

Jammu and Kashmir Pre-Conception and Pre-Natal Sex Selection/Determination (Prohibition and Regulation) Act, 2002

JAMMU & KASHMIR

India

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Act 31 of 2002

- Published on 21 April 2002
- Commenced on 21 April 2002
- [This is the version of this document from 21 April 2002.]
- [Note: The original publication document is not available and this content could not be verified.]

Jammu and Kashmir Pre-Conception and Pre-Natal Sex Selection/Determination (Prohibition and Regulation) Act, 2002(Jammu and Kashmir Act No. 31 of 2002)[Received the assent of the Governor on 21st April, 2002 and published in the Government Gazette dated 23rd April, 2002]An Act to provide for prohibition of sex selection or determination, before or after conception and for regulation of prenatal diagnostic technique for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of their misuse for sex determination and for matters connected therewith or incidental thereto.Be it enacted by the Jammu and Kashmir State Legislature in the Fifty-third Year of the Republic of India as follows:-

Chapter I Preliminary

1. Short Title, Extent And Commencement

(1) This Act may be called the Jammu and Kashmir Pre-Conception and Pre-Natal Sex Selection or Determination (Prohibition and Regulation) Act, 2002.(2)It shall extend to the whole of the State of Jammu and Kashmir.(3)It shall come into force on such 1. Enforced vide SRO-198 dated 30-5-2002 w.e.f. June, 2002. date as the Government may, by notification in the Government Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires (a)"Appropriate Authority" means the Appropriate Authority appointed under section 17;(b)"Board" means the State Supervisory Board constituted under section 7;(c)"Genetic Counselling Centre" means an Institute, Hospital, Nursing Home or any place, by whatever name called, which provides for genetic counselling to patients;(d)"Genetic Clinic" means a Clinic, Institute, Hospital, Nursing Home or any place by whatever name called which is used for conducting prenatal diagnostic procedures.Explanation: Any place including a mobile vehicle, where Ultrasound Machine (capable of determining sex of foetus) or any other equipment for selection of sex before conception is used shall fall within the definition of Genetic Clinic for the purposes of this clause;(e)"Genetic Laboratory" means a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for prenatal diagnostic test;(f)"Gynaecologist" means a person who possesses a post-graduate qualification in Gynaecology and Obstetrics;(g)"Medical Geneticist" includes a person who possesses a Degree or Diploma or Certificate in Genetic Science in the field of preconception techniques, prenatal diagnostic techniques or has experience of not less than two years in any of these fields after obtaining(i)any one of the medical qualifications recognized under the Indian Medical Council Act, 1956, or(ii)a Post-graduate Degree in Biological Sciences;(h)"Paediatrician" means a person who possesses qualification in paediatrics;(i)"Prenatal Diagnostic Procedures" means all Gynaecological Obstetrical or medical procedures such as Ultrasonography, Foetoscopy, taking or removing samples of Amniotic Fluid, Chronic Villi, Blood or any Tissue or Fluid of a pregnant woman or conceptus for being sent to a Genetic Laboratory or Genetic Clinic for conducting prenatal diagnostic test;(j)"Prenatal diagnostic techniques" includes all prenatal diagnostic procedures and prenatal diagnostic tests;(k)"Prenatal diagnostic test" means Ultrasonography or any test or analysis of amniotic fluid, chronic villi, blood or any tissue of a pregnant woman conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases;(l)"Prescribed" means prescribed by rules made under this Act;(m)"Registered Medical Practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and whose name has been entered in a State Medical Register;(n)"Regulations" means regulations framed by the Board under this Act;(o)"Sonologist/imaging Specialist" means a person who possesses any one of the medical qualifications recognized under the Indian Medical Council Act, 1956, and/or a post-graduate qualification in Ultrasonography/Imaging Technique/Radiology and who is certified for performing Sonography; and(p)"Preconception Sex Selection Technique" includes all medical or other scientific techniques such as sperm separation which are used or claimed to be used for selecting the sex of the offspring before conception.

Chapter II

Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics

3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics

On and from the commencement of this Act, (a)no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including Clinic or Laboratory or Centre having Ultrasound Machine/Imaging Machine unless registered under the Act shall conduct or associate with, or help in, conducting activities relating to diagnostic techniques;(b)no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall employ or cause to be employed any person who does not possess the prescribed qualifications;(c)no Medical Geneticist, Gynaecologist, Paediatrician, Registered Medical Practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any prenatal diagnostic techniques at a place other than a place registered under this Act; and(d)no person including a specialist in the field of infertility shall conduct or cause to be conducted or aid in conducting by himself or through any other person, a preconception sex selection technique on a woman or a man or on both or on any tissue, conceptus, fluid or gametes derived from either or both of them.

Chapter III

Regulation of Prenatal Diagnostic Techniques

4. Regulation of Prenatal Diagnostic Techniques

On and from the commencement of this Act, (a)no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting prenatal diagnostic techniques except for the purposes specified in clause (b) and after satisfying any of the conditions specified in clause (c);(b)no prenatal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely: (i)Chromosomal abnormalities;(ii)Genetic metabolic diseases;(iii)Haemoglobinopathies;(iv)Sex-linked genetic diseases;(v)Congenital anomalies; or(vi)any other abnormalities or diseases as may be specified by the State Supervisory Board;(c)no prenatal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely: (i)age of the pregnant woman is above thirty-five years;(ii)the pregnant woman has undergone two or more spontaneous abortions or foetal loss;(iii)the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;(iv)the pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease;(v)any other condition as maybe specified by the Central Supervisory Board;(d)no person, including a relative or the husband of the pregnant woman shall seek or encourage the conduct of any prenatal diagnostic techniques on her except for the purpose specified in clause (b); and(e)no person, including a relative or the husband of a woman or wife shall seek or encourage the conduct of any preconception sex selection technique on her or him or both.

5. Written consent of pregnant woman and prohibition of communicating the sex of foetus

(1) No person referred to in clause (2) of section 3 shall conduct the prenatal diagnostic procedures unless, (a)he has explained all known side and after effects of such procedures to the pregnant woman concerned;(b)he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and(c)a copy of her written consent obtained under clause (b) is given to the pregnant woman.(2)No person conducting prenatal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner.(3)Any person conducting Ultrasound Scan/Test/Procedure on any pregnant woman shall keep complete record of such scan/test/procedure indicating her complete name, address, husband's name as well as name and address of the referring medical practitioner/doctor, the reasons requiring such scan/test/procedure etc.

6. Determination of Sex Prohibited

On and from the commencement of this Act, (a)no Genetic Counselling Centre or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, prenatal diagnostic techniques including Ultrasonography, for the purpose of determining the sex of a foetus;(b)no person shall conduct or cause to be conducted any prenatal diagnostic techniques including Ultrasonography for the purpose of determining the sex of a foetus; and(c)no person shall, by whatever means, cause or allow to be caused selection of sex before conception.

Chapter IV

State Supervisory Board

7. Constitution of State Supervisory Board

(1) The Government shall constitute a Board to be known as the 'State Supervisory Board' to exercise the powers and perform the functions conferred on the Board under this Act.(2)The Board shall consist of (a)the Minister In-charge of the Department of Family Welfare, who shall be the Chairman, ex-officio;(b)the Secretary to Government In-charge of the Department of Family Welfare, who shall be the Vice-Chairman, ex-officio;(c)two members to be appointed by the Government to represent the Ministers In-charge of Woman and Child Development and of Law, ex-officio;(d)the Directors of Health Services of the State, ex-officio;(e)ten members to be appointed by the Government, two each from amongst, (i)eminent Medical Geneticists;(ii)eminent Gynaecologists and Obstetricians;(iii)eminent Paediatricians;(iv)eminent Social Scientists; and(v)representatives of Women Welfare Organizations;(f)two Women Members from the two Houses of the State Legislature of whom one shall be an elected member of the Legislative Assembly; and (g) an officer, not below the rank of an Additional Secretary or equivalent of the Government, In-charge of Family Welfare, who shall be the Member-Secretary, ex-officio.

8. Term of Office of Members

(1) The term of office of a member, other than an ex officio member, shall be in case of appointment under clause (e) or clause (f) of sub-section (2) of section 7, be three years. (2) If a casual vacancy occurs in the office of any other member, whether by reason of his death, ceasing to hold post/office, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled by the Government by making a fresh appointment and the member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed. (3) The Vice-Chairman shall perform such functions as may be assigned to him by the Chairman from time to time. (4) The procedure to be followed by the members in the discharge of their functions shall be such as may be prescribed.

9. Meetings of the Board

(1) The Board shall meet at such time and place, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be provided by the regulations: Provided that the Board shall meet at least once in two months. (2) The Chairman, and in his absence the Vice-Chairman, shall preside at the meetings of the Board. (3) If for any reason the Chairman and the Vice-Chairman are unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting. (4) All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote. (5) Members, other than ex officio members, shall receive allowances, if any, from the Board as may be prescribed.

10. Vacancies, etc. not to invalidate proceedings of the Board

No act or proceeding of the Board shall be invalid merely by reason of (a) any vacancy in, or any defect in the constitution of, the Board; or (b) any defect in the appointment of a person acting as a member of the Board; or (c) any irregularity in the procedure of the Board not affecting the merits of the case.

11. Temporary Association of Persons with the Board for Particular Purposes

(1) The Board may associate with itself, in such manner and for such purposes as may be determined by regulations, any person whose assistance or advice it may desire in carrying out of the provisions of this Act. (2) A person associated with it by the Board under sub-section (1) for any purpose shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a member for any other purpose.

12. Appointment of Officers and other Employees of The Board

(1) For the purposes of enabling it efficiently to discharge its functions under this Act the Board may, subject to such regulations as may be made in this behalf, appoint (whether on deputation or otherwise) such number of officers and other employees as it may consider necessary: Provided that the appointment of such category of officers, as may be specified in such regulations, shall be subject to the approval of the Government. (2) Every officer or other employee appointed by the Board shall be subject to such conditions of service and shall be entitled to such remuneration as may be specified in the regulations.

13. Authentication of Orders and other Instruments of The Board

All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other member authorised by the Board in this behalf, and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary or any other officer of the Board authorised in this behalf by the Board.

14. Disqualification for Appointment as Member

A person shall be disqualified for being appointed as a member if, he (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude; or (b) is an undischarged insolvent; or (c) is of unsound mind and stands so declared by a competent court; or (d) has been removed or dismissed from the service of the Government or a Corporation owned or controlled by the Government; or (e) has, in the opinion of the Government, such financial or other interest in the Board as is likely to affect prejudicially the discharge by him of his functions as a member; or (f) has, in the opinion of the Government, been associated with the use or promotion of prenatal diagnostic technique for determination of sex or any preconception sex selection technique.

15. Eligibility of Member for Re-Appointment

Subject to the other terms and conditions of service as may be prescribed, any person ceasing to be a member shall be eligible for re-appointment as such member.

16. Functions of The Board

The Board shall have the following functions, namely: (i) to advise the Government on policy matters relating to use of prenatal diagnostic techniques, preconception sex selection techniques and their misuse; (ii) to review and monitor implementation of the Act and the rules made thereunder and recommend changes in the said Act and rules to the Government; (iii) to create public awareness against the practice of preconception sex selection and prenatal determination of sex leading to female foeticide; (iv) to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories, Ultrasound/Imaging Authorities and Genetic

Clinics; and(v)any other functions as may be specified under the Act.

Chapter V

Appropriate Authority and Advisory Committee

17. Appropriate Authority and Advisory Committee

(1) The Government shall appoint, by notification in the Government Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of prenatal sex determination leading to female foeticide.(2)The officers appointed as Appropriate Authorities under sub-section (1) shall be (a)when appointed for the whole of the State, of the rank of the Director of Health Services; and(b)when appointed for any part of the State, of such other rank as the Government may deem fit.(3)The Appropriate Authority shall have the following functions, namely (a)to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;(b)to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;(c)to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;(d)to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;(e)to take appropriate legal action against the use of preconception sex selection techniques by any person at any place, brought to its attention or suo motto and also to initiate independent investigations in such matters;(f)to create public awareness against the practice of preconception sex selection or prenatal determination of sex;(g)to supervise the implementation of the provisions of the Act and Rules; and(h)to recommend to the State Supervisory Board modifications required in the Act or Rules in accordance with changes in technology or social conditions.(4)The Government shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.(5)The Advisory Committee shall consist of (a)three medical experts from amongst Gynaecologists, Obstetricians, Paediatricians and Medical Geneticists;(b)one legal expert;(c)one officer to represent the Department dealing with information and publicity of the Government; and(d)three eminent social workers of whom not less than one shall be from amongst representatives of women's organizations.(6)The Advisory Committee shall have the following functions, namely: (a)to pay surprise visits or periodic visits to Centres, Laboratories and Clinics with a view to check compliance of the provisions of Act and Rules;(b)to recommend to the Appropriate Authority cancellation or otherwise of registration of or prosecution against a centre, laboratory or clinic;(c)to check and prevent contravention of provisions of the Act or Rules in the area of its purview;(d)to advise Appropriate Authority about implementation of the Act and creation of public awareness on the issue of the sex selection; and(e)to seize machines as may be found appropriate.(7)No person who, in the opinion of the Government, has been associated with the use or promotion of Pre-Natal diagnostic techniques for determination of sex or preconception sex selection shall be appointed as member of the Advisory Committee.(8)The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or

cancellation of registration and to give advice thereon: Provided that the period intervening between any two meetings shall not exceed the prescribed period. (9) The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such Committee in the discharge of its functions shall be such as may be prescribed. (10) In processing a complaint under this Act, the Appropriate Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, Samvat 1977 while trying a suit in respect of the following matters, namely: (a) the summoning and enforcing attendance of any person and examining him on oath or on solemn affirmation; (b) the discovery and production of any documentary material object producible as evidence; (c) the reception of evidence on affidavits; (d) issuing of any commission for the examination of any witness; and (e) any other matter which may be prescribed.

Chapter VI

Registration of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics

18. Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics

(1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including Clinic, Laboratory or Centre having Ultrasound/Imaging machine/Clinic capable of undertaking determination of sex of foetus, after the commencement of this Act, unless such Centre, Laboratory or Clinic is duly registered separately or jointly under this Act. (2) Every application for registration under sub-section (1), shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed. (3) Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged, either partly or exclusively, counselling of conducting prenatal diagnostic techniques for any of the purposes mentioned in section 4, immediately before the commencement of this Act, shall apply for registration within sixty days from the date of such commencement. (4) Subject to the provisions of section 6, every Genetic Counselling Centre, Genetic Clinic engaged in counselling or conducting prenatal diagnostic techniques shall cease to conduct any such counselling or technique on the expiry of six months from the date of commencement of this Act unless such Centre, Laboratory or Clinic has applied for registration and is so registered separately or jointly or till such application is disposed of, whichever is earlier. (5) No Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be registered under this Act unless the Appropriate Authority is satisfied that such Centre, Laboratory or Clinic is in a position to provide such facilities, maintain such equipment and standards as may be prescribed.

19. Certificate of Registration

(1) The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder and

having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration in the prescribed form jointly or separately to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.(2)If, after the inquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act or the rules, it shall, for reasons to be recorded in writing, reject the application for registration.(3)Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.(4)The certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in a conspicuous place at its place of business.

20. Cancellation or Suspension of Registration

(1) The Appropriate Authority may suo moto, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.(2)If, after a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.(3)Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).

21. Appeal

(1) The Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the Appropriate Authority under section 20, prefer an appeal against such order to the Government.(2)The Government may, after affording reasonable opportunity of being heard to the Appropriate Authority and the Appellant, pass such orders as it may deem fit.

Chapter VII

Offences and Penalties

22. Prohibition of Advertisement Relating to Prenatal Determination of Sex and Punishment for Contravention

(1)No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including Clinic, Laboratory or Centre having Ultrasound Machine capable of undertaking

determination of sex of foetus shall issue or cause to be issued any advertisement in any manner regarding facilities of prenatal determination of sex and preconception sex selection available at such Centre, Laboratory, Clinic or any other place.(2)No person or organization shall publish or distribute or cause to be published or distributed any advertisement in any manner regarding facilities of prenatal determination of sex and preconception sex selection available at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or any other place.(3)Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.(4)Any person who contravenes the provisions of sub-section (3) of section 5 shall be punishable with fine which may extend to fifty thousand rupees and may also be liable to cancellation of his registration as a medical practitioner by the concerned Medical Council or any other registering authority.Explanation: For the purposes of this section, "advertisement" includes any notice, circular, label wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas.

23. Offences and Penalties

(1) Any Medical Geneticist, Gynaecologist, Registered Medical Practitioner or any person who owns a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or is employed in such a Centre, Laboratory or Clinic, and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.(2)The name of the registered Medical Practitioner who has been convicted by the Court under sub-section (1) shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including suspension of the registration for two years if the charges are framed, removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.(3)Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or Ultrasound /Imaging Clinic or of a Medical Geneticist, Gynaecologist, Sonologist/Imaging Specialist or Registered Medical Practitioner for preconception sex selection or for conducting prenatal diagnostic techniques on any pregnant women (excluding such woman) for purposes other than those specified in clause (b) of section 4 shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

24. Presumption in the Case of Conduct of Prenatal Diagnostic Techniques

Notwithstanding anything contained in the Evidence Act, Samvat 1977, the court shall presume unless the contrary is proved that the pregnant woman has been compelled by her husband or the relative to undergo prenatal diagnostic technique and such person shall be liable for abetment of offence under sub-section(3)of section 23 and shall be punishable for the offence specified under

that section.

25. Penalty for Contravention of the Provisions of the Act or Rules for Which No Specific Punishment is Provided

Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

26. Offences by Companies

(1) Where any offence, punishable under this Act has been committed by a company, every person who, at the time of the commission of the offence was in charge of, and was responsible to, the company for the conduct of its business as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. For the purposes of this section, (a) "Company" means any body corporate and includes a trust, society, firm or other association of individuals; and (b) "Director", in relation to a firm, means a partner in the firm.

27. Offence to be Cognizable, Non-Bailable and Non-Compoundable

Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

28. Cognizance of Offences

(1) No court shall take cognizance of an offence under this Act except on a complaint made by, (a) the Appropriate Authority concerned, or any officer authorised in this behalf by the State Government, or the Appropriate Authority; or (b) a person who has given notice of not less than thirty days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court. Explanation. For the purpose of this clause, "person" includes a social organization. (2) No court other than that of a Judicial Magistrate of the first class shall try any offence punishable under this Act. (3) Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to

make available copies of the relevant records in its possession to such person.

Chapter VIII

Miscellaneous

29. Maintenance of Records

(1) All records, charts, forms, reports, consent letters and all other documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed: Provided that, if any criminal or other proceedings are instituted against any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, the records and all other documents of such Centre, Laboratory or Clinic shall be preserved till the final disposal of such proceedings. (2) All such records shall, at all reasonable times, be made available for inspection to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf.

30. Power to Search and Seize Records etc.

(1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, or any other place such authority or any officer authorised thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times, with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or other place and examine any record, Register, Document, Book, Pamphlet, Advertisement or any other material or object found therein and seize the same if such authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act. (2) The provisions of the Code of Criminal Procedure, Samvat 1989, relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

31. Protection of Action Taken in Good Faith

No suit, prosecution or other legal proceeding shall lie against the Government or the Appropriate Authority or any officer authorised by the Government or by the authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

32. Power to make Rules

(1) The Government may make rules for carrying out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for, (i) the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (a) of section 3; (ii) the form in which consent of a pregnant woman has to be obtained under section 5; (iii) the procedure to be followed by the members of the State Supervisory Board in the discharge of their functions under sub-section (4) of

section 8;(iv)allowances for members other than ex-officio members admissible under sub-section (5) of section 9;(v)the period intervening between any two meetings of the Advisory Committee under the proviso to sub-section (8) of section 17;(vi)the terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be followed by such committee under sub-section (2) of section 18;(vii)the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 18;(viii)the facilities to be provided, equipment and other standards to be maintained by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under sub-section (5) of section 18;(ix)the form in which a certificate of registration shall be issued under sub-section (1) of section 19;(x)the manner in which and the period after which a certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 19;(xi)the manner in which an appeal may be preferred under section 21;(xii)the period up to which records, charts etc. shall be reserved under sub-section (1) of section 29;(xiii)the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody such documents, records or objects were seized under sub-section (1) of section 30;(xiv)any other matter that is required to be, or may be, prescribed.

33. Power to make Regulations

The Board may with the previous sanction of the Government, by notification in the Government Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for, (a)the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 9;(b)the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 11;(c)the method of appointment, the conditions of service and the scales of pay and allowances of the officer and other employees of the Board appointed under section 12; and(d)generally for the efficient conduct of the affairs of the Board.

34. Rules and Regulations to be laid Before State Legislature

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session, for a total period of fifteen days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, however, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.