

Appropriate Authorities (AA) under PCPNDT Act

Their roles, duties and functions

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Who is an Appropriate Authority (AA) under PCPNDT Act

- State Appropriate Authority (AA)- Three member team (Officer of rank of Joint Director or above of Department of Health and Family Welfare, Eminent women from NGO, Officer of Law and Judiciary Department)
- District AA – Civil Surgeon/ CMO
- Corporation AA – Medical officer of Health

AAs have to be notified in the official gazette

Functions of AA

- Grant, suspend and cancel registration of clinics
- Seek advise of advisory committee for registration of clinics or suspension or cancellation of registration and take action
- Ensure standards prescribed for clinics are followed
- Investigate complaints of breach of provision of Act
- Take appropriate legal action against use of any sex selection technique by any person [Qualified Private Medical Practitioners And Hospitals As...](#)
- Create public awareness on issue
- Recommend to State Supervisory Board modifications required in rules of Act based on technological developments.

Powers of AA

- Summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the Rules made thereunder;
- Production of any document or material object relating to the earlier power
- Issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination.

Duties of AA

- Search, seize or seal equipment or clinic and seize records at a genetic counselling centre, laboratory and clinic. (Section 30) [Dr. Mrs. Suhasini Umesh Karanjakar Vs Kolhapur Municipal...](#)
- Filing a complaint (Section 28a)-[Dr. Preetinder Kaur Vs State of Punjab 2011 CriLJ 876](#)
- Cancellation or suspension of Registration (Section 20). [Dr. Sujit Govind Dange v. State of Maharashtra D.B. Bomb... M/s Malpani Infertility Clinic Vs Appropriate Authority ...](#)
- Report name of medical practitioner against whom charge has been framed to State Medical Council.- (Section 23 - 2) [Dr Pradipchandra Mohanlal Gandhi And Anr Vs Maharashtra ...](#)

Registration of centers

- Receive Application for registration of Genetic counseling centers, Genetic Clinics and Genetic Laboratories (Section 18-2) in Form A (Rule 4)
[Documents to be collected with registration certificate](#)
- Grant certificate of registration (Section 19-1 and Rule 6-1) having got advise of Advisory committee in Form B(Rule 6-2)
- Reject certificate of registration (Section 19-2 and Rule 6-3) in Form C.
- Receive applications for renewal of certificate; grant or reject renewal

Documents to be collected with registration certificate

- Affidavit containing undertaking that center shall not conduct any test or procedure for selection of sex before or after conception or for detection of sex of foetus.
- Undertaking that center will display a board stating that they do not conduct any test/procedure for detection of sex of foetus
- Degree of certificate of doctor.
- Certificate of registration of doctor with State Medical Council.
- Details of place where center is to be established.
- Details of machine (make, model, serial number)
- Registration fee [Registration of centers](#)

Inspection of centers

- Has registration certificate been displayed at a prominent place (Section 19-4 and Rule 6-2)
- Has a notice stating that ***Disclosure of sex of foetus is prohibited under PCPNDT Act*** been displayed in English and local language. (Rule 17-1)
- Does center have a copy of Act and Rules available- (Rule 17-2)
- Who is conducting sonography- PG Radiology or Gynecology or RMP who has undergone 300 hour training titled Fundamentals in Abdomino Pelvic Sonography.

Scrutinizing Records

- Is five column register maintained (As per Rule 9-1)
- Are Forms D, E and F maintained by Genetic Counseling center, Genetic Laboratory and Genetic Clinic respectively (Rule 9-2, 9-3,9-4)
- In case of F Form, Is it filled on line and is a hard copy with consent maintained. (Rule 9-7)
- Are all columns filled.
- Has Doctor signed a declaration that sex selection will not be conducted.
- Are all F Forms being submitted to them before 5th of next month.(Rule 9-8)
- Are all Records being preserved for a period of two years. (Section 29-1)
- Tally F Form with OPD register.
- If records are not maintained as per Act- write a complaint, complete formalities of search and seizure- seize record and seal machine, Proceed with filing a case.[Suo Moto Vs Sate of Gujarat 2009 Cri. L.J. 721 \(F.B.\)](#)

Search and seal of sonography center

- AA has right to visit any center suspected to have contravened the Act and search and seal all registers, documents, machine, registration certificate, computer, printer, recording camera, all receipts and documents related to sonography (Section 30-2 and Rule 12)
- Provisions of CrPC, 1973 to be followed for conducting search and seizure. (Section 30-1)
- Seize and seal in presence of two persons (independent and reliable) acting as Panchas (At least one Pancha to be a Government servant) [Dr. Vandana Ramchandra Patil Vs State of Maharashtra Bom...](#)
- Prepare a panchanama of sealed material.
- Give acknowledgement of seized material to accused.
- Take statements from accused and co accused if any.
- Prepare detailed visit report and inspection report.
- Issue letter for suspension of registration.

Procedures to be carried out prior to filing case

- Call meeting of Advisory committee. Pass a resolution for filing of case and suspension of registration of center.
- Ensure all documents are available- statements of accused, visit and inspection report, statement of decoy and witnesses, panchanama of seized material.

Filing of a case

Along with case sheet submit following:

- Notification appointing person as AA.
- Authorization letter if AA has authorized a person on his/her behalf
- Attach inspection/visit report.
- Attach Panchanama in original
- Attach statement of witnesses
- Attach notice calling meeting of Advisory committee and resolution of Advisory committee.
- Attach original registration certificate along with order suspending registration prepared at the time of inspection.
- Attach statement of accused and co accused if any.

Supporting documents for the case

- Attach F Form register
- OPD register
- Consent sought
- Declaration stating sex will not be revealed.
- Referral slip

Other critical pieces of evidence

- CCTV recording
- Computer and printer
- File with USG reports.

Conducting a decoy

- Choose a trustworthy woman 14-22 weeks pregnant
- Inform and take permission of relatives.
- Prepare affidavit. Note numbers of currency notes that would be used in trap.
- Prepare two witnesses to accompany woman.
- Keep audio/video equipment handy.
- Be available close to place where decoy is to be conducted.

Assisting in Decoy

- Keep handy numbers of police stations and police officers.
- Take accused in custody. Switch off phone.
- Check decoy affidavit, search currency notes match with numbers and keep them in record.
- Take statement of accused and co accused.
- Inspect center, prepare inspection report.
- Search, seal and seize all documents and material.
- Prepare Panchanama.
- Record statement of decoy and witnesses.
- If audio video recording done, prepare CD

Qualified Private Medical Practitioners And Hospitals Association Vs State of Kerala MANU/KE/0330/2006

Case answers the question whether AAs are competent to ensure due compliance of the Act from Clinics which are un-registered under the Act ?

Considering the object of the Act and provisions of S. 4(1) and S.22 of the Act, it was held that, “Appropriate Authorities are competent to ensure due compliance of the Act from all persons, at all places and at all institutions, whether registered or un-registered under the Act, where the ultra-sound scanning device is installed”. [Functions of AA](#)

Dr. Mrs. Suhasini Umesh Karanjakar Vs Kolhapur Municipal Corp.

2011(4)AIR BomR 326 (F.B)

In this full bench judgment high court made an attempt to answer whether the power to search, sieze and seal any other material object conferred u/s 30 of the Act includes the USG machine or any other machine or object and is AA empowered to seize and seal sonography machine which is suspected to being used for conducting sex determination. The full bench:

- Held that, words “any other material object” used in S. 30 of the Act and Explanation (2) to Rule 12 clearly provide that Appropriate Authority is empowered to seize and seal ultra-sound machines, other machines and equipments capable of aiding or assisting in sex-selection. (Earlier contrary view reversed)
- Considering declining sex-ratio in Maharashtra from 913 in 2001 to 883 in 2011, the directions were given for expeditious disposal of the pending cases under the Act with utmost priority, preferably within one year.[Duties of AA](#)

Dr. Preetinder Kaur Vs State of Punjab

2011 CriLJ 876

In this civil writ petition competency of the Authority who initiated criminal prosecution against petitioner for violation of section 3(a) punishable u/s 23 of the Act was challenged.

In the judgment High Court discussed scope of section 28 of the Act and held that Act does not narrow down the class of persons who can initiate action:

- Apart from Appropriate Authority, an officer authorized by Central or State Govt. can also file a complaint.
- Complainant can also be a person authorized by Appropriate Authority or a social organization.

The case broadens the scope of S.28, giving authority to a wide class of persons to initiate action being a legislation to prevent social evil.[Duties of AA](#)

Dr. Sujit Govind Dange v. State of Maharashtra

D.B. Bombay High Court. Dated 16.8.2012

In this case the following issues were raised for consideration:

- whether opportunity to show cause or of being heard was required to be given to the Petitioner before seizure of Sonography Machine ?
- Whether approval of Advisory Committee was necessary before seizure of Sonography Machine
- Whether suspension of Licence for indefinite period was in complete violation of Principles of Natural Justice and hence contrary to Sec.20 of the Act.

Dr. Sujit Govind Dange v. State of Maharashtra

D.B. Bombay High Court. Dated 16.8.2012....Contd

The High Court held:

- Considering the objectives of the Act to be achieved, in order to protect the larger public interest, the Appropriate Authority has been given exceptional powers under sub-section 3 of Sec.20 of the Act to suspend the registration of the Clinic and seize the Sonography Machine, without giving show cause notice or an opportunity of hearing to the accused.
- It was further held that, the words “unless contrary is proved” used in proviso to Sec.4(3) of the Act requires that such presumption laid down in proviso to Sec.4(3) of the Act is to be rebutted at the time of trial and not at the stage when Sonography Machine is seized or registration is suspended. The burden will lie on the accused to prove the contrary at the time of trial before the Criminal Court that there was no deficiency or inaccuracy in maintaining and preserving the complete record of the clinic.
- It also cannot be said that suspension of registration is for indefinite period because it is only upto the conclusion of criminal trial.[Duties of AA](#)

M/s Malpani Infertility Clinic Vs Appropriate Authority AIR 2005 Bom 26

In this writ petition, order passed by AA suspending the registration of petitioners diagnostic center was challenged. Main contention raised was that S.20(3) of the Act provides only for cancellation and not for suspension of the registration of the clinic.

High Court rejected this contention saying that such power has to be read in to the Section, Otherwise the provisions of a welfare enactment will be rendered nugatory.

“ Where there is a conflict of pvt interests to carry on a particular activity, which the public authority considers as damaging to social interest, the power under the statute has to be read as an enabling power” [Duties of AA](#)

Suo Moto Vs State of Gujarat

2009 Cri. L.J. 721 (F.B.)

In this case, full bench of Gujarat High Court was deciding the reference made by single judge, whether deficiency or inaccuracy in filing Form F as required under statutory provision is merely a procedural lapse.

The full bench :

- Gives progressive interpretation to S.4(3) of the Act holding that by virtue of deeming provision of the proviso to said section, contravention of the provisions of S.5 or 6 is legally to be presumed. Hence, there need not be allegation in the complaint about the inaccuracy or deficiency in maintaining record as resulting in contravention of S. 5 or 6 of the Act.
- Burden to prove the contravention of this provision does not lie on the prosecution.
- Deficiency or inaccuracy in filling Form –F under Rule 9 is not merely a procedural lapse but an independent offence. [Scrutinizing Records](#)

Dr. Vandana Ramchandra Patil Vs State of Maharashtra Bombay High Court 23rd January 2013.

In this case the petitioner held that the sonography Machine seized by AA should be released on Indemnity Bond during pendency of inquiry and trial As it is a muddemal property which will get damaged, if unused and hence there is no point in keeping the same till conclusion of trial.

The High Court held:

- Offence under PCPNDT Act is committed essentially with the use of Sonography Machine. The crime is essentially repetitive in nature. The prevention of crime is best achieved by sealing the Machine. If the seal is opened, the accused is facilitated to repeat the crime. Once a case is made out against the Accused, repetition of such crime has to be prevented. The accused, therefore, cannot use machine until trial is over.
- Order of release of machine passed mechanically like any other property lacks sensitivity. The Court must consider the impact and effect of each Order. A machine sealed cannot be directed to be re-opened or released. It should remain sealed till the conclusion of trial.[Search and seal of sonography center](#)

Dr Pradipchandra Mohanlal Gandhi And Anr Vs Maharashtra Medical Council Writ Petition No 6495 of 2012

Case answers the question whether Maharashtra Medical Council is required to hold enquiry before suspension or removal of name of registered medical practitioner as laid down in Section 23(2) of the Act.

When the charges are framed the State Medical Council must take action including suspension of registration till the case is decided but when there is conviction the name of the concerned medical practitioners should be removed from the register of the council for a period of five years. High Court held that there is absolutely no warrant for holding any enquiry so as to delink the taking of action in terms of sub section (2) of section 23. [Duties of AA](#)