



Committee on the Elimination of Discrimination Against Women  
Office of the High Commissioner for Human Rights  
Geneva, Switzerland

18 June 2014

**Reference: Supplementary information on India scheduled for review by the CEDAW committee during its 58<sup>th</sup> session in June and July 2014**

Dear Committee Members:

This shadow letter is intended to complement the periodic report submitted by the State of India for your consideration during the 58<sup>th</sup> session of the Committee on the Elimination of Discrimination Against Women.

Campaign Pratigya represents a group of organisations and individuals concerned about gender biased discrimination against women and girls and how certain short term measures intended to address prenatal sex selection are inadvertently impacting women's right to safe, legal abortion services in India.

The purpose of this letter is to provide information about India's violations of CEDAW that result from the underlying problem of misinterpretation of two legal provisions to safeguard girls and women's rights. These are the two Acts i.e. Medical Termination of Pregnancy Act (MTP Act) and the Pre Conception and Pre Natal Diagnostic Techniques (PCPNDT) Act the first that gives constitutional provision of safe abortion services and the law to prevent prenatal sex selection. In addition, we have concerns about the contradictions that arise because of specific requirements of the Protection of Children from Sexual Offences Act, 2012 (POCSO) that aims to safeguard children from being victims of sexual violence.

On the ground evidence suggests that certain misinformed arbitrary approaches of the implementing bodies of the PCPNDT Act have further affected women's access to safe abortion by increasing abortion-related stigma and choking national and state support for abortion policies. Repercussions of this include:

- Legally authorized safe abortion (MTP) centers coming within the mistaken purview of the implementing authorities under the PCPNDT
- Some of the state governments deny or delay approvals of new private abortion care facilities in a bid to restrict sex selection
- Trained doctors have become increasingly apprehensive about offering abortion services due to fear of harassment; leading to increasing number of medical practitioners not offering MTPs in order to avoid possible criminal prosecution
- Study findings show that chemists are refusing to stock medical abortion drugs for fear of

harassment

- Overall access of second trimester abortions in the country has been curtailed; reports from several states show consistent decline in numbers of reported abortions.

There are also concerns about the non-alignment of the Protection of Children from Sexual Offences Act (POCSO Act) with the Medical Termination of Pregnancy Act (MTP Act) that could emerge as a public health challenge.

- The POCSO Act, 2012 has led to a peculiar problem of dichotomy in the law. The MTP Act guarantees complete confidentiality to women and minors who seek abortions but the POCSO Act, 2012 states that every girl under 18 who is pregnant should be considered as a rape victim and doctors who come across cases in which under-18 girls seeks medical termination of pregnancy should inform the police POCSO poses a major challenge due to mandatory reporting and does not differentiate between cases of sexual violence and consensual sex for this age group. If abortion access is hinged on mandatory reporting to police, girls will be pushed to seek services from unsafe and illegal abortion providers. This may put their lives at risk or they may be forced to pay huge costs.

Even though abortions are legal in India for a broad range of conditions and while public health facilities are expected to provide safe services, major barriers prevent women and girls with unwanted pregnancies from accessing safe services. As abortion is a medical condition that affects only women such barriers contravene **Articles 12** of the Convention (the rights of women to non-discrimination in health care) and **Article 16(1)(e)** (the rights of women to decide freely and responsibly on the number and spacing of their children). As a result, women and girls continue to resort to backstreet providers which results in death and injury. Even today, every two hours a woman dies as a result of abortion related causes in India.

CEDAW Committee in 2006 did express concern regarding sex-selective abortion, and called for comprehensive strategies to overcome the traditional stereotypes regarding men and women that underlie such practices.<sup>1</sup> The Committee has also expressly called on India to closely monitor implementation of national legislation prohibiting sex-selective abortion, including creating safeguards to prevent the criminalization of women who are pressured to obtain the procedure.<sup>2</sup> We are concerned with the ongoing confusion and access problems created by this legislation, and we urge the Committee to demand swift action to respond to these concerns.

We request that the Committee pose the following questions to the State of India during the 58<sup>th</sup> session of the Committee on the Elimination of Discrimination Against Women:

1. What steps or plans does India have to ensure that the requirement of guardian's consent for abortion for women under the age of 18 does not act as a barrier for minors from accessing abortion care?
2. What plans does India have to address the non-alignment between the MTP Act and the POCSO Act; mandatory reporting of this to the police, which could be a traumatic experience for the young girl and family members, and more important, will discourage use of formal services

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<sup>1</sup> See, e.g., **China**, par. 17-18, 21, U.N. Doc. CEDAW/C/CHN/CO/6 (2006); **India** par. 38-39, U.N. Doc. CEDAW/IND/CO/3 (2007).

<sup>2</sup> See **India**, par. 39, U.N. Doc. CEDAW/C/IND/CO/3 (2007).

3. What measures will the government of India take to ensure women and girls have better access to safe abortion services?
4. How will India ensure provision of second trimester abortion services in light of the confusion surrounding implementation of the PCPNDT Act?
5. What plans does India have to eliminate existing prejudices that lead to son preference in order to ensure compliance with Article 5a?

### **Background Information**

India passed the Medical Termination of Pregnancy (MTP) Act, which allows abortion for a broad range of indications in 1971. It continues to be one of the most liberal abortion laws in the world, though barriers to access to safe abortion remain. A key barrier to safe abortion services, a requirement of the Medical Termination of Pregnancy (MTP) Act provides that a woman under the age of 18 must have the consent of her guardian in order to terminate her pregnancy. Requiring a minor to not only inform her guardian that she is pregnant and seeking a termination, but to obtain the guardian's written consent is detrimental to the health of the minor. Seeking consent can lead to delays due to the stigma surrounding sexual activity and abortion. Minors may also be the victims of sexual abuse at the hands of their guardian and therefore be in a position of seeking consent from their abuser. **Articles 5(b) and 16(1)(d)** of the Convention require that the best interests of the child should be held in highest regard. Requiring a young woman to seek written consent from a guardian is a harmful impediment to accessing safe and legal abortion for women who seek it and should be removed.

This Committee's General Recommendation 21, paragraph 22, states, "Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government." General Recommendation 24, paragraph 14, goes further, stating, "For example, States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women."<sup>3</sup> Despite these recommendations being issued in 1994 and 1999 respectively, India has not amended its law to remove guardian consent.

The PCPNDT Act (Pre- Conception and Pre- Natal Diagnostic Techniques Act) of 1994 was formulated and later revised in 2003 to include the emerging technologies especially the pre-conception techniques. The law prohibits determination and disclosure of the sex of the foetus<sup>4</sup>, outlaws advertisements related to preconception and prenatal determination of sex, and prescribes punishments for violators. As the law stands today, there is a two-fold objective to be achieved. The first being the regulation of pre-natal diagnostic procedures/ tests and secondly, a total prohibition

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<sup>3</sup> Further, in his interim report to the UN General Assembly in 2011, the Special Rapporteur on the Right to Health focused on removing all criminal barriers that interfere with individual decision making on health-related matters and access to health services, specifically abortion. In addition to recommending that states remove all criminal penalties for abortion, something India has already done, he also recommended the removal of all legal restrictions regarding abortion care, including spousal and parental consent requirements. As the Special Rapporteur notes, these barriers make safe abortion unavailable, particularly for poor and young women and serve to reinforce the stigma surrounding abortion.

<sup>4</sup> except for restricted medical conditions

on “sex selection” a term defined to denote any kind of pre-conception test for the purpose of sex selection. The intent of this law is to correct the imbalance in the sex ratio of men and women in India and to attempt to discourage son preference. However, some health care providers are confused by State messages intended to implement the PCPNDT Act and providers are refusing to provide abortion services for fear of being accused of violating the law by the PCPNDT Act.

Additionally, imposing legal sanctions with the aim of instilling a value in society is an ineffective technique. Article 5(a) of the Convention asks States Parties, “to modify the social and cultural patterns of conduct of men and women”, not any legal practices, to eliminate prejudices based on the inferiority of one sex. While India has implemented programs aimed at achieving gender parity in education, more needs to be done beyond criminalization certain types of abortion to ensure women and girls are valued in society.

We hope that the above information will be useful for your review of the State of India’s compliance with the CEDAW Convention.

Very sincerely,

Maju Mathew

Campaign Coordinator

**On Behalf of Pratigya Campaign Coordinating Group**

**Campaign Coordinating Group Members**

Dr Sharada A.L, Programme Director, Population First

Dr Sharad Iyengar, Chief Executive, ARTH Society, Udaipur

Dr Suchitra Dalvie, Asia Safe Abortion Partnership

Dr Nozer Sheriar, Secretary General, Federation of Obstetric and Gynaecological Societies of India (FOGSI)

Mr Vinoj Manning, Country Director, Ipas India

Adv. Varsha Deshpande, Advocate

Dr Priya Nanda, Group Director, International Center for Research on Women's (ICRW)

Mr V.S Chandrashekar, Country Director, Marie Stopes International (MSI)

Dr Shubhra Phillips Director Health Services, Population Services International (PSI)