कार्यालय मिशन निदेशक
राष्ट्रीय ... मिशन
64/MP 28/1/14

F. No. 12017/18/2013-PNDT
Government of India
Ministry of Health & Family Welfare
(PNDT Section)

Nirman Bhavan, New Delhi.
Dated the 22-January 2014

To

The Chairman
State Appropriate Authority (PNDT)
All States / UTs

Subject: Important Judgements related with PC & PNDT Act.

Sir / Madam,

DA(PCH) Kindly find enclosed herewith the gist of the land mark judgements related to PC & PNDT Act pronounced in different courts of the country. These 17 cases are the land mark judgements that have helped to interpret the PC & PNDT Act in a more productive and dynamic way.

27 JAN 2014 These judgments will guide the State & District Authorities in implementing the PC & PNDT Act more effectively and will help in building up strong cases under PC & PNDT Act by citing suitable reference from the relevant judgements.

Further details of the judgements can be referred from the publication "Compilation and Analysis of case-laws" available on the below web-link

http://india.unfpa.org/drive/compliation and analysis of Case Laws on Pre conception.pdf

L.A.
28/01/14

Medical & Health Services
No. 222
Date 28/1/14
State PC-PNDT Cell, Jaipur

Yours faithfully,

(D.N. Sahoo)
Under Secretary to the Government of India
Tel. 23061875

Copy to:

1. Principal Secretaries (Health) of all States/ UTs.
2. Director (PNDT), MoHFW

JUDGMENTS STRESSING THE IMPORTANCE OF IMPLEMENTATION OF THE ACT AND DIRECTIONS ISSUED BY THE SUPREME COURT AND HIGH COURTS	
Writ Petition (Civil) No. 301 of 2000, Decided on May 4, 2001.	The Judgments and Orders of Supreme Court are binding on all in view of Article 141 of the Constitution of India and the non-obedience and non-compliance with the directions issued by the Supreme Court amounts to contempt of court
In The High Court Of Orissa Writ Petition (Civil) No. 9596 of 2007, Decided on 14/02/2008	High Court rightly rejected the argument that in the State of Orissa the sex ratio is better than in any other part of the Country by observing that this can not be the reason why the provisions of the Act were not implemented. The High Court stressed that it is both the statuary and Constitutional obligation of the State, to implement the provisions of the Act. This judgment is very positive in nature, giving impetus to strict implementation of the provisions of the Act and compelling the State to comply with its duty/obligation of implementing the Act, and clearly depicts that when executive lacks a will to implement the provisions of beneficial legislation, judiciary has to play a pro-active role.
In The High Court Of Punjab & Haryana At Chandigarh Civil Writ Petition No. 15152 of 2007, Decided on 07/07/2009	The statuary notification appointing Civil Surgeon of the district as Appropriate Authority under the Act was not published in Official Gazette on account of official apathy till the lapse of 12 years. The High Court found it regrettable that for a period of over 12 years non publication of the Notification never came to the notice of the concerned authorities and said that it adversely reflected upon the official machinery of the State Government charged with the responsibility of implementing an important legislation like PCPNDT Act. The petition was disposed of with the direction that the proceedings already initiated, or to be initiated shall be expedited by the concerned authorities and appropriate action taken against all those found to be violating provisions of the Act, or derelicting the discharge of their duties for the same.

In The High Court Of Punjab & Haryana At Chandigarh Civil Writ Petition No. 17964 of 2007, Decided on 31/07/2009	Court took suo-moto cognizance of a newspaper report about Sex Determination kits entering in the State. Being alarmed by the declining child sex ratio in the State and to curb the social menace of pre-natal sex selection and sex determination, the High Court on its own motion, issued notices to Central and State Government. This decision illustrates that human ingenuity in evolving new techniques knows no bounds when it comes to gender discrimination and elimination of female foetuses. Concerted efforts on the part of all the three wings of the Government - legislative, executive and judiciary alone can check such unpardonable crimes. Their acting together and in harmony is of importance.
JUDGMENTS UPHOLDING THE CONSTITUTIONAL VALIDITY OF PCPNDT LAW	
In The High Court of Bombay Criminal Writ Petition No. 945 of 2005 and Criminal Application No. 3647 of 2005 Decided on 13/06/2005	The High Court exposed the fallacy of this argument by observing that, "right to personal liberty cannot be expanded by any stretch of imagination to liberty to prohibit to coming into existence of a female or male foetus which shall be for the nature to decide." After making reference to the decisions of the Supreme Court, which explain that Article 21 includes the right to food, clothing, decent environment and even protection of cultural heritage, the High Court held that "these rights, even if, further expanded to the extremes of the possible elasticity of the provisions of Article 21, cannot include right to selection of sex, whether preconception or post-conception. High Court dismissed the Petition by holding that it does not even make a prima facie case for violation of Article 21 of the Constitution. The case leaves one wondering how right to life of a person can be expanded to include selection of sex of the child.
In The High Court Of Bombay Writ Petition No. 2777 of 2005 Decided on 06/09/2007	The Hon'ble Judges of the High Court held that there can be no comparison between the two legislations – viz., MTP Act and PCPNDT Act. The object of both the Acts differ, MTP Act does not deal with sex selection before or after conception. Anguish of a mother who does not want to bear a child of a particular sex cannot be equated with a mother who wants to terminate the pregnancy not because of the sex of child but for other circumstances. Thus by process of comparative study, the High Court held that provisions of the Act cannot be called as discriminatory and hence violative of Article 14 of the Constitution. The court held that sex selection affects the dignity of women. It undermines their importance. It insults and humiliates womanhood. It violates woman's right to life. Sex selection is therefore against the spirit of the law and Constitution."

JUDGMENTS ON PROCEDURAL ISSUES UNDER THE ACT	
In The High Court Of Bombay Writ Petition No. 5295 of 2003 Decided on 17/09/2004	High court upholds that where there is a conflict of private interest, to carry on a particular activity which the Public Authority considered as damaging to the social interest, surely the power under the Statute has to be read as an enabling power." Court explained that when the reasons are required to be given in writing it is not necessary that there ought to be a detailed discussion. It was also pointed out that such power has to be read in to the Section; otherwise the provisions of a welfare enactment will be rendered nugatory.
In The High Court Of Punjab and Haryana at Chandigarh Civil Writ Petition No. 20635 of 2008. Decided on 10/02/2010	High Court gave broader interpretation to Section 28 of the Act and held that Section 28 does not narrow down the class of persons who can initiate action. On the other hand, as any legislation intending to prevent a social evil, it allows for fairly large body of persons to set the law in motion. As per the Explanation contained u/s 28, the expression 'person' includes even a social organization. The various categories of persons which are set out u/s 28 give authority to a wide range of persons who can initiate the action under the Act. It was further held that Section 28 must not be read as constituting a narrow class of persons who could initiate the action, It must be given an extensive meaning to pave the way for any socially conscious person to initiate action.
In The High Court of Allahabad At Allahabad Criminal Misc. Writ Petition No. 5086 of 2006 Decided on 26/05/2006	**The Court has observed that "we are sitting on a virtual time bomb, which can spell social disaster."** High Court rejected that Section 28 prohibits cognizance of an offence except on a complaint made by the concerned Appropriate Authority and held that prohibition does not apply at the stage of investigation and only relates to the stage when cognizance is sought to be taken by the concerned court. The court rejected the contention that no offence u/s 312 r/w 511 IPC is made out as mere consent to perform the abortion is only an expression of an 'intention' to commit the offence and does not amount to an 'attempt' to commit the offence and held that there is no clear dividing line between the stage of preparation and the stage of attempt and whether a certain act would amount to an attempt is a question of fact which can be determined by the court at appropriate stage The court rejected the contention raised was that no offence under the Act was disclosed as the FIR itself mentioned that sex determination of the woman had already been conducted elsewhere when she approached the Petitioner who agreed to perform the operation to terminate the prgnancy and held that sex selection prohibited under the Act cannot be confined only to the determination of the sex of foetus but includes all the steps taken by the person or by the specialist either himself or by any other

	person in facilitating sex selection leading to elimination of female foetuses.
In The High Court of Punjab And Haryana at Chandigarh Civil Writ Petition No. 14759 of 2009 Decided on 27/04/2010	The court upheld that "a Practitioner under Indian Medicine System may have a requirement of Sonography machine for determination of foetal abnormalities for appropriate treatment, but if he doesn't possess the particular qualification required under the PCPNDT Act to operate the sonography machine, his challenge to the suspension order is futile without a challenge to the provisions of the PCPNDT Act or the Rules themselves. It was further held that the Notification issued by the State allowing the use of Ultrasound machine by medical practitioner with B.A.M.S. degree cannot expand the legislative intent or the Rules which have been framed under the Act. It was further held that the Notification issued by the Government cannot displace the requirement of Rule 3 of the Act.
In The High Court of Kerala O.P. No. 39084 of 2001 and connected cases Decided on: 01.08.2006	The Court rejected the contention that laboratories and clinics which do not conduct pre-natal diagnostic tests using ultra sonography will not come within the purview of the Act and the Authorities under the Act should not insist for registration of all ultra sound scanning centres irrespective of the fact as to whether they are conducting ultra sonography or not. Considering the Provisions of Section 4 (1) and Section 22 of the Act and keeping in mind the object of the Act to prevent misuse of any pre-natal diagnostic techniques it was held that, authorities will be free to conduct inquiries or inspection at any place where such device is available and to take action under the Act in case any person or institution is indulging in activities contrary to the provisions of the Act, irrespective of the fact that such an institute is registered or not under the Act. This judgment thus takes a positive view, by holding that Authorities are fully competent to ensure due compliance of the Act from all persons, at all places and in all Institutions, whether registered or unregistered, and thereby empowering Appropriate Authorities to take action ever against any unregistered institute
In The High Court of Gujarat (Full Bench) Cri. Reference Nos. 4 and 3 of 2008, Decided on 30/09/2008	This Full Bench decision of Gujarat High Court is a path breaking decision regarding:- • the provisions of the Proviso to subsection (3) of Section 4 of the Act require that the complaint should contain specific allegation regarding the contravention of the provisions of Section 5 and 6 of the Act ; • whether, the burden lies on the Authorities to prove that there was contravention of the Provisions of Section 5 or 6 of the Act; • whether, any deficiency or inaccuracy in filing Form - 'F' as required under the statuary provisions is merely a procedural lapse?

	• The judgment held that the Rules are made and the Forms are prescribed in aid of implementation of the Act to plug the possible loop holes in strict compliance of the Act and hence they are very important for implementation of the Act . Any deficiency or inaccuracy in filling Form-'F' being a deficiency or inaccuracy in keeping record in the prescribed manner, is not a procedural lapse but an independent offence amounting to contravention of the provisions of the PNDT Act and has to be treated and tried accordingly • It was held that the burden to prove that there was contravention of these provisions does not lie upon the prosecution. • It was further held that not only the Appropriate Authority but any officer on whom the powers are conferred by the Central Government, and court can take cognizance on a compliant made by any officer authorized in that behalf. ***Hence the judgment widens the scope of the term 'Appropriate Authority' and recognized the locus standi of any officer authorized by such Appropriate Authority to file complaint and set the law in motion in case of violation of the provisions of the Act***
Writ Petition No.7896 of 2010 Along with Civil Application No. 512 of 2011, Decided on June 6th 2011	• The court held that the analysis of the provisions of the Act is sufficient to hold that the expression "material object" in respect of which the power to seize and seal is conferred upon the Appropriate Authority/ authorised officer, includes ultra sound machines, other machines and equipment which are used for pre-natal diagnostic techniques or sex selection techniques" and hence now it can be held as settled law that Appropriate Authority has power to seize the ultra sound machine used in genetic clinics. • The High Court directed that all cases under the Act shall be taken up on top priority basis and shall be tried and decided PNDT cases with utmost priority and preferably within one year. ***This judgment goes a long way not only in clarifying the anomalous legal position but also paves the way for expeditious disposal of the cases filed under this Act .The results of this judgment are also visible in expeditious disposal of cases and recent decisions in Maharashtra.***
In The High Court Of Punjab And Haryana at Chandigarh W.P. No..873 of 2005 (M/B) Decided on 16/08/2005	The court held that the action of cancellation of registration is directed against the Ultrasound Centre and not against the owner of the Centre; where as criminal action is directed against the person who has committed the offence under the Act. Both the actions are independent and they can be dealt with simultaneously.

	The pendency of criminal proceedings need not and should not deter the Appellate Authority from deciding the Appeal filed against the cancellation of registration. ***This Judgment thus provides guidance to State Appropriate Authorities when to entertain or not to entertain the Appeal, when simultaneously several actions are being initiated. The Judgment also explains the difference between the penal action and the action of suspension and cancellation of registration.***
In The High Court of Bombay Writ Petition No. 797 of 2011 Decided on: 26/08/2011	The High Court found considerable substance in distinct advantages in the online submission of Form – F : • Firstly, that entire information in the Form – F has to be filled • up in its online submission, otherwise Form was not accepted by Computer. • Secondly, the work of submitting information in Form-F has to be complete on day to day basis, which results into • third advantage to District administration to make its meaningful scrutiny and analysis to zero in on cases where sex selection was resorted to after sex determination. • Fourthly, it would enable the Appropriate Authority to take immediate action in case of breach of provisions of the Act and Rules. ***The High Court, therefore, found that the Circular to submit Form-F online within 24 hours is in keeping with the letter and spirit of Section 17(4).***
In The High Court of Bombay (Goa Bench) Criminal Writ Petition No.6 of 2009, Decided on 15-4-2009	The court held that necessary averments ought to be in the complaint before a person can be subjected to criminal process by way of fastening vicarious liability on him in his capacity as director of the company. What are those necessary avermentsis also spelt out by the unanimous judicial decisions. There was no necessary averment made that Petitioner was in charge of and responsible for the conduct of the business of the company. Hence for this technical lacuna in the complaint the process issued against Petitioner came to be set aside though factually all the necessary conditions of the offence were met. ***This case is therefore important for the prosecution to act as a guideline while drafting the complaint against the company and its directors.***

In The High Court of Delhi W.P. (C) 6654 and 6826/2007 Decided on: 05.07.2010	The Court recognized the absence of clear rules and guidelines spelling out unambiguously the qualification, training and experience required for operating a diagnostic clinic offering ultrasound tests have resulted in unethical practices being adopted in many such clinics in violation of the PNDT Act going unchecked." The High Court expressed the need to amend the PNDT Act to plug the loopholes in terms of qualification, training and experience to be recognized and registered as a "sonologist", ***This case is therefore important for advocating suitable amendments in the Act and Rules thereof that would realized in the form of training rules for the "sonologist".***