

THE GUJARAT GOVERNMENT GAZETTE

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Separate paging is given to this Part
in order that it
as a separate compilation.

PART V

Bill Introduced in the Gujarat Legislative
Assembly.

The following Bill which was introduced on the 5th March, 1991
by Dr. Dineshbhai Parmar, Minister of State for Health, is pub-
lished under rule 127-A of the Gujarat Legislative Assembly
Rules for general information:-

"THE GUJARAT REGULATION OF PRE-NATAL
DIAGNOSTIC TESTS BILL, 1991.

GUJARAT BILL NO. 21 OF 1991.

A BILL

to prohibit use or carrying out of pre-natal diagnostic tests
for the purpose of determination of sex of a foetus; to regulate
use or carrying out of certain pre-natal diagnostic tests for
certain purposes and to provide for matters connected therewith
or incidental thereto.

It is hereby enacted in the Forty-second Year of the Republic
of India as follows:-

1. (1) This Act may be called the "Gujarat Regulation of Short
Pre-natal Diagnostic Tests Act, 1991." Short
title,
extent
and comm-
encement.
- (2) It extends to the whole of the State of Gujarat.
- (3) This section shall come into force at once and the
other provisions of this Act shall come into force on
such date as the State Government may, by notification
in the Official Gazette, appoint.

21-1

21-2 GUJ. GOVT. GAZ. EX. 5-3-1991 (PART V)

Definitions. 2. In this Act, unless the context otherwise
require,--

(a) "advertisement" includes any notice, label,
wrapper or other document and any announcement
made by means of producing or trans-

(1) "designated test" means any of the following pre-natal diagnostic tests, namely:-

- (a) Amniocentesis,
- (b) Chorion villi biopsy,
- (c) Foetoscopy,
- (d) Amnioscopy,
- (e) any other test which the state Government may, by notification in the Official Gazette, specify;

(c) "Gynaecologist" means a person who has acquired a post-graduate degree in the subject of Obstetrics and Gynaecology of any University established by law in India:

(d) "Inspector" means an Inspector appointed under section 6;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "specified test" means any of the following pre-natal diagnostic tests, namely:-

(i) any of the designated tests mentioned in sub-clauses (i) to (iv) of clause (b),

(ii) any other test specified as a designated test by the State Government under sub-clause (v) of clause (b),

(iii) Sonography,

(iv) any other test which the State Government may, by notification in the Official Gazette, specify.

Prohibition. For the purpose of determination of sex of a foetus irrespective of whether it is intended to terminate pregnancy under the Medical Termination of Pregnancy Act, 1971 or not-
of specified test.

- (a) no person shall use or carry out,
- (b) no person shall aid or abet the using or carrying out of,
- (c) no female shall submit to, and
- (d) no person shall aid or abet submission of a female to, any specified test.

4. No person shall take any part in the publication of any advertisement offering to determine the sex of a foetus.

Prohibition of advertisement offering to determine sex of foetus.

5. (1) No person, other than a specified Gynaecologist or an authorised Head of Unit, shall use or carry out any 'designated test'.

Regulation of use of designated test.

(2) No specified Gynaecologist and no authorised Head of Unit shall use or carry out designated test at any place other than the Government Hospital attached to a medical college in which he is employed as such Gynaecologist or Head of Unit.

(3) The specified Gynaecologist or authorised Head of Unit shall not use or carry out any designated for any purpose other than the purpose of detection of any of the following abnormalities, namely:-

- (i) Chromosomal abnormalities,
- (ii) Genetic metabolic diseases,
- (iii) Haemaglobinopathy,
- (iv) Sex-linked genetic diseases,
- (v) Congenital anomalies,
- (vi) Rh. incompatibility.
- (vii) Any other abnormality or disease which the State Government may, by notification in the Official Gazette, specify.

(4) The specified Gynaecologist or the authorised Head of Unit shall not use or carry out a designated test unless-

- (a) he is satisfied that any of the following conditions exist, namely:
 - (i) Age of the pregnant woman is more than 35 years.
 - (ii) Occurrence of two or more abortions or foetal loss.
 - (iii) Occurrence of exposure to potentially teratogenic drugs, radiation, infection or hazardous chemicals.
 - (iv) Family history of mental retardation or physical deformities such as spastic or deaf mute child, haemoglobinopathy or any other genetic disease,
 - (v) Any other condition which the State Government may, by notification in the Official Gazette, specify; and
- (b) he has obtained a written consent of the female in relation to whom the designated test is to be used or carried out, in such form as may be prescribed, after explaining to her the likely side-effects or after-effects of the designated test.

Explanation I - For the purposes of this sections 13, 14 and 20 the expression 'specified Gynaecologist' means a Gynaecologist employed as the Head of the Department of Obstetrics and Gynaecology in a Government Hospital to which a medical college is attached.

Explanation:II.- For the purposes of this section and sections 13 and 14, the expression "authorised Head of Unit" means such Head of Unit of Department of Obstetrics and Gynaecology in a Government Hospital to which a medical college is attached as may be authorised in writing by the specified Gynaecologist in such Government Hospital in this behalf.

Inspectors.6.(1) The State Government may, by notification in the Official Gazette, appoint such officers of the Government as possess the prescribed qualifications to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(2) The State Government may, by notification in the Official Gazette, appoint any officer of the Government to be a Chief Inspector who shall exercise the powers of an Inspector throughout the State.

Powers of Inspectors

(7) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed, enter, with such assistants being persons in the service of the State Government or any local or other public authority, as he thinks fit, any dispensary, clinic, laboratory or any other premises, where he has reason to believe that contravention of the provisions of this Act, has been, is being or is about to be committed and search the same, and seize-

(a) any apparatus, equipments and instruments which were used or are being used or about to be used in contravention of the provisions of this Act if he has reason to believe that such apparatus, equipments and instruments are liable to confiscation under the provisions of this Act;

(b) any books of accounts and documents which in his opinion may be useful for, or relevant to, any proceedings under this Act and the person from whose custody such books of accounts and documents are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of the Inspector having the custody of such books of accounts or documents.

31 of 1971

(8) Whoever in contravention of the provisions of section 3 uses or carries out any specified test for the purpose of determination of sex of a foetus irrespective of whether it is intended to terminate pregnancy under the Medical Termination of Pregnancy Act, 1971 or not shall, on conviction, be punished with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees :
Penalty for use of specified test in contravention of provisions of section 3.

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in writing in the judgement of the court, such imprisonment shall not be less than one year and fine shall not be less than one thousand rupees.

31st of 1971

(9) Whoever in contravention of section 3 aids or abets the use of carrying out of any specified test for the purpose of determination of sex of a foetus irrespective of whether it is intended to terminate pregnancy under the Medical Termination of Pregnancy Act, 1971 or not shall, on conviction be punished with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees.
Penalty for aiding or abetting use of specified test in contravention of provisions of section 3.

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in writing in the judgement of the court, such imprisonment shall not be less than one year and fine shall not be less than one thousand rupees.

10. Whoever in contravention of section 3 submits to a specified test shall on conviction, be punished with fine which may extend to five thousand rupees. Penalty for submission to specified test in contravention of section 3.
11. Whoever in contravention of section 3 aids or abets submission of a female to a specified test shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to five thousand rupees. Penalty for aiding or abetting submission of a female to specified test.

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in writing in the judgement of the court, such imprisonment shall not be less than three months and fine shall not be less than one thousand rupees.

12. Whoever in contravention of section 4 takes part in any advertisement offering to determine the sex of a foetus shall, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both. Penalty for taking part in any advertisement in contravention of provisions of section 4.
13. Whoever not being a specified Gynaecologist or an authorised Head of Unit in contravention of the provisions of section 5 uses or carries out any designated test for any purpose whatsoever, shall on conviction, be punished with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees : Penalty for use of designated test in contravention of provisions of section 5.

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in writing in the judgement of the court, such imprisonment shall not be less than one year and fine shall not be less than one thousand rupees.

14. Where a specified Gynaecologist or an authorised Head of Unit uses or carries out a designated test for any purpose other than the purpose of detection of any of the abnormalities mentioned in section 5, he shall, on conviction, be punished with imprisonment for a term which may extend to one year and/or with fine which may extend to five thousand rupees or with both. Penalty for use of designated test by specified Gynaecologist for any purpose other than mentioned in section 5 in contravention of provisions of section 5.

- Apparatus, equipments and instruments liable to confiscation. ✓
15. Whenever any offence punishable under section 8 or 13 has been committed, any apparatus, equipments and instruments used in commission of such offence shall be confiscated by the order of the Court.
- Offences under sections 8, 9, 11, 12 and 13 to be cognisable and non bailable. ✓
16. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police-officer not below the rank of Sub-Inspector may arrest without warrant any person who is reasonably suspected of having committed an offence under section 8, 9, 11, 12, or 13 and offences under sections 8, 9, 11, 12, and 13 shall be non-bailable.
- Name of offenders to be reported to Medical Council.
17. (1) Where any registered medical practitioner is convicted of an offence under section 8, 12, or 13, the court convicting such practitioner shall report the name of such practitioner to the Gujarat Medical Council.
- (2) The Gujarat Medical Council shall take such disciplinary action against the registered medical practitioner as deemed fit.
- Protection of action taken in good faith.
18. No suit, prosecution or other legal proceedings shall lie against the State Government or any officer of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act.
- Power to make rules.
19. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following matters, namely:-
- (a) the form in which written consent of a female is to be obtained under clause (b) of sub-section (4) of section 5:
- (b) the qualifications to be possessed by persons for being appointed as Inspectors under sub-section (1) of section 6:
- (c) rules subject to which Inspectors may exercise the power of entry, search and seizure under section 7:
- (d) any other matter which is to be or may be prescribed under this Act.
- (3) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication.
- (4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following:-

(5) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

20. Nothing in this Act shall apply to the use or carrying out Saving of any specified test or designated test solely for the purpose of medical education or research, other than such education or research related to sex determination by:-

- (a) a specified Gynaecologist, or
- (b) such professor or such associate professor of Obstetrics and Gynaecology in any Government Medical College authorised in writing by a specified Gynaecologist of the Government Hospital to which such Government Medical College is attached.
- (c) such professor or such associate professor of Obstetrics and Gynaecology in any other medical college, recognised by the Medical Council of India, or, as the case may be, approved by the State Government as may be authorised in this behalf by the Government by notification in the Official Gazette.

STATEMENT OF OBJECTS AND REASONS

It has been brought to the notice of the State Government that pre-natal diagnostic tests intended to find out probable genetic disorders in unborn child are freely being carried out to determine the sex of the unborn child with a view to terminating the pregnancy, with or without the consent of mother, if the unborn child is determined to be a female. Such diagnostic her death. The tendency of terminating the pregnancy if the unborn child is determined to be a female stems from the belief that a girl child is burdensome and therefore unwanted.

In order to prevent deterioration of the health of pregnant woman on account of pre-natal diagnostic tests and protect the unborn girl child so as to prevent imbalance in the male and female population in future, it is considered necessary to enact the proposed legislation to prohibit the use of pre-natal diagnostic tests for determination of sex of unborn child and to regulate the use of diagnostic tests for determination of genetic or congenital disorders.

The following notes on clauses explain in brief the important provisions of the Bill.

Clause 2.- This clause seeks to define certain words. Sub-clause (b) seeks to define 'designated' test' to mean any of the diagnostic tests mentioned therein and power is taken to the State Government, to specify any other test which on such specification would be the designated test. Sub-clause (f) seeks to define 'specified test' to mean any any of the diagnostic tests mentioned therein as well as any of the designated test. Power is also taken to the State Government to specify any other test which on such specification would be the specified test.

Clause 3.- This clause seeks to prohibit-

- (a) the use or the carrying out of a specified test.
- (b) aiding or abetting the use or the carrying out of a specified test,
- (c) submission of a woman to a specified test,
- (d) aiding or abetting submission of a woman to a specified test,

Clause 4- This clause seeks to prohibit advertisement offering to determine sex of foetus.

Clause 5.- This clause seeks to prohibit-

- (a) the use or the carrying out of any designated test by any person other than the Gynaecologist mentioned therein;
- (b) the use or carrying out of the designated test by the Gynaecologist at any place other than the Government Hospital attached to a Medical College in which the Gynaecologist is employed.
- (c) the use or carrying out the designated test by the Gynaecologists for any purpose other than the detection of the abnormalities mentioned in sub-clause (3) of the said clause 5.
- (d) the use or carrying out of the designated test by the Gynaecologist unless the conditions mentioned in paragraph (a) of sub-clause (4) of clause 5 exist and written consent of the female in relation to whom the designated test is to be used is obtained.

Clause 6.-This clause empowers the State Government to appoint Inspectors.

Clause 7.-This clause provides for powers of the Inspectors to enter, search and seize.

Clause 8, 9, 10, 11, 12, 13 and 14.- These clauses provide for penalty for contraventions of clauses 3, 4 and 5.

Clause 15.- This clause provides for con-fiscation of apparatus, equipments and instruments used in commission of an offence under clause 8 or 13.

Clause 17.-This clause empowers the Court to report the name of a registered medical practitioner convicted of an offence under clause 8, 12 or 13, to the Gujarat Medical Council for disciplinary action by the Council against the practitioner.

Clause 19.- This clause provides for power of the State Government to make rules.

Clause 20.- This clause saves the use or carrying out of specified test or designated test, solely for the purpose of medical education and research other than that related to sex determination by persons mentioned therein.

BABUBHAI VASANWALA

FINANCIAL MEMORANDUM

Clause of the Bill empowers the State Government to appoint Government officers possessing prescribed qualifications to be Chief Inspector and Inspectors to exercise the powers of Inspectors for the use of the Act. Since only existing Government officers are to be appointed, such appointment will not involve any additional expenditure from the Consolidated Fund of the State.

BABUBHAI VASANWALA

MEMORANDUM REGARDING DELEGATED LEGISLATION.

This Bill involves delegation of legislative powers in the following reports:-

Clause 1- Sub-clause (3) of this clause empowers the State Government to appoint by notification in the Official Gazette the date on which the remaining provisions of the Act shall come into force.

Clause 2.- (i) Paragraph (v) of sub-clause (b) of this clause empowers the State Government to specify by notification in the Official Gazette any other test to be a designated test.

(ii) Paragraph (iv) of sub-clause (f) of this clause empowers the State Government to specify by notification in the Official Gazette any other test to be a specified test.

Clause 5.- (i) Item (vii) in sub-clause (3) of this clause empowers the State Government to specify by notification in the Official Gazette any other abnormality or disease for the purposes of the said sub-clause (3).

(ii) Item (v) in paragraph (a) of sub-clause (4) of this clause empowers the State Government to specify by notification in the Official Gazette any other condition for the purposes of the said paragraph (a).

(iii) Paragraph (b) of the said sub-clause (4) empowers the State Government to prescribe by rules, the form in which a written consent of a female shall be obtained.

Clause 6.- Sub-clauses (1) and (2) of this clause empowers the State Government to appoint respectively the Inspectors and the Chief Inspector for the purposes of the Act.

Clause 7.- This clause empowers the State Government to make rules subject to which an Inspector may exercise the powers of entry, search and seizure within the local limits for which he is appointed.

Clause 19.- This clause empowers the State Government to make by notification in the Official Gazette rules generally for carrying out the purposes of the Act and particularly for all or any of the matters specified in sub-clause (2).

Clause 20.- Sub-clause (c) of this clause empowers the State Government to authorise by notification in the Official Gazette certain professors and associate professors to use or carry out any designated test or specified test for the purpose of medical education and research.

2. The delegation of powers as proposed is necessary and is of a normal character.

Dated the 21st February, 1991

BABUBHAI VASANWALA

Gandhinagar

Dated the 5th March, 1991

P. N. THAKKAR

Secretary

Gujarat Legislative Assembly

(A Report by Garbh Pariksham Virodhi Manch)This is the only copy we have

Following the passage of the bill banning the use of pre-natal diagnostic techniques for sex determination in the Maharashtra Assembly in March this year, the Garbh Pariksham Virodhi Manch, a front formed by the progressive organisations, doctors and other concerned citizens in Baroda (Gujarat), decided to conduct a survey to find out the misuse of such techniques in Baroda city and to roughly estimate the extent of their ^{mis}use for female foeticide. The Manch interviewed (1) 30 doctors (2) some pathologists (3) some women who have undergone the test (4) some women who are against such test and refusing to undergo despite having one or more daughters and under social pressure (5) individuals from various economic, social and cultural stratas.

FINDINGS

A. Prevalence of Pre-natal Diagnostic Techniques

1. In Baroda mainly two pre-natal diagnostic techniques are used for sex-determination, viz. Amniocentesis and chorion-villi-biopsy (CVB). Of these two, the Amniocentesis is much more prevalent as it is ^{comparatively} cheap.
2. Except very few gynaecologists in Baroda, almost all do amniocentesis.
3. Of those who are doing the test, except one, all said that personally they do not favour the test.
4. More than 70% of them admitted that the amniocentesis could ~~be~~ be harmful to the mother and the foetus. Sometimes it leads to spontaneous abortion and sterility.
5. The Manch also came to know that some doctors were doing amniocentesis with inadequate precaution and facility and thus endangering the lives of the mother and the child.

6. Women from all castes, religion and economic classes go for this test. Many of them have taken loan to pay for the test.

7. A common view that parents with two or more daughters go for such test was proved to be incorrect. We found couples going for test at first conception. We also found couples already having one son (the only child) going for the test as they wanted son second time too.

B. The Extent of Misuse

1. According to one information, a well known laboratory in Baroda has tested 20,000 samples of amniotic fluid in last 10 years.

2. In 1987, in Baroda city alone estimated 2400 tests were conducted.

3. We came to know that a sizeable number of women go to Anand city to undergo the test. Must the real number of women undergoing this test is much higher than estimated by us.

C. Some other findings

Following are some qualitative findings based on case studies and observations.

1. Although doctors did admit the possible harmful effect of amniocentesis on mother and child, and risk of abortion, sterility etc, none of them maintain any record about the harmful effect observed by them.

2. Some doctors said that sex-determination and the female foeticide should be encouraged as a part of family planning programme.

3. Many doctors said that they will stop doing this test if government bans it. But till then they cannot say

no as other doctors continue to do this test and that will adversely ^{affect} their income.

- 4. Some doctors said that they are new in the business, ^{they} ~~or~~ have just started ^{their} ~~our~~ practice. "let us earn a lot for a while! After some time, we will stop doing this test."
- 5 Only one doctor believed that this test should be offered to all couples with two daughters. According to that doctor, as long as daughters are unwanted in the world they have no right to take birth.
- 6. Only three doctors condemned the test and said that it violates medical ethics and the medical profession should take initiative to banish it.
- 7. Except these three doctors, the others, though did not favour the test at personal level, blamed the society for its spread. They believed that doctors give what the customers demand. They completely absolved doctors from any responsibility regarding the test and the female foeticide.
- 8. People believe that banning pre-natal sex determination tests will not radically change the situation. After such ban, the test will become costlier.

Translator's note for the MFC Bulletin: These findings are taken from a mimeographed report of the Manch in Gujarati. The presentation is changed for stylistic reasons. On reading the Manch's report it was clear to me that the Manch has done more of an investigative report rather than a scientific survey. However, this does not minimise the seriousness of the problem they have painfully highlighted. The findings are startling. The hypocrisy of the commercialised medical profession is fully exposed. We hope that some more systematic research will be conducted on this subject so that an effort can be made at national level to banish such inhuman medical practice]

(A Report by Garbh Parikshan Virodhi Manch)

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Bill to be introduced, not to be published before introduction.

Gujarat Bill No. of 1989.

**THE GUJARAT PREVENTION OF MISUSE OF PRE-NATAL DIAGNOSTIC
TECHNIQUES BILL, 1989.**

A BILL

to prevent the misuse of the present and the future medical or other scientific procedures of pre-natal diagnosis, like Amniocentesis, Chorionic Villus, Diopov, etc, solely for the purpose of detecting genetic disorders, Chromosomal abnormalities, matabolic disorders or certain congenital malformations or Sex-linked disorders and to provide for prevention of the misuse of these techniques.

It is hereby enacted in the Fortieth Year of Republic of India as follows:-

1. (1) This Act may be called "The Gujarat Prevention of Misuse of pre-natal Disagnostic Techniques Act, 1989".

Short title.
Extent and
Commence-
ment.

2. (1) It extends to the whole of the State of Gujarat.

(2) It shall come into force atonce.

3. In this Act, unless the context otherwise requires :—

(1) "Genetic Analysis Centre" means a Centre created and run by Government preferably attached to Government Medical college, which provides facilities of (a) genetic analysis for detection of genetic disorders and (b) the obstetric procedures involved in drawing of sample for testing.

(2) "Gynaecologist" means a person who has acquired a post graduate qualification in Gynaecology after obtaining M.B.B.S. degree ;

(3) 'Medical Geneticist' means a person who has acquired a degree or diploma or certificate in Medical Genetics in the field of prenatal diagnosis or has experience of atleast two years of work in that field after passing (1) M.B.B.S. or (2) Msc. or PHD in Biological Sciences

(4) 'Pre-natal Diagnostic Procedures' means all present and future gynaecological or obstetrical or medical procedures such as taking or removing samples of amniotic fluid, chorionic villi, Blood, other tissues of pregnant woman's body etc, for analysis by a Genetic Laboratory in order to perform prenatal diagnostic tests or determination but shall not include pre-natal diagnostic tests.

(5) "Pre-natal Diagnostic Tests" means all tests or analysis of samples of amniotic fluid, chorionic villi, blood, other tissues from a pregnant woman's body etc. Carried out in an approved Genetic Laboratory in order to detect genetic or metabolic or chromosomal abnormalities or certain congenital anomalies or hemoglobinopathies and shall include Sex Determination Tests.

(6) "Pre-natal Diagnostic Techniques" includes Prenatal Diagnostic Procedures and Prenatal Diagnostic Tests.

(7) 'Registered medical practitioner' means a medical practitioner who possesses any recognised medical qualification as defined in clause (k) of section 2 of Indian Medical Council Act, 1956 and whose name has been entered in the register prepared and maintained under the Gujarat Medical Council Act, 1968.

Act No. 11
of 1956.

Guj. 10 of
1968.

(8) "Sanctioning Authority" means an authority to examine and then certify in each case whether the pre-natal diagnostic tests or any part of the said test may be performed or not.

(9) "State Appropriate Authority" means an Authority appointed by the State Government under section 9 of this Act.

(10) 'State level Selection Committee' means the Committee appointed by State Government under section 8 of this Act.

(11) 'Voluntary Organisation' means any registered Voluntary Organisation having reputation of working in the field of health, women's welfare or human rights including science and technology groups.

(12) 'Women's Organisation' means any registered Voluntary Organisation which has a reputation of working for women's rights and development.

4. No Institution, Hospital, Nursing Home, Clinic, Laboratory or Centre or place except the Genetic Analysis Centre as defined in section 3 of this Act shall carry-out or associate or help in carrying out activities relating to the pre-natal diagnostic techniques with the help of procedures such as Amniocentesis, Chorion Villus Sampling or any other present or future prenatal diagnostic techniques.

Restrictions
on Places.

5. No Gynaecologist or Medical Geneticist or Medical Practitioner or person shall carry-out or help in carrying-out or cause to carry-out either himself or through his assistants, agent, or associates etc. any prenatal diagnostic techniques at a place other than a Genetic Analysis Centre.

Restrictions
on Persons.

6. (1) No place including the Genetic Analysis Centre or any other place shall be used and no person shall use or cause to be used the prenatal diagnostic techniques such as Amniocentesis, C. V. B. or such other present or future techniques for a purpose other than for prenatal detection of genetic disorders as indicated in the types of cases mentioned hereafter in this section.

Restrictions
on place
and persons.

(2) The pre-natal diagnostic facilities by chromosomal analysis are of importance to identify the genetic disorder in the foetus. Hence the use of such facilities should be restricted to any of the identifications as stated below:—

(i) A previous pregnancy that resulted in the birth of a chromosomally abnormal offspring.

(ii) Chromosomal abnormality in either parent including:—

(a) balanced translocation carrier state

(b) aneuploidy

(c) mosaicism.

(iii) Down syndrome or other chromosomal abnormality in a close family member.

(iv) A previous infant with multiple major malformations but no Cytogenetic Study was performed.

(v) Fetal sex determination in pregnancies at risk of a serious-X-linked disorder.

(vi) Biochemical studies in pregnancies at risk of a serious autosomal or X-linked recessive disorder.

(vii) A previous child or a parent with a neural tube defect or on routine screening maternal serum fetoprotein level is abnormally high.

(viii) Pregnancy above 35 years of age.

(ix) Previous history of three or more Spontaneous abortions (as certified by a medical doctor):

Provided that the prenatal diagnostic technique shall not be used or carried-out unless sanctioning authority qualified to certify for such test is satisfied that any one or more of the above conditions are fulfilled in each case:

Provided further that the pre-natal diagnostic test shall be used or Carried out in case the sanctioning authority unanimously decides to do so for any other health reasons such as (a) history of exposure to drugs/radiation/infection/Hazardous chemicals upto potentially terratogenic effect. (b) Family history of mental retardation, deaf, matespastics/physical deformities or any such other genetic disease:

Provided also that the use of sex-prediction or sex determination techniques for the purpose of indicating the sex of a foetus shall be strictly prohibited and will be considered as a mis-use of the pre-natal diagnostic procedures and techniques, and be punishable under Section 16 of this Act.

Consent of
Woman for
Pre-natal
diagnostic
Procedure.

7. In no case should a woman be subjected to pre-natal diagnostic procedures unless a written consent is obtained from her in the form prescribed under rules after all possible side effects and after-effects of such procedures are clearly made known to her in the language she understands:

Provided that any person including the relatives of the pregnant woman who seeks to get prenatal diagnostic procedures done for a purpose other than the one permissible under this Act shall be punishable under Section 16 of this Act.

State Level
Selection
Committee.

8. (1) The State Government shall by a notification in the *Official Gazette*, within one month from the commencement of this Act establish a State Level Selection Committee to nominate members of the State Appropriate Authority and Sanctioning Authorities.

(2) This Committee shall consist of at least 2/3rd members selected from the voluntary organisations working for health of people and Women's rights:

Provided that at least 4/5th of these 2/3rd members representing the voluntary organisations will come from the following :—

- Gujarat Voluntary Health Association
- Forum Against Sex Determination, Ahmedabad.
- Forum Against Sex Determination, Baroda.
- Foam Against Sex Determination, Surat.
- Forum Against Sex Determination, Bulsar.

(3) The list of above organisations shall not be expanded/changed for atleast 5 years, from the date of formation of this State Level Selection Committee.

9. The State Government shall by a notification in the *Official Gazette* within 3 months from the Commencement of this Act establish a State Appropriate Authority (herein after referred to as 'the Authority') Consisting of....

State Appropriate Authority,

1. Minister of State for Health as Chairman.
2. Secretary of Health Department.
3. Director of Medical Education-Member Secretary
4. A Medical geneticist } Full time employed by
5. A Gynaecologist } Government.
6. Three representatives of women's organisations.
7. Three representatives of voluntary organisations
8. Two M.L.As.

10. The functions of the State Appropriate Authority shall be as follows:-

Functions of State Appropriate Authority.

(1) To formulate policy regarding regulation of pre-natal diagnostic techniques and to prevent the mis-use of such techniques.

(2) To advise Government on all policy matters relating to the use of above techniques.

(3) To decide about changes in the Rules framed under this Act.

(4) To supervise the performance of Genetic Analysis Centres and generally to ensure the working of the provisions of this Act and Rules made under this Act.

(5) To take steps to create necessary social awareness amongst people against female discrimination.

(6) To ensure that steps are taken by M.T.P. Centre, Hospitals, for women and children, genetic centres, genetic laboratories, genetic clinics, pathology laboratories, Nursing Homes, Maternity Homes, Gynaecologists in the professions, to exhibit prominently notices, or messages at their business premises in order to generate social awareness for the successful implementation of this Act and its objectives in the letter and in spirit as follows:-

(a) M.T.P. after sex determination tests only with the object of female foeticide is banned by law and the concerned family of spouse as also the Doctor will be liable for punishment for it.

(b) Mother is not responsible for the sex of the child. It is the father who decides the sex of the child.

(c) Modern techniques of pre-natal diagnosis are available only for detecting genetic deformities or congenital abnormalities. Their use for sex determination is illegal.

(d) That there are dangers and hazards to the health of the woman and the foetus if doctors do the pre-natal diagnostic procedures at a place other than the Genetic Analysis Centre run by Government.

(e) It is illegal to undergo any procedures or take/buy/sell any substance with an intention of sex preselection or purpose of choosing sex before or during pregnancy.

(f) That pre-natal sex determination with the help of only ultra-senography machine is not fully reliable.

(g) M.T.P. after twelve (12) weeks is a difficult procedure and M.T.P. after twenty (20) weeks is hazardous to the health of the mother.

(h) That women are equally important to the society than men and they can reach high levels of accomplishments.

(7) (a) To pay periodic or surprise visits to approved centres, laboratories and clinics with a view to ensure compliance of and adherence to prescribed Rules.

(b) To investigate complaints by members of Public or other institutions or in the press about contraventions of the provisions of this Act or Rules.

(c) To seize incriminating evidence or documents or record for further action through a duly authorised person.

(d) To check and prevent operation of unauthorised Centres, laboratories or clinics.

(e) Generally to check contravention of provision of the Act and Rules and to take necessary actions.

(8) To consider appeals against the orders of sanctioning authority at Genetic Analysis Centre and to revise such orders, if necessary.

11. (1) The State Appropriate Authority shall meet as and when necessary but not less than four meetings of the Appropriate Authority shall be held every year.

(2) No decision or proceedings of the State Appropriate Authority shall be held as invalid because of a vacancy or absence of any member.

12. The terms and conditions of service of the non-official members of the Appropriate Authority shall be such as may be prescribed by State Government.

13. The State Government shall by a notification in the Official Gazette, within 3 months from the commencement of this Act establish sanctioning authority attached to each Genetic Analysis Centre consisting of:—

Meetings of
the State
Appropriate
Authority.

Terms and
Conditions
of Service
of non-
official
Members.

Sanctioning
Authority

- | | | |
|-------------------|---|---|
| (a) Gynaecologist | } | Working full time with the Government medical college or hospital running the Genetic Centre. |
| (b) Geneticist | | |
| (c) Pediatrician | | |

- (d) three representatives of the women's activist groups and/or a voluntary health agency having reputation of working for women's rights and women's development.

14. The functions of the sanctioning authority shall be as follows:—

Functions
of Sanction-
ing Author-
ity.

- (1) To conduct independent medical examination of a case from beginning.
- (2) Not to allow the test to be performed if the motive for demanding the test is to know the sex of the foetus.
- (3) To find out if female foeticide is implicit in the process, if such is the case then to refuse the test.
- (4) To certify in writing whether the genetic analysis tests should be conducted in particular case or not.
- (5) To monitor the performance of the genetic analysis centre
- (6) To take active measures to see that in no case the sex of the foetus is known to any one else than the geneticist who conducts the tests.
- (7) To see that the person responsible for disclosure of the sex of the foetus to anyone shall be punished.

15. All important records, charts, reports, consent letters and all other documents required to be maintained under the rule framed under this Act shall be preserved for a period of atleast three years or as may be laid down in the rules or if there are any legal proceedings during such period further as may be required for the legal processes.

Maintenance
of Records.

Provided that all such record will be available for inspections to the persons duly authorised by the State Appropriate Authority or to such other persons as may be duly authorised by State Government.

Provided further that any member of the State Appropriate Authority or any Officer duly authorised by the State Appropriate Authority or State Government shall have powers to seize the records or documents as given under Criminal Procedure Code 1973 if he has reasonable apprehensions that pre-natal diagnostic techniques or any part of the procedures are used for prediction of sex or the provisions made in this Act or Rules made under the Act are contravened in any other respects.

Provided also that seizure of such record by the concerned person a panchnama be made by him in the presence of two independent witnesses.

Provided also that the non-availability of any type of record prescribed in this Act or Rules framed under the Act to the authorised person shall be construed as Contravention of the provisions of this Act.

Offences
and
Penalty.

16. (1) A Medical Geneticist or a Gynaecologist or a Registered Medical Practitioner or Sonologist or any person who owns a Centre or a Laboratory or Clinic or is employed by the Centre or Laboratory or a Clinic or Ultra Sonographic Clinic who gives his services to such a Centre or Clinic or any other person and who contravenes any of the provisions of this Act or Rules framed under the Act shall be liable to punishment of rigorous imprisonment for a period of upto two years and fine upto Rs. 10,000 for the first offence and for any subsequent offence the punishment may extend upto 5 years and fine upto Rs. 50,000 for each subsequent offence subject to a minimum period of 3 years and a fine of Rs. 25,000/—.

Provided that the name of the Gynaecologist or Registered Medical Practitioner or any other person who contravenes the Provisions of this Act or Rules framed under the Act shall in addition be reported to the Medical Council for suspension of his name from the registers of the Council for a period of two years for the first offence and for permanent removal for any subsequent offences.

Provided further that any person who carries-out Prenatal Diagnostic Techniques at a place not approved under this Act or Rules framed under this Act shall be liable to a punishment of atleast 5 years and a fine of Rs. 25,000/-

(2) Any person who seeks the aid of a Centre or Clinic or of a Medical Geneticist or a Gynaecologist or a Medical Practitioner for carrying-out prenatal diagnostic procedures or techniques for a prohibited purpose under this Act on other woman shall be liable to punishment of rigorous imprisonment for a period of upto one year and a fine of upto Rs. 10,000/- for the first offence and a punishment of rigorous imprisonment upto two years and a fine of upto Rs. 25,000/- for every subsequent offence.

Provided that it shall always be presumed that a woman who seeks such aid for pre-natal diagnostic procedures on her self has been compelled to do so by her spouse or in laws who shall be liable to punishment as indicated above in this section.

(3) whoever contravenes any of the provision of this Act or any rule or any direction issued thereunder, for which no penalty has been provided elsewhere in this Act, shall be punishable with imprisonment for a term which may extend to three months or with a fine which may extend to one thousand Rupees or with both, and in the case of Continued Contravention, with an additional fine which may extend to five hundred rupees for every day during which such Contravention Continues after conviction for first such contravention.

Offences to
be cogni-
sable etc.

17. Any offence punishable under this Act shall be cognisable-non-compoundable and non-bailable offence.

18. All money realised by way of fine imposed under this Act shall constitute a separate fund for being utilized by the State Appropriate Authority for creation of social awareness conducive to the objects of this Act.

Separate
Fund.

19. (1) The State Government may, subject to the condition of previous publication in the Official Gazette, make rules for carrying-out the purposes of this Act.

Power to
make
Rules.

(2) In particular and without prejudice to the generality of the forgoing power, such rules may provide for—

- (i) running of the Genetic Analysis Centre,
- (ii) the place of such a Centre,
- (iii) the minimum qualifications of the persons giving services at such a Centre,
- (iv) the forms and manner of applications, maintenance of reports etc. at such a Centre.
- (v) the minimum equipment necessary at the Centre.
- (vi) the type of cases which indicate the need for services of such a centre.
- (vii) the standards to be maintained by the Centre,
- (viii) the code of conduct of persons working at the Centre.
- (ix) any other matter that is required or may be prescribed under this Act.

(3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(4) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

STATEMENT OF OBJECTS AND REASONS

The article 14 of the Constitution of India guarantees equality before the law and equal protection of law to women. Article 15 of the Constitution disallows any discrimination against its citizens on account of sex alone. The women and children constitute a major proportion of our population and their welfare and health is very important for the Country. of late, there has been a growing tendency—

- (1) to perform certain procedures or take certain substances claimed to affect the sex of the foetus so that they are claimed to make sex pre-selection possible, and

(2) to misuse pre-natal diagnostic procedures such as amniocentesis to predict the Sex of the foetus and then to terminate the pregnancy if the sex of the foetus is predicted as female.

The pre-natal diagnostic procedures are necessary to detect genetic or chromosomal disorders or congenital malformation or sex-linked disorders etc. The misuse of these procedures to terminate the pregnancy when foetus is found to be of female sex is wholly discriminatory for the female sex and affects the dignity and status of woman—

It is therefore, necessary to enact a legislation to ban any kind of mis-use of these procedures and to provide for regulation of these procedures for the appropriate Scientific use for which they are intended.

Hence this Bill.

Gandhinagar
Dated 9th August, 1989.

sd/—
BABUBHAI VASANWALA,
M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respects :-

Clause 7 :—This clause empowers the State Government to prescribe form for consent of a woman for Pre-natal Diagnostic Procedures.

Clause 2 :—This clause empowers the State Government to prescribe the terms and conditions of Service of the non-official members of the State Appropriate Authority.

Clause 15 :—This clause empowers the State Government to prescribe the period upto which all important records, charts, forms, reports, consent letters etc. are to be preserved.

Clause 19 :—This clause empowers the State Government to make rules for carrying out the purposes of the Act.

The delegation of legislature powers as aforesaid is necessary and is of a normal character.

Gandhinagar
Dated 9th August, 1989.

Sd/—
BABUBHAI VASANWALA,
M. L. A.