

LAW AREA NAME : WOMAN
SECTION NAME : SPECIAL LAWS
SUB SECTION NAME : FEMALE FOETICIDE

LAW IN BRIEF

Female foeticide is one of the evils ailing the Indian society today. Gender discrimination and atrocities against women are on the rise in the midst of progressive ideas of liberalization and globalization. This is one example where scientific advancement has proven to be a bane to the society rather than a boon. Selfish and narrow-minded male chauvinists have found yet another way of nipping the life of a woman in the bud. With active campaigning by NGOs and women activists, the Government has come out with the Pre-conception & Pre-natal Diagnostic techniques (Prohibition of sex selection) Act, 1994 to deal with the rising problem. The act prohibits sex selection techniques and regulates pre-natal diagnostic techniques used for sex determination.

LAW IN DETAIL

The offences under this Act are cognizable, non-bail able and non-compoundable.

11. What are the main provisions under the amended and renamed PNDT Act to deal with PBEF issue?

The salient features of the PNDT Act 2002 are-

- It prohibits sex-selection, both before or after conception
- It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing their use only to detect
 - Genetic abnormalities
 - Metabolic disorders
 - Chromosomal abnormalities
 - Certain congenital malformations
 - haemoglobinopathies
 - sex-linked disorders
- no laboratory or center or clinic will conduct any test including ultra-sonography for the purpose of determining the sex of the foetus
- no person, including the one conducting pre-natal diagnostic procedure as per the law, will communicate the sex of the foetus to the pregnant woman concerned or her relatives by words, signs or any other method
- any person who puts out an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any other document, or advertises through internet or other media in electronic or print form, or engages in any visible representation made by means of hoarding, wall-painting, signal, light, sound, smoke or gas, can be imprisoned for up to three years and fined Rs. 10,000
- any medical geneticist, gynecologist, registered medical practitioner or any person who owns an genetic counseling center, a Genetic Laboratory or a Genetic Clinic where the test is conducted can be imprisoned for up to three years and be required to pay a fine of Rs 10,000. For any subsequent offence, the fine can go up to Rs 50,000 and imprisonment to five years.

- the person who seeks the aid of a genetic or ultrasound clinic or medical geneticist for sex selection can face imprisonment for a three year period and be required to pay a fine of Rs 50,000. For any subsequent offence, the fine can go up to Rs 1,00,000 and imprisonment up to five years. However, the woman who was compelled to undergo such selection will not be fined or imprisoned. Additionally, the court will presume, unless otherwise proved, that the woman was compelled by her husband or relatives to undergo pre-natal diagnostic techniques
 - no pre-natal diagnostic technique can be conducted unless the person qualified to do so is satisfied that any of the following conditions are fulfilled -
 - age of the pregnant woman is above 35 years
 - the pregnant woman has undergone two or more spontaneous abortions or foetal loss
 - the pregnant woman had been exposed to potentially teratogenic (causing physical defect to foetus) agents such as drugs, radiation infection or chemicals
 - the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as spasticity or any other genetic diseases
 - a pre-natal diagnostic technique cannot be conducted unless the person conducting the test –
 - has explained all known side and after effects of such procedures to the pregnant woman
 - has obtained the pregnant woman's written consent to undergo such procedure in the language she understands, and
 - has given a copy of the written consent so obtained to the pregnant woman
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- ultrasound machines, including mobile ones, have to be registered and records of all pre-natal diagnostic tests conducted to be maintained
 - the central and state supervisory board will have representatives of woman welfare organizations, social scientists as well as medical experts
 - the Appropriate Authority (constituted by the state or central government) will have a women's organization representative. The authority will possess powers to summon any person in possession of any information relating to violation of the act. It can also issue search warrant for any place suspected to be indulging in sex selection techniques

PROCESS FOR SOLUTION

Complaint Under which Section ?

A complaint under section 28 of the Act can be made to the concerned court authority.

Whom to complain / where to complaint?

A complaint under this section can be made to the Metropolitan magistrate or to the First Class Judicial Magistrate by the Appropriate Authority itself or by any person or voluntary organization.

How to file the Case ?

Before filing a case in the court of law, the complainant must first give a notice to the Appropriate Authority of his intention to file a case against the perpetrator of the offences under this Act.

If the Appropriate Authority fails to take any action within 15 days, he may approach the court directly with his/her complaint.

What Next ?

As and when a person comes to know of the commission of an offence under the Act, he must, as a responsible citizen, inform the Appropriate Authorities at all levels about it. If they fail to respond to his complaint, he may bring it to the notice of the Supervisory Boards for the PCPNDT Act at the state and central level. This may help in containing the number of offences perpetrated under this Act.

ALTERNATE REMEDIES

It is imperative for every responsible citizen to know the provisions of the Act and also educate his companions about them. As awareness builds up, female foeticide consequent to prenatal diagnosis can be successfully prevented. Any person who comes to know of any violation of the provisions of the Act may also inform a voluntary organisation which may file a case against the offenders of the Act.

The offences under this Act being cognizable, the police will take immediate action on being informed about the commission of such an offence. The offenders will be arrested and the case will be appropriated investigated into.