

ERRING ON THE SIDE OF CAUTION: ON SEX-SELECTIVE ABORTION RULES

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

A view of the Supreme Court of India, in New Delhi. File | Photo Credit: [Sushil Kumar Verma](#)

Last week, the Supreme Court deferred a pronouncement on the legality of the Centre's now-lapsed controversial notification relating to the rules of the law banning sex-selective abortions. The judges viewed the matter as closed for now, as the April 4 notification pertaining to the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) (PCPNDT) Act was left to expire by the government on June 30.

The apex court similarly erred on the side of caution in June, choosing not to stay the Ministry of Health and Family Welfare's gazette notification. The inference was that such an option would be warranted only if the suspension of relevant rules was extended beyond June. The petitioner's concerns have thus largely been allayed that the April 4 notification loosening the rules, ostensibly to cope with the pandemic, would dilute the law.

One of the impugned rules requires a five-yearly renewal of registration of genetic laboratories, ultrasound clinics and imaging centres, subject to the fulfilment of eligibility criteria. Another mandates these diagnostic establishments to submit monthly records on the conduct of pregnancy-related procedures to the designated authority. State governments and Union Territories are required to furnish quarterly reports to the Centre on the implementation of the law. The Union Health Ministry had maintained that various procedural deadlines were relaxed in the wake of the public health crisis and that such flexibility would in no way jeopardise the larger objectives of the law.

On the other hand, activists saw no rationale whatsoever behind the suspension of rules, since the operation of diagnostic laboratories had been declared essential services. They were understandably apprehensive that the freeze would result in large-scale violations. It is one thing to condone delays in the completion of formalities via an administrative order, but altogether another to declare a freeze via a gazette notification, they argued.

In any case, the 25-year jurisprudence around the PCPNDT legislation does not justify a sanguine approach on the enforcement of its various provisions. A case in point is the ongoing litigation regarding the eligibility of medical practitioners to conduct ultrasound procedures. In February 2016, the Delhi High Court struck down the requirement under the 2014 PCPNDT rules of a six-month training period for personnel carrying out ultrasonography. In challenging that ruling in the Supreme Court, the Indian Radiological and Imaging Association (IRIA) stressed the lack of preparation in an MBBS programme to conduct ultrasound procedures, which was part of the discipline of radiology. IRIA also cited the relevant Medical Council of India guidelines based on the law.

The Supreme Court stayed the Delhi High Court judgment in 2018 as an interference in legislative policy intended to further the objectives of the law in the face of grave misuse of pre-natal diagnostic procedures. The Court last year ruled that the non-maintenance of medical records as per Section 23 of the PCPNDT Act could serve as a conduit in the grave offence of foeticide. The Bench hence dismissed the plea of the Federation of Obstetrics and Gynaecological Societies of India to treat inaccuracies in paperwork as clerical errors. In its

2016 judgment, in response to the Voluntary Health Association of Punjab petition, the Court authorised the seizure of illegal equipment from clinics and the suspension of their registration as well as speedy disposal of relevant cases by the States. Many of the court's strictures go back to the litigation in the early years of the legislation spearheaded by the Centre for Enquiry into Health and Allied Themes.

Crucially, the alarming decline witnessed in recent decades in India's sex ratio at birth calls for an uncompromising adherence to public policy, more than is evident from evolving case law.

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