F' & 'G' of the PC&PNDT Act. In their show-cause answer they explained that they are maintaining records as they were asked by the CDMO office.

*Bargarh District*

<b>Name of Ultrasound center/ violator</b>	<b>Name of Court /Authority/ any investigating team</b>	<b>Type of violation under Act</b>	<b>Current status</b>	<b>Initiator of Complaint</b>	<b>Facts of the case</b>
1. Catholic Mission Hosp	Under DAA – Bargarh	renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-CDMO Bargarh and the Task force of the District	1. The catholic Mission Hosp. was seized on 28.7.07 by the district authority Magistrate and police. During the course of checking it was found that the validity of license has been expired since 31.12.06.
2. Jaanata Chikitschalaya	Under DAA – Bargarh	renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-CDMO Bargarh and the Task force of the District	The Janata Chikitschalaya was seized on 31.07.2007 by the district authority Magistrate and police. During the course of checking it was found that the validity of license was expired since 31.12.06.
3. Behera	Under DAA –	renewal of	Asked for	DAA-CDMO	2. Behera

Nursing Home, Bargarh	Bargarh	registration	show cause and after receiving the causes the authority renewed the registration with prior fine	Bargarh and the Task force of the District	Nursing Home was seized on 27.7.07 by the district authority Magistrate and police. During the course of checking it was found that the validity of license was been expired since 31.12.06.
4. Dr. B.D Das U/S clinic Hiripalli	Under DAA – Bargarh	renewal of registration	Asked for show cause and after receiving the causes the authority renewed the registration with prior fine	DAA-CDMO Bargarh and the Task force of the District	3. Dr. B.D. Das U/S clinic was seized on 5.08.2007 by the district authority Magistrate and police. During the course of checking it was found that the validity of license was been expired since 31.12.06.
5. Gayatri NH	Under DAA – Bargarh	Non-registration of the machine	Gayatri NH case is under SDJM Bargarh and till pending. No hearing till date.	DAA-CDMO Bargarh and the Task force of the District	4. Gayatri Nursing Home was seized on 28.11.2007. by the district authority. On receipt of information about possession one Ultrasound machine at Gayatri Nursing home without

the certificate of registration for operation. The same was cerched and seized in the presence of witness.

The present status of these cases:

Penalty collected from the proprietors as punishment

- a. Catholic Mission Hosp.-----Rs. 20,000/-
- b. Jaanata Chikitschhalaya.....Rs. 20,000/-
- c. Behera Nursing Home.....Rs. 20,000/-
- d. Dr. B.D Das U/S clinic Hirlipalli-----Rs. 15,000/-

**e. Gayatri Nursing Home: till 20.12.2008 <sup>55</sup>**

The case no. is 2(c) C case C No-6-28

Initiated on the complaint filed by the sub-Collector & Sub- Divisional magistrate – Bargarh – Orissa

The appearance of the accused Kamini Prabha Nanda was shifted by showing causes. This case is not yet reached to the stage of hearing of witnesses.

*Jajpur District*

Name of Ultrasound center/ violator	Name of Court /Authority/ any investigating team	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
1.Diagnostic centre, Jajpur	Under DAA- Jajpur	. Renewal of registration	Fine .Rs. 15000/- Dr. Rabindra Ku. Swain, M/S Diagnostic Centre	District AA & CDMO	At the time of supervision the AA found the Registration no of the Ultrasound Machines were missing and submitted later in the office of the DM with an application for renewal of the
2.Sri Maa Clinic, Jajpur	Under DAA- Jajpur	. Renewal of registration	Fine . Rs. 20000/- Dr. Bata krushna Mohanty.	District AA & CDMO	

<sup>55</sup> Source: report submitted by the APP- Bargarh

3. Anima Nursing Home, Jajpur	Under DAA- Jajpur	. Renewal of registration	M/S- Sreema Clinic Fine Rs,20000/- Sri Indu Shekhar Panda, M/S Anima Nursing Home	District AA & CDMO	registration. The DM or the AA asked for show cause by personal hearings. Now they got the registration renewed valid up to 2012.
-------------------------------	-------------------	---------------------------	---	--------------------	---

**Observation:**

There are 5 Ultra Sound clinics are running in the district. Out of 5 Ultrasound, 4 are running privately and one is in the District headquarters Hospital (DHH). Out of 5 Ultrasound Clinic, one Ultrasound Clinic Asha Sonographic Centre, Sukinda is functioning with valid registration. Other 3 Ultra Sound Clinic functioning in the private sectors are functioning without valid registration. Their registrations have expired on 22.3.2007 and they have not renewed valid registration during surprise visits.

Appropriate Authority asked all of the above Centers to show the causes of the failure of the renewal of their registration personally in the court of the District Magistrate for hearing. The proprietors of the following Clinics had shown their causes and submitted an application with prior fine as per the rule in the PC & PNDT Act.

Present status: all the above Ultrasound Proprietors received an order from the Appropriate Authority and all the clinics are opened. The Registrations renewed valid till 2012.

*Bhadrak District*

Name of Ultrasound center/ violator	Name of Court /Authority/ any investigating team	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
1. Binayak N.H. & Research Centre , Jajpur	Under DAA- Bhadrak	The machine was operated by a non – allopathic practitioner	Opened and now one allopathic doctor is operating the machine	District AA & CDMO	One non allopathic practitioner was operating the machine during the supervision

During the inspection of the Appropriate Authority found in Binayak Nursing Home the Ultrasound machine was being operated by anon-allopathic practitioner. The Appropriate Authority had sent a notice to change the practitioner.

Present status:

The Ultrasound Unit of Binayak Nursing Home of Bhadrak district submitted the Ultrasonologist Certificate of Dr. Uttam Charan Sahu of Cuttack district. After the submission of the verification report of the CDMO the Binayak Nursing Hoem got permission to reopen the Ultrasound Unit.

#### Sundergarh District

Name of Ultrasound center/ violator	Name of Court /Authority/ any investigating team	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
1. Sudha NH - Sundergarh	Under District AA & CDMO- Sundergarh	Renewal of registration	Opened Rs. 20000/- collected as fine	District AA & CDMO- Sundergarh	The registration of these Ultra Sound Centres had been expired during inspection.
2. Gayatri clinic	Under District AA & CDMO- Sundergarh	Renewal of registration	Opened Rs. 20000/- collected as fine	District AA & CDMO- Sundergarh	The registration of these Ultra Sound Centres had been expired during inspection.
3. Subas Bose Hospital Rajgangapur	Under District AA & CDMO- Sundergarh	Renewal of registration	Opened Rs. 20000/- collected as fine and case filed against the violator in the SDJM court	District AA & CDMO- Sundergarh	The registration of these Ultra Sound Centres had been expired during inspection.
4. Ambika Biramunda NH Rourkela.	Under District AA & CDMO- Sundergarh	Renewal of registration	Opened Rs. 20000/- collected as fine	District AA & CDMO- Sundergarh	The registration of these Ultra Sound Centres had been expired during inspection.
5. Auro Sca	Under District AA & CDMO- Sundergarh	Renewal of registration	Opened Rs. 20000/-	District AA & CDMO-	The registration of these Ultra Sound

n US clinic	Sundergarh		collected as fine	Sundergarh	Centres had been expired during inspection.
6. Catholic Mission Hospital	Under District AA & CDMO-Sundergarh	Renewal of registration	Opened Rs. 15,000/- collected as fine	District AA & CDMO-Sundergarh	The registration of the Ultra Sound Centres had been expired during inspection.
7. Prasanti Diagnostic	Under District AA & CDMO-Sundergarh	Renewal of registration	Opened Rs. 20000/- collected as fine	District AA & CDMO-Sundergarh	The registration of the Ultra Sound Centres had been expired during inspection.
8. Orissa polyclinic	District AA & CDMO-Sundergarh	Renewal of registration	not deposited fees and penalty	District AA & CDMO-Sundergarh	The registration of the Ultra Sound Centres had been expired during inspection.
9. Rohini Diagnostic	Under District AA & CDMO-Sundergarh	Renewal of registration	not deposited fees and penalty	District AA & CDMO-Sundergarh	The registration of the Ultra Sound Centres had been expired during inspection.
10. ESI Specialist Centre.	Under District AA & CDMO-Sundergarh	Renewal of registration	not deposited fees and penalty	District AA & CDMO-Sundergarh	The registration of the Ultra Sound Centres had been expired during inspection.
11. Dr. R. Acharya	Under District AA & CDMO-Sundergarh	Renewal of registration	not deposited fees and penalty	District AA & CDMO-Sundergarh	The registration of the Ultra Sound Centres had been expired during inspection.

Facts of these cases and current status:

1. Sudha Nursing Home, 2. Gayatri Clinic, 3. Subash Bose Hospital, 4. Ambika Birsamunda Nursing Home, 5. Auto Scan Ultra Sound Clinic, 6. Catholic Mission Hospital and Prasanti Diagnostic had deposited the penalty with application for the renewal and the clinics got renewed and opened.
2. Orissa Poly Clinic, Rohini Diagnostic, ESI specialist Centre and Dr. R. Acharya. Clinics had not deposited any application or any penalty asked by Appropriate Authority. Appropriate Authority preparing to file a case against these violators in High Court.

Jharsuguda District <sup>56</sup>

Name of Ultrasound center/ violator	Name of Court /Authority/ any investigating team	Type of violation under Act	Current status	Initiator of Complaint	Facts of the case
1. Dr. PK Jain	Under District AA & CDMO	Renewal of registration	Dr. P.K. Jain Rs. 20000/- Rs.20000/- +Rs. 4000/- fine collected and the centre is opened	District AA & CDMO	It was found that the ultrasound center's registration was not renewed at the time of supervision
2. Dr. SD Sharma	Under District AA & CDMO	Renewal of registration	Opened after receiving the fine charges and authority gave permission	District AA & CDMO	It was found that the ultrasound center's registration was not renewed at the time of supervision
3. S. Mahanta	Under District AA & CDMO	Renewal of registration	Opened after receiving the fine charges and authority gave permission	District AA & CDMO	It was found that the ultrasound center's registration was not renewed at the time of supervision
4. Central Hospital	Under District AA & CDMO	Renewal of registration	Opened after receiving the fine charges and authority gave permission	District AA & CDMO	It was found that the ultrasound center's registration was not renewed at the time of supervision
5. Dr. SC Mohanty	Under District AA & CDMO	Renewal of registration	Opened after receiving the fine charges and authority gave permission	District AA & CDMO	It was found that the ultrasound center's registration was not renewed at the time of supervision
6. Dr. PC Pradhan	Under District AA & CDMO	Renewal of registration	Opened after receiving the fine charges and authority gave permission	District AA & CDMO	It was found that the ultrasound center's registration was not renewed at the time of supervision
7. Dr.	Under District	Renewal of	Opened after	District AA &	It was found that the

<sup>56</sup> These cases were collected from NHRC- New Delhi on 4/2/09 sent by the district authority of Jharsuguda district. These are draft prosecution report will be submitted in the court of SDJM –Jharsuguda

N. C. Samal	AA & CDMO	registration		receiving the fine charges and authority gave permission	CDMO	ultrasound center's registration was not renewed at the time of supervision
8. St. Merry Hosp	Under District AA & CDMO	Renewal of registration		Opened after receiving the fine charges and authority gave permission	District AA & CDMO	It was found that the ultrasound center's registration was not renewed at the time of supervision
9. Dr. P Sujatha	Under District AA & CDMO	Renewal of registration		Dr. P. Sujatha's Centre is not functioning now.	District AA & CDMO	It was found that the ultrasound center's registration was not renewed at the time of supervision

Facts of these cases:

1. Case no. 1-8 are reopened and it was found during supervision these ultrasound machines used by the mentioned persons had been installed in these institutions for conducting Genetic Examination and the same is being under taken without valid registration, which had been expired since 31.12. 2006. The Ultrasound was being used without a valid registration so the Appropriate filed case under the section 18(1) and Rule 8 (1) of the Act.

Present Position:

Sl. 1-8 are reopened with an application for renewal with penalty charges.

Dr. P. Sujatha's Clinic is not functioning now.

## MAHARASHTRA

*District Ahemadnagar*

**1. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. R.B Jadhav ( A.A of Rahata) VS, Dr. Probod Udhav Joshi, Joshi Hospital, A/p Shirdi, Taluka- Rahata, Dist- Ahemadnagar

- **Name of the court:** Judicial Magistrate Court First Class.

- **Nature of the offence:** Non- maintenance records.

- **Relevant section under the Act.** Complaint under Act 1994(Amended) read with Section 29, Rule 9(4), Rule19 (3) & (4).

- **Initiator against the offence:** Dr. Mr. R. B. Jadhav (Appropriate Authority)

- **Complainant of the court matter.** Dr.Mr. R.B. Jadhav (Appropriate Authority)

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:** Case No. 151/ 2007 Date- 03/10/2007, Judicial Magistrate Court, The (A.A) on 16/7/07 visited Dr.Joshi Hospital where they observed few misappropriations with instruments, register, documents etc 1. Out of one to seventeen Column of the register were date and sonography column are mentioned were half filled, sonography findings were also vacant. 2. On 13/07/2007 the sonography which was maintained in register no. 1 to 17 column, serial no. 13 and page no. 32 were patient declaration was nominated. 3. While checking the consent form, it was mentioned that Dr. Bavale and signature of Mr. Bavle was also not there. 4. On March 2007 there was monthly report were only 7 cases was registered and in 1 to 7 column there were actually 17 cases filed which was there in page 43 and 44 of the register.

- **Status of the case.** Pending

- **Observations:** In this case, they have not produced license of the hospital and spot Panchnama. The documents in the case seem to be insufficient. Appropriate Authority has not bothered to collect the purchase slips of the sonography machine. If the Appropriate Authority has done and completed raiding to show that they are functioning it would have been a strong case. But there can be no conviction if the documents are not on record to support the accusation.

**2. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. R.B Jadhav (A.A of Rahata) VS. Dr. Santosh Swapanrao Maid, Add- Dr. Maid Hospital, Gynecological Hospital Nagar-Manmad Road Ruchi Nagar, A/P Taluka – Rahata, District- Ahemadnagar.

- **Name of the court:** Judicial Magistrate Court First Class.

- **Nature of the offence:** Non- maintenance records.

- **Relevant section under the Act.** Complaint under Act 1994(Amended) read with Section 29, Rule 9(4), Rule19 (3) & (4).

- **Initiator against the offence:** Dr. Mr. R. B. Jadhav (Appropriate Authority)

- **Complain-ant of the court matter.** Dr. Mr. R. B. Jadhav (Appropriate Authority)

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:** Case No. 150/2007 Date- 03/10/2007 Judicial Magistrate Court, The (A.A) on 16/7/07 visited Dr. Maid Hospital where they observed few misappropriations with instruments, register, documents etc. 1.The month of July Form- F has not been completed. 2. On 16/07/2007 the sonography which was done, there the consent letter was not signed by the patient. 3. Dr. Maid has signed two different signatures. 4. Dr. Maid has already been given notice in the past there was violation of Act, but he did not take precautions. 5. In Form- F the Patient's age was not kept in the office.6. In form – F and acceptance letter there was no sign of the Doctor.

- **Status of the case.** Pending

- **Observations** The case report has been written very badly. It is not good for a strong case. The mention on the 'Tabe pawati' dated 16/07/07 says that the machine has been sealed and given in the custody of Dr. Maid. But on the notice / summons dated 20/07/07 it is mentioned that the custody of the

sealed machine had given to Dr. Sonavane. There are some mistakes like these which make the case good for the accused. The Appropriate Authority shall be more vigilant while implementing this law.

**3. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. R.B Jadhav (A.A of Rahata) VS. Dr. Shubhada Promod Khare , Khare Hospital, Shukleshwar Mandir Road, A/P Taluka- Rahuri , District- Ahemadnagar.

- **Name of the court:** Judicial Magistrate Court First Class

- **Nature of the offence:** Non- maintenance records.

- **Relevant section under the Act.** Complaint under Act 1994(Amended) read with Section 29, Rule 9(4).

- **Initiator against the offence:** Dr. Mr. R. B. Jadhav (Appropriate Authority)

- **Complain-ant of the court matter.** Appropriate Authority.

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:**

Case No. 894/2007 Date- 08/10/2007 Judicial Magistrate Court, Date 17/07/2007 appropriate authority visited Dr. Khare Hospital, and then the faults which are mentioned are listed below, 1. The sonography center and the consulting room were at different places. 2. The sonographer did not have undertaking certificate. They have kept one confidential room 'F' for their own purpose, in that room there was information and registered file but the information was minimum. 3. There was registered note of February 2007 in which the sonography done was of pregnant women and reason for sonography was not mention. While in July 2007 in this center only four pregnant women sonography was done and they have not been registered.4. The name which was obtained from the office was not containing full information and original monthly report as available. In this center Dr. Uttam Bhimrao Patil, Gynecologists Rahuri committing an offence of termination of the child. However abortion center in this hospital was not authorized according to the government. 5. Declaration form in sonography center was not available. Form 'G' was filled by the patient who was not necessary and also not signed by doctor.

- **Status of the case.** Pending

- **Observations:** In this legal case Dr. R.B.Jadhav (A.A) visited to Dr. Shubhada Promod Khare Hospital on 17/07/07 to check the details about sonography center and found so many faults that he his mentioned and told to Dr. Shubhada Khare she accepted all the faults and lastly she has given application, to not cancel her PNDT certificate and according to certificates conditions she is ready to run his sonography center. This is good case against the accused.

**4. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. R.B Jadhav (A.A of Rahata) VS. Dr. Atul V. Jhower, Rukmani Nursing Home, At- Post – Vamboli, Taluka- Rahuri.

- **Name of the court:** Judicial Magistrate Court First Class

- **Nature of the offence:** Non- maintenance records.

- **Relevant section under the Act.** Complaint under Act 1994(Amended) read with Section 3 & 29 Rule 9 (4).

- **Initiator against the offence:**

1. Dr. R.B.Jadhav (A.A)
2. Umesh Bahaurao Saheb (Tasildar Rahuri)
3. Nalini Virvae.N.B (Taluka Health Officer, Panchyat Samittee.

- **Complain-ant of the court matter.** Appropriate Authority.

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:**

Case No. 897/2007 Date- 08/10/2007 Judicial Magistrate Court, Date 17/07/2007 appropriate authority visited Dr Atul Nursing Home, and then the faults which are mentioned are listed below, 1. Dr. Mahajan comes in this center with his machine on every Sunday at 01:00 pm onwards for sonography. On 08.07.2007 he did sonograpy of eight women and declared only two patients has not even signed also and in the rest six patients signature was not there. Dr. Mahajan sonography center has been registered sonography only on Sunday but it was open on Tuesday dated 17.07.2007. 2. Form 'F' was not kept in spare in the column eighteen of the register there was written regular check-up instead of sonography done. 3. In the register of sonography reports patients' name, address and age was not mentioned. 4. Checking report was half filled and Dr. Mahajan sign was also half done. 5. All the columns of eighteen register of the patients sonography there was different signature of Dr. Mahajan. 6. The sonography center was registered in the name of Dr. V. Jawhar was present and the pregnancy columns the reason of abortion was not given.

- **Status of the case.** Pending

- **Observations:** In this case lots of negligence has taken place by the accused. Though the Panchas are independent government authority and had rightly mention the defects in the said case still appropriate actions have not taken place at the time of incident accused. What is lacking in this case correct print out by Panch, Tahasildar? So the prompt actions need to be taken .

**5. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. R.B Jadhav (A.A of Rahata) VS. Dr. Khande, Khande Hospital, Genealogical center, near to bus stand, A/P Taluka, Rahata, District – Ahemadnagar.

- **Name of the court:** Judicial Magistrate Court First Class

- **Nature of the offence:** Non- maintenance records.

- **Relevant section under the Act.** This has led to the violation of Section 3 & 5 .Complaint under Act 1994(Amended) read with Section 29, Rule 9(4), Rule 19 (3) & (4) and also so the case has been filed as per the jurisdiction of the court.

- **Initiator against the offence:** Dr.R B. Jadhav (Appropriate Authority)

- **Complainant of the court matter.** Appropriate Authority

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:**

Case No. 153/2007 Date- 03/10/2007 Judicial Magistrate Court, Date 16/07/2007 appropriate authority

visited Dr Khande Hospital, and then the faults which are mentioned are listed below, 1. In one to eighteen columns Form – F was not filled. 2. In register one to eighteen the reason for non- fulfillment of form was not given as per the Act. 3. In the sonography center there should be a board that sex selection is prohibited which was not there in the clinics. 4. On 18.07.2007 and 15.07.2007 the declaration form i.e. Form F there was radiologist named as visiting Dr. Sachdev and the signature was of Dr. Khande (Dr Sachdev name was as the visiting doctor but Dr. Khande was registered and signature was of Dr. Khande). 5. Form- F was filled by somebody else not by the doctor who did the sonography. 6. In the consent form the child born after sonography done was not mentioned. 6. The book of the Act was not kept there in the hospital or common room.

- **Status of the case.** Pending

- **Observations:** The documents in the case are insufficient. Good for the accused to take undue advantage.

**6. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. R.B Jadhav (A.A of Rahata) VS. Dr. Vijay S. Lahoti, Lahoti Hospital, Gynecological center, Gokul Colony, Near Bus Stand, A/P Taluka – Rahuri, District – Ahemadnagar.

- **Name of the court:** Judicial Magistrate First class.

- **Nature of the offence:** Non- Maintance Record

- **Relevant section under the Act.** Complaint under Act 1994(Amended) read with Section 29 and Rule 9 (4) and also Rule 19 (3) & (4).

- **Initiator against the offence:** 1. Dr. R.B.Jadhav (A.A)

2. Umesh Bahaurao Saheb (Tasildar Rahuri)

3. Nalini Virvae.N.B (Taluka Health Officer, Panchyat  
Samittee.

- **Complainant of the court matter.** Dr.R B. Jadhav (Appropriate Authority)

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:** Case No.896/2007 Date- 08.10.2007 Judicial Magistrate 16/07/2007 appropriate authority visited Lahoti Hospital and then the faults which are mentioned are listed below, 1. The Board in which Act information should be given, that was not kept at proper place i.e. at the public so that it would be visible to the public and they could be aware. 2. The Board was inside the cup- board near the waiting room. 3. In Form – F there was no declaration of doctor and patient.

- **Status of the case: Pending.**

- **Observations:** The papers in this case are incomplete. So difficult to prove any offence. There is no 'Panchnama' no seizure Panchnama. The accused can get benefit of doubt.

**7. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. Arun Ambadas Raj Rau Medical Superintendent, Rural Hospital, Village Karjat, and District- Ahemadnagar. (A.A) Vs. Dr. Pandurang Vitthal Bhore, Suvidha Hospital, A/P- Mirajgaon, Age- 38, Occupation- Doctor.

- **Name of the court:** Judicial Magistrate Court.

- **Nature of the offence:** Non- Maintenance Record.

- **Relevant section under the Act.** Complaint under Act 1994(Amended) read with Section 3 and section 29(1), 29(2), Rule 9(1), Rule 10 (1) and Rule 17 (2) and so the case has filed as per the jurisdiction of the court.

- **Initiator against the offence:** Appropriate Authority.

- **Complainant of the court matter.** Dr. Arun Ambadas Raj Raut (A.A)

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:** Case No. 9/2008 Date- 17.01.2008 Judicial Magistrate Court, Date 08.08.2007 Appropriate Authority Visited Suvidha Hospital and then the faults which are mentioned are listed below, 1. The key of sonography room was not sinologist. 2. Act, 2003 book was not kept there in the common room for the purposes of reading. 3. In Form – F in front of patient name was written self referred. 4. In the patient declaration form the signature was and there was thumb signature but there was no signature of the witnesses. 5. in 2007, June the monthly report of Act was not given. 6. On 04.08.2006 the consent form was not signed by Mrs. Sunita Shinde, Anita Pnadule, and Suvarna Gadkah.

- **Status of the case.** Pending

- **Observations:** Papers are insufficient in the case.

**8. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. Shila Mahendra Dnaghe, Medical Superintendent, Rural Hospital, Shrigonda, Taluka- A.A. Village – Shrigonda, District – Ahemadnagar. Age 31, Occupations – Doctor. Vs. Dr. Vishnu Dhondiba Jagtap, A/P Kasti, Taluka- Shrigonda Dist- Ahemadanagar.

- **Name of the court:** Judicial Magistrate Court.

- **Nature of the offence:** Non Maintains Record.

- **Relevant section under the Act.** Complaint under Act 1994(Amended) read with Section, 3 and 29, Rule 9 (4), Rule 19(3) & (4) and so the case has been filed as per the jurisdiction of the court.

- **Initiator against the offence:**

1. Shaila Mahindra Dange (A.A)
2. Mr. Mohekar Saheb (Tahsildar Shrigonda)
3. Dr. L.B. Karle, Medical Superintendent, (Member of  
A.A, Ahemadnagar)
4. Mr. Pranjal Shinde, Officer of Panchyat Samittee,

Shrigonda.

5. Dr. S.D. Khote, Taluka Medical Officer, Panchyat

Samittee.

6. Mr. Sunil Borade (Laboratory Specialist), District

Rural Hospital Ahemadnagar.

- **Complainant of the court matter.** Shaila Mahindra Dange (A.A)

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:**

Case No. 786/2007 Date-07.12.2007 Judicial Magistrate Court Date 24.07.2007 Appropriate Authority visited the clinic, and then the faults which are mentioned are listed below, 1. The sonography machine was not sealed. It was there for the registered sinologist who was not there to use the machine but somebody else was using it. 2. The board was not there neither in English nor in Hindi. 3. And the board which there it was not also half- filled. 4. There was no copy of Act neither in Marathi nor in English. 5. The Form – F was incomplete. 6. Sonography center which was sealed there was no signature of doctor. 7. on the sonography report FOR was written.

- **Status of the case.** Pending

- **Observation:** this case is legally good. The Appropriate Authority has done everything according to the procedures. But many times following the procedures becomes so mechanical that the statement taking (Which is the most important and live process) get lost lack of evidence.

**9. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. Dr. Shila Mahendra Dnaghe, Medical Superintendent, Rural Hospital, Shrigonda, Taluka- A.A. Village – Shrigonda, District – Ahemadnagar. Age 31, Occupations – Doctor. Vs. Dr. Sujata Vijay Bajade, A/P- Kasargalli, Taluka – Shrigonda District- Ahemadnagar.

- **Name of the court:** Judicial Magistrate Court.

- **Nature of the offence:** Non- Maintenance Record.

- **Relevant section under the Act** Complaint under Act 1994(Amended) read with Section, 3 & 29, Rule 9(4), Rule 19(3) & (4) and so the case has been filed as per the jurisdiction of the court.

- **Initiator against the offence:**

1. Shaila Mahindra Dange (A.A)

2. Mr. Mohekar Saheb (Tahsildar Shrigonda)

3. Dr. L.B. Karle, Medical Superintendent, (Member of  
A.A, Ahemadnagar)

4. Mr. Pranjal Shinde, Officer of Panchyat Samittee,  
Shrigonda.

5. Dr. S.D. Khote, Taluka Medical Officer, Panchyat  
Samittee.

6. Mr. Sunil Borade (Laboratory Specialist), District  
Rural Hospital Ahemadnagar.

- **Complainant of the court matter.** 1. Shaila Mahindra Dange (A.A)

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:**  
Case No. 787/2007 Date- 07.12.2007 Judicial Magistrate Court Date-24.07.2007 Appropriate Authority visited the clinic, and then the faults which are mentioned are listed below, 1. The sonography machine was not sealed. It was there for the registered sinologist who was not there to use the machine but somebody else was using it. 2. The board was not there neither in English nor in Hindi. 3. And the board which there it was not also half- filled. 4. There was no copy of Act neither in Marathi nor in English. 5. There was no declaration letter of the patient. 6. The sinologist visited the center, but the date was not written there and neither any detail. 7. Form F was not filled.

- **Status of the case.** Pending

- **Observations:** In this case documents are sufficient as per the procedures. Required documents are provided in this case. Appropriate Authority is done their job according to the procedure; case can be proved against the accused as she herself has given same reasons and clarifications.

**10. Complainant Vs. Accused in the court matter:** State of Maharashtra through Dr. Dr. Shila Mahendra Dnaghe, Medical Superintendent, Rural Hospital, Shrigonda, Taluka- A.A. Village – Shrigonda, District – Ahemadnagar. Age 31, Occupations – Doctor. Vs. Dr. Holhe Bhaushe Baban, A/P- Kalkai, Taluka- Shrigonda District- Ahemadnagar.

- **Name of the court:** Judicial Magistrate Court.

- **Nature of the offence:** Non- Maintains Record.

- **Relevant section under the Act** Complaint under Act 1994(Amended) read with Section, 3 & 29, Rule 9(4), Rule 19(3) & (4) and so the case has been filed as per the jurisdiction of the court.

- **Initiator against the offence:**

1. Shaila Mahindra Dange (A.A)
2. Mr. Mohekar Saheb (Tahsildar Shrigonda)
3. Dr. L.B. Karle, Medical Superintendent, (Member of  
A.A, Ahemadnagar)
4. Mr. Pranjal Shinde, Officer of Panchyat Samittee,  
Shrigonda.

5. Dr. S.D. Khote, Taluka Medical Officer, Panchyat

Samittee.

6. Mr. Sunil Borade (Laboratory Specialist), District

Rural Hospital Ahemadnagar.

- **Complainant of the court matter.** 1. Shaila Mahindra Dange (A.A)

- **Content of the cases Indicate case number, date, court, type of volition under Sec/s of the Act:**

Case No. 788/2007 Date- 07.12.2007, Judicial Magistrate Court, Date- 24.07.2007 Appropriate Authority visited the clinic, and then the faults which are mentioned are listed below, 1. the sonography machine was not sealed. It was there for the registered sinologist who was not there to use the machine but somebody else was using it. 2. The board was not there neither in English nor in Hindi. 3. And the board which there it was not also half- filled. 4. There was no copy of Act neither in Marathi nor in English. 5. There was no declaration letter of the patient. 6. The sinologist visited the center, but the date was not written there and neither any detail.

- **Status of the case.** Pending

- **Observations:** The general principle of law is the witnesses and the panchas in the case shall be the independent persons but in this case the advantages can be taken by the accused. On the show cause notice also the Appropriate Authority has committed same mistakes while tick marking the reasons. It shows the irresponsible attitude and this will also help the accused in escaping from the clutches of law.

## WEST BENGAL

Sl. No	Case Title	Name of court	Nature of violation	Current status	Initiator of complaint	Facts of the Case
1.	Dr. Bikash Ranjan Manna, Joint Director of Health Services, Department of Health and Family Welfare Vs. Mr. C.R. Damani, Kothari Medical Centre Case No: C/1877/02	Metropolitan Magistrate's Court, Kolkata	Complaint filed u/s 23 of the Act. Complaint filed for non-registration of the accused's clinic. Year: 2002	Evidence stage	State Appropriate Authority	a. on different dates the said clinic was inspected by the Medical Officer-in-charge and the accused was requested to register the clinic under the Act b. a complaint was filed u/s 23 of the Act

2.	Dr. Bikash Ranjan Manna, Joint Director of Health Services, Department of Health and Family Welfare Vs. Dr. O.P. Sharma and M/s Nirog M R Diagnostic Centre Case No: C/1873/02	Metropolitan Magistrate's Court, Kolkata	Complaint filed u/s 23 of the Act. Complaint filed for non-registration of the accused's clinic. Year: 2002	Show cause	State Appropriate Authority	a. on different dates the said clinic was inspected by the Medical Officer-in-charge and the accused was requested to register the clinic under the Act b. a complaint was filed u/s 23 of the Act
3.	Dr. Bikash Ranjan Manna, Joint Director of Health Services, Department of Health and Family Welfare Vs. Mr. Sanjay Maitra and M/s VIP Nursing Home, Kolkata Case No: C/1874/02	Metropolitan Magistrate's Court, Kolkata	Complaint filed u/s 23 of the Act. Complaint filed for non-registration of the accused's clinic. Year: 2002	Hearing stage	State Appropriate Authority	a. on different dates the said clinic was inspected by the Medical Officer-in-charge and the accused was requested to register the clinic under the Act b. a complaint was filed u/s 23 of the Act
4.	Dr. Bikash Ranjan Manna, Joint Director of Health Services, Department of Health and Family Welfare Vs. Dr. S. Upadhyay and M/s Advance Medicare & Research Institute Case No: C/1870/02	Metropolitan Magistrate's Court, Kolkata	Complaint filed u/s 23 of the Act. Complaint filed for non-registration of the accused's clinic. Year: 2002	Hearing on process	State Appropriate Authority	a. on different dates the said clinic was inspected by the Medical Officer-in-charge and the accused was requested to register the clinic under the Act b. a complaint was filed u/s 23 of the Act

5.	Dr. Bikash Ranjan Manna, Joint Director of Health Services, Department of Health and Family Welfare Vs. Dr. S.K. Sen and M/s. Woodlands Hospital and Medical Research Centre Case No: C/1878/02	Metropolitan Magistrate's Court, Kolkata	Complaint filed u/s 23 of the Act. Complaint filed for non-registration of the accused's clinic. Year: 2002	Hearing at High Court	State Appropriate Authority	a. on different dates the said clinic was inspected by the Medical Officer-in-charge and the accused was requested to register the clinic under the Act b. a complaint was filed u/s 23 of the Act
6.	Dr. Swapan Chakaraborty, Deputy Director of Health Services (Administration), Department of Health and Family Welfare Vs Dr. Piyush Agarwal, Flat No. 102, Wellesly Mansion, Kolkata	Metropolitan Magistrate Court in Kolkata	Complaint filed u/s 23 of the Act. Complaint filed for non-registration of the accused's clinic. Year: 2006	Show cause	Directorate of Health Services, based on an inspection report from National Inspection and Monitoring Committee (NIMC) and State Appropriate Authority (AA)	a. When the NIMC visited the establishment of the accused but nothing was shown and the attendant of the said clinic prevented the members to enter the premises b. a letter was issued to the accused to appear at the office of the AA with the PCPNDT registration certificate and Form "F" for the period January to December 2005 c. on different dates the said clinic was inspected by the Medical Officer-in-charge and the person was requested to register the clinic under the Act d. a complaint was filed u/s 23

					of the Act	
7.	Dr. Swapan Chakaraborty, Deputy Directorate of Health Services (Administration), Department of Health and Family Welfare Vs. Dr. Kalpana Gupta Chakaraborty, Proprietor of City Medical Centre, Kolkata	Chief Judicial Magistrate Court, Alipore	Complaint filed u/s 23 of the Act. Complaint filed for non-registration of the accused's clinic. Year: 2006	Hearing	Directorate of Health Services, based on an inspection report from National Inspection and Monitoring Committee (NIMC) and State Appropriate Authority	a. When NIMC conducted an inspection at the accused's clinic, it was found closed and the appropriate authority (AA) sealed the room where the ultrasound machine was kept. b. a letter was sent to the accused to appear before the AA but the accused replied expressing inability to appear c. the AA was requested at several occasions to get the clinic registered under the Act d. a complaint was filed against the accused u/s 23

## UTTAR PRADESH

Sl. No.	Name of Accused	Nature of Offence
1.	Dr. Gayatri Singh Proprietor, Maa Chandrika Devi Hospital, Sitapur Road, Lucknow	* Machine found at other place * Unavailability of records * Non-registration of the centre * Sex determination and communication
2.	Mr. Rajkishor Awasthi	* Unregistered Doctor found working at the centre

	R/o 22/2 Narayan Garden Hardoi Road, Lucknow	*	Registered machine carried out for ultrasonography to other place
		*	Non maintenance of records
3.	Dr. A.K. Sachan, Shekhar Hospital, B Block, Indira Nagar, Lucknow	*	Non-Maintenance of records
		*	Use of unregistered machine
		*	Notice board not displayed
		*	Unavailability of Act book
4.	Dr. K.N. Singh, Mayo Medical Centre, Vikas Khand – 2 Gomti Nagar, Lucknow	*	Non – maintenance of relevant records
		*	Non – registered machine used
		*	Notice board not found in accordance of the Act.
5.	Dr. Anup Dayal, Vibgyor Clinic, Lekhraj Market , Indiranagar, Lacknow	*	Advertisement in Newspaper

*Meerut*

1.	Dr. Mrs. Nisha Grover, Director, Bhagwati Complex, Garh Road, Meerut	*	Non – Registration
		*	Notice Board not displayed
2.	Dr. Mrs. Amita Agarwal, Vigyan Bhavan, Garh Road, Meerut	*	Non – Registration
		*	Notice Board not displayed
3.	Dr. Mrs. Renu Bhagat, Bhagat Hospital & Maternity Home, Bagpat Road, Meerut	*	Non – Registration
		*	Notice Board not displayed
4.	Dr. Mrs. Godavari Goel, Bhagwandas Memorial Charitable Hospital, Hapur Road, Meerut	*	Non – Registration
		*	Notice Board not displayed
5.	Mrs. Indu Trivedi, Dr. Trivedi X-Ray & Diagnostic Centre, Khair Nagar, Bazar, Meerut	*	Non – Registration
		*	Notice Board not displayed
6.	Dr. Ashutosh tandon, Baccha Park, Meerut	*	Non – Registration
		*	Notice Board not displayed
7.	Dr. Manjula Lakhanpal , Hapur Road, Meerut	*	Non – Registration
		*	Notice Board not displayed
8.	Dr. Mrs. Renu Kamboj, Kamboj Ultrasound Centre & Diagnostic, Delhi Road, Meerut	*	Non – Registration
		*	Notice Board not displayed
9.	Dr. Mrs. Beena Rani Gupta, Garh Road, Meerut	*	Non – Registration
		*	Notice Board not displayed
10.	Dr. Mrs. Sunita Suri, Director, Suri Nursing Home, Prabhat Nagar, Meerut	*	Non – Registration
		*	Notice Board not displayed
11.	Dr. Mrs. Komal Arora, Saket, Meerut	*	Non – Registration
		*	Notice Board not displayed

12. Dr. Archana Mittal, \* Sex determination & Communication  
Aditi Medical Centre,  
Khair Nagar, Meerut

#### UTTARAKHAND

Sl. No.	Name of Accused	Nature of Offence
1.	Dr. Vinod Chauhan, Bengali Marg, Rishikesh	* Advertisement
2.	Dr. Chitra Agarwal, Chitra Ultrasound Centre , 5-New Road, Dehradun	* Sex determination * Non-Maintenance of required documents
3.	Dr. Chitra Agarwal, Chitra Ultrasound Centre , 5-New Road, Dehradun	* Breakage of seal of clinic without permission * Sex determination
4.	Dr. Madhu Khanduri , Khanduri Ultrasound Centre New Road, Dehradun	* Sex determination

#### ANDHRA PRADESH

S. No	Case title	Nature of Violation	Initiator of complaint	Present status
1	State of Andhra Pradesh through Dr. S. Satyawati, Wife of Prem Kumar, (DAA) & District Medical and Health Officer, 4 <sup>th</sup> floor, South Block, Municipal Complex, Tank Bund Road, Hyderabad.  Vs. 1. M/S Ratna Hospital Rep. By its owner/proprietrix Dr. Mr. Ratna. 2. Dr. Mr. Ratna. W/o not known to Complaint aged major Occ. Medical Profession/owner of M/s Ratna Hospital Add – H. No. 8-2- 618/2/1/1, Patel Avenue Road No. 11, Banjara Hills, and Hyderabad.	U/S 23 read with section- Section 18 and Sec 23 of the Act.	1. Dr. S. Satyawati, Wife of Prem Kumar (A.A) 2. Dr. Vijayakumari I/C Addl. DM. 3. Dr. Namita Kumar Admn. Officer. 4. Shaikh Farool Ahemed, Radiographer	Pending
2	State of Andhra Pradesh through DAA Dr. S. V. Muktabai Repre. By Addl. District Medical and health Officer. CFWB. Tank Bund Road, Hyderabad.  Vs. 1. Dr. Balakumari, Owner, Marie Stops Nursing Home, Under Franchise, Arrangement with PSS2-21105/10/A, Tilak Nagar, Hyderabad 500 044.	U/S 17(2) read with section- Section 23 and 26, 18, 25 of the Act.	1. Dr. Shakthini, Sr. Medical officer Maternity Center Amberpet.  2. Mr. Uma Kumari Dy. Director CFWB	Pending

	<p>2. M.K.Ravindra Kumar, Slok Janardhan, "Ultra Scan" Marie Stops Nursing Home, R/o 1-8 – 720, Lalita Jyothi Apartments Nallakunta, Hyderabad.</p> <p>3. Dr. G. Linga Reddy, S/o. G. Linga Reddy Radiologist, flat No. 104, Parkview Apartments C. E. Colony Hyderabad- 500 013.</p>		MCIL.	
3	<p>State of Andhra Pradesh through Dr. S. Satyawati, Wife of Prem Kumar, (DAA) &amp; District Medical and Health Officer, 4<sup>th</sup> floor, South Block, Municipal Complex, Tank Bund Road, Hyderabad</p> <p style="text-align: center;">Vs.</p> <p>1. Taranaka Diagnostic Services rep. by its owner Dr. R. Goverdhan Reddy. 2. Dr. R. Goverdhan Reddy s/o not known to complainant aged major Occ: Medical owner of M/S Taranaka Dignostic Services, Add- Both at Shop No. 6 Huda Complex Opp: Pavani Anusaya Travels Taranaka. Hydrabad17 3. Dr. Bharat Kumar s/o not known to complainant, major Occ: Radiologist, c/o M/s Sai Vijaya Dignostic, Uppal Hyderabad.</p>	U/S 4, 5, 6, 18 and 29 of the Act read with rule 4, 9 and 10 the Act.	<p>1. Dr. S. Satyavati (A.A)</p> <p>2. Dr. G.R. Chandak, (Office of CCMB, Hyderabad and member of the District Advisory Committee.)</p> <p>3. B. Kumar, Jr. Assistant, office of DM and HO.</p>	Pending
4	<p>District Appropriate Authority &amp; DM HO</p> <p style="text-align: center;">Vs.</p> <p>1. New Life Hospital Rep. by its owner/ proprietor Dr. Maqsoor Ali Khan. 2. Dr. Maqsoor Ali Khan, owner of M/s New Life Hospital H. No. 16-6-104 to 109 Kamal Theater Chanderghat, Hyderabad.</p>	U/S 18 read with section- Section 19(4), Rule- 10, Sec 28 of the Act.	<p>1. Dr. G. Sudheera, civil Asst. Surgeon. Medical Officer Govt. Urban Health.</p> <p>2. Mr. Faroq Ahmed Radiologist &amp; Anwar Khan, Junior Asst, Urban Health Post Jambagh</p>	Pending
5	<p>District Appropriate Authority DM HO</p> <p style="text-align: center;">Vs.</p> <p>1. M/s Nisha Maternity Hospital, Rep, by it owner Dr. Farida. 2. Dr. Farida, Owner of Nisha Maternity Hospital, Bazarghat x Roads Hyderabad. 3. M/S ERBLS ENGINEERING COMPANY LTD. No. 11. 1st cross, Pari Nagar, Pondecherry- 605 008</p>	U/S 23 read with section 19(4), 3, 28, Rule-10 of the Act.	District Appropriate Authority	Pending
6	<p>District Appropriate Authority Dr. Ch. Jaya Kumari, W/o Nimal Kumar, aged 49 years, DM and HO</p> <p style="text-align: center;">Vs.</p> <p>1. M/s S. K. Clinics. 2. Dr. Sudha Kishore, S/o not known to</p>	U/S 18 and 23 read with section 19(4), Rule (9), Sec- 28 of the Act.	<p>1. Dr. Nirmal Kumar, Admin. Officer, DM &amp; HO.</p> <p>2. B. Kumar, Jr. Assit.</p>	Pending

	complaint Occ. Medical Practitioner, C/o office at 2-6-767, 13th Street, Sudha Kishore lane, Himaya thanagar, Hyderabad- 500 029.		3. Mr. Farooq Ahemad	
7	District Appropriate Authority & DM HO Vs. 1. M/s S. L. S. Diagnostic & Specialty Clin`ics. 2. Dr. Ravindra, S/o not known to complainant, Medical Practitioner, In charge of M/s S. L. S. Dignostic & Specialty Clinics, # 12-13-1250, Street No. 8, Taranaka, Secunderabad. 3. Dr. Shi Hari, S/o not known to complainant, Radiologist, C/o M/s Sai Vijaya Diagnostic, Uppal, Hyderabad. 4. Dr. Bharat Kumar, S/o not known to complainant, Radiologist, C/o M/s Sai Vijaya Diagnostic, Uppal, Hyderabad.	U/S 23 read with section 4, 5, 6, 18, 23, 29 of the Act read with rule 4, 9, 10 of Section 25, 27 of the Act.	1. District Appropriate Authority & DM and HO 2. Dr. G.R. Chandak, (Office of CCMB, Hyderabad And member of the DAC) 3. B. Kumar, Jr. Assistant, office of DM and HO.	Pending
8	State of Andhra Pradesh through Dr. S. Satyawati, Wife of Prem Kumar, (DAA) & District Medical and Health Officer, 4 <sup>th</sup> floor, South Block, Municipal Complex, Tank Bund Road, Hyderabad. Vs. 1. M/s Jeevan Diagnostic Centers, office at Strret No. 7 Lane Besides Meera Bazar, Near Hall and Mini Bazar, Near Andhra Bank, Taranaka, Hyderabad 17. 2. Dr. M. Chandra Prakash Reddy, s/o not known to complainant, Medical Center. R/o H. No. 1-2-30/31, Flat No. 306, Pruthvi Mansion, Hyderabad.	U/S 23 read with section 5 & 29 of the Act.	1. Dr. G.R. Chandak, (Office of CCMB, Hyderabad And member of the District Advisory Committee.) 2. B. Kumar, Jr. Assistant, office of DM and HO.	Pending
9	State of Andhra Pradesh through Dr. S. Satyawati, Wife of Prem Kumar, (DAA) & District Medical and Health Officer, 4 <sup>th</sup> floor, South Block, Municipal Complex, Tank Bund Road, Hyderabad. Vs. 1. Alfa Hospital, H.No.23-1-863, Near MCH Swimming Pool, Mogalpura, Hyderabad-500 002. 2. Dr. Sirajuddin, S/o Syed Jallauddin Owner of M/s Alpha Hospital.	U/S 23 read with section 19(4), Rule-10, Sec 28 of the Act.	1. Mr. Farooq Ahemad (Radiologist) 2. Anwar Khan, Junior Assit, Urban Health 3. Dr. Vijayakumari I/C Addl. DM. 4. Mr. Mohan Raj, Junior Assit.	Pending
10	State of Andhra Pradesh through Dr. Bhanumati (DAA) & District Medical and Health Officer, 4 <sup>th</sup> floor, South Block, Municipal Complex, Tank Bund Road, Hyderabad. Vs. 1. M/s Rites Diagnostic, Rep. By its owner Dr. S. Saraswati Devi. 2. Dr. S. Saraswati Devi, D/o Net Complainant	U/S 23 read with section 19(4), Rule-10, Sec 28 of the Act.	1. Dr. Bhanumati, (DAA). 2. Kum. T. Uma Kumari, Dy (DEMO).	Pending

Owner of Ultra Sound Scanning Machine.  
 3. Sri Azmath, S/o not known to Complainant  
 Radio Grapher.  
 4. Dr. S. Janaki, D/o not known to Complainant,  
 Owner of Ultra Sound Scanning Machine.

3. G.  
 Venkateshwar  
 Rao (MRO  
 Shailpet)

11	<p>Sudha Kishore Hospital, rep. By Dr. Sudha Kishore Taggarse, W/o Dr. Kishore Taggarse. Age 65 yrs. Occ: Doctor At 3-6-756 and 3-6-767 Himayath Nagar,</p> <p style="text-align: center;">Vs.</p> <p>1. The Govt. of Andhra Pradesh rep by its secretary, Medical Health Department, Secretariat, Hyderabad.          2. District Medical and Health Officer, Hyderabad.          3. Appropriate Authority – cum District Medical and Health Officer, Municipal Corporation of Hyderabad, Lower Tank Bund, Hyderabad.          4. District Collector, Hyderabad.</p>	<p>writ of mandamus declaring action of respondents in seizing WIPRO 2000 Scanner from the petitioners hospital on 11/03/2006 as illegal, arbitrary and contrary to the provisions of the Act.</p>	<p>Dr. Sudha Kishore (Petitioner)</p>	<p>Pending</p>
12	<p>M/S Iris Diagnostic Services</p> <p style="text-align: center;">Vs.</p> <p>The State of Andhra Pradesh.</p>	<p>Non Maintenance of records &amp; Separating Scanning on Mobile machine of Dr. Gourav Shukla, Radiologist</p>	<p>M/s Iris Diagnostic Services.</p>	<p>Pending</p>
13	<p>M/s Vijaya Vamsi Hospital, A Unit of Vijaya Krishna Arts &amp; Science Services Pvt. Ltd., 6-03-649/6, Somjiguda, Hyderabad-500 082 Rep. by its director Dr. A. Sameera w/o Dr. C.L.Venkata Rao, aged about 42 yrs.</p> <p style="text-align: center;">Vs.</p> <p>The State of Andhra Pradesh. Rep. by its principal Secretary, Medical Health, Secretariat, Hyderabad and others.</p>	<p>Rule No. 12 read with Section, 3(2), Rule 12 of the Act</p>	<p>1. K. Mohan Raj.          2. Farooq Ahmed Radiographer          3. B. Kumar.</p>	<p>Pending</p>

**GOA**

<b>Case title</b>	<b>Dr. S. G. Dalvi, DAA of South Goa district (Complainant) V/S 1. Philips Medical Systems India Private Limited 2. J. Sunderrajan, Director, Philips Medical Systems India Private Limited (Accused)</b>
Nature of Violation	Installation of ultrasound machine in Apollo Victor Hospital, Margao-Goa before the hospital was duly registered.
Year of violation	2003

Initiator of complaint	Dr. S. G. Dalvi, DAA of South Goa district
Name of Court	The Court of the Chief Judicial Magistrate South Goa at Margao
Present status	Hearing stage

## MAHARASHTRA

Case title	Nature of Violation	Initiator of complaint	Present status
State of Maharashtra through Dr. Ashok Tukaram Shende Medical Superintendent, Sub District Hospital Islampur (A.A of Islampur) VS. 1. Dr. Sampada Yogendra Shinde At/P Shinde Hospital Takari Tal- Walwa Dist- Sangali. 2. Dr. Arvind R. Shinde At/P Flat No. 1 Ganesh Apartment, Budhwar peth, Karad. Dist- Satara. 3. Mr. Prakash Aananda Devkule At/P Dhawli (Navin Vasahat) Tal- Tasgaon Dist- Sangali. 4. Mr. Ankush Babasaheb Bobade At/P Chinchani Tal- Tasgaon Dist- Satara.	Non-maintenance of records. (Decoy case)  &  Complaint under Rule 10(1), 10(1A), 9(1), Section 29(1) (2) of the Act 1994 (Amended) Act 2003.	1. Dr. Mr. Ashok Tukaram Shende, Medical Superintendent (Appropriate Authority)  2. Rani Rajendra Awale.  3. Ad. Shaileja D. Jadhav	Pending
State of Maharashtra through Dr. Datttrya Aantu Pawale Medical Superintendent, Appropriate Authority Age 51 (Kurundwad) Dattawad. VS. 1. Dr. Gajanan Daulat Koli, Shri Shakti Hospital, Kurundwad Tal- Shirola, Dist- Kolhapur. 2. Dr. Shivaji Sadashiv Mane, At/p Shirola, Dist- Kolhapur.		1. Dr. Datttrya Aantu Pawale Medical Superintendent, (Appropriate Authority) 2. Mr. Shivaji Baburao Mali (Head of Aadhar Swayasevi Sanstha, Herwad)	Pending
State of Maharashtra through Dr. Ashok Dada Killedar Age 55, Occupation- Service, Medical Superintendent, Taluka Appropriate Authority, and (Jaysinghpur) Dattawad. VS. 1. Dr. Shivaji Sadashiv Mane Age 45, Occupation- Medical At/p Shirola Dist- Kolhapur. 2. Dr. Ujama Atik Patel Age-38, Occupation- Medical, at/p 18, path, Laxmi Park, Maleka Hospital, Jaysinghpur, Dist- Kolhapur. 3. Ramling Bahuso Sutar, At/p Umalwad, Tal- Shirola Dist- Kolhapur.	Non-maintenance of records. (Decoy case)  &  Complaint under Act 1994 (Amended) Act 2003 read with section 23 & 25.	1. Ad. Varsha Deshpande (Member of the SIMC)  2. Dr. Ashok Dada Killedar (Appropriate Authority)	Pending

# ANNEXURE 5

## CHECKLIST FOR COURT COMPLAINTS

---

### CHECKLIST FOR COURT COMPLAINTS – Under section 22

i.e. under illegal advertisement of facilities for pre-natal determination of sex or sex selection

1. Whether full details of the centre have been provided in the complaint – i.e. address, name and address of owner, details of staff employed?
2. Whether the correct provisions of the Act have been mentioned in the complaint? Does the complaint seek penalties under section 22(3) of the Act for advertising?
3. Does the complaint mention action undertaken under section 23(2) i.e. report the registered medical practitioner to the State Medical council for taking necessary action if the charges are framed by the court and till the case is disposed of?
4. Does the complaint raise a cause of action under Section 22 of the Act against the:
  - Issuer
  - Publisher
5. Whether the centre was registered?
6. Whether the following documents were included in the court complaint:
  - The paper cutting of the advertisement, the name of the newspaper or magazine or any other document which carries the advertisement, the date of the issuance of the advertisement;
  - The name of the advertiser, his place of business;
  - The name of the owner of the clinic, centre or laboratory issuing such advertisement, the address of the said centre, laboratory or clinic;
  - The name of the distributor, his place of business;
  - The photograph of the advertisement, the photograph of the hoarding, board, wall on which the advertisement is present etc;
  - The letter heads, memorandum of association, annual reports, statements showing organizational structure and ownership of the newspaper, or distributorship, or the centre. This information has to be collected in order to link the person to the violation.
7. Did an investigation team visit the premises of the clinic?
8. Did the investigation team receive any written/verbal agreement from the accused owner/ staff of the clinic to having given out the advertisement that the clinic was conducting sex determination tests?
9. Did the investigation team take any action?

10. Whether registration certificate could be made available by the centre when requested by the investigation team?
11. Whether lists of documents and witnesses have been provided along with the court complaint?
12. What other evidences have been produced along with the court complaint?
13. Was an FIR filed for this case by the district AA?
14. Did the court dismiss the case, if so for what reason?
15. Was the case withdrawn by the DAA after filing?

#### CHECKLIST FOR COURT COMPLAINTS – u/s 5 and 6 i.e. under determination of sex of a foetus

1. Whether full details of the centre have been provided in the complaint – i.e. address, name and address of owner, details of staff employed?
2. Whether the correct provisions of the Act have been mentioned in the complaint?
3. Whether the centre was registered?
4. Did an investigation team visit the premises of the clinic?
5. Whether registration certificate could be made available by the centre when requested by the investigation team?
6. Which records were scrutinized?
7. Register showing persons given genetic counseling and / or subjected to pre-natal diagnostic procedure or test, their names, addresses and dates
8. Case records and histories of patients
9. Floppy or printed copy of the ultrasound image of the foetus
10. Receipt of fee paid for the test, details of the cheque payment etc.
11. Forms of consent/ Form Fs
12. Laboratory results, Microscopic pictures, Sonographic plates or slides, referral slips
13. Recommendations and letters
14. Books and pamphlets
15. Advertisements
16. Were the equipments like ultrasonography machines, needles, foetoscope, etc scrutinized and sealed?
17. Were these records maintained for a period of two years as required under the Act (Section 29 (1) of the Act)?
18. Were there any missing records or information displays at the clinic, e.g. board stating that they don't conduct sex determination tests?
19. Whether any material objects were sealed since there is reason to believe that it may furnish evidence of commission of an offence punishable under the Act? (*'Material object' include records, machines and equipments*)

20. Were there two witnesses when the search was conducted by the investigation team?
21. Whether lists of material objects etc seized during a search were submitted along with the court complaint?
22. What other evidences have been produced along with the court complaint?
23. Tape recorded conversation and transcripts between the decoy witness and the accused doctor
24. An Affidavit signed by decoy witness stating that they are getting the test done on the grounds of public interest to assist the appropriate authority and will not opt for a sex selective abortion
25. Statements of witnesses
26. Whether a list of witnesses (witnesses of search and seizure and of decoy operations) was provided along with the complaint?
27. Whether the report of the search and seizure (Panchnamah) was attached with the complaint?
28. Whether a copy of all documents collected was enclosed along with the complaint as annexures?
29. Does the complaint seek penalties against the medical practitioner for contravening *any* provisions of the Act or Rules under section 23 (1) of the Act,?
30. Does the complaint mention action undertaken under section 23(2) i.e. report the registered medical practitioner to the State Medical council for taking necessary action if the charges are framed by the court and till the case is disposed of?
31. Who conducted the sting operation?
32. Media organization
33. District AA
34. Individual complainant
35. Was an FIR filed for this case by the district AA?
36. Did the court dismiss the case, if so for what reason?
37. Was the case withdrawn by the DAA after filing?

#### **CHECKLIST FOR COURT COMPLAINTS – u/s 18 i.e. under non-registration of clinics**

1. Whether full details of the centre have been provided in the complaint – i.e. address, name and address of owner, details of staff employed?
2. Whether the correct provisions of the Act have been mentioned in the complaint?
3. Whether the centre was registered?
4. Did the criminal investigation that followed examine whether a registration certificate was displayed prominently at the center clinic or lab? (Rule 6 (2)) If a registration certificate was not displayed, did the complaint raise a cause of action under section 19 (4) of the Act and Rule 6(2)?
5. Did an investigation team visit the premises of the clinic?
6. Did the facts indicate an investigation covering the dealer, supplier, manufacturer, importer or organization supplying the equipment?

7. If so, does the complaint raise a cause of action against the:
  - a. dealer
  - b. supplier
  - c. manufacturer
  - d. importer
  - e. organization including a commercial organization
8. under section 3 (b) of the Act read with section 3 (a) 1 of the Rules for sale of equipment to an unregistered clinic
9. Does the complaint raise a cause of action under section 23 (1) of the Act, penalties for contravening any provisions of the Act or Rules?
10. Does the complaint mention action undertaken under section 23(2) i.e. report the registered medical practitioner to the State Medical council for taking necessary action if the charges are framed by the court and till the case is disposed of?
11. Whether the following documents were provided to the investigation team at the clinic, at the time of their visit:
  12. Copy of the registration certificate
  13. Copy of the affidavit given by the owner that he will not conduct pre-natal determination of sex
  14. Copy of the particulars given about the qualifications of the employees while registration
  15. Documents collected from the MCI, the degree certificate of the medical practitioners (employees of the centre) etc
  16. Other materials collected as evidence in case of conducting tests
17. Whether the following evidence has been submitted before the magistrate:
  18. Did the court dismiss the case if the clinic applied for registration after the case was filed?
  19. Was the case withdrawn by the DAA after filing?
20. Copy of the complaint
21. A statement showing the list of witnesses both witnesses of the search and seizure and decoy witnesses
22. The report of the search and seizure or commonly called Panchnamah
23. A copy of all the documents collected
24. Statements of witnesses if any