

MTP and PCPNDT

Unpacking the Nuances



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Abortion and sex selection: the overlap

- Sex selection is often linked with abortion creating a misconception that abortion is illegal.
- Laws to address the two issues are different
 - PCPNDT Act– to prevent sex selection
 - MTP Act – to prevent unsafe abortion.
- MTP Act legalizes abortion under certain conditions to prevent unsafe abortions.
PCPNDT Act aims to prevent sex selection

Sex selection and PCPNDT Act

- Sex selection is about discrimination- Discrimination is unlawful.
- Sex selection is a result of subordination of women.
- **PCPNDT Act** aims to prevent misuse of pre natal diagnostic techniques to determine sex of foetus.
 - Prohibit the sex selection before or after conception
 - Regulates pre-natal diagnostic techniques for detecting genetic abnormalities or metabolic disorder or chromosomal abnormalities or sex linked disorders
 - Prevent misuse of sex determination techniques for determining sex of foetus

Abortion and MTP Act

- Abortion is not about discrimination.
- Not providing women access to safe and legal abortion deepens discrimination and subordination of women.
- **MTP Act** To prevent maternal morbidity and mortality associated with unsafe abortion
 - Abortion is legal under certain conditions(Continuation of pregnancy would involve risk to life of pregnant woman or cause grave physical and mental injury, including pregnancy due to rape; risk of physical and mental abnormality in child and contraceptive failure)
 - Abortion legal upto 20 weeks.
 - Pregnancy can be terminated at a Government or private registered facility
 - Pregnancy can be terminated by a medical practitioner registered with State medical register.

MTP and PCPNDT Overview of legal compliances

Critical Issues	MTP Act	PCPNDT Act
Provider Eligibility	RMP as defined in MTP Act Section 2 (d) Rule 4	PG in Radiology or Gynaecology or RMP with 300 hour training- Rule 3
Site Approval/ Registration	Private site needs to be approved by DLC as specified in MTP Act. Section 4 Site approval certificate- Form B to be displayed. Rule 5(7)	All centers have to be registered . Section 18. Registration certificate to be displayed at a conspicuous place of business. Section 19 (4)
Consent	No pregnancy shall be terminated except with consent of pregnant woman. Section 3(4) Consent to be sought in Form C Rule 9	Written consent obtained in Form G for invasive procedure and declaration of pregnant woman as part of Form F. for non invasive procedure. Section 5 and Rule 10(1)

MTP and PCPNDT Overview of legal compliances...contd

Critical Issues	MTP Act	PCPNDT Act
Records	Form I- Regulation 3 Form III- Regulation 5 Form C – Rule 9	Form D/E/F Section 29, Rule 9
Reporting	Cases to be reported on a monthly basis to CS- Form II to CS or MOH	Report for each month to be sent to AA by 5 th of next month- Rule 9(8)
Copy of Act	To be maintained at facility	To be kept at center for public information. – Rule 17(2)

Why safeguard women's right to abortion

- In India a large percentage of abortions are unsafe. Conducted by unregistered, untrained providers under unsafe conditions.
- With the result, 8% maternal mortality occurs due to unsafe abortion *
- Abortion complications - third major cause of maternal mortality after hemorrhage and sepsis *

Even then, abortion is informally curbed to stop sex selection

- *2001-03 Special Survey of Death, Registrar General, India*

Abortion and sex selection: the overlap

Abortion curbed in an overzealous effort to implement PCPNDT

- Only a small percentage (9%) of abortions are sex selective. Therefore curb on abortion will not be effective in preventing sex selection
- Abortion is not the cause of the problem, discrimination is
- Discrimination is unlawful (PCPNDT), Abortion is lawful (MTP)
- Access to safe abortion important as a large number of maternal deaths occur due to unsafe abortion.
- Abortion is only the consequence not the cause

How communication on sex selection can compromise women's access to abortion

- Communication on sex selection generally uses the fear and guilt angle to communicate the heinous nature and consequence of the practice and the urgency to address it.
- Such communication confuses sex selection with abortion and creates a misconception that abortion is illegal.
- Use of terminologies like foeticide, bhrun hatya, etc further add to this confusion
- Communication to address sex selection, should not compromise on women's access to safe and legal abortion

How incorrect communication is impacting women's access to safe abortion

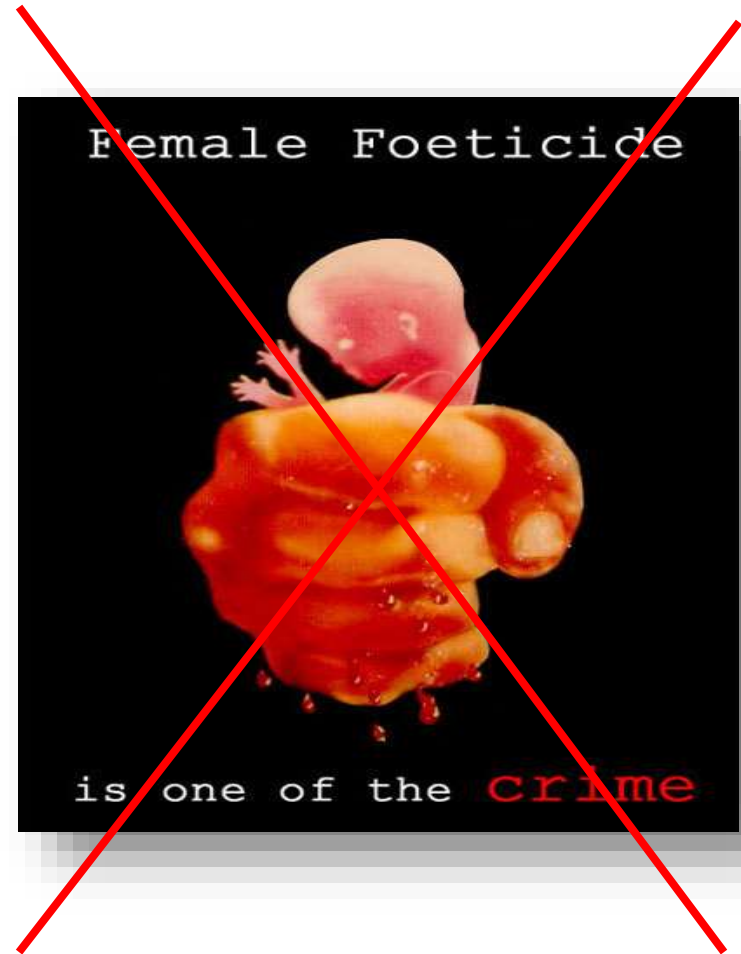
Incorrect communication to curb sex selection ends limiting women's access to safe abortion. Studies have shown:

- Access to medical abortion has been restricted
- Pregnancies are being tracked to ensure pregnant women don't undergo abortion.
- Suggestions that contraceptive failure should not be included as a condition for second trimester abortion.
- Some areas - Doctors insist on special permission of government or provide abortion services only if followed by sterilization.
- Doctors refusing second trimester abortions.

Maintaining balance in communication

Avoid language and imagery that takes away women's right to safe abortion

- **Language-** Use terminology that does not jeopardize abortion. Refrain from use of words such as foeticide, killing, murder, genocide.
- **Imagery-** Use imagery that does not imply murder, illegality of MTP, or personify an unborn fetus. Avoid imagery like fetus in a bottle, dagger piercing the womb, crushing the fetus.
- **Positioning-** Communication does not imply sex selection and abortion as violence against fetus and does not refer to sex selection as being about right to life and right to be born. **It is about women's right to live a life free of discrimination.**



- [Save the Girl Child - Directed by Jagmeet Bal](#)



Save the Girl Child - Directed by Jagmeet Bal.mp4

Dr. Mangla Dogra and Others Vs. Anil Kumar Malhotra and Others

In this case the husband filed a civil suit for the recovery of Rs. 30 lacs towards damages on account of mental pain, agony and harassment against the wife, her parents, brother and doctors who had conducted medical termination of pregnancy, for getting the pregnancy terminated. The question before the Court was "whether the express consent of the husband is required for unwanted pregnancy to be terminated by a wife ?"

High Court had dismissed husbands plea saying termination of pregnancy was the sole prerogative of woman

On 28th Oct 2017, a three member bench of the Hon. SC upheld the decision of the High Court and dismissed the husband's petition seeking damages from his estranged wife for undergoing abortion without his consent, and ruled that an adult woman had an unimpeachable right to give birth or terminate pregnancy.

High Court on its own motion vs. State of Maharashtra, 2016

In this PIL permission was sought for termination of pregnancy of an under-trial prisoner based on a requisition given by her. In the requisition, she has stated that she already has a baby who is five months old. The baby was suffering from convulsion / epilepsy, hernia, loose motion as well as fever. Her health was also not good and she was suffering from repeated bleeding. she was four months pregnant. In all these circumstances, it was very difficult for her to maintain and take care of her five months old baby and herself and in addition, the baby which she was expecting, hence, she requested that she be allowed to medically terminate her pregnancy.

Bombay High Court endorsed women's sole right over her own body and her consequent right to choose or not to choose motherhood and that she should be allowed to opt out of an unwanted pregnancy irrespective of the reason.

“According to international human rights law, a person is vested with human rights only at birth; an unborn foetus is not an entity with human rights. The pregnancy takes place within the body of a woman and has profound effects on her health, mental well-being and life. Thus, how she wants to deal with this pregnancy must be a decision she and she alone can make. The right to control their own body and fertility and motherhood choices should be left to the women alone.”

Hallo Bi @ Halima V.s State of Madhya Pradesh and others, 2013

In this case the petitioner who is in Jail has asked for issuance of a direction to terminate her pregnancy, which she says was caused on account of her being forced into prostitution and her being subject to forced sex/rape. Her plea for termination was rejected at first.

High Court of Madhya Pradesh affirmed the importance of providing victims of forced sex/rape access to abortion.

A victim of forced sex/ violent rape cannot be forced to give birth to a child of a rapist. The anguish and humiliation which the petitioner is suffering will certainly cause grave injury to her mental health.

Suchita Srivastava & Anr vs Chandigarh Administration, 2009

A woman staying in a home run by Chandigarh Administration was found to be pregnant. Woman had “mild mental retardation” and was suffering from spinal deformity and Hepatitis B. Administrative Authorities sought permission to have her pregnancy terminated questioning her physical and mental capacity to bear and raise a child and on the ground that although she was 19 years of age, she suffered from mental retardation.

The Court in its order stated that: The woman’s pregnancy cannot be terminated without her consent and proceeding with the same will not be in her best interest. Court further directed that woman be provided best medical facilities so as to ensure proper care and supervision during pregnancy as well as for post-natal care.... “Women’s right to make choices is also a dimension of personal liberty as understood under Article 21 of the Constitution. Reproductive choices can be exercised to procreate as well as to abstain from procreation”