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Verbatim Report

Workshop on PC&PNDT ACT

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Session – 1

Cultural, Social and Economic Factors that Promote Gender Bias:

Context of the PC & PNDT Act in India

Resource Person – Dr. Sabu M. George, M.s Anuja Gulati

Mr. Rajesh - Good morning all of you, welcome to the National Judicial Academy. This is one and a half day programme on one of the most important legislation in India, that is Pre Conception and Pre-Natal Diagnostic Prevention of Sex Selection Act, and we have with us Mr. Sabu George. He is a member of national inspection and monitoring committee under ministry of health and family welfare and he is committed to eradication of this problem for many decades. I welcome Mr. Sabu George in this programme, despite his very schedule he managed to attend this programme thank you very much. We also have with us Madam Anuja Gulati, associated with UNFPA. It is body which is also committed to the eradication of this problem from the society. They have been engaged in Maharashtra and in other states to provide training to the judicial officers and prosecutors and large number of judicial officer and prosecutors have been oriented on this Act. It's very necessary to talk to judges regarding this Act because there is no other organ of the government which is seriously concerned with the implementation of this Act. If you see the jurisprudence on the implementation of this Act, it is the Supreme Court and High Courts which are ahead of all other organs of the government in ensuring the implementation of this Act and directing various government functionaries. Judges hold a very important position viz a viz the entire structure of the implementation of this particular Act and we expect that you will participate in this programmer by bringing forth the issues which you confront in your court. The resource person are here and they will briefly tell you about the issue, then all of you are expected to participate in the programme.

Dr. Sabu M. George - I am not a lawyer let me tell you, but I think the contribution of the judiciary to this issue has been the most significant. for years, I used to live in villages work with communities then we started campaigns in state levels...we have worked a lot with the media, but i think the most significant, sexist has been, in terms of what the judiciary has been in terms of what the judiciary has been able to do you know, started our interaction with the law, about nearly 19 years ago and I think the law has made so much of a difference in terms of bringing to the attention of the people what we are dealing with, we are dealing with discrimination, a discrimination which is extreme and since even girls are not allowed to be ..Born and you know I am very pleased to hear. Because we have so many judges for so many parts of the country, south, north, east, northeast and I have been to most of the states from where you are coming from and everywhere ...it's a problem, you know though it's at a different level so because the technologies started being misused at different levels in different parts of the country so, the country as whole is not at the same stage in terms of the misuse of the law and I think, we are dealing with not with an ordinary crime, we are dealing with a genocide. I am sure as a legal professional, all of you do understand the context of genocide. We are dealing with lakhs and lakhs of girls being eliminated every year. many lakhs and when you look at Madhya Pradesh or Uttar Pradesh or Bihar, why i talk about Uttar Pradesh or Bihar because nearly one in three girl are born these states and there the practice is increasing very rapidly so when you are dealing with big states like UP Bihar, you know what happens in individual state will have a very implication at the national level, like in 2001 we had Punjab and Haryana is the worst in the country but these 2 are very small states so when you have 2 % of population in each of these states the impact overall will be much smaller, so therefore ,and we are dealing with the medical profession, okay which is very very, you know respected people see them as Gods and therefore you know, it's important to understand and appreciate the misuse of medical technologies what we are dealing with PNDT act. Sadly unlike other crimes against women.

Sex selection there many parts of India where it is still people see it as service, people don't see it as a crime now the contrast with Nirbhaya all of you were aware, 3 years ago when this rape and murder occurred such widespread anger you know resulting in ...for weeks young people and men were protesting in Delhi and other cities for years and so much ...Justice Verma Committee to be instituted, you had to bring in many significant judicial reforms so what I am saying that sex selection is not considered as a crime in many parts of India, when I go to the villages in UP or Madhya Pradesh, when we talk to the people they see it as service, largely because the medical profession has been promoting relentlessly for the last 30 years or 40 years sex selection, as matter of choice.

Constitutionally you know you all are familiar the provision of nondiscrimination of very very strong, but here you have a technology which is promoted by a organized profession and therefore that's why we all have to take it seriously and irrespective where you go, whether you go to Tripura or whether you go to Kerala. Or whether you go to Kashmir or any part of the country you go you are dealing with the mis-use, so that is something which we need to but like in my state of Kerala for instance doctors will claim. we don't have a problem last year when we want for the inspection we found a big corporate hospital right in the heart of the Trivandrum city, not being registered here you know, so what I am trying to say is that, some of the basic provisions of the act in terms of registration, do seems ...still seem ...not implemented but the most heartening thing what we are seeing, today is the example of Maharashtra, where the law has been taken very seriously and we have several 100 cases, we have more than 70 convictions and in the last few years, actually we are seeing a turn-around, we are seeing more girls being born, now that is very significant because by and large the doctors will tell you, that this is a useless act, its you know but when you look at the kind of numbers of cases, like what we are seeing in the constitutional courts and the High Courts in the Supreme Court, in the last few years, after doctors have started going to jail, is indeed very large, yesterday afternoon, I had to go to the supreme court just to look ..at one particular challenge of PNDT act, by a medical associations so what I am trying to tell you is that, it's a very powerful act, what we have seeing in Maharashtra over the last 5 years is very impressive we have ...several judges from Maharashtra so I don't have to tell you they can tell you how seriously the courts in Maharashtra have taken it, in the last one to two year we have seen some initiation in Haryana earlier also we say many years ...we have the first conviction in 2006 in Haryana because of early efforts in 2001, in implementation but again what happens is when you are dealing with very powerful professions like the medical profession, you know nothing is consistent like in Maharashtra, if the new government continues to keep the same pressure on implementation, then you know by 2021, the next census we would see very significant improvements in Maharashtra for the first time because its 5 years ...previous census so we see very good improvement in last 5 year in Maharashtra but the same improvement does not continue. For the next 5 years we will not see the improvement in 2021. I am very pleased Dr. Shalini is here because you know Shalini has taken a lot of efforts in Maharashtra in terms of both implementation of the Act as well as bringing into public discourse. Now I think when you look at discrimination against women, discrimination against girls for 100s of years, probably thousands of years we have discrimination against women in our country but what is, unique about sex selection in last 40 years, since 1970 when it was introduced in the country, it is the extreme form of discrimination and, if you look at all forms of violence, if you look at the most violent phases in our history, is the Indian war of independence and about 200 years ago in the mid-1860s or even if you look at the partition, during the partition one million people lost lives and during the, Indian war of independence in the 1860s also, we had very huge loss of lives, but what we are seeing in terms of sex selection is much larger, much much larger. Like we have lost millions in the last 15-20 years millions 10s of millions so what I am saying is that the levels of violence are very very large and you have to understand, in 1970, this was, sex selection and abortion both were brought to the country and legalized because it was seen as population control method. So please remember it is not the people who wanted this, it was the government which brighten, as a population control method and later it expanded into the private sector like till 1978, sex selection was available in the big hospitals of Delhi, then it was banned.

Then in 1979 the private clinic started doing it. so today we are dealing with implementation long long many decades after this, technology was promoted was used like in the late 80s every newspaper in Delhi was advertising for sex selection the Punjab clinics had advertisement saying come to us, we have been doing this for 10 years eliminating girls in Punjab okay so what I am trying to say is that, I remember you know, I got interested in 98, when I went to Punjab, I saw advertisement in the tribune in the Punjabi one in the English one, for advertisement of sex selection, though we had an act, in 1994, I remember when I came to Bhopal in 2000 we saw advertisement in the papers here so what I am saying is that, so the act may be in 94, but we have seen blatant violations even much after the act.

So only after the court judgment in our case which we filed in 2000, the first judgement the implementation started at that time there were 600 clinics which were registered in the country, 500 of them were in Tamil Nadu, today we are dealing with more than 52000 clinics are registered so one part of the act is somewhatbut regulation which is the central feature of this act is hardly done except in Maharashtra and to some extent in the last few years in Haryana so that is where your role becomes very very significant like, if today we have to reduce sex selection then your role becomes the most significant, generally in public discourse people always tend ...even in the judicialpeople will talk about mindset etc ..

But the crucial question here is that...this is a very profitable thing for the medical profession and there is very little regulation of the medical profession in our country and therefore unlike in the west ...there is tremendous amount of regulation, tremendous amount of record keeping. tremendous amount of audits because .they are very very concerned about the wellbeing of an individual to prevent misuse, to prevent malpractice like for the US for instance in the last few years, the one of the biggest achievement of the US government has been to provide healthcare, provide federal funding for insurance etc. etc. so because it has become so expensive and about 30 million people did not even have health insurance till recently, you know because healthcare was so expensive, so in our country all this is very new and, i would later in the afternoon talk about some of salient features of the provisions of as far as authorities are concerned but decimation is by use of this technology is as resulted in a genocide and that is why we all have to serious, the other aspect which we need to look at, is in terms of private medical education, whether you look at Maharashtra or look at any south Indian state Karnataka started ...medical education in 1950, okay so now every state, north Indian states are going ahead in a very big way in terms of privatization so you can pay money and become a doctor, today the radiologist is the most, you have to pay up to 4-5 crores in parts of north India to become a radiologist, so what is important for you to recognize ..Is that when people pay this kind of money, I mean 80 lakhs or 1 crore to become an doctor and then many crores to any other specialty.

There will be very little ethical practice, and the best example what we can see is from Andhra Pradesh, in 1995 there were 8 medical colleges in Andhra by 2003 when Chandra babe Naidu left there were 30 medical colleges because he had a very close association with ketan desai, okay who was in the medical counsel of India the one in kupam ...in chandra babu naidu home in his hometown, one in Nellore he had part share, so these 30 medical colleges started producing 1000s and 1000s of doctors very few of them, had clinical training because they were very few, trained medical faculties so what happened after these colleges were established, these doctors who were not properly trained, started coming out with ultrasound machines, going around the whole state and by 2011, Andhra has the sharpest drop, okay so what I am trying to tell you is that, you know Andhra you still in early 90s we used to have very good ratios was you know in many ways an example of better status of women, compared even Kerala or Tamil and or Karnataka, so what I am trying to say, it only takes a few years and once one medical practitioner like in 95 we found, medical practitioner coming to learn ultrasound and once one doctor gets an ultrasound, then everybody else starts buying it. so we had also the involvement of the, ultrasound companies like GE we had to take them to the supreme court and get an order that companies like GE cannot sell it to anybody you know, so in December 2002, we had an order from the supreme court in terms of that ultrasound companies can sell it only a registered clinic because the same companies GE in America would only sell it to a Doctor, but here there

selling to anybody who had money, you know so what I am trying to say, lot of these like though we had PNDT act in 94 the...till 2002 you know, many of the features of the act were very weak so we had the court, direct the government of India to parliament in 2000 to strengthen the Act.

Therefore today it is a very strong act and I think what we will come to the features latter on and what I would request all of you is to read through it we also have had repeatedly since 2002 repeatedly challenges of constitutionality huge number of petitions in constitutional courts again which can give you by and large we have had very good judgements from the constitutional courts, defending the act and but again, constantly you know like what will happen when you are dealing with highly organized profession, you will constantly see more and more cases and more and more challenges to weak in the Act and that itself will give an idea how strong the act is and unfortunately Varsha Despande is not here today she can tell you the kind of success in terms of conviction you know when we have, when you deal look at with very big acts like terrorism acts etc. PNDT is very successful in terms of its, conviction rate, in states like Maharashtra because the act is very strong...so I have spoken for about 18 minutes, what I would like is to hear from you for few minutes before I give it to Anuja. Can you all, tell from your own experience and understanding respond to what I have said or you would like to make any comments. Please.

Participant- Sir, Good Morning sir, i am Sandeep saran, from Karnataka. sir, in our Karnataka as per the direction of Hon'ble High Court we have already conducted workshops on pre-natal diagnosis and there are so many gathering 300 people are gathered and also we have conducted a jaata for that in giving information to the people that some act is there but one thing is there sir, there is case is registered.

Dr. Sabu George: Karnataka is very unique state like in 2001 like I have spent time in northern Karnataka see the northern part of Karnataka which is the more underdeveloped part of Karnataka, whether you look at from balgramgulgarga those district are adjoining Maharashtra and therefore because Maharashtra had started sex selection very early, you know like Punjab Haryana south Gujrat Maharashtra started in the 70s you had big leading hospitals. like you had this very famous Jain hospital in Bombay which would not allow people to eat x in the hospital, but they would do sex determination in the hospital, so what I am trying to say is thatby early 90s the Jains association of Maharashtra had express concern that the number of girls in the community had come down now why I say about Jains is because in northern Karnataka right from belgam there is very huge proportion of Jains in this region just like Kolhapur and sangli just across the border so the Jains in Karnataka had the lowest sex ratios in 2000 one so when we met the associations in Jain association people ...the richest Jains in that community were those people who were involved in selling Jain women to Gujrat and Karnataka, I mean Gujarat Maharashtra etc. ... because the Jains were in these regions were little backward in terms of adopting sex determination so in Karnataka you had in north Karnataka and in you know the most prosperous part of south Karnataka ...Krishna's district you know Udupi....no no Krishna's district is mandaya so mandaya and north Karnataka were very low ratio in 2001, while rest of Karnataka is unaffected so but we have large no. of cases in belgam.

We have large number of cases in north Karnataka, even varsha went for inspection, few months ago so we had bijapur which was relatively backward till recently, but what we have seen bijapur was also caught a lot in terms of sex determination north Karnataka so what your seeing is a very limited thing ...but if you come to urban Bangalore or rural Bangalore you will find huge practice and it takes many years before people want to see there is problem people want to do something, like i remember in south India ...2000 - 2001 we had worked very closely with the health officials we started implementation there etc. but again the pace declined so what you have to remember, even in shimoga I am sure when you look at the highway from north Karnataka to all the way to bang lore you can find on the highway which i can show you, you know areas where the ratios have fallen, so I think Karnataka also it is a problem, but i think whatever cases have come, like i remember Karnataka had said the trendKarnataka state commission for women has declared us one of the appropriate authorities under the act, you know which other states subsequently

followed like Maharashtra and others.....Sir another problem is this the police people they do not know about the correct information about the acts, what means to hesitate to register case whenever theso, i will come to this particular thing about the police, latter on because though this is cognizable offence ...the cognizance, not in a police sense, police actually has no role in this act, they say judicial cognizance we will come to that latter in the afternoon, anybody else please because we have people from Punjab Haryana we have people from Maharashtra, and even northeast anybody else would like to ...few more minutes we have...yes sir,

Participant- Sir, Myself Jitendra Singh, i am from Delhi...i am working in tees hazari court, i don't have a much experience about this act because i have just been, transferred to thewhere these cases are there sir you said that, this act is very strong act yes sir, but when i look into the act, i find that section 28 itself restrict the power of the court to take cognizance, okay on the sense you say this is a very strong act, secondly you say that, it's an ...the cognizance has to be taken on the complaint of the appropriate authority, okay why we are excluding, general public to come against them. Okay so now let me take your second part ...and one more question sir, when you say that this is the conviction rate is very good in this act, yeah. so why do we mean by itdo they have framed in a manner that the people get convicted,okay now let me first refer to you ...your second part of thing was in terms of.

Dr. Sabu George: Remember we are dealing with a medical profession and the ...it is doctors who enacted this law, so and in our parliament, now parliamentary framework, they have a tremendous role in making laws, tremendous law, tremendous role, so when doctors make the law, so this one of few laws in the country where when you when an offence is committed you have to go in front of a doctor, so that's why you know so you don't go into the police and the second part see, if you look at the original 94 act, somebody from the public, do can go and bring attention to the authorities ...in terms of the legal authorities in terms of the violations but you are to give a 30 day notice, which we reduce to 15 days, so what I am trying to say is that, yes i would like personally that 15 days to come to one day or no day, but what I am saying is that for that we have to use the act, unless people see ...when I have go to 100 of districts in the country, in most part of the country they still see it as service they don't see anything wrong in determination because what they hear is only from the doctors, they don't see the ...long term consequences, you know so therefore that is one part, the first part madamwould you like to respond to the first part of question, because as a judicial officer, you should be better*As far as sec 28 of the act is concerned I will be dealing it tomorrow. But I would like to say not only appropriate authority but when voluntary organization can also file a complaint till giving 15 day notice that is what sec 28 says so anyone who is aggrieved, I mean he can definitely approach after giving particular notice, so it is not restricted to a particular authority. Any other we have* , at least few more min before I give to Anuja, any other responses. Yes sir.

Participant - I am coming from Tamil Nadu ...which district sir...first i am concerned that considerable radius in the sex selection...and not because of this act, i think that now the people realize there mistake. By difficulty in getting the act...

Dr. Sabu George: Your state is one state where I have lived the longest, i have lived in north Tamil nadu and south Tamil and villages for six years so I am very familiar with your state, recently in February we have gone to 5 district in northern Tamil and, we couldn't go down and south, because of the big festival happening and so what I am saying that, see 85 i started going to... I mean I started living in Tamil so by 95 we were, you know early 80s we were only concerned about in female infanticide neglect, so you know, only by early 90s we saw the problem of sex selection ... so if you look today what we are seeing, I mean with the authorities would also agree in terms of sex selection is spreading out in Tamil and and historically it was in the, you know parts of dharmपुरi selum...selum in 91 was the worst district in the country, 91 census selum was the worst district, so if you look at 90s, if you look at early 2000s what you saw was selum dharmपुरi you had parts of atur and, then you had the teni so which had...these ratios were largely

low because of the practice of infanticide, but what we are seeing in the last few years, the ratios have started dropping in the more developed areas of kadalore aryalur like vridayachalam, you know so we had some very famous cases in your, in that region around you, so we are really worried it is it is expanding, though one fortunately, where again I am very compared to we have seen, the declines in parts of Karnataka or Andhra where both Andhra and Telangana Tamil and had not that steep declines, but you know.

Now if you look at in 2000 when we started registration Tamil Nadu we had about thousands clinics, today, I think we are dealing ...times a clinic you know so, the competition so intense so the likelihood of misuse is even greater, so therefore, i think we should be worried and Tamil Nadu is one state like my state of Kerala we are dealing with a very small fertility rate, you know we are dealing with about an average of 1 and a half children today and so if in Tamil nadu, we are going to have a preference of most families wanting having one son half a girl then we are going to have very very ...this thing because in Punjab Haryana or up, Bihar everywhere family sizes are large so therefore there are more girls by nature but when you deal with one two sizes like, you know in my state of Kerala we are very worried about one child families because, even if a small no. of them start wanting boys or ratios will start decline, so that's another grave threat, yes by and large, we have not in the last 30 years have not seen the decline which we thought we would see in Tamil and, but what we are seeing in kadalur, aryalur and other parts we are worried you know like in dharmapuri when you go to dharamapuri today, we are seeing more sex selection then infanticide, you know so that replacement is also a problem anybody else one more intervention please before i give to anujaI am happy to see a lot of women because generally in the judicial circles we only see younger women, we don't see many older women whether you look at constitutional court or district courts, but any voices.

Dr. Sabu George.- No, But in general what we are seeing, whether in UP or Rajasthan we are seeing judicial officer, women judicial officers which you know like even in Up we see about 10% - 15%, 20 % and depending on which part of ... so i think its very, very ...encouraging you know like we see, of course we have students also, from national law schools, we see far more women in the law colleges today, then what we say much earlier, we will just hopeful in the sense that you know equality would come into the judicial stream also, though it might take a little longer to this in the supreme court, but

Participant- to some extent it has come from last 2 selections in Delhi judicial service, we have more than 50 person female being selected...yeah more than 50%, ...in fact in the last batch there are 15 girls lady, judicial officer and just 2 girls, so they trend has reversed.

Dr. Sabu George- But, it's again very specific, you know. But what is important hereany further intervention please, one more yes sir.

Participant -

Dr. Sabu George - okay, so again as i said, before the cognizance here is judicial cognizance, it is not the cognizance normally and that is one of the weak features in terms of we have really not, its our failure that even in 2002 amendment we have not highlighted that part of cognizance. Very carefully but we over the...now we have several judgements of Supreme Court which also emphasize that cognizance has to be judicial, police should not come into it. no no but again let me tell you .

Participant - Again when you go to CRPC..CRPC says that.

Dr. Sabu George - Madam, would you like.

Ms. Anuja Gulati – In fact very clearly section 28 says, and i am reading from the bare act, no court shall take cognizance of an offence under this act, except on complaint made by the appropriate authorities so here really role of the police, although its a cognizable offence it is not there, its the appropriate authority who can file a complain, and coming back you know again connected to what you had asked, you know who...its restricting, you know with having only an appropriate authority to take cognizance, very clearly there is case law Pretinder kaur vs state of Punjab and in this civil writ petition, the competency of the authority who had initiated action was challenged and the court gave a very very broad interpretation to section 28 and said that either an appropriate authority or a person authorised by the appropriate authority on his behalf or a person authorised by the central or the state government to take action or an NGO which is there in you know sub-section b, who has given a notice of not less then 15 days so you know who is it who can take action, you know this was entirely broadned by the court.

Dr. Sabu George - So what I would like. Even the supreme court there have been observation where they have, you know when the police is come and they have actually, this thing now we have again represented in you know there was this judgement in 2013. which is there in your compilation by Radhakrishnan and Dipak Mishra so we now finally the final judgement, after 2013, will be soon given we dont know when it will be declared but there again we have tried very hard to bring this question of police we hope in the final judgement, some clarity will also be there, one clarification sir can I request you one thing can we ask Anuja to start.

Ms Anuja Gulati - okay, after that really wonderful setting of the tone on how this act, evolved and or rather why it came into place and how it evolved and that discussion that followed after Sabu's you know, discussion, I think, I would go on to discuss a little bit on the numbers because like Mr. PrakashMr. Rajesh had mentioned every time we have been discussing with the judicial officers in Maharashtra we realize that, one thing that came out following the discussions was that they were very keen to understand the entire perspective and the extent of sex selection you said you know several ..millions of girls missing, so what is the extent how many girls are missing because of the practice of sex selection so, I just thought that you know since he said the broader tone or the broader picture, he has put that up really well let me take you through some you know details on the numbers and basically where we are when we talk of the issue of sex selection or how serious really the problem isand you know, i just thought well before we go on, i would just like mention to you that every time we discuss the issue of sex selection, there are different figures that keep coming up and you know when we talk of pre-birth elimination of female fetuses or gender bias sex selection, or the number of girls that have really gone missing from our countries population because of this practice, then you know the definition on top that is sex-ratio at birth is probably the best definition which is the number of girls being born per thousand boys because that is clearly, because of human intervention, other things like population sex ratio, child sex ratio, well are impacted by a lot of other things like migration differential mortality, child sex ratio to a much lesser extent but population sex ratio to a very large extent, but I have realized in a lot of technical circles people still continue to refer to figures of population sex ratio.

So I just thought before I begin, we should probably just look at this currently we have, sex ratio at birth figures are available from the sample registration system or civil registration system and you know the sex ratio at birth is 900 and 9 girls per thousand boys, i mean you know 900 and 9 girls being born for every thousand boys and this was the figure and this was the figure in 2012, i mean its an average for 11 -13 just to reduce statistical error, if you look at the trends and i am quickly talking you through that, in 1900 and 61 we had child sex ratio, i mean this is what is available from census so for most of my presentation, I have used figure of child sex ratio, which are lesser impacted by differential mortality migration etc. we had child sex ratios which were 976 and they declined to 918 in 2011, just showing how serious or how grave the situation is today we have 918 girls in the zero to six year, child sex ratio 0-6 year per thousand boys today. and if you see also you know the decline has been more predominant in the 81-91 decay because

it was in the early 80s that techniques that could be used to determine the sex of the fetus which is either sonography or Amniocentesis really you know got or became very popular.

If you were to look at and you know, I am sure you can't see the numbers, but I leave behind a book called missing which really maps the child sex ratio across districts of the countries and states and district of the countries and states and district of the country we just find here, I mean you see the dark green districts are the ones which have good sex ratios 950 and above the red and the orange are the ones where sex ratios are between 800 and 900 and you can see how, sex ratios have worsened in the last decade between 2001 and 2011 and actually if you see 24 out of 35 states in union territories show the decline in child sex ratio between 2001-2011, well you may ask worse other district which showed an increase the districts which actually showed an increase the highest increase was probably in Punjab, where sex ratios were really really ... child sex ratio ... 798 girls per thousand boys in 2001 it increased by 48 to become 846, but still extremely low .. Haryana was another place where child sex ratios increased by 15 points you know from 819 to around 834, but again low so most of the districts where sex ratios went up were district where sex ratios were really really low ... there were other places like Tamil Nadu, Gujarat where sex ratios did go up, 3.1 to 6. so that's the range broadly, again if we look at the map we will realize the 13 out of the 35 states in Union territories have child sex ratio which are lower than the national average which means they are lower than 918, and the best child sex ratio was in Arunachal Pradesh 972 and the lowest in Haryana 834 and I have listed these states mostly from western and the northern region where child sex ratios were below 900 in the 2000 or as per the 2011 census, again very striking was that 26 districts out of the entire 40 plus district of the countries, showed more than a 50 point decline in child sex ratio over the last decade which means you know things were really beginning to get worse off there. 16 districts witnessed a decline of between 40 and 49 and 36 districts have shown a decline of 30 - ... there were others you know several which registered a lesser but you know predominantly, if you just see, you have around you know around 80 districts, which were very very critical where the decline was pretty predominant also we noticed one thing that if you were to see data of 91 in 2001, in terms of child sex ratios this phenomenon began or was more pre-dominant in the urban socio economically well off classes, but you know in the last decade one thing that was very very noticeable was that, it no longer was a problem in the urban areas, it started spreading.

I mean it did continue to be a problem in urban areas but also spreading, to the rural and the tribal areas and wherever the sex ratios were low things probably worsened there and there was a spread effect around areas of lower sex ratios. Dr. Sabu George mentioned about Belgaon since you know you talked about Karnataka Kolhapur had really low sex ratios it started spreading, I mean around Kolhapur from Maharashtra Belgaon also you know had started having low sex ratios well if you were to look at child sex ratio variations by socio economic indicators we have discussed that urban areas have worst child sex ratios prosperous regions have worst sex ratios and wealthier households tend to select more and the direct co-relation is with availability of or you know access to resources and because you have access to resources, you have access to technology and you tend to sex select.

In fact even if you look at the entire thing of Punjab, Fatehgarh Sahib, you know which in 2001 had a child sex ratio as low as 754, you found that the economic condition of people there was very very high so, you know wealth and low sex ratios inverse or rather wealth and sex ratio, inversely correlated, very interestingly another thing that's being visible not just in India but across the Asian region is that women with no education had better sex ratios as compared to women with some education I am not talking of women who were who had high levels of education, and here the direct correlation is with the use of contraception, you know at least in some of the articles that Mr. Gilmoto who is a researcher from France has written is that you know where women have no education access to contraception is low, they still want to have a particular sex composition of the family either one son or two sons, you know that's not compromised but because they have no access to contraception they keep giving birth till they have that sex composition of the family, so you know that's the case another interesting thing that we see when we

look at socio economic indicators is that child sex ratios are more normal where women have an important and visible role in the economy, he mentioned andhra, i mean you look at andhra east godavari west godavari completely paddy growing areas, you will find sex ratio, women have a better role in economy better sex ratios.

You take the example of the southern states more paddy growing compare to northern states, you know and paddy growing areas women participation is much higher, access to gainful employment is higher so sex ratio is better, well this is just a plotting of you know sex ratios by residential status we see, urban sex ratio were very very low as early as 1981 there were 931 they have come down to 902 in 2011 and we do see like I said a decline in rural areas but rural areas still continues to be better off then urban areas and better off, does not mean that they are good the problem is equally prevalent in these area he mentioned large number of girls going missing and you know these are the estimates these have been calculated and i have brought this book, little booklet for you here and we will circulate it to you a little later based on the sex ratio at birth if the sex ratio at birth is 900 and 9 girls today we said as per in 2012, the ideal sex ratio at birth of the normal sex ratio at birth is believed to 952, 952 girls being born for every 1000 boys you know that the natural sex ratio its between 950 and 960 and 960 and why is nature done that is because the female sex is biological stronger sex and if you look at mortality rates, specially upto 5years, if nature was the same if there was no discrimination, you know of the kind that sabu talked of you know then mortality is higher amongst male upto or upto male children upto the age of 5 and its believed that there it kind of becomes normal so 950 to 960 girls born per 1000 boys is normal, but today we have 909 and if you were to use that deficit 950 plus minus 909 and we were to calculate we find that on an average, you know 4.56 lakh girls have gone missing every year and this is the average for the last 12 years every year has different sex ratio at birth so average out, it's that much things have started improving across the country between 2001 and 2006 the number of girls that had gone missing because of the practice of sex selection and missing is because of the practice of sex selection was 5.83 lakhs, it has come down to 3.29 lakhs per year and if you were to look at it, in terms of percentages, you know its 3.6 % of total female births you know not allowed to occur just and just because of the practice of sex selection.

I mean this is huge number which brings us back to, you know one concern that this is something, I mean we may come from across the country we may say oh we are from the southern states, it's not really an issue here but something which is a here, something that we need to really look at, you know with immediate effect, conditional sex ratios this is again based on the data of census and the national family health surveydata triangulate, very interestingly they show that while there is no significant difference in sex ratio at birth for the first child, if the first born is a girl, you know for the second child sex ratio at birth falls to 836 girls, it falls further to 768 girls per thousand boys for the third child, another interesting thing that the study which was published in the lancet in 2011 may brought out this phenomenon is more predominant in the educated and rich people and that if the first born is male, if the first born is a boy then for the second child sex ratios at birth are kind of close to normal, you know well very very quickly because the social and economic causes why the daughters go missing we all do understand or know when we talk of gender the gender is a social construct, you know, sex is biological and gender is social and norms expectation and behaviors for men and women in society are prescribed by which a lot of the women expected to do more unproductive repetitive, reproductive roles because of which they have lesser access to resources decision making mobility and when they have lessor access to resources, you know there is power imbalance saata to uski ke haanth mei hoti hai jiske pass sadhan sansathan ho....aur yaha sadhan sansathan kyunki productive kaam purush zayda karte haimahilaye ghar ke andar zaydatar rehti hai toh saata unke haanth mei rehti hai. There is a power imbalance and because there is power imbalance, there is subordination of women and because there is subordination of women there is different kinds of treatments and denial of basic rights and all forms of discrimination are you know there to maintain this imbalance and the entire issue of son preference, really emerges from this thought, you know where we are a patriarchal society, where expectation, norms behaviors are defined we expect that boys perform certain role or men perform certain roles they have a superior position in society and because of that it is believed that you know they will be

the once to continue the family lineage look after parents in old age and all those believes really come from there and what are those patriarchal mindsets referring boys over girls dowry family lineage I don't need to really tell you this but just to maintain the flow they would provide old age support, you know moksh tabhi milega agar ladka antim sanskar karega, I mean its a huge thing patrilocal marriages, you know ladki toh parya dhan she would anyway go into another persons house so what is the need to have girls what is the need to invest in their education etc all. There are other causes for sex selection like I said we have desire for smaller families and you know Maharashtra has been quoted so much we have total fertility rate in Maharashtra which is way below the replacement level fertility, 1.68, and so you know with, a desire to have small families also you know, the impact is on you know girls being eliminated, 2 child norms which is been imposed by certain state governments direct impact on you know the unborn girl or on the women bigamy desertion for the women or you know you want to have a particular sex composition, so you start eliminating females and easy access to technology for sex determination at affordable prices wherever technology is available and enough number of studies have shown sex ratios are lower, well like I said there are three conditions low fertility we all want to have smaller families but want to have a particular sex composition, so there is a readiness there is son preference, and there is the ability because technology is available and it is affordable. so this is, having discussed a lot on the numbers just to give you some examples the names have been changed and faces blurred what people do in a desperate attempt to have a son the story of lady who had an 18 year old son who died in an accident desperate to have a child a male child when to a quack got medicines, gave birth to still born.

When those medicines were analyzed they had arsenic peacock feather all poisons substances, you know another example of lady in a small village in Punjab you know she, when the picture was taken have conceived 11 times had 5 miscarriage 6 of her daughter were alive but she said, she was too poor to go in for sex selection and would continue to keep giving birth till she had a baby boy she had all girls, I mwna look at the pressure being beaten up, you know physical violencetum ladkia paida kati ho ...mental violence I will leave you, desert you....desertion ..bigamy and reproductive and sexual violence. repeated preganancy, miscarriages I mean is this a kind of life, again its a myth that children really look after parents in old age, I mean we have several examples, that boys really don't care for, parents in old age and girls can do it, if they are educated, if we value our girls give them equal opportunities educations, consequences, well just thought, I will bring it here, since you mentioned that, there is increase in violence against women in sex related crime like rape is increasing we know of course many of you may say that reporting is gone up but also instances. polyandry, you know in areas where there are lesser number of girls of manageable age then more than one percent or one boy from a family is married off to one girl so there are many 2 3 4 brothers who get married to a girl, abduction bride trafficking we saw in an example its impacting health of women physical mental and reproductive health, increase in sexual exploitation of women and marriage sequeze and increase. but the fact that these implications are visible over generations and a gross geographical boundaries, you know today you may see Punjab having lesser number of girls of marriageable age, girls are being trafficked from the tribal district. Tribal states, you know which are "women surplus state" and its a gross geographical boundaries and the impact is really visible after generations, I mean its only when a boy turns of marriageable age, in Punjab they are now realizing were the problem existed 20 30 years back that there are no girls of marriageable age of course you know that should not be the reason why we give births to girls but nevertheless well I had certain examples, but we can probably look at it later.

Dr. George Sabu- Sir, you had a question please. Which district sir?

Participant - My name is Amarnath from Karnataka, chickmaglore. Section 28 the cognizance of offence no court shall take cognizance of the offence under this act, except complaint given by the authorised by the authorised officer. that means, the complaint should be section 2(d) of the CRPC , section 2(d) deals that hilly allegation made to magistrate orally or written, here sub clause one an appropriate authority may

file the complaint before the magistrate even written or orally the taking cognizance in the hands of magistrate, if the document produced by the appropriate authorities is insufficient the magistrate may Act ...section 28(3) three direct the appropriate authority to produce further documents to take the sufficient documents to take cognizance, that is the highlights of section 20. Yes whatever you were saying is correct, just like you know, food inspector files a complaint in the court ...ultimately it's the discretion of the chairman see whether to issue process hereon orso here appropriate authorities like a food inspector in the food adulteration acthe will find whether to file complain or not, whether to take cognizance or not, that will be decided by the magistrate ultimately.

Even sir has told that, it is a cognizable offence police have to register the case even the police can register the case but at the time of filing the report for the court it is in the form of section 2(d) of the CRPC, it is in the form of a complaint. like in the case of wildlife protection act, the power has been given to the ACF to file the report but it is in the form of the complaint, only at the time of their filing they are filing that complaint, then only the court can take the cognizance, otherwise not, it is the mandatory provision which enshrined.....you may give more important to the word accept said in section 28, except on the complaint made by the authorized officers even mines and minerals act the complaint is necessary, even the director of mines ...police files fir the court may, higher court may quash the it is not, as per the provisions of ..complaint.yeah it has to be filed by the authority which are prescribed under the act like appropriate authority, any person authorized by appropriate authority even public, voluntary organization provided 15 day notices is given after all it is the magistrate who is having the entire power discretion authority to decide whether to take cognizance or not, of that complaint but normally when such complaints are filed otherwise then on police report as we say like food inspector, I said under food adulteration act, forest officer under forest act, similarly here also appropriate authorities is the person, given the locus standi to file such complain,we will have to understandnow we feel that it is causing lot of difficulties for implementation of the act, but if you know the object behind clothing the appropriate authorities with this locus standi was that, he was appropriate authority was the districtits was bound I mean legislature thought that this act deals with some scientific knowledge which pertains or which medical fraternities expected to have and therefore they will decide whether it is really an offence, any offence has taken place or not and therefore it appears that appropriate authority is given such power and not the police, that was the object but now it is findingbeen found difficult to implement that because sometimes you voluntary organizations are appropriate authority.

Go to inspect the premises of sonography clinic and they find that some malpractices or misuse of this provision is taking place, but whether they can seize the machine, whether they can seal it without the help of good panchas like police are having expertise in that area but the appropriate authorities are totally different, it is not technically skilled in carrying out such sort of investigations and hence when the cases come we find a lot infirmities and lacunas in the course of enquiry or investigation whatever appropriate authorityso may be in future as they are making the efforts police will also be givenauthority to file the complaint but for the present we will want to remainyeah mam, you must have seen, you must have noticed the fertility clinics they have come up, yeah and thereno people or some of the people they are having twin boys one boy childless couple, in 40s the women is delivering babiesthey are i am sure they are also doing something hanky panky, why only the boys are being born yeah, now is it covered within this

Dr. George Sabu - Yeah, See the 2002 amendments cover all technologies because, in 1994 only the fetal sex determination was covered, 2002 covers. now unfortunately in a place like Delhi, Bombay has startedvarsha would have told you they have started covering the, all these high, very expensive clinics you know, in Delhi this is really not happened we have seen because see what happens in the fertility industry, you produce, multiples like you, you know you have more twins more triplets and ...what happens is that the girls are selectively reduced,.....then why don't we make a presumption that if the particular clinic is getting the women to deliver only boys over a period of time, let it be just 2 times and we must presume

that they are indulging,no I think yes, what we would hope and trust with the new government in power they would be little more vigilant, about like what Bombay is setting an example for others....even otherwise, if you dont have legal presumption, you can still have history.

Dr. Anuja - Act very clearly says, you know there are three kinds of setups, that the act covers, one is a genetic counselling center one is a genetic laboratory, and one is a genetic clinic so all the ultrasound stuff comes under the genetic clinic, the genetic counselling center and the genetic laboratory covers all this ...so what we need to do, I mean it's there, it's very much part of the act and they are supposed to fill in certain forms DE all that is very very clearly listed in the act, the problem was that, one was not able to really understand how they could be brought under the implementation part of the act, okay so now once made an attempt in Maharashtra to actually list out, what are the 19 or 20 different procedures which are done under IBF and how was it they are connected to the act and which forms they need to be fill so that they could be brought under ambit of implementation, they are under the act, so this is something.

You know is probably the next step but, yes you are right this is happening and he was right in saying that you know the fertility industry, because of the nature of it, there is more likelihood for twins and triplets to be born. But yeah, there is a possibility, presented diagnostic implantation etc where you can do....you can have a particular sex conceit, so its vey much part of the amended 2002-03 pre conception Act or proper authority goes ...they have history. You are right.

Dr. George Sabu - Right, and like in 2 years ago, in a very famous Delhi clinic we did this, but the state didn't follow it up in terms of the case and things like that you see.

Participant - Actually, I visit some fertility center, and I go that, I want the baby through IBF or any other technology and he says to me, I ask him what is your rate and how ...what are the pattern of the born child. And if he says 90% of them are....does any offence has been committed.

Dr. Sabu - Yeah...I think so, if you look at yes ...offence is committed, definitely if you look at some of the there is indeed offence committed now do I need to give a notice of 15 days to appropriate authority stating this.

See the first thing is, in terms of actual implementation see what is happening in Delhi for instance, is that like if you look at, you know there are many ways of producing boys, one is in terms of sex selection before conception or at the embryo stage, okay now those are very expensive very few clinic have those capabilities the other one is in terms of the what you said in terms of, triplets and you know people have and they selectively eliminate the fetus at later 8 weeks or 10 weeks or 11 weeks, that happens, now third method is in terms of blood test. that is also being offered in some cities, which is still not actually, I mean it is covered under the act, but you have to take the implementation machinery to do these kinds of things so we have to in, places like Delhi we really need to expand from ultrasound into these kinds of clinics you know specialized clinics specialized test, but remember that today in the country we are dealing with by and large, you know 95% of more of the sex selection is still with ultrasound, the other things are more limited like if you look at the blood test its very specific, it is for unlike an ultrasound which is used for many other things, you know so it is more difficult in today to look at these things the ...it's more a question of getting the state missionary active to look at these clinics, these specialized clinic, I think it is possible and we should do it. Yes sir.

Ms. Anuja - see the moment you say the doctor is telling you 90% of the, children born here are male, its a form of advertisement, and if you see section 22 covers advertisement, Right so immediate there is a thing that, appropriate authority be informed and take action. And now also as per rule 18 there is a specific code of conduct for appropriate authorities. To take timely action, see you know you need to just 2 and 2 together.

If we go through the web we find many of the chinese calanders, which predict if you conceive the child of so and so date, you will have the probablity of having a male child. If there is any precedent to it. that we had taken any action, by the appropriate authority.

Dr. Sabu - if you look at, first let me tell you that the, provision of on advertisement is very broad, so it covers all these things, now in 2008, I had filed a case against google, Microsoft yahoo which is still pending in the court, okay so from last December, we have had orders of the court to ensure that because these like google claim thatthat they are not under the jurisdiction of Indian courts because server is in California, the court has refused to accept that logic and so what I am trying to say that, even today from the orders of the court, you know. so we can go after these companies so we have the both the, the legal basis in terms of the act as well as the orders of the court, we definitely can cover all these, sir do any appropriate authority has taken against this, you may have personally done it, but do any appropriate authority which is mandated against under this Act.

Dr. Sabu - there was case on advertisement Maharashtra, first case in conviction of.....yeah so they had advertised x y z clinicon 2 days in a week, if you come ...then we will so later what happened was so so these are print like even in UP, but these are print your question was referring to the web ok so all these are illegal so what I am trying to say, if you look at for instance the web. Sir, i gotted that its illegal. What action has been initiated by appropriate authority, I want to know not in my knowledge.

Justice shalini - you have asked about appropriate authority that I would like to, those are print advertisement they have filed a writ, it was not of use it is illegal...i got it that it is illegal, I wanted to know that when the appropriate authority has mandated by this act, to act, so whether any appropriate authority.

Dr. Sabu - In my knowledge the kinds of thing, to my knowledge these have not happened but nothing has ...we have had see the what you talk over Chinese calendar, is in terms of science so itself is fraud, you see but what I am trying to say, is that there are other more scientific methods also which have being advertised, but we have not had any ...sirwhat i am trying to tell ...see sir what I am trying to tell you is that, these are illegal under the law okay, just because no authority or no organization has filed doesn't make it legal, but in the advantage of these Chinese calendar and many other like, you will find, for instance, you know certain chanting lower caste, so there are many, there are certain medicines, now these dont have scientific bases, but still they are covered under the act and we hope more and more people will raise these complains and cases then we will makeNow in the case of putra jeevak, in the case of putra jeevak, baba ramdev deliberately named it you know it was not an accidental thing it was deliberate, you know and in his website he had done it so after this was raised in parliament by this ...tyagi what happened was that there was changes in the website of ramdev but sir offence has been comitted. i agree offence has been committed. but today can you get the government to do something against baba ramdev. sir we can have appropriate authority to act upon it, they are the government servants. I agree, my request is judicial officers. And there are many NGOs working they are not afraid of. Let me tell you, a few days after ram dev came and did a press conference they were 3 very big spiritual leaders who had a press conference in Delhi. arguing that these, you know in Ayurveda we have such special ability to produce boys, now these allopath are angry and therefore they are doing all this so what i am saying, few days after ramdevs press conference3 big acharyas had done a press conference, so what i am trying to tell you is that, see you know ramdev etc today are far too big, i am not talking about legally but again we hope people would, but the fact that the parliament was you know raised, the fact that ramdev made changes, the fact that putra jeevika was not available in many stores around the country, I went even to some districts to ramdevs store to ask for putra jeevika, they were not giving it...definitely it's an offence, no question about that....see now let me tell you this particular thing of the advertisement is a very unique provision of this

act, and this is by 2001-2002 we had large number of you knowcomplains, like in Delhi we had lot of complains, like we had this case against times of India. so what I am trying to say is that, this has been one of the biggest changes like, you know, I had mentioned in terms of the success in Maharashtra in terms of creating deterrence and fear in the profession, but by and large advertisements have disappeared from the trend....but our challenge is now how do we get them out of the. So print by and large is disappeared, which is very very significant ...somebody files a complaint, if somebody writes to the appropriate authority. That this offence has been committed and even though the appropriate authority does not act, does this act provide any kind of remedy.

Justice Shalini - if we read, it provides that no court shall take cognizance, except on a complain, by appropriate authority concern or any officer authorized in that behalf by the central government or the state government, as the case may be or the appropriate authority and clause b, a person who has given less than 15 day notice, so if you give 15 day notice , I got it ...what I am suggesting, if appropriate authority is not deliberately acting when we have provisions that the SHOS are not registering FIR and we have stringent provision ...so how this act then ...Dr sabu is saying it's a strong act.

Ms. Anuja - Now a code of conduct for appropriate authorities okay, it's just been amended teh rules have just been amended or rather about an year ago they have been amended and by this the appropriate authority can also be made an accused under the act . Not just the co-accused he or she can be made the first accused if an appropriate authority. Doesn't take action. There are 10 points as part of the code of conduct and as we go along may be in the session in this afternoon we could discuss that because. There is specific session on roles and function of appropriate authorities but yes.....it was not there earlier, it's now thereso thus it provide any punishment or does it only

Dr. Sabu yeah but again see please remember....

Ms. Anuja - see one needs to understand that this is a crime as he said that happens in the confines of the doctor client relationship. Really there is no aggrieved party. okay so if, i as an individual goes to clinic and i understand that there is something which is wrong or you know the clinic is erring clinic the doctor is going wrong or there is a violation of the PNDT act, and i know i cant do anything, i need to give time, i need to inform the appropriate authority and the 15 day time has been given to the appropriate authority to actually take action go do inspection, search seizure whatever. Like he said 15days is long and we would like to see it come down, but nevertheless that has been given.

Sir why that time frame is fixed 15 days. In the 15days time is given the entire evidence will be obliterated.valuable evidence would be screened.

Dr. Sabu - Now let me first see, again as i said right at the beginning because the doctors ...we say organisation powerful ...they intially was able to make sure it was thirty days we reduce it to 15 days. we hope with more pressure we can again do it less but again in terms of the nature of the evidence, the evidence is documentary, so we will come to that in the afternoon, sir we will raise it. any further ..yes sir.

Ms. Anuja - see there are two things under this act, what it regulates the use of pre-natal diagnostic techniques, if you look at the preamble there 3 things it prohibits certain things it regulates certain things and it prevents certain things, what is regulated is the use of pre-natal diagnostic techniques for certain conditions, if you looks at the preamble again very clearly saysRegulation of pre-natal digonistic technique for the purpose of detecting 5 thingsgenetic abnormalities metabolic disorders chromosomal abnormalities or certain congenital malformation or sex-linked disease. so it is regulating, you can use pre-natal diagnostic techniques, you know for finding out these. the purpose was to find out abnormalities or anomalies.

Dr. Sabu - yeah, that is again we will come in the afternoon, see it is important for all of you to understand. a doctor makes or a clinic makes money not by doing one test. they do it by large numbers and therefore that is very the evidence etc becomes very very significant and it is possible, so we are dealing with millions of crimes, like to eliminate one girl would require three crimes. Two crimes of sex determination and one crime of sex selective abortion, so what we are dealing with this millions of crimes in the country so when we go to any town or this thing we will have tremendous information in that, there are few clinics which are notorious because clinic doesn't get a patient without widespread advertisement and public awareness. Other causes have played major role, sex ratio ...decline well its all about undervaluation of girls and

Ms. Anuja - You know that's why this act ...specially ...how it is connected with the dowry act, inheritance act, you know who, if you look at law of inheritance how they favor the male or if you look at dowry, the cause and the consequences of sex selection. Again the 2 child norm which we discussed so I mean as we go along probably in my next session, I could touch upon that very briefly if you feel like, I will definitely do that.

Dr. Sabu - so what you have to look at, is in terms of that we are dealing with many facets of violence against women, okay dowry is one way, sex selection is another like if you look at 50 years ago, in Tamil Nadu, 95% of the population did not have dowry. Okay so you have as the constitutional principles of equality have become more and more like we have had, very significant improvement in women's literacy, women participation and economic activitiesetc. etc. There is also revulsion from the society so you do see, more violence in terms of dowry violence. more violence in terms ofyou know for instance khap ...you see more violence in terms of dowry violence, you see more violence in terms of you know khap for instance khap kind of politics which you don't see that much.....yeah as transition from joint families to nuclear families to smaller families, you see in the older days when people had four five children. the older children looked after younger children so we have all these new problems now before I conclude just 2 things i need to say now one of the consequences of family sizes becoming small, like for instance in you know the first born we are seeing sex selection in the first born okay....like in Delhi of 2013 ...4% of the first born in Delhi sex selection was done okay. Like if I look at Punjab certain classes of people certain like landowning classes are today wanting the first child itself to be boy. because they worried about what happens to the division of property okay so what I am trying to say is that so you do see more and overall ...if in Punjab they maybe lesser sex selection but we do see new manifestation of intensification of sex preference and the other part which you all have to be worried is that, in terms of globally you know it is not only in our country but wherever Indians and Chinese are there these things are happening so therefore globally also there is much greater attention to these things because India and china doing economically very well so there becomes a greater effort on the western countries to look at our own. so that is what we should you know we are making economic progress, but we are also doing more and more violence against our girls so therefore we should at least be cognizant of this, we should do respond to it, so that the western way of undermining our country, doesn't happen.

Session -2

Jurisprudence on Implementation of PC & PNDT, Act

Resource Person – Justice Shalini S. Phansalkar Joshi

Justice Shalini S. Phansalkar- It's really a great pleasure to be here amongst you all especially for this subject which at times appears to be very close to the heart but at times it appears to be fire away from every generation as we always say that this legislation is safe for future generations it is future why because presently we may not feel the gravity of the situation. we are having our own daughter, but whether that daughter will have the daughter, if the trend continues, if the discrimination, against the girl child continues, whether my son or your son will get some wife or not, because the decline is so sharp and so steep that at times it becomes rather suspicious or apprehensive of entire things, entire future as such, and therefore one may say that, this is really a legislation for our future generation we have to take care for them we have to secure their future and therefore this legislation is brought, when we are talking about the jurisprudence of the act, we have to remember that this act cannot be read in isolation or standalone ...it has to be readin the larger and broader perspective, especially we have to seek its root in our constitutional guarantees , we have to see whether the constitution wants this gender inequality or gender equality and therefore the origin of this act we have to trace to article 14 of the constitution, which guarantees equality irrespective of your sex. whether you are born or otherwise, we have to see article 15 which gives protection, discrimination against discrimination but the beauty of article 15 of the constitution is that it also provides for beneficial legislation, so far as the women and children are concerned, so the legislation which is for the benefits or which is in favor of the women and children that legislation, even if discriminatory, it is protected under article 15 of the constitution and this legislation definitely falls under article 15(3) of the constitution because this legislation is in favor of the women and also in the favor of the unborn female children we are having more provisions in the constitution, anyone who can elaborate or even cite the provision which aims at gender equality or to avoid gender discrimination can you say I have cited article 14 15 can you remember, can you recall any provisionarticle 39, yes then article 53 , what it says that is article 15(3) we are saying that ...is beneficial legislation.

We are having one important fundamental duty also, not only fundamental rights like article 14 guarantying equality, prohibition of discrimination on the ground of sex, the most important article and most important provision in the constitution is the preamble, which guarantees the social economic and political Justice to all irrespective of their religion caste, sex or anything, it guarantees to all its citizen, but our constitution does not stop only after granting fundamental rights but it also cast a duty onone of the fundamental duty which is enshrined in article 15(1) ..51(e) is that of all the practices derogatory to women should be renounced, everyone should renounce all the practices derogatory to women and having, sex selection is one of such practice, which insult....womanhood which is really a derogatory to the women, insulting to the women that we don't want you and thank you and therefore we are not allowing you to born at all and therefore the origin of legislation can be found in fundamental duty cast by the constitution on all of usto see to it that that all the practices which are derogatory to women are renounced. not only this is the only broader perspective that we are stressing the origin of the act to our constitution which is the mother of all laws which is the basic law, but we are also want , we also want all of us to look into this act, in the larger perspective of gender discrimination as i could gather from the discussion which was flowing in the first session we are really worried about how to stop this, but why it has occurred, I mean some of gauges we have seen that there is discrimination to a girl child. And what is essential its along with the legislation the

change in mindset and we merely saying that we want a girl child will not be enough unless we make the conditions in our society. conducive to have such girl child if we are having the practices of dowry, we are having such dowry deaths, day in day out taking place we are having the 2 child norm and several other aspects which she has dealt or will deal with merely saying that this clinics are alone responsible is not going to solve our problem and therefore change of mindset is the basic need and everyone will agree with it. at times it is also contented that it is the mother in law who wanted a grandson and therefore the daughter in law is taken to the hospital to have the sex selection so if it is women against a women that is also a picture created and in several session, these interaction ...in interaction these question also come up but why a women wants a male child only why a mother in law wants a grandson only and not a granddaughter, the answer to it lies in our social milieu or social circumstances which are, I mean furthering these mindset of the society and therefore the change in mindset of the society is definitely ...otherwise these mere legislation or change in law is not going to help us in anyway but it is also recognized time and again and it is well known as we all the judicial officers are working in the field that change of mindset takes years.

I mean it may be several years and several decades and even sometimes ages to have the appropriate change in mindset where we will treat both of them really equally, but till then if we allow these things to happen then one day we may not have the women at all to have this change of mindset and therefore laws gives that necessary push. the law act as a necessary impetus to see to it that these practiceswhich are in sort of social evils are not continued we all know that sometimes law precedes the social change sometimes social change follows the law, sometimes they go hand in hand together, if we see the sati prohibition act we will notice that ...because of the law only that practice could be stopped but if we see right to education act we see that now already female children are studying in the school that act will go hand in hand with the change in set of mindset but this sort of act i mean we have to first have it then only sometimes the social mindset may change or it may follow, what is the importance of this act is that it breaks the unholy nexus between medical community and the persons who are going for sex preference, as Anuja has said in the first session here in such cases no one is aggrieved as such, because parents want a male child they go to the doctor. Doctors say there is demand and therefore we supply so who will make the complaint, who will raise the voice against such practices and therefore the act has come into effect. surprisingly and it is really interesting to note that Maharashtra was the first state to enact the act, I mean in the year 1987, itself the state of Maharashtra has enacted the PNDT act it was initially ...called but the implementation of the act was not much again the reasons political will lacking ...again the reasons the act was having several such grey areas if you see that today's act. Lots of ambiguity are left open. So the implementation of the act was not in the way ...it was desire and therefore in the year 2000 or around that period you will find several clinics mushrooming in the city of Mumbai and doctors giving interviews that since last more than 11 years.

I am having this clinic in Mumbai and not a single couple came to me with a request for a girl child everyone who was coming to me was only for the having a male child and there only to the clinic otherwise girl child no one has come so when these situation was broad, i mean media then NGOS were working in the field then the government we all know that enacted ...the central government this enacted the act initially it was again PNDT act and subsequently in the year 2003, with the change in technology earlier before preconception you could determine the sex of the child. now before preconception also you can determine as we all know that following certain things or having sex particular day, if it was so then it was felt that in the stage of pre-conception, post conception, at every stage we will have to see and keep pace with technology to see to it that such practices are not followed act was enacted in the year 1994.

But remember my friends till 1996 absolutely no machinery was established under the act the act is very small of hardly of 31 sections ...relevant sections very few again but the important task of implementing the act was given to the appropriate authority the state supervisory boards central supervisory board, executive committees and absolutely advisory committees but no such committees or bodies were established under the act, the act was also though enacted in the year 1994 it was brought into effect in 1996 and the notification wasbringing it into force on 1st January 1996 so for 2 years act was not even notified. so this much apathy towards the implementation of the act was there so naturally there is no wonder that we find that there are still some ambiguity still some grey areas and we are the governments or no one is taking up the task to see to it that those ambiguity are remote and who has taken up that task in the end because we are all in the judiciary and really not the government not anyone but it was the supreme court which said in the ...i mean if supreme court has really expressed the grave concern because this PIL was filed when in the supreme court saying that ..and it was in the year 2001 you can imagine and the supreme court said that we are not doing anything though it was necessary to implement this act fourth whip immediate effect we should have those bodies like appropriate authorities we should have the supervisory boards, central supervisory board, advisory board nothing is there in government has not taken any action an therefore the supreme court, it was supreme court which has given various directions for reviewing and implementation of the act supreme court has kept this i mean litigation alive by way of continuing mandamus, this PIL was not disposed of in the year 2001 itself after giving initial directions supreme court has in this PIL six times given that the direction to ensure that the act is implemented by the government authorities the supreme court was aware that mere having the legislation in placeor mere having the public bodies is not sufficient what is essential is to create public awareness and therefore since 2001 the supreme court is saying that create public awareness against the practice of sex determination and sex selection.

You will find that this act is very beautifully drafted in some sense nowhere it uses the word feticide, if you see except for some object and reason it doesn't say feticide intention is to see to it that it does not conflict with MTP act, medical termination of pregnancy act because there we are recognizing the termination of pregnancy here we are not allowing termination of pregnancy if it was done on the ground that fetus is of the female sex but the supreme court has said that it should be implemented then we are having this time to time supreme court giving directions and the ultimate in year 2003 supreme court has as I said it has said that, we have to change the mindset how to change it, then we have to stop them misuse of modern science and technology also preventing the birth of girl child by sex determination then it was found that in several states after states this practice of sex selection and sex determination was going onwe are having several such cases like Hemant rat v state of Orissa were in near one clinic, I mean around 2500 aborted fetuses were found, i mean it was really a matter of grave concern, how it happen why it happen and then where the high court taking out this issues we are having the case from Punjab and Haryana high court they found that these clinics, where having and doing this business on such a large scale and having regard to this continuing declining sex ratio, the supreme court has again given the directions for proper implementation of the act as i said in Orissa and Haryana from near the place of nursing home and clinic hundreds of skeletons kills body parts of the children were recovered and it led to the strong allegation of existence of sex selection and there also the high court also, high courts in writ jurisdiction had given several directions for implementation of the act as can be seen from the case of Hemant v. Union of India but it was after 2008, I mean these practice still we find their effort to the broader perspective of the act. Human rights, constitution principles and stressed on constitutional obligation of the state to implement this act. so this jurisprudence of the Actyou will find in the pronouncements of the supreme court in seat in the pronouncement of high courts, in these cases and also in various other cases which will be considering they have taken recourse to ultimately thesaying such things are not stopped we will have to take stern action

against state machinery, the central machinery because it is utmost essential to see that this practice no more survivesthis S.K Gupta also in the year 2012 the supreme court again insisted on effective implementation of these acts and also give other directions for expeditious hearing of the cases to frame charges within the cases pending in the court within 2 months, even by preponing date no laxity to be tolerated.

If trial court delayed framing of charge. So all these directions were given from time to time especially not only in the case of these cases but in several other cases also, it was also directed that government should take action against aiding doctors centers investigation in pending cases to be completed then we are having this voluntary health association of Punjab this is the latest decision of the supreme court where the supreme court again failed that whatever directions we had given way back in the year 2001 and 2003 are not being implemented and therefore again we have to look into the matter then supreme court give the direction to state supervisory and central boards to maintain all records forms in accordance with rule 9, mapping of registered and unregistered clinics within 3 months special cells to monitor progress of various cases. so it was again the supreme court which had to take up the ...and to see to it that the act was implemented we always notice that whenever any such Act is framed or brought on statute, its constitutional validity is challenged, the same fate, these act also made, but prior to that we will see what the directions the supreme court is given in the voluntary organization case, the supreme court said that we should educate the people so even after the 13 years from 2001 we are again saying educate the people that is the change of mindset why educate to change mindset, to conduct workshop awareness camps focusing on the empowerment of women only when we achieve gender equality in real sense, we can say that our ultimate goal is realized then supreme court has given directions to seize confiscate, the sonography machine, used illegally and contrary to the provisions of the act, dispose of the pending cases.

Now as I was reporting saying about the constitutional validity this sort argument was raised before the high court when the constitutional validity was challenged how you will deal with such argument, a married couple comes before the court and submits that the personal liberty of a citizen we know article 21 all of us ...includes the liberty of choosing the sex of the child, we have broadened the scope of article 21 as you know everything comes under the umbrella of article 21, even right to squat on pathwaysyou cannot be removed so everything even, if you are woken up from the sleep early in the morning at 4 am it is said that it is breaching the right to liberty. guaranteed under article 21 of constitution so the argument engineers argument it was advanced that i want a child which....child should be of which sex let me decide that is my personal liberty, this is the liberty of both of as couple as of my family, and you cannot curtail that liberty because that is, the fundamental right given to me under article 21 how you will meet with this argument as a judicial officer, Madam

Good morning Madam. When we say about the personal liberty, it should not contrary to the special enactment,

Personal liberty is guaranteed under the constitution itself. When there is an act which determines that no sex selection can be done then we cannot,

That's why they were challenging the validity of the act itself they were saying that, act was constitutionally void. You got it ...because it breaches. it commits the breach of the fundamental right which is given to me under article 21 of the constitution personal liberty, who will decide the family me not you who will decide which children I want not the government I will decide whether I want sons only. Daughters only or both.haan bacha hai toh jeevan hai tumhe....MTP Act permit mam, my lord.

Right Guaranteed under Article 21, does not include right of a person to decide the sex of another person, he is not deciding of another person. He is deciding of his own child, just as you are giving the liberty to the couple to how the child should be brought up how that child should be educated similarly here also.

even an unborn child has been given right under our constitution, it is so wide enough so that evenwhen the constitution itself guarantees certain rights to an unborn person also and other, like the Hindu law the rights are given, then one person cannot say that my right to liberty can even decide the sex of unborn child, right to life and personal liberty. Restrict to yourself. Constitution give you the right to change your sex. if any couple wants to change their sex they are at liberty but they cannot decide the sex of someone who is inside the body because his rights are being effected he may be born as a male or a female and moreover if we see the article 14 15 and 21 we cannot read them, different compartment we have to read it in harmonious construction and everything should be just fair and reasonable and the special provision in favor of the women is guaranteed by the constitution itself in article 15.

Article 21 hai who bolt hai procedure established by law, us key anagram hi hone chaise.

Justice Shalini: That is what they are saying, law itself is not the proper law got it, it is constitutionally void because it is against the fundamental rights.

It is also against the natural order of things. the nature does not provide us or equip us to choose the sex of a child, so liberty is granted under 21, they are all on the basis of our ...but. Are there ...what are considered as basic rights, right to employment, right to squat although, it has been ...so you cannot simply, extrapolate it and say Ki Bhai, you have right to choose the sex, because nature does not provide or equip us with the

I think larger interest of society and its repercussions that has prevalent over...

Participant- Basically Madam, when there is conflict between the 2 articles of the constitution, then we have to see the d, we have to maintain the balance and we have to see the larger interest of the society. Basically the act is enacted in view.....and the preamble itself says equalitygender equalityalso the article 39 state is duty-bound and even the fundamental duty of every citizen of the country so when we have to see the larger and any practice which renounce or in dignitary to the women had to be renounced in the society then we have to see the larger interest and the welfare of the women and the child which contemplates under article 15(3) of the constitution then we have to renounce those practices and we have to enact the law and it is provided under the constitution we can enact special legislation prevent the welfare of the women and children that's why it is not against the spirit of the constitution and not against the we can say personal liberty of the people, but it is in the interest of the society. another argument in another case, i mean this one case, another argument which is corollary to this was that the conditions in the society where my child is to born, like my female child is to be born are not conducive for her to be born every day we are coming across the atrocities against the girl childlike rapes sexual violence, then we are also having dowry deaths harassment of women sexual harassment other sort of harassment. so until and unless the conditions in the society really improves for a girl child to be born, this act should not be brought into force let the girl child not be born at all because i don't want by daughter to face all this. society is yet not ripped, is mindset is yet not changed and till then please don't inforce on me because i don't want my daughter to be born in such society, what you will say because, i am not able to pay the dowry i will have to, i mean she will have to be given the dowry, i may not be in a position to give her education and so, why i should give birth to a child who i cannot care, i cannot look after her security, i cannot guarantee her safety, so i

don't want the girl child and because of this act i cannot abort, i cannot say to the girl child, what will be the argument. What will be your answer ...this is the argument.

Participant- That discrimination on the grounds of sex, one cannot allowed

Justice Shalini- That is what he is saying this is everything is happening is you, yourself are saying that there are discriminatory practices, you yourself are saying that society is yet not ripped mindset is not changed, then why I should be compelled to have a girl child, I don't want girl child, i don't want to bring her into this world.

Participant-are not conducive to change or they will remain static stagnant we can't progress otherwise, so I think this is a very weak argument that....

Justice Shalini- okay according to you, it is a weak argument

Participant- It is a strong argument

Justice Shalini- she is saying that argument made was a weak argument. Her case is strong

Participant- Mindset of people. It will take ages and decades and in the meantime. Law has to take.

Participant- Mam can we give a guarantee to a male child that he will not be abused, can any parent give a guarantee.

Justice Shalini- But, if you see the percentage, if you see the percentage ratio, otherwise we would not have special provision for women and children, right merely because there are ...such incidents happen more in case of women and children. Therefore we are having special legislation also ...like, you know domestic violence act its validity was also challenged, men are also subjected to domestic violence, why only women ...so similarly here also because women are subjected to more that is the only argument.

Participant: Madam, when we go through the united nations report we find that the male child are more prone to child abuse not i am talking about the becoming major andbut the male child are more prone to sex abuse , yes it is true. But so far as India is concerned, they said incidence of such offences like you know domestic violence, dowry death, rape sexual abuse, so far as female children are, it is far more than the male children and therefore it is said that. We don't want to bring our daughter in this world which is not fit for her to be brought up. Third argument in another case, it was said thatokay size of my family. how it should compose, i am going to decide, this act is putting a total ban, girl child, if so make it somewhat classified suppose i am having 2 daughters, i and my wife are having two daughters now we want ...naturally we also want to bring up sons toenjoy that bringing up also ...my daughter also wanted brother, now you are prohibiting me him, i cannot afford to have more than 3 children ...so third child which i want because i have to decide the size of my family, i want only 3 children. Maximum i can afford now you are determining the size of my family also. You are determining how it should compose also. But my daughters at least they have right to love and affection of your brother. We are also having the right, to have the love and affection of a son we are not discriminating against the daughter. We already have 2 daughters. We are bringing them up with lot of love and affection but now at least allow us to have a son and therefore allow us to have a sex selection and sex determination. so don't put a blanket ban, make intelligent classification....reasonable classification as we say it....so what will be the answer ...so no discrimination

against girls because we are really having two daughters now at least let me decide, whether i should have a son that much liberty. You should uphold.....nay nay they are saying thatargument was we are not making any discrimination. Like you know even, if i had

Participant: Agar Asia nay hot, toh ASAP do key bad teaser Bache key Vishay me sachet hi nashi....

What argument was that, if i had two sonsi would have asked for the daughter in so. I mean there was no question at all. I am not making any discrimination, merely becausewe are having two daughters. Now the third child. I want a sonnaturally for love and affection, i mean both the genders are different, both the children are different, bringing up. And why my daughter should be deprived of the brotherly love.....

Participant: Yen toh naturalyen natural process, agar Asia ho chi skate hai Ki tesserae bacha apace who john hai boy ho, likin yen arura toh nay hai.

Justice Shalini-nay hai an, isle toh mojo try Karen do that is what....

Nay toh ASAP try Karen se apace kasha rake hai. Likin yen hai Ki agar hot hai toh us key lie phi apace mentally prepare chi rehang chaise. Ab yen koi society me koi druse kami Karen key lie crime Karen key lie toh apace coot nay Diya java skate.

Constitutional validity of the act is challenged they are saying that you are not permitting me to do the sex determination. You are not permitting me to do the sex selection, I want the 3rd child but I want a male child, but because of these act. I cannot do any of these.

Participant: Mam it's a very valid argument but practically if we see, if we allow the sex selection then it's very difficult to have a reasonable classification that if 2 daughters. If we allow the clinics to go for it. They will be indulging in this kind of practice with respect to the other cases also. What i feel.

Justice Shalini- but then, merely because act cannot be implemented, you cannot stop. You can make such things, you can say that, first daughter is there, then second child....you can go for sex selection there should not be blanket ban...that is what the argument isthat was i said our legal parents. They are well prepared...Han that is what they are saying that allow me to go for the sonography testthen again ...provisions of the act. Before pregnancy also it is taken. pre-conception pre-natal, therefor they are asking us to determine that we will have, only male child and clinics are mushrooming for that, they are saying that we will guarantee 100% male child. But this is also we are not permitting. You are not permitting that also. You are not permitting that also. What i am to do? And it is not my genuine desire, that my parents they should have grandsons, not because he will perpetuate or anything, but just to have the pleasure of love affection that is there old mindset, *abhor yen jo jinni vaiwashtha hai yeh sab lai toh gai society ke dwara haiaur society jab lai gai hai toh society ne jis samay hamre liye enacted kiya gaya us samay jis problem ko rokne ke liye hi kara gaya hai. agar yeh samasyaagar hamra sex ratio bigad nahin raha hota toh hume laye hi kyun hote act. jin desho mei sex ratio nahi kharab huawaha is act ki koi awashakyata nahi hai ...woh apne desire ke according ..they are saying it is necessary we understandlegislation is necessary we understand because declining female sex ratio. but what we are seeing its not to have a blanket ban have some reasonable classification, the person who is having the couplethe couple who is having first daughter 2 daughters let him, have the son or who is having already having the son, then you may stop him for doing it. So reasonable classification.*

Justice Shalini- that's why he is asking to have the sex determine

That's why I am saying mam, it's the vicious circle then, if tomorrow a boy is not born a girl child is born...

Justice Shalini- nai nai they will not allow the girl child....to be born at all that's why they will go. they are challenging this act, what this act prohibits is, if you see pre-conception and pre-natal, sex selection and sex determination, so you cannot select the sex of the child in advance, at the same time you cannot determine the sex of the child. You cannot once, you know the sex of the child you also cannot abort that child, so everything is prohibited under the act.....and they are saying 2 child norm we are adopting so we also dont want to cross that norm, we dont want ...we are in government service so we dont want to indulge in that act also, what we want is that, our family should consist of both the children.

Participant: madam there can be another argument, i am already having a son....desperately want to have a girl child, yes and i want to go for sex selection only because i want to have a girl child that argument will rarely coming. Shalini - but it is a counterpart, of course counterpart yes of course counterpart that's why they are saying Ki don't put total blanket ban. How far it appeals to you. If such argument was advanced before you. And you are deciding the constitutional validity. What you will do.

Every liberty and right are subject to certain restriction.

Okay so which reasons you will give ...you will have to give the reasons you can't straight away dismiss it.

Participant: Same logic which is given by Supreme Court in number of cases. Every liberty and right is having certain reasonable restriction,

Right under article 21, is unrestricted there can be act like this. Anyone else want to tryyes, it is according to the ...we have to go according to the social status because whenever there is changes in the society. We move towards that, not to the backwards. Because, when there is total pre-natal diagnostic at is camethen we have to follow that because we have so many....

Justice Shalini- Act has to be followed, they are challenging the validity of the Act, itself we have so many desires, but according to the society we have to act,.....According to the society we have to act, that's okay. anyone elsebasically mam the larger purpose of the act, is to change the mindset of the people....basically if we allow the person to, slack the sex of the child so even after they have to girl child earlier so that will of course the purpose, the very object of the legislation get defeated because basically we want to change the mindset of the people by way of the enactment, and if we allow them to do the sex selection or sex births selections, so then the very objective behind the legislation got defeated and we get nothing from this legislation, especially, we will not allow and the argument advanced is not. Though seem to be strong but, it does not, it should not be allowed at any cost. For the larger objective for the achievement of the larger...yes so inas regard eventuality which i had get, that personal liberty. Right to personal liberty includes even to decide the size of my family or the children sex of my children. Supreme Court...our Bombay high court said that no, it cannot be itself a right to decide the sex of the child to be born that is not a right at all, it is a part of nature as such, so it cannot include right to selection of the sex of the child. Pre-conception or post-conceptionnothing doing. right to liberty has to be curtailed somewhere.....otherwise you will tomorrow ask anything under the sun, rightthen so far as the second argument as I said....I have already discussed with you that they are having two daughters, they want the

affection of son, enjoy the company ...daughters to enjoy and then it was held by the Bombay high court in the.....so it was really interesting and how you will read that judgement of the high court in the case of Vijay Sharma v.there should not be blanket ban on sex selection and sex determination that was the argument which was advanced, the Bombay high court in the case of Vijay Sharma, a very good judgement, it is included also, it held that the sex selection is against the spirit of law and constitutionit affects the dignity of women and undermine their importance, it insults and humiliates womanhood, it violates women's right to life and therefore we will not permit any such thinghowsoever sweet coated, you may say that it is, it should not bewhy the girl child be brought into existence when we can't guarantee or safety so, indirectly, you are going for such preference we will not allow it. Saying that we want ...my daughter on the pretext of your daughter wanting to have the love and affection or brother you want to go for a son we will not allow, because it will ultimately undermine and humiliate the womanhood. Read these judgements in detail because it is included and way the Bombay high court or the ...in earlier cases the Supreme Court has dealt with this issue.

It's very interesting.....now we will ...rest of the matter we will take tomorrow ...rest of the case laws, but I wantI would like to go through the brief provisions of the actbecause unless you know the act, as such ...we will not be in a position to implement it also, so far as trial process and other things are concerned, jurisprudence also includes the bare sections of the act as such, so if you see the object and reasons as she has rightly pointed out, it is prohibit prevent and also to regulate ...so we are not totally the act does not ...totally negative or rule out or ban the use of diagnostic techniques they are essential that is the boon of the modern technology, now even when the child is in womb, you know whether child is suffering any genetically problem or abnormalitiesif it is so, then the doctors can take necessary steps or MTP act also permits, you know the abortions, i just forgotten this case when arguments advanced was that under MTP act, the child can be abortedfetus can be aborted ...before 3 months or 3 conditions are laid down, if the pregnancy is on account of the rape, if the pregnancy is because of the failure of contraceptives and 3rd is if it is causinghealth problems anguish to the mother so in that Vijay Sharma's case the argument was advanced that mother who already have 2 daughters now having a 3 daughter will cause definite mental anguish to her, it will also be injurious to her health, because her family will not allow her, there will be case of bigamy and there will be case of desertion. there will be a case of desertion, there will be case of divorce, and therefore let us allow her to have the termination of that pregnancy legally, because it is causing her mental anguish so this one argument, i mean the way they go on and on sometimes you know to just see to it, that they are permitted to have the male child, irrespective of the nature or irrespective of the consequences which the birth of female children may have, so the act seeks to regulate.

The use of diagnostic techniques ...the diagnostic techniques are essential for the health of the child, in the womb and therefore the word use is regulate, but so far as the sex selection, and sex determination is concerned, the act absolutely bans it, totally bans, it you are having the provisions of the act...comewe can deal with those provisions and these. Oh it will take time, section 3 of the act, i mean definitions you can go through and then we will have the section 3 of the act, which also ...deals with the same of the act....of the act and registration of the clinic, because whether ...there are very few sections in the act which are of relevance, other sections are not concerning to judiciary like establishment of central supervisory board, state supervisory board, advisory boardadvisory bodythere meeting ...appointment of appropriate authorities we may not be concerned much ..As a judicial officer we are concerned with section 3, section 4, section 5, section 6okay, these 3 4 5 6 ...and some extent definition...therefore section 2 of the actsection 2 of the act, if you see it defines...genetic counsellinggenetic clinic ..Embryo fetus...all the terms which are used in the act are defined in section 2 ...the most important definitions in section 2 pertain to the sex selection and sex determination, then pre-natal diagnostic techniques and pre-natal

procedures test ...so if you read the definition...okay if you see the section 2 and section (i) pre-natal diagnostic procedures ...majority of the worlds are medical, but covers everything ...in the skythose techniques which are for selection sex ...before or after conceptionthis two words are important. So if the family goes before.....couple goes before likeway of technology....it is pre-conceptionso if they go for male child only for IVF technologythen also it will be covered because it is though pre-conception, it will be definitely includedthen pre-natal, diagnostic techniques, it also includesultrasonography, as we know that whenever the lady is pregnant and the basis of ultra-sonography we find out the sex of the child, so so far as selection and determination of sex is concerned all this techniques are completely prohibited ban, but so far as other aspects of finding out the abnormalities in the child, amniocentesis ..they are permitted and therefore it is called as regulationthen the definition of section 2(o) which pertains to sex selection, because these are words which are used in further sectionthese words ...the act as i said do not use the word feticide

When we are terminating the pregnancy aborting the child that word is not used in the act. Purposely with intention because in the next session you will see that MTP act is also there, which permits the feticide. in some cases and therefore it is held that sex selection and sex determination so sex selection is determine to include, any procedure technique taste administration or prescription or provision anything for the purpose of ensuring or increasing the probability of an ... that an embryo will be of a particular sex, so when you are determine the sex of the child or the embryo then it becomes sex selection ...and section 5 of the act, first we will go to section 5 ...which is of most importance, it pertains to obtaining written consent of pregnant women and prohibition of communicating the sex of fetuswhy it is important because whenever women comes ...section 5, so prohibition of communication in any form you should not disclose the sex of the fetus to the women or the person accompanying her, very innovative devices and means are now invented ...by the doctors who are also equally engineers. What i used to do, that you should not communicate the sex of the embryo or the fetus, then they will say that come on ...Monday means male child ...come on Tuesday means female child, otherwise god is great jai mata santoshi...ai matafemale child ...or if the photo of saibaba or male godish on their name ...then a male child....so 16 and 19 also one of the doctor hasreally interesting varsha will tell that. Therefore i dont want to encroach there area ...so one of the doctor in Maharashtra he has done that on case paper he will write 16 another case paper ...19. So what is it she will explain to youshe is not comingokay, then explain it....?

Ms. Anuja - 16 was one boy one by one gthat was the means of communicationso on the case paper it will written accordinglyso that disclosure of the sex in this way or in that wayso these are the means were adopted and therefore, now we can see thatthat disclosure is prohibitedin every waywhen ...whether it is by, if you see subsection 2 of section 5 no person including the person, conducting pre-natal diagnostic procedure shall communicate to the pregnant women or her relative or any other person the sex of the fetus by words by signs or in any other manner so in any other manner will include everything, otherwise they used to adopt the techniques also to ensure that the sex of the child is communicated to the couple in advance so that they can determine whether to go for abortion to sex determination or not and this care is taken by section 5 of the act, it also requires that written consent of the pregnant women is obtained before any ultrasonography is done she should be explain the consequences, she should be explain, why it is being done and why we are not going for sex selection and sex abortion, so side effects and everything. It is sort of check on the practice of sex selection and so on. Then regulate section 3 pertains to regulation of genetic counselling, genetic center, genetic laboratory. Prohibition of sex selection 3(a) and prohibition of the use of ultrasound machine etc., which are not registered under the act that is let down in section 3 and 3(b) of the act. The material provision, in addition to these provisions are section 22, 23 and 24 ...22 pertains to prohibition on advertisement. So you can directly come to section 22 ...okay, it's there, so section

22 prohibits any sort of advertisement, and if you see the definition, you will find that it covers everything, in any form, including internet also, it is there but whether we are able to check it that is really question, but if we know even the iPhone they are not allowing the American fbi to crack the code, so these the techniques are they are increasing, we have to worry about the safety personal liberty so here also whether the websites will respond to such things that is again an issue, internet issued published distributed communicated any advertisement, in any form including internet regarding facilities of pre-natal determination of sex or sex selection before conception, intention is to see to it that in no way you are advertising. this cases of Mumbai municipal corporation which we were referring in the morning, here the advertisement was published like as I saidmega Hawaii ...means ladka hawai ...whether you want a ladka that and you come to our clinic and when this was brought to the notice of the appropriate authority, appropriate authority took cognizance file a case and when they issued the notice it was thedefense taken was that.....that we had told the editor of the newspaper whether you want ...mul hawaika child bachamulga haiwka so we did not maintained it to say whether you want a son we intended toright to say only whether you want a child and come to this clinic, but this argument, was rightly rejected by the court, after recording the evidence and I mean it was a full flagged trial and it was found that, if it was such an editorial or printing error then she should have brought to the notice of the editor immediately on the next day.

There would have been corrigendum, not after the complaint was lodged and she came to know that action is being taken against her, thereafter she has asked for the corrigendum and explanation and everything.....and therefore she was, both the doctors were convicted and punishment imprisonment of three years which is the maximum punishment with fine and everythingso the section 22 is materially in that case, one booklet was also ...published, if you knowin saying that if you want a son , you can usedo these techniqueslike putting some juicein the nose everything and that booklet was being sold speciously not like ...openlyyou will not get it on the counter ...but when it was brought to the notice of appropriate authority they took the action, they confiscated those copiesbut the point to be stressed is that the advertisement and communication in any form ...under section 22 is prohibited. section 23 thendeal with the punishments , important section apart from this section is section 24, if you read it, you will know the significance, because it is a very very good provision intended again for the sake of women, to protect their rights. it raises a presumption, you know the presumption then the burden shifts on the other side, to prove that she has come to, abort or for sex selection or sex determination on her own accord, so it is said that, notwithstanding anything contained in the Indian evidence act the court shall presume unless contrary is proved, that pregnant women was compelled by her husband or her relatives as the case may be to undergo this techniques and such person shall be liable, because it is noticed that women are hardly in a position, to make a reasoned choice or selection, they are compelled by their either in laws or the husband or even at times, where parents also, to have the male child and therefore these section provides that, if any such women comes and you cannot prosecute women, as such pregnant women, as such that is what the intentbecause the burden will lie on other accused to show that, she had come on her own accord, it will be otherwise presumed that she was compelled to go for sex selection...and sex determination so that provision really saves pregnant women, from prosecution....remember she is the best witness, because who else will say that doctor has done it or doctor has told me the sex of my child, who will tell she is the best witness and therefore indirectly she is also protected for proper evidence to come before the court, if she is made an accused actually it is she who goes for sex selection but if she is made an accused you will not get the best evidence, secondly the legislature has also taken the cognizance of social conditions, where she is not taking any decisions independently on her own but at times she is persuaded compelled insisted upon, instigated, motivated by her family members or by the social circumstances as such, if her status is likely to be increased because having a male child, then she will naturally opt, to for a male child, and therefore

the section 24 is also necessary to be kept in mind, there are other, rules framed under the provision of the act....but as i said act is very small, but on account on several ambiguity in the said provision we find that lot of litigation is centering around those ambiguity, which we will ...those case laws and those ambiguity we will see in the next sessionNext means tomorrow it is an trial process ...so thankyou...it is time

Dr. Neelam Singh - Good afternoon, everyonegood afternoon, I know after tea or lunch or anything the blood supply goes to brain, rather than brain, it comes down to stomach and our brain becomes slow, because it has to digest whatever you are eaten. So what's why I am saying that everybody is awake while we are talking, let me just tell you. I am a gynecologist by profession. and i have been struggling with these 2 laws, so what i am going to present before you is what is the conflictand problem in implementing, these two laws together, but because both the laws, they probably are directed. Towards women and how they are trying to preserve the rights of women and what is the problem while they are implemented at the ground and what is the confusion out of which one law is influencing on other law. And that is how, it is undermining the rights of women. So this I am going to take and I hope we are going this session together with Anuja, Anuja will be more focusing on the communication, and how it should be on both the laws. So that the greater interest, is taken care of....see we understand the context of this problem of abortion. medical termination of pregnancy is a term which is used, abortion can be spontaneous by itself, medical termination of pregnancy when it is terminated medically for some reasons and the indication is there and patient doesn't have a spontaneous abortion rather, it is induced so abortion is induced as well as spontaneous while medical termination of pregnancy is always induced and it is on the demand of the women so let us understand that way so if I try to explain the context is that 10 women die to abortion each day in the country, because these abortions are unsafe and id i say largely, a large figure, roughly 40-50 percent abortions in the country today are unsafe, because you know the law came in 1971 implemented in 1972 or 1973 that old law is yet not implemented so that is how ten women almost they die to and abortion is not one condition when women cannot be safe. And if you look at the entire maternal mortality. Maternal mortality is one of the indicator of human development index once we make. Maternal mortality ratio is very important indicator. So any country, which is looking to upgrade its self in HDI, human development index they see that how we can do with the maternal mortality, how can we decrease the maternal mortality. so this act was when, this is the situation ...though this is the old data, new data is still awaited from SRS, which just happened in 2012-13, but still roughly ten women die of abortion and roughly 8% of maternal mortality, half women die. Maternal mortality is death of a very young women reproductive year women. She is hardly 28, 22, 19, 30 ...and they die so lot of productive life is wasted, once a maternal mortality happens and you can very well understand the social consequencesconsequences for the family, in which a maternal death takes place. So that is how it was an important issue and keeping this issue in mind. way back 1971 MTP Act, was passed as we understand and madam Shalini was just explaining you the indication why how and when you can undergo MTP one of the indication was contraceptive failure, and if you just think of contraceptive failure as a doctor when a patient comes to me and says that, you know we were using contraception and it failed what evidence is there that the contraception failedcan there be evidence, no that presumption that contraception has failed a doctor terminates the pregnancy right, so if you look at it wasif you think of 1971 ...we were struggling with population problem so at times i think that probably this law came at that time partly because of safety of women and reducing maternal mortalityBut somewhere would have been back of the mind. The problem of population out of which this indication of contraceptive failure was put in at least those families who are not intending to have a child. In future they can come to doctor and can terminate the pregnancy. roughly 6.5, 6.4 million abortion take place in India and out of which56% as i said, depending on different state figure is different ...they are unsafe.

So we have to look at the abortion issue and once we are struggling with PCPNDT, wherein after a sex selection, sex selection is done pre conception ally when the fetus ...even when the fetus comes in the womb the sex selection is doneusing those assisted reproductive techniques IVF and everything you must have heard. surrogacy, these things the assisted reproductive techniques are used and the sex selection is done outside the womb and then this ...after the sex selection, this particular embryo is implanted in the womb, right so after sex selection or after sex determination, sex determination happens around after 3 months only, before 3 monthsbefore 12 weeks of pregnancy, nobody actually can determine the sex. By ultrasonography there other methods, likebiopsy. This can determine even at 8 weeks when small piece of biopsy is taken, from the embryo and the sex is determined ...but generallylet us say 99% patients are using sex determination techniques as ultra-sonography so that can only tell us the sex of fetus....after 12 weeks and as the pregnancy goes, the accuracy of the test goes. definitely what they do, ultrasound is a sort of camera which is when it is put on the mother's womb, they try and fix and see the genital of the fetus and by seeing the images the doctor is able to say that, because the image is for male entail and female entail are different ...so by virtue of that so it's a kind of camera and if i can say that the camera comes one thousand rupees and a 50 lakhs camera defiantly the resolution will be better with a higher resolution camera and it will give us a good picture, but then what sort of camera are we using ...that depends so similarly what sort of ultrasound machine are we using...so if you look at in the country, right now lot of machines are floating in the country, which do not have that sort of resolution which can actually and hand which is expert in seeing and telling whether it is a male child or a female child.

If I say the experts are those. who have done their post-graduate degrees in radiology it is very simple logic and common sense, so if a person who is done, who is expert, but if you look at the law, PCPNDT Act , it permits uphill now, now it permits any doctor, who is done his mbbs his or her mbbs and after that he is taken training for one year, with somebody or has undergone some experience with someone it allows to use in my practice, is right now mentioned that i am member of inspection committee and i have inspected many states like sabu has done we have been doing itWe have seen in our inspection even a high school fail ladka or a computer operator, is ba pass lady is running ultrasound machine. I have seen with my own eyes. While the name of the doctor operator is written someone elsetechnicians are using it, i have seeing inter fail ladka was doing in one of the districts in UP. and, you know every month, he was earning good money because you know what these people are not competent to do sex determination, what they do is they know that with what intention the client is coming to the doctor. So every time they tell it is the girli have seen patients who say that they have aborted, 9 times because every time she is so unfortunate. She feels so i am so unlucky because every time there is pregnancy there is a female child. so hence she has to abort 9 times i have seen 5 times 4 times 3 times, women are aborting because they are not going to a competent person and what is safe, safe is to tell that this is a female, because there is a nexus between this doctor, who is doing a ultra-sonography and a person who is terminating the pregnancy, so at times there isi just got a call from Jhansi last evening when i was in train, i got a call saying that there are many doctored. who has package of 10 thousand rupees, there they will tell you the sex as well as they will tell you the charges for the abortion so it's a package, so the i am not purposely looking in my slides because you know then you know get fixed, so i want to talk to you, I want to take your questions.

So I am not really at my slides , so the problem is that there is lot of argument in the country and there is lot of problem in the country, because of conflation between these two laws, because some of the opinion makers are that, we should take care of MTP act and we should watch every women and we should watch every abortion, because you know ultimately the womb is there and somebody tells it is female, it is going to be get terminated so we should watch abortion, while the other people say that no, sex determination is the first step, if sex determination doesn't happen, the termination will not happen, so let's look at the sex

determination. This is the problem ...out of over enthusiasm in certain places what has happened that implementers they started enforcing standards on people who were aborting. who were providing MTP services and that is how what happened that the entire focus changed and there is fear, though i don't think there is lot of evidence very strong evidence which is coming from different experiences that PCPNDT implementation is going to undermine the implementation of the MTP and it will undermine the reproductive right of women and her right to get a safe abortion, abortion is need of a women for various reasons, women may not like and it's her body she can decide and choose whether she wants the child or not as a result, law is very very liberal and it says that spousal consent is not necessary, if I decide not to carry this pregnancy, I am an adult i can simply go sign and have my termination done, but because of the lack of understanding even in the doctors they always ask the men to come and sign and various condition which are, so as a result what happens that these women they do not to right place to terminate their pregnancy still go to ...in the absence of reasonable awareness in the country on MTP act that this is legal right of a women and this is a law which permits abortion, it makes conditions for safe abortion to a women ...in the absence of that lot of women as i said roughly half of the abortions are illegal and unsafe in the country because these standards ...so let us see what are standards described in the act as such. what factors influences abortions services we can understand there are social factors policy factors also as i said that, only few qualified providers are there for safe abortion the service facilities do not have enough equipment and supplies referral linkages are weak and legal aspects, the awareness ...generation is not enough and likewise economic factors, women she is living in a village far-off from the facility she may not like to travel because she doesn't have that money.

To give to a provider and to travel all the way for having abortion so she would...stick to a person who is an rmp or a local provider or a quack or a dai, so these are factors which affect the abortion services as i said and this been said in the morning also so i am not speaking on the slide. These are when and how the legal framework of MTP act, who can terminate a pregnancy, as the act is very beautiful, you know when can a pregnancy be terminated...rape substantial risk ...physical or mental to the fetus because you know abnormal fetus are at times we have very advanced technology which can detect a fetus which is malformed, a fetal which is downs and domesa fetus who has multiple conjectural anomaly the hands are not made of ...legs are not made. Or the heart is not there or a kidney is absent. you can detect these abnormalities right now so these fetuses can be terminated, contraceptive failure is one and as I said spousal consent is not necessary, but sex selection is not the indication if somebody comes and says look i have detected the sex, it is a female child or it is a male child, even if she says this is a male child. I already have 3 males' children.

I do not want to carry. she cannot because sex selection is not the pre-condition as an indication, sides hospital established by the government as well as private providers, but then there has to be strict standard of which private providers will be able to and there is a provision in the act that a district level committee will go inspect and verify and register the center which can provide but practically speaking, i don't think i have never seen district in which all the providers are registered with the help administration and there are any standards laid on these clinics are inspected are there any record are these clinics sending any records to the health authorities, we do not have data on abortion in India which is being generated what we have is some studies which have been done to collect some make some assumptions or data but states do not have any data. As described in the MTP ACT, who can terminate only doctor who is MBBSS plus some training or degree can terminate a pregnancy which is very well described in the act. pregnancy can be terminated up to 20 weeks and there are different standard who and when a pregnancy be terminated but by 20 weeks, you must have heard lot of cases in the country, specially that case in Mumbai was ...Nikiti Mehta case was very famous and at times you know there are laws which need to be like, this law is again

there is lot of discussion in the country and lot of amendment is proposed because after 20 weeks there are certain conditions in the fetus, which can be detected even by advance technologies, like ultrasound and CT scan after 20 weeks or women has not gone to a doctor by 20 weeks and she is gone in 22 weeks and we find out that there is spinabifida there is gross anomaly in the heart, fetus will not be able to survive, is there a point. carrying that pregnancy till 9 months and then terminate or avidly at that time because you know women knows that this child will not, my fetus will not survive and still she is carrying, so know we have to think of these condition there are lot of countries in the world who have made very efficient boards which takes decision on such cases but in our countries there is no provision. and that is how cases like Nikiti Mehta happens she was detected with this anomaly at 26 weeks ...21 weeks and then she carried you know, it was in court and you know the case was here and there ...and ultimately she had a termination at 26 weeks as a gynecologist, i can understand that she must have been induced, she must have given some medicine she started bleeding and then there was indication to save her life, at any stage we have to deliver a child, if the life of the mother is in danger.

So I think these are something which were we are struggling, so that there is lot amendment which is needed, even in the MTP act, as there is lot of prescription about record maintenance there is so much of secrecy about these records and this record has to go to the chief medical officer within 24 hours, i have never seen including myself any doctor who is done his mbbs his or her mbbs and after that he is taken training for one year, with somebody or has undergone some experience with someone it allows to use in my practice, is right now mentioned that i am member of inspection committee and i have inspected many states like sabu has done we have been doing itWe have seen in our inspection even a high school fail ladka or a computer operator, is 12th pass lady is running ultrasound machine. I have seen with my own eyes. While the name of the doctor operator is written someone elsetechnicians are using it, i have seeing interfamily ladka was doing in one of the districts in UP. and, you know every month, he was earning good money because you know what these people are not competent to do sex determination, what they do is they know that with what intention the client is coming to the doctor. So every time they tell it is the girli have seen patients who say that they have aborted, 9 times because every time she is so unfortunate. She feels so i am so unlucky because every time there is pregnancy there is a female child. so hence she has to abort 9 times i have seen 5 times 4 times 3 times, women are aborting because they are not going to a competent person and what is safe, safe is to tell that this is a female, because there is a nexus between this doctor, who is doing a ultra-sonography and a person who is terminating the pregnancy, so at times there isi just got a call from Jhansi last evening when i was in train, I got a call saying that there are many doctors who has package of 10 thousand rupees, there they will tell you the sex as well as they will tell you the charges for the abortion so it's a package, so the I am not purposely looking in my slides because you know then you know get fixed, so I want to talk to you, i want to take your questions.

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At that time because you know women knows that this child will not, my fetus will not survive and still she is carrying, so know we have to think of these condition there are lot of countries in the world who have made very efficient boards which takes decision on such cases but in our countries there is no provision. and that is how cases like Nikiti Mehta happens she was detected with this anomaly at 26 weeks ...21 weeks and then she carried you know, it was in court and you know the case was here and there ...and ultimately she had a termination at 26 weeks as a gynecologist, I can understand that she must have been induced, she must have given some medicine she started bleeding and then there was indication to save her life, at any stage we have to deliver a child, if the life of the mother is in danger. So I think these are something which were we are struggling, so that there is lot amendment which is needed, even in the MTP act, as there is lot of prescription about record maintenance there is so much of secrecy about these records and this record has to go to the chief medical officer within 24 hours, I have never seen including myself any doctor who has send this record within 24 hours, in the chief medical officer office, this is not practically possible to send these record so lot of problem are there in the act, but as of now, i think it is under review so i believe, something will come up ...legal abortion once we fulfill all the condition where when and who will terminate if we fulfill all the conditions then of course, it will be termed as legal ..I am not talking on this. So these committees are not fictional, there are committees for abortion the district committee under the chief medical officer. and this a recently, this i want to talk about, medical method of abortion, because you know this is the drug, RU486 prostate is combination of drug, which is very good fordoing abortion because uphill now it used to be invasive procedure because some instrument has to be put in the womb of the mother, which was a very invasive procedure and if the doctor is not competent one might perforate, many women use to lose their live because of this reason because this was always a invasive procedure you have to put in something but this is something in the form of a drug it is very efficient, but then it too has complication.

It can be given to a women in a particular manner, which is to be decided to a particular women it may not be effective in certain women in pregnancy, it has to be decided by a doctor but then the track it is not over-the-counter drug, but through the country this is available at.....so it should be available with the prescription, but in our country. Let me tell you since i practice as doctor, I have seen very educated people they can be officers they can be advocates they can be IIMs IITS educated people they come to be ...and they say my friend has told me, so i have given these tablets to my wife and you know she is been bleeding for these many days and abortion is not having, so even educated people they come up with this, so this is the drug, which actually is being used left and right at the grassroots to terminate pregnancies, and there is no control of the drug and administration whatever department it is or the health department there is no control, it came for good, in many country it is very regulated and it is you know, and it is you know very good because you know the women does not need any intervention, any invasive procedure and it's a very easy effective drug, but in the absence of the standards which should be followed by a doctor, this drug also is an, and this drug is the right now I would say that in the periphery this drugs is being used by doctors to terminate even....when we say sex selection and elimination of girl, female fetus it is being, this drug is being used, so I think there are as I said, I will not speak on this because you have in the earlier session these are the methods of sex selection, the one is pre-conception, when the test tube baby is happening and the other one is as I said post conception, amniocentesis, taking fluid from the mother's womb or doing ultrasonography or taking a small tissue in the form of biopsy these are 3 methods....post conceptionOnce the conception has happened out of which the sex selection is done.

Sex determination post conception ally of course sex determination post conception ally of course sex determination, and pre-conception sex selection is done, by assisted reproductive techniques, abortion I am just as a thought i am just posing the slide, women who underwent, you just focus where this red mark is

there and you will find that in certain districts it is average of UP , 35.25% women underwent ultrasound before abortion, what does it tell abortion has mandated if, somebody has to undergo abortion doesn't want a pregnancy, it will happen in the first one two three months, why the person has to wait for 4 month or 5 month, very logical, but they undergo, ultrasound because they want to know, this indirectly tells us and this figure is 35.2, this is an average of all 75 district of UP , in certain district it is 50% , it is 60 % , even 80%, women undergo ultrasound and then they undergo pregnancy termination this was an annual health survey which asked women did you undergo ultrasound before undergoing an abortion, this was the questionso that tells us that women undergo ultrasound and when they find that this a pregnancy which is female they terminate the pregnancy, this indirect correlation is somewhere there and I think this sabu is expert in showing these figures, I am just trying to read areas 2001 decline in sex ratio, so you know there is some connection between the two laws, so you know this I have already said that you know it is an issue of right, to me I would like to speak on the slide because you know, I was very distressed when one of the supreme court judge in ...who was chairing the session, I was in the panel in Delhi, I heard that, you know it is very difficult, India has many laws which are towards social evil and disorders we cannot we have failed to implement and they cannot be implemented.

So my logical question to all of you is, as I understand as lay person whenever there is social disorder and we have failed we come up with ...and that we understand as law, so once we have done the law now we say that this not possible, that was not possible to take care of that is how we came up with this, now we say this not possible to be implemented, where do we go. so i would like to give 2 examples one is, I know it is difficult to deal with social evils, so I would take 2 examples, one is child marriage, in instant act which is prevention of child marriage act 2006 amended now and dowry Act, are we successful or failedchild marriage do you know the datawhat is the datathis country so we failed and dowry ...who knows better than you, it is continuing , right so we failed I can say largely we fail, implementing these laws against social evil, but you know this law is not against the social evil, look at the law pre-natal diagnostic technique, who is using the technique, the society is using the technique no, it is a very qualified highly educated community who is using the technique, the doctors and some quacks in the name of doctors but they are protected by the doctors because doctors give their certificates get their clinics registered, somewhere it is the medical fraternity who is the highly educated fraternity in the country. So this law is towards, more towards regulating the technology and prohibition of sex selection by regulating the technology.....prevention of misuse, if you read the preamble of PCPNDT, these words are written. so this is not towards, because we know everybody is sitting in this room also wants son, even I wanted a son.....so what is bad in it, the social conditions I went through in my lifeI felt son is more precious, I will be honoredso if a women has that wish what is wrong in that, because you know she is been pressured she is not living in social vacuum. So that is how this law is against miss-use of technology and it is against, towards the use, people who are using technology.

Pre-natal diagnostic technique act, this is a technique act. and you just right know, you listen24 says that women will not be held guilty because you know, because law understand that women, it may be a wish by a women but while this wish is there because of social conditioning of the women and until and unless that social conditioning is not changed, I think wish is going there so that is how section 24 is there and PCPNDT actso I feel we should not take this that you know we have to change the mindset of the society that may take centuries. Prat septal.....centuries old we cannot change it 20 years or 30 yearswe cannot so we have to come up with legal order we have to implement the law on thiswe have to implement the law, I know when every party is willing to give and take in dowry ...we cannot implement the law against everyone and we cannot go to every house, but you know every house is demanding but you know who is providing so this law is for suppliers. There is demand and this is the supply so this law is against suppliers and how

many are they. how many are they just 55 thousand in the country and in a state like UP which is the largest state just 5200 so if the administration and enforcement agencies cannot take care of 5200 people in the state this is my argument, I do not, I would like you to after the class maybe in the free time, you can argue amongst yourself, about this what should we do, so overlap is if I look at the figures because I will not have much of time Ahuja has also to speak. So I would say that what is presumptive numbers of abortion in India, its only 4.6 % of female fetuses would have been terminated so it's a small number, so because of this number we cannot undermine the MTP act and safety of women and safe abortion provision to the women which is the reproductive right of the women. so only 9 % of the abortions will be sex selective abortions, ...on abortions will not be effective so that is why I say that you know we start following women ...seeing who is aborting where aborting will not be effective because then we are violating the rights of women so you know if I largely see these two acts what comes to my mind is MTP act is something which fulfills the reproductive rights of a women PCPNDT Act it provides for prohibition of sex selection, this is also saving for women, this is also a women friendly law because, you know it is saving the girl child in the womb before and after conception and regulation of pre-natal diagnostic techniques, it wants to regulate this technique MTP Act regulates towards the avoidable death of mother by safe abortionthis act provides for unnecessary termination of a fetus which is determined as femalethis law define when one can terminate the pregnancy, this defines the ethical use of technology. it also in some way addresses social awareness and son preference in the society the PCPNDT ACT sex selection is possible only by illegal use of diagnostic technology with unethical medical practice i said that ...i am amongst them, but I am saying because you know i have enough experience i have experience of 35 years of my medical practice which tells me that you know doctors are not ethically using this signs, because once science is good.....it terminates into a technology. technology needs market, it is investment technology is an investment, it needs market and market is so aggressive that you know it has percolated down in the country and if you look at the figures 2001-2011 if you compare the census through India, the sex ratio declined minus 11 points in rural India against minus 1 in urban India, so that tells us this technology in investment very aggressive marketing it has gone down to the rural areas and now this is available even in the villages and Kasbahs. Pan India so once it is decided.

A sex is determined or is selected it leads to illegal abortion illegal i am saying because you know, the MTP act does not say that sex selection or sex determination is a pre-condition can be a pre-condition for determination. So what do we do, whether we stop the determination or sex selection or we stop the abortion? What should we do? once we know that safe abortion is a reproductive right of women and once we know that tracking women in lot of state this has started happening ... for pregnancies, they will go after Asha s, the frontline workers who terminated where terminated. so as result what happens once we do this what happens that ...abortionit undergoes the carpet and illegal and unsafe abortion will rise in the country so we have to look at the PCPNDT act for sex selection can be prevented by ensuring the technology is used only for medical reasons and by effective monitoring to stop unethical and illegal practice both in provision of abortion as well as use of law. So we have to look at effective implementation and monitoring of the laws in both cases. And that we go after....run after the women and abortion and to make it for unsafe in times to come. So that we are going to lose much more productive lives. In future in the form of maternal mortality by unsafe abortions. So this is all I have to say if you have any question or anything else to me I think once Ahuja has finished us can both take together.

Mrs. Anuja Gulati - well, after that wonderful demystification of the MTP act, by Neelancan i have the...what is happened and why are we here looking at the confluence between the MTP act and the PCPNDT act. and why is it that we are today discussing you know she said i am going to talk on communication or why is it that we'd even talking of something on how do we communicate about sex

selection. And the reason was as we evolved, you know as we started implementing the PCPNDT act. we realized that on a lot of occasions there was a lot of confusions between sex selection and abortion and what began happening was that you know women's access to safe abortion started being compromised several studies you know across in small studies done by individuals, done by seat the center for enquiry and health and allied thing said that in several parts of the country, you know because we were working on the issue of sex selection in a lot of places what happen was there was a complete ban on the second trimester abortions Neelan said you can detect the sex properly only after 12 weeks. Second trimester abortions complete ban. or i can give you example of districts in Maharashtra where women came for an abortion specially second trimester abortion, she was said that you go in for sterilization.

Then we will give you...you know let it follow with sterilization why because nobody is going to blame us, that we have given you an abortion thirdly she said people started tracking pregnancy, and we know going back to the first episode of stayed jay ate where aimer khan did his show, he talked of Nava sheer example. he said Nava shear in Punjab has been really able to reverse sex ratio and that was completely through tracking pregnancy and what is tracking pregnancy, it was the moment, a women is pregnant the entire system is following her, to understand if she has undergone an abortion or not and if she undergoes an abortion because of legal reasonsbecause of reasons that ...you know Shaliniji and Neelam mentioned those four reasons if she even undergoes a termination because of those four reasons it was presumed that she has probably undergone because of sex selection and all kinds of investigation started happening and it was completely against her reproductive rights another thing that happened was she talked of medical methods of terminating pregnancy, you know we were saying that ok sex selection is happening we need to curb sex selection one fine day the government just woke up when some of the state government I don't want to name them here and said that all medical abortion pills across, you know they are available across the counterwill not be available, I mean it's a schedule x drug you need to make it available with a prescription and they were not available, I mean you can go around n number of chemist to see, the drug available it was not available, this was against the women's right to save legal abortion and another thing was that when you look at these drugs the efficacy of these drugs is between 7 and 9 weeks whereas you can actually detect the sex of a child she said you know without mistake only at about 12 weeks, there are techniques I am not saying that there are no techniques which can detect it earlier but using an ultrasonography its generally 12 weeks and that is the most widely prevalent way, so a lot of these examples, I mean even examples like there were states which said that probably contraceptive failure should not be considered as a condition for second trimester abortion which went against a women reproductive right, against the MTP act which said that a women, can terminate a pregnancy under the four conditions they mention in the first 12 weeks with the signature or approval of one registered medical PR actioner and up to 20 weeks.

This entire group who said that why is there need to work on sex selection at all because it's going against a basic right of the women and also what started happening was that the kind of communication that we were involving in you know bhrun hatya.... feticide what does that imply feticide suicide homicide, genocide killing and you say that there is life you are killing it and say mat kariye dont do this what are you saying ...don't go for abortion so what people started saying they started saying abortion is the culprit whereas that was not the case ...I think I will skip a lot of this things like she said and we also need to understand that the entire issue of sex selection is about discrimination it is about subordination of women and there was this wonderful discussion in Shalini's session on how is it about discrimination and how our constitution does not allow discrimination and PCPNDT Act is to prevent that discrimination whereas the MTP act is not about discrimination it is about preventing maternal mortality and morbidity which is unsafe.

So MTP Act is to prevent unsafe abortion and ...that is to prevent discrimination that is to prevent discrimination that's where that line between the 2 acts is and we need to also understand that only small percentage of abortion are sex selective about the range is from 8 - 10 percent and abortion is the consequence not the causeso all those things that I enlisted to you earlier tracking started happening people started denying second trimester abortion, you know as if abortion was the cause but we need to understand the consequences and not the cause the cause was basically was discrimination, I really will not go into you know the overview of legal compliances because I think she is talked quite a bit about it. But to also say and comeback to the entire issue of terminology use so every time and again all this she is covered this very well but whenever we used terminology we need to be very careful because every time you use terminology like foeticide or bhrun hatya or genocide or murder, what you are doing is you are trying to take away women's right to safe and legal abortion, yeh mat kariye dont indulge in this because you personifying the fetus saying dont kill it which means dont do abortion so we need to very careful about the language and imagery so as to ensure that women's right to safe and legal abortion is maintained the language we should use terminology you know or refrain from the kind of technology we discussed imagery we have seen several images of this nature you know squeezing of fetus a dagger piercing through the womb, blood oozing out of the womb.

I have even seen gory pictures like a fetus within burger buns or a fetus on a plate, you know and with a fork and knife, I mean people say oh this kind of imagery has immediate impact one it's against women right to abortion, you are saying don't do it which means don't indulge in abortion and two what is happening is they may have an impact but the impact is very short-lived, you know you will just withdraw yourself from a situation like this, instead if you position the entire issue or the whole issue of girl child is girl being a cherished one lady or you know doctors for daughter something like that probably the impact may be little slower, but it will be long lasting because you can connect with the impact, also we need to understand that sex selection is not about right to live or right to be born. Because person who begins at birth. so the entire thing of, your saying of ma much mat mare is again going against the women right to safe and legal abortion, the moment you giving a life to a fetus and saying you know dont kill me or mother don't kill me. I will be useful in this way, I will do this, I will do that again you personifying the fetus giving the status of personhood and saying we are not supposed to do it. You are again going against the women right to safe and legal abortion so whenever we talk of communication. And I am really keeping my sessions small because she has covered most of the issues we need to understand the language. we use does not jeopardize women rights to safe and legal abortion imagery does not imply murder or illegality of abortion or does not personify a fetus you know talking, it's not about violence against the fetus it's about violence against the women because of the consequences and we say the consequences she can face physical violence being beaten up for giving birth only to girl children mental violence desertion bigamy reproductive violence repeated pregnancy eliminations which is what we need to understand and it's about, when you talk about it in terms of right, it's about a women's right to live a life free of violence and discrimination and her sexual rights it's not about the right of fetus to be born because we believe that person would beings at birth she has already discussed. sex selection is not about personal liberty, it's not about family balancing I think will just stop here because we really you know, she has discussed the new answers but if you keen we can again discuss or you know if there are questions we can look at clarifying them about the evolution or the entire confluence of the 2 Acts.

Participant - Madam I have query, you said that, you gave the example of satiate jay ate that in one of the district they followed the tracking of the pregnancy, suppose I am an unmarried women and I visit a, I am pregnant and I visit a hospital and they ask me ...my I-card, my data and they want to track me, whether I will go for a safe abortion. Who aspen kasha Ki selection us period me ratio bad Gaya, undone yeh example.

Ms. Anuja - Nai, yehi toh mei aapko bol rahi hu. this is against....I said it in a very negative way, I said he quoted the example of navashehar saying pregnancy tracking was done and it reversed sex ratio, whereas it completely against a women's reproductive and sexual rights, you cannot track pregnancy, it's against a women's reproductive and sexual rights, I am sorry ..

Participant-What is the best thing to make people aware? How do you ...what means should be employed.rather I would like to reframe the question, mam is a doctor mam suggested that, if the doctors are kept in supervision or the clinics are controlled then we will be able to curtail it. Mam you have been a doctor. Could you suggest, what could be done? What would be the best method? We are judicial officers. We are not concerned with it. We are not the executive officer, neither we can ...what do you suggest. Against the doctor.

Dr. Neelam Singh - yeah definitely because, I have got experience from my own practice, my colleagues and lot of other practitioner. I am from within them so I can ...i have generally seen that lot of doctors do it because you know nobody is watching, nobody is bothered so let's do it. it makes very quick money, if I give you an example ...a normal ultrasound is done for 400-500rs, a sex determination ultrasound is done for 10,000 rs wearing from 10,000 to 5000 to 25,000 anything but if i say even if it is done for 4000rs so if a person does 10 ultrasound in his clinic he earns 4000rs by the end of the day, and if he involves himself into sex determination illegal practices, then he earns 40,000 rs so can you compare 4000 per day and 40,000 per day so that is the lure of money, why doctors do it then second is a competent doctor has much more to do, he has the capability a doctor who has capability to detect the sex of the fetus in the women has lot of other capability also. So if nobody is watching he is going to earn that quick money. Which is everybody is willing to earn right and once he feels that no somebody is watching and I have a social respect. i have seen many doctors. i know of, who after certain point in time they stop doing, then what happens, this lure of money ...once the technician or a compounder who is there and ...the way the doctor is earning money and what is he doing, he is just putting the probe on the abdomen and he tells it is a male or female because he knows to determine and he thinks, if I put in this probe and i say its female, i will not likewise many MBBS doctor, i have seen in my inspection, MBBS doctors who have not done abcd of ultrasound ever, they have just taken certificate for 7000 for 80,000 Rs for 2laks rupees, they have bought the certificate from doctors because you know law was permitting, but hopefully the law has changed and now we have prescription of standards of qualification no MBBSS doctor will be able to do it. one has to undergo a MCA recognized course in medical college for six months and then only one will be able to do it. It will be implemented from January 2017....*No it has to be completed by 2017 ...Jan 2017* people will not be registered...the doctors we are already doing it. and has to have this 300 hour course they can give us skill test and the time for that ...and the time frame for that is 2017 ...and any new clinics cannot be registered unless you have completed 300 hours training programme with a medical college that has been recognized by the department of medical education and research of a state government. The cost goes up, you are very right cost goes up. i will give you one example.

I will give you example of deterrence so in a city, if the ultrasound is going on nobody is watching. If you put in cases. I give example i live in Lucknow. there 10 cases in the court from 2001- 2011, the sex ratio of Lucknow declined by minus 2 point only, right while the district adjoining declined by 20 30 40 those pointsso i have seen if there are cases in the court against the doctors the sex determination becomesthey become very very cautious. it goes the cost goes high ...this is given to a very confidential person wholot of intelligence is done on the patient who is the patient from which source has the patient come shall we do it and i tried it myself sending decoise, i got to know that if a patient says i am from Lucknow address they will not do it. But if they say i have come from hardoi, I have come from shahjanpur they will

do it. So that is how they were declining the sex ratio of the other districts and not of ...because then there is chance of being caught. Because the person, if a patient get to know that this a female foeticide in Lucknow she is going to go for abortion to a doctor in Lucknow itself, and there is fair chance of being caught. So that is how. So deterrence has a big big role and if a doctor is caught, you know the act says that the punishment is suspension of his or her degree for 3 years in first instance and then permanent termination of a degree. This is too highso i think implementation of the law is the answer because right now what's happening out of this layout this old machine of a doctor when new technology comes in the high resolution machine the person who is earned lot of money will buy a high resolution machine. This machine will go to a quackhe is going to do can....doctor whom he is going to pay 20,000 -30,000 50,000 Rs per month.

The doctor is not visiting the clinics. Then name of the doctor is there in the clinic, but this person is doing because you know he is sitting in the remoter rural place he is doing left and right, he is doing 50 cases, i have seen lines and lines of patients sitting in such clinics for sex determination. he is doing roaring business and part of the money he is paying to the this doctor without doing anything because he has given his name to be registered and health department is always hand in glove with these people and the other thing what i have to emphasize upon you ...is that you know it's very difficult to it without operationvarious stages and the result is also coming and the convictions are coming but you know decoy becomes hostile in most of the cases its very logical that they become hostile. The third thing that number of cases in the court in the country they are mostly of non-maintenance of the records ...and once the case for non-maintenance is there in the country even the judiciary thinks you know it is the typographical error this just happened. Doctor was too busy. Doctors says we were busy we could not right, we could not do it. It just happened and they all get acquittal. so that is one problem because doctors are right now very confident that they will not be prosecuted or they will not have any punishment.

Dr. Anuja - you know the critical thing is to create deterrence. Like she said and, i will just give you certain examples from Maharashtra which will go on to prove the deterrence, it is actually been created.

Participant - Mam, I want to ask a question in Uttar Pradesh is the state having the largest population. But when I was checking the data we find only 169 cases. Till 2015 is there. What it reflects and they are 4000 around 5000 registered centers.

Dr. Neelam Singh- I just thrown this question to the chief minister just 10 days back. And he had no answer. no my DM is sitting my CMO is sitting so now the DM has asked me to train the inspection team so that do somethingbut that's in LucknowI have given .cd also on how to inspect and almost scanned all the cases in UP and I found out the cases were very weak.

Participant - Madam do the department of family welfare is conducting training of the district magistrate. Who are heading.

Dr. Singh - let me tell you 8 batches of CJMS have been trained and they were all done.

Participant - Mam, not judicial officers. I am talking about the district magistrates.

Dr. Singh - District Magistrates, No

Participant - Who is acting as appropriate authorities?

Dry Singh - district magistrate are acting as appropriate authority. There one training was kept but they never came. They sent there representatives. Anybody would come and will get it transferred.

Participant - Mam training us will serve the purpose, but if we don't receive any complaint. How would we act there are only 169 cases in the whole UP. \

Well they are contributing to the 1/3 of the female fetus elimination. In the country.

Participant- So we need to have training programmer of the district magistrates at by the department of family. We advocated with them, we kept 2 meetings. But you know in absence of the political unwillingness I would say, the district magistrate never turned up 2 3 just came out of 75 districtsbut we some trainings were done. Likewise now the elections are coming and since these issue was there and I directly. I asked the question from the chief minister now the district magistrate are calling me that you train my. SDMS because they are also delegated the responsibilities. So I think its happening and this is a valid question about Uttarpradesh.

Mrs. Gulati - I just wanted to add to that the entire deterrence come. you know when actual action is taken by the appropriate authority in Maharashtra say for example we have 79 convictions with 89..doctors convicted under 79 conviction and relatives because it also calls for that but more important is that once charges have been framed like she said the names of 50 doctors have been suspended for a period of 5 years from the state medical council and 9 have been permanently removed. So that actually went on to creating a deterrence. The second thing is that you know it a lot depends really on the executive to implement the act. Right and the entire thing here came from. While we all know and understand appropriate authorities are to go and inspect the clinics on a quarterly basis that wasn't really happening so there were crash drives taken up in Maharashtra and as part of first crash drive actually 108 cases were registered. Infect I would always say you know. I think someone said talking of the case the voluntary health association of Punjab case. That she talked of she said that we need to actually do a listing or mapping of centers. i was in Bihar a little while ago and after this thing came up we realized that out of a total of about, you know not too many centers there 130 centers where not registered. Immediate...

Can I add one thing I have mapped roughly 30 districts in up and the rough estimate that N number of centers registered in a city roughly 10 -15 % are those who are not registered. And not under the purview of the act. Because they are not known and the other statement, i want to make is all the, all of them these centers which are not registered the machines are mobile they come from some registered center. They provide service and it is all in the knowledge of health department. Most of the times out of 10 9 times this issue is in the knowledge of health department. It runs with their protection. infect a lot of new things have been introduced in the rules, say for example she said somebody is sitting somewhere and somebody else is doing sonography now there is a new rule which says that the doctor cannot be associated with more than 2 clinics within a district the name and the timing of the doctor has to be put up. So these are all things that have been introduced to bring about that little amount of deterrence. To enable better implementation of the act also portability you know. Portable machine is it's very clearly been said cannot be taken out of the premises where they are registered.similarly the issue of tracker ...keeping the images preserve ...i just visited Rajasthan for 2nd half years this tracker was put in the machine nobody has come the tracker wasn't even functioning there was case for prime ministers award in Gwalior the district magistratei was the domain expert, I inspected I stayed in Gwaliorthere was no evidence that the sex ratio has improved while ... I have done so much and there was noeven in the doctors ...after the meeting with the doctors. One of the doctors who was the head of the department in the medical college she called me and she said

madam there are doctors who have put up 2 machines. One machine is in the knowledge ofand the tracker is put in, they have another machine at home which doesn't have a tracker and which is not registered. I said why you didn't say in the public. She said no what do i have to do with them you know you have to...you need lot of courage to say this.

Mrs. Gulati-and technological options are always technological options are

Participant: But we can regulate the manufacturers, isn't it covered within the act. We can force the manufacturer to add the biometrics and it is not too costly. Jackal her hospital me hazard ke liye laga hota hai. Aapke clinic mei bhi hoga.

Dr. Singh- My point is if somebody is not going to observe that biometric, and if they go and say everything is fine. The point is when we inspect go, we find out 10 clinics we visit. We find 6 clinics are violating the law once they visit 904 clinics in UP and nobody is violating the law. How is that possible? So it is total willingness.

Mrs. Gulati - most of these technological options are not full proof and they can be tempered with like she talked of the active tracker and UNFP commissioned a study and i just happened to go to feed to take a look and you know the active tracker was to be connected to the sonography machine with a sticker and okay the sticker is there and i was just sitting around when the study was. I mean when they were interviewing or talking to people and suddenly i looked behind and i find the same sticker at least 12 of them lying under the sonography machine. If i need to do sex selection, i mean when there is somebody coming in for inspection i will put those stickers when they go. I will just remove it. I mean it had a gaps system it could track where you are taking it. It could do everything. You know we can put in as many technological solution but unless there was a really a change or reversal in sex ratio at birth. You cannot say things were.

Now we have a case in Jabalpur high court, okay in Jabalpur high court a doctor has challenged it in the case now the state of Madhya Pradesh filed saying that device is good why because the state of Madhya Pradesh has very influential district magistrate so who have used the device in Gwalior Indore etc. who are very influential so the government of India few years ago said you cannot use government money. Government of India funds for doing these tracking, i mean this kind of device. So what did the influential officer in Gwalior in Indore do they got state funds do this fraud and now they are filing a petition. They have filed affidavit in the Jabalpur high court saying that this is very good device it is very useful now the government of India is filing another one, it's just exactly the opposite. So what i am trying to tell you is so any technological suggestion. Not only are possible to use. But you will have the just like thejust like the doctor trying to. You know challenge the constitutionality, you have a large number of judgement right from the Bombay High court which is supporting this fraudulent device. So please remember that the when it comes to technology the presumption is any technology is good. Okay which is not the real reality and in a context where like in Maharashtra you had convictions without use of this fraudulent devices.

Mrs. Gulati - The implementing authorities fear. The implementing authority feel that task is done. So they don't have to go in for inspection they feel that technology will take you know take charge of everything and that's not true. The moment that happens then there are more lapses or more violations. I mean we need to be really careful about use of technology to do this. Instead, infect probably audits of your forms and other things would really bring out clinics which are violating the PNDT Act.

Participant: One of the grey areas in the act or implementation of the act is appointment of the appropriate authority. I am from Maharashtra you are praising lot about Maharashtra. There are at least 10 government gas which are appointing different persons as appropriate authorities. There are revenue officers. There are civil surgeons. There are medical officers from municipal corporation so all these person are creating the maze. So don't you think that there should be uniformity in appointment of the appropriate authority across the India? let me tell you one thing the reason why revenue officer were appointed as appropriate authority and this was done around 2003- 2004 was that it was believed that since appropriate authority were medical professionals they would not take actions against doctors, anyone from same profession. And that's why, to begin with Rajasthan and Maharashtra were 2 states were non-medical appropriate authorities. And now i understand district magistrates. UP me chi hai. But yes there was an issue Nan herd there were lots of problems. I don't know about that one district but in a lot of ...now again there is one Gr which says, you know it's clarified everything that's one thing.

Now still it is making a lot of confusions because I have discharged 16. I have given discharge in 16 cases. there was16 cases by one lady and she has been held, she is not the appropriate authority and it is judgement by the Honorable High court so still there is lot of confusions now there are ward officers in corporation areas.dr payal chaubeys case that is famous.

Ms. Anuja Gulati – It was as recent as December 2015, there was a overruling saying Ki kon appropriate authority, woh abhi aaya hai. So you know that is there. You know, yes these things as you implement an act. You evolve. You know. The one big thing that came up was doctors will not take action against doctors so let's appoint revenue people but i still feel that if there is case coming up with anybody who says has been appointed and there is notification in the official gazette the case should be really looked at.

Participant - Sorry to interrupt you, but from judicial prospective once the act says that...sir whenever there are penal consequences we have to go for the strict interpretation of the law and when law says that no court shall take cognizance, then we stop there and we think for a while on that particular thing. There must be uniformity across the India in appointment of the appropriate authority. madam last question, I would like to say...from this session you said that PCPNDT aggressive projection of that particular act eclipsed MTP Act, what you are trying to say ...the right of safe abortion of women has been taken away, indirectly due to this PCPNDT act, what suggestion, I would like to give for these particular,

So I think implementation of the act in true spirit is important because you know both the acts are for the preserving the rights of women and discrimination issues, don't you see that there are unified act would curb this problem, I think we took 40 years not to understand MTP act we took 20 years not to understand PCPNDT Act and we come up with 3rd solution we will take another 60 years to understand so I think as the Act there are beautiful Acts....in the rights spirit.

Ms. Anuja Gulati - And one medical critical thing is not use terminology that is compromising on women rights to safe and legal abortion, because that's where people okay ...strictyou know we use the right kind of terminology then there is a difference. There is thin line. But we all know there is thin line and there is...

Participant - Honestly speaking madam for the first time we understood that it is now just eclipsing the MTP act for the first time, I understood because I have given judgements in 20 cases, but for the first time I realize that what you are saying that aggressive projection of PCPNDT, because every time they are making a projection of fetus and something at fork and something knife is given there.

Mrs. Singh – So what is happening right now they start ingest this drug, they take this drug and then they go to a doctor, then doctor has to terminate the pregnancy so I think controlling this drug which is available over the counter is something which we have to take care of. The other ...submission of this group is that. Mera ek issue hai controlling mei kya hua in Maharashtra when somebody was ...logically or really wanted to use a drug it was not available what would be pharmacy do they would saybring your prescription, yes it's a schedule x drugs, you need to take it with prescription, you give your prescription and triplicate ...give your name and address which again go against women's right to confidentiality against the MTP act, so one needs to also ensure that overzealous implementation of one act ...no but*But anuja i have seen as gynecologist, i am speaking, i have seen patients who come bleeding, the women is hardly able to because you know she has bled a lot. These are illegal use of these drugs by anyone, you know it is.....second trimester pregnancy is also there. We have to you know, we have to impose certain standards, certain standards we have to do something. Hand those are also there so i think...so that's why we are saying we should strictly for sex selection and declining sex ratio which should strictly implement PCPNDT ACT and we should leave MTP as it is. And i am not saying there should not be implemented in the interest of women. It should be ...my other humble submission with this audience is that whenever there is a case of non-maintenance of record, it should not go as acquittal, because you know doctors are very confident, non-maintenance of record we will get away. Our vakeel will do something and we will get away because it is very difficult in most of states non-maintenance of...and mostly the cases is they are of non maintenance of the records....if you strictly do medical audit ...i can do a audit sitting here in this for clinic and i can tell this clinic is indulge because you know there is lot of evidence, which can be generated just from the basis of that record that the clinic is involved in sex selection and if a clinic is there ...very clearly the ...there is a full bench judgement of the gujrat high court suo motto v state of gujrat, which says that non maintenance of form is not merely a procedural error but an independent offence that needs to be tried under section 23 so very clear ruling on that, yeah absolutely .*

Session - 4 (SE-6)

Roles and functions of Authorities under PC&PNDT Act

Resource Person – Dr. Sabu M. George

Dr. Sabu M. George - First of all we missed Varsha because, Varsha is one lawyer who was member of the satara district advisory council in 2003. She took in interest in the law so we spent many years in the Supreme Court trying to get the court activate the implementation. But we found one lawyer Varsha did wonderful work at the district level initially and later at the state level. Today if you have 70 convictions she played the most important role, unfortunately we have hardly any other varshas in the country and so when you had asked saying, why are the civil society is not doing so its not only the failure of government what we are dealing with, we are dealing with the failure of the civil society, you know, of course the medical profession failed completely that's why we had to have law because ethics would not allow discrimination but there is so much money in this.

Now I would hear this is session, I would definitely require your cooperation because some of you have lot of experience some of you have view these sections. I would definitely seek your participation in this. But before I began I just want to share some simple facts and you know we have more thanwhy I began with this is because, you know India has its own distinctiveness, now we more than 200 countries in this world.

Though more countries have more men than women. Do most countries have more men or women? ...anybody else think more women or more men in the world. Are there more men or more women in the world? Hand, nobody wants to sir ...more women in the world anybody else has to say anything....more men ...now let me say...mam. What do you think more men or more women in the world? More women ...handinfact there are more men in the world, okay and most of the 200 plus countries most of them have more women. the only exception is the Indian sub-continent that's India Pakistan Bangladesh Nepal Afghanistan whichand china these are the major countries because all the other continents have more women except Asia ...Asia because 2 big countries ...because India and china they have so much discrimination against women so therefore, more men survive socially, if there was no discrimination then in India and china you would have had more women and you would have had more women in the world so why I am saying this because we all believe in the country you know i go to lots of places in the country to talk about sex selection and wherever I go almost everywhere people believe the world is like India you know ...I think which is important to realize so because there is so much of discrimination and it affects in terms of survival do women live in India longer or men live in India longer.

Are you sure. Do women in India live longer or men live longer, menare you sure...anybody hand yeah ...by about late 80s we have seen, till 1980s it was men was living longer, but ...so that has been one of the remarkable changes in the countries demography, for the last ...since 1870s when the British started doing the census they found Indiathey were always finding more men but the survival has increased of women over the yearsand by 80s we have seen the women living longer and like for instance in the most recent data Kerala women live 5 years longer than men, okay so what I am saying is that so though you have more old age homes for men etc. etc. so the social discrimination still continues, so in the west like if you look at the US etc. or any western countries you will find last 100 years life expectancy of men have improved women have improved but the women have always lived longer than men in lastnow I would come to the recent so if you look at age of 100 at the age of 100 do you expect to see more men or more womenat the age which is called centenarians 100 so if you look at Sweden, or if you look at china or look at India would at age 100 you would find more men or more women because lot of the men are out in the gulf. So of course there is migration of men and women but many more numbers of men work outside. So overall you might see morebecause census will only be count over living at that point in time, who is present in that time.

No who were present in that area, it could be somebody who has come from Bangladesh you will count, okay now at birth are there more boys or girls born. okay anybody else, there response was more girls, but actually today right at the beginning we started with presentation which said that, you know, nature produces 5% more boys...okay, it could be ...if you look in terms of boy by girl it is 105 boys per 100 girls while if you look at the other way it is 95 girls per thousand girls ...and these are biological co....essentially the same everywhere in the world. you know there are very minor differences, if you look at black population in America, after many decades they realized the proportion is you will little moreit's less masculine, like if you look at ...if 105it will 104. Something for blacks these are north African...or west African blacks ...so what i am saying these are all very ...you know physical constant.....water boils at 100 degrees at normal atmospheric pressure. so like physical constants these are biological constants and but generally not understood you know generally not recognized because we believe discrimination what we see in our country is what is everywhere and then this is because in the early first few years of life mostly and in the early life boy mortality is 30% higher okay so then it becomes equal, is that clear but if you look at in government programmers, if you look at the go to the health centers. you go to AIIMS you will tend to find more boys coming for treatment, now even though you know ...like if you look at you know nurserieswhere this premature and requiring special care at the birth, today our country about 60 - 40 is the attends

special care in the government hospitals, you know we have about 7 lakh children who are being, put in nurseries in about 600 centers in the country, so one in three girls are not going there, so okay what I am saying is so discrimination is not only before birth at birth, if you require nursery care one third of girls will not reach there.. Of course here it is deliberate in the sense that there is a lot of profit motive for the families I mean sorry....for the doctors do these.

So with that let me come to the powers and so this you know this law has certain because it deals with medical things so it has certain medical aspects to it. and one of the major things is documentation, now this you have to understand that is documentation is so fundamental to the implementation to the appreciation of why documentation is important and doctors would try to tell you generally it is only a typographical error and things like that now there are many similarities to this to the income tax act to various other financial acts, you knowbecause here in the income tax if you don't declare, because most of it is self-declaratory okay so, if most people will say that don't file the taxes. then our country will be bankrupt just like Greece and other countries so what i am saying is that so documentation is very important here and if you look at there is provision here in right at the beginning where it presumes if the doctors does not keeps the records it is presumed that the doctor is doing sex determination. So please remember that the presumption clause is very strong. right from the2002 onwards December we got the act strengthened since then the doctors have been trying very hard to get all these you know know strong clauses removed because particularly in last few years as in Maharashtra doctors have been put in jail. You know we had the first conviction in Haryana Faridabad in 2006 because in 2001 one year Haryana was quite in serious in implementation of the law. so what i am saying is that, so please take this issue of documentation very seriously will come back to that little later and the presumption that the women.

The pregnant women is ... i think that's already covered before is that clear. there 2 crucial aspects one is documentation and like most acts you have lot of definition are there right at the beginning in terms of what is fetus what is sex selection what isin fact we borrowed the definition of sex selection from the Canadian law when candy has drafted this prohibition of sex selection, i mean they hada law on genetic technologies so we borrowed the sex selection from the definition of sex selection from candy so the whole structure of the act is based on audits, you know that is any medical procedure in the west is audited that is whether some unnecessary surgeries being done and audits are very important for the looking at the whether the surgeries required whether it will benefit patients, okay so therefore you know so this might be in your criminal statute but it has a lot of basis in terms of audits in how it is done, and why I say that because you know ultrasound of pregnant women is the only outpatient procedure where you keep records in the west there is extensive documentation, where you go to the national health services or you go to the private practitioner in US they have to keep so much about your records okay because records means lot of money, lot of protection for the both the doctors and the patient. Okay so please remember that documentation is integral for the wellbeing of people and for the protection of the doctor. because, I today I was talking to one of the judges from Haryana who was bringing to me that the cases they have cases in kurkshetra I said in the last 10 years I have been to so many times to kurkshetra because we have had very well know case of doctor being harassed they have to go up to the High Court so the point here is that documentation is what will protect a honest doctor and documentation is what will ...also provide you the evidence for a doctor who is misusing sex determination. So presumption i think you already got it that is madam also said if the accusedif the pregnant women is made accused you would really would not get evidence to convict him. A let us start with section 17 as of the act, now before that. You constantly see genetic clinics genetic centers. Genetic counselling center etc. because by 60s, by 70s the first technique of sex determination was a genetic method, is that clear. See we had the act in 1988 in Maharashtra. And 94 at the national level.

Okay so we had the first Act in 98...1988 in Maharashtra. 1994 we had the act in the country except J&K. Joke we had to go the Supreme Court to get them to the act in 2002. So the entire 94 act was only looking at the fetus. And it was only looking at genetic methods, though we had ultrasound in the country by late 80s, but the 94 the parliament was not convince that ultrasound should be covered. So basically what was looking at genetic technologies so in 2002 when we amended, we included ultrasound and made it obligatory, to ensure that every clinic gets, every ultrasound clinics gets registered and also all the other methods. That is before conception embryo selection. is that clear, so basically so what we have seen over the last 15 years after the amendment is that, you know all potential technologies are covered as of today and the way we have drafted we hope it will that ...generally any medical act is limited by technological development, but here we hope at least that's not there, but bringing ultrasound, is been one of the biggest changes in the law from 94 to 2002 so pre-natal become pre-conception and pre-natal diagnostic. PNDT become PCPNDT so sub section 17 a powers of the authorities an appropriate authority which in some places are medical doctors some are....have tremendous powers they have more powers then the police you see, so almost powers of civil judge, so they can summon anybody, get hold of any documents issue search warrant.

You can go inspect clinics so because you have to really provide evidence and evidence comes from looking at the machines looking at the records and all that. So when if you find a weak case it is very deliberately weak here. Please understand that like we go for inspection around the country and sometimes cases came before the court it's not what we have actually found you know, it's actually what is present. and of course again let me tell you recently about two months ago we went to south Indian state and when they ...the case to the judge the judge and that particular big city it did not know there was something called the PCPNDT ACT okay so remember that we are dealing with a very new act we started filing cases only in the last 2001 onwards and so far so few cases you know. So few cases like you had raised so few cases in UP I remember three years ago when we go to question. we were able to file 30 cases there so suddenly from 30 the cases in UP doubled you know to 60, so compared to what it was 3 years ago 170 is very respectable number for UP given recent history but again we are barely getting maybe even.

1 percent of the cases are coming to the courts you know we are you know compared to the kinds of criminal offences happening it is so few coming in to the court, and again that reflects our failure like for instance. I am coming here after more than 10 years. earlier we had 2 sessions in 2001-2005 year, now of course when i speak to people who are having more they saythe academy says hardly any PNDT cases why should we have training, you know so therefore what i would request you all of you is that please make sure that yes there are few cases but whatever cases come to you whenever you get opportunities to look at it because everywhere things are you know expanding, you know in terms of you have you know, more and more ultrasound companies coming and more and more sales happening. you know, 15 years ago we were talking about few thousand machines today it is several times that which is being sold every year, okay like in the west....for instance...like in the US UK etc., there is very little potential for sale of these equipment's because they are saturated with technology and very rarely do you know innovations and technologies come like ultrasound and therefore market like India is very important for them. and like even you look at big cities in up you know the first ultrasound came in Lucknow and Shahjanpur in the 80s, you know, even 10 years ago when they went to places like Jaunpur almost all the ultrasound machines were directly in city of Jaunpur now three years ago when I went I found every tehsil of Jaunpur has got several ultrasound clinics. so it is spreading and therefore the misuse is also is increase, is there any question on that so section 18 is on registration of the this thing... now registration is a very simple elementary thing of the legal framework because if you don't register you can't do anything. And there again Neelam Singh said you know large parts of Madhya Pradesh till even today not all the clinics are registered so even simple

...the most elementary objects of law have not been implemented everywhere though we find very significant improvement, you know like when we go for inspections almost every state we find the first clinics were registered around 2001 because that's when the supreme courts started pushing it the very few states which have done registrations Tamil and is one of the few exceptions where registration started before 2000, Karnataka is another example.

But by and large certificate of registration, sir can you read that section section 19, yeah.....section 19(1) - the appropriate authority shall after holding an enquiry and after satisfying itself that the applicant has complied with the all the requirement 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 register certificate of registration in the prescribed form jointly or separately to the genetic counselling center. Genetic laboratory or genetic clinic as the case may be. Is this clear any query...question see some places you know the authorities delay giving you certificate. so that's the misuse the money to be paid you know so therefore what I am saying is that, so that's again something which you had to be very cognizant in terms of cancellation of suspension, that again is a standard procedure and you know ...and the authority has got tremendous power please remember that they need not even issue a show cause notice, normally in most laws you have to be heard, but in this case you have a in public interest the authority can decide to close down a clinic. It's a very strong law, because we do find you know there are judgements like we go to Andhra Pradesh high court they not understood at times the strength of theokay they have not been given an opportunity to be heard.

So what we have seen over the years is that even the authorities do give them a chance you know because once you collect document the evidence. once you look at the machine then you have a very solid case, today morning sir you raised the fact that you know, if you give notice...you'll lot of this is missing not really if you do the inspection and then and again see what you need to remember it is the ...not everybody will do misuse see if somebody does one ultrasound in a week or one ultrasound in a month for sex determination they won't going to make much money it is people who, if you can identify the people who do the large numbers and large numbers are only possible with widespread people knowing, you know like, I was asked a question today afternoon by one of you that okay the case came before them and the unauthorized person was saying that he was only applying gel he was not doing ultrasound. he was only applying only gel, now in a small town, like in the city of kurkshetra we do know you know unauthorized people right in the heart of the city doing ultrasound you know, now this was the peripheral what i am trying to say is that people all know what could ...who does ultrasound who does sex determination it's very easy for u to even check on you know on the you know in addition to what people, what kind of documentation is produced to even find out what's happeningIs there any concern on that? Pardon me. No when you look at what happens sir, see like...see remember what we are dealing with this when ...you deal with corporate and Titus the biggest the biggest institutions okay so they are very powerful you know like. I remember many years ago. you know when i was brought back into the committee in 2011 we went and inspect ...so the government of India people were very disturbed, you know how could you go ...I said obviously you put me on a committee i will go to wherever, I think is important you know.

So therefore what I am saying is that you know so collection is one but, like i was telling the judge from Punjab. you know in august we found that thousands of inspection are been happening but they have hardly any cases being filed so on paper there are lot of things happening but in practice there is no deterrence virtually there are no cases are filed, in Rajasthan we have several 100 cases being filed but we have judgements of the high court saying that you go and settle the cases with the parties rather than coming to the court. This is a non-compoundable non-cognizable, non-billable offence. how can you go and settle with the parties directly so what I am trying to say is that so this is part of thethat you may have a good

act but if the authorities at different level whether it is medical authorities who are supposed to be implementing it or whether it is the judicial authorities, were supposed to be listening to it don't apply their minds. Then of course the impact will be the same. like we yeah today one of you was saying that okay what is the use of training us you know but you know the whole idea is to even if you get cases or if you are aware of what is happening like you know judge from richer was saying that he of course he knows that it is happening, yes we know last 10 years it's been happening now if the ...it's a cultural capital of Kerala so we don't think we only think I remember in the 85 and I went to the village ...in Tamil and I heard about female infanticide, but we all believe that you know only bad things happen in north India.

South India is good you know, so what I am saying is that it has taken many mint years for us to find what is happening in Tamil and what's happening in Kerala. etc. that the whole country in many ways similar when it comes to misuse of technology because the medical people are very similar in their mind and the other thing about medical profession unlike many other profession, either judiciary or engineering or anything like when I studied in IIT, my class had 5 % girls so unlike engineering or unlike medicine or you know ...sorry medicine has got huge number of women relative to other professions but still when it comes to ethics when it comes to protecting girls we don't see the same commitment to you know so that is why the law becomes more and more important. because the more unethical the doctor is the more money the doctors make and so much confidence you know that nobody will come. Recently we went to big corporate hospital in Tamil and so they were asking us. How could you come to us you know we are so big you know. Oh inspection, basically we look at records. Pardon me,.....okay now let's see I was referring to inspection as a member of national inspection monitoring committee now this was setup,.....this was setup in 2002 because the supreme court endorse this because both the government of India and the court felt, you know they were only looking at the reports....tautly reports were being submitted by the district and the states they were not telling what was happening on the ground. So they wanted an independent verification of ...and that is why though this is a national lack actual implementation is done at the district level and the state level. so the court endorsed this idea of a national inspection, so when i am taking about mine inspection is based on NIMC, But wharf the law expects is inspection by the appropriate authority we is at the district level because implementation is largely at the district level, though some states have formed state inspection monitoring committee also. But again like in Punjab, you have state inspection containing of 20 people or more you know and you know you have 1000 of inspections by the districts, but practically no intention to find anything to find wrong here. and you haveeven today 10% of the girls are eliminated which means we have lakhs of crimes of sex determination, sex selective abortion, even today happening in Punjab you know, okay ...section 24 presumption we have dealt with that before is there any reason we have to read that or understand that, doctor Shalini also had talked about it. Section 27, you know 28 both what is cognizable non billablewe have had discussed that right. Then come to chapter 8 section 29 on maintenance of records, okay so again like when you sign a check.

You cannot say that you made a mistake you see, when you file a your tax documents they cannot be any mistakes there...you know...because there is a penalty for that so therefore maintenance of records is very crucial and that is what doctors don't want to keep. so you can look at the physical records like form f, you can look at the machine because you know where they store images or other patient information you can look at registers you have an ultrasound register which they have to keep record all ultrasound of pregnant women... i remember in Khammam in 2002 we started working with a district magistrate, the first district magistrate we worked so there were hardly recording, doctor were getting 100 patient he was hardlyso what he did was so what he did he just posted ...and counting pregnant women coming into the clinic . so what i am saying is one doesn't need sophisticated electronic gadgets, one doesn't require, you know many simple elementary things you know versa can tell you how you know.in so many ways, she build up

evidence just basic locking at you know what records that kept. And since the presumption is if you don't keep records the doctors doing sex determination it's for the doctors to probe again the doctors to prove that everything is fine in those circumstances it is not for the prosecution to prove that they had committed.

Is there anything on maintenance of record see when I have gone to you know we have many judges from many different states etc. Tripura and Meghalaya I have been to every other state from where you have come forum and you know. you are always surprised where ever you go that people are so casual that is you know you walk in to a clinic you know they may report 5 or 10 ultra sounds done in the entire month in that particular time we are entering into the clinic we will find 40 patients or 50 patients you know pregnant patients so what I am saying is that the evidence is so overwhelming you know. Mam is there anything you would like to say. So far my understanding goes.....till now burden lies on accuses person to prove the innocence. Isn't it, yeah but expect in this question of record keeping because the law is constructed because they ...the doctors don't practically keep any evidence in our country. any records like if you go to UK, or US the kind of record keeping if you go for cold the tremendous amount of record keeping for various reasons for protection of patients for protection of the doctors because it is a very litigant....like US is very litigious so for the first thing an Indian doctor goes there is to buy a health insurance. Why protection ...you see because so what i am trying to say is there is an incentive for the state to ensure protection of both the of the doctor as well as the patient,.....but this entire interpretation comes from section 24 itself, mam would you like to.

Dr. Shalini - presumptions under the act, section 24 as I have already said if you read it. what it says is that if a pregnant women goes for sex selection or sex determination then it says that notwithstanding anything contained in any other law for the time being in force, it shall be presumed that she was compelled and her relative or husband or mother in law who has compelled her they will be the accused so here when you are making the pregnant women as an accused the presumption will arise not otherwise. So for other accuse are concerned there will not be such presumption clear. So for as pregnant is...and so for as record keeping is concerned that is you will have to go through section 4 sub clause proviso that is provided section 4 and proviso sub clause 3 proviso. Act mandates that certain record is to be maintained and that which is the record. Which is led down on rule 9.

And section 29 also. So the proviso says that the person conducting ultrasonography on a pregnant women shall keep complete record thereof in the clinic. the use of the word shall implies that it is mandatory provision, that is what held down in so many of judgement which we will be considering or tomorrow so it says that the person conducting ultrasonography shall keep complete record thereof in the cynic in such manner as may be prescribed. Materially subsequent clause which says that any deficiencies or inaccurate found therein shall amount to contravention of the provisions of section 5 or 6 unless contrary is proved by person conducting ultrasonography so proviso to some extent shifts the burden as we all know the presumption always shift the burden to some extent on the accused like section 139 of negotiable instruments act. whenever cheque is issued we say that it is presumed to issue for the discharge towards discharge of liability here also it is said that when you are supposed to and bound to maintain the records and if you are not maintaining and some deficiency or inaccuracy is found in such record then unless you explain it contrary why it has happen unless you prove otherwise it will be presumed that you have contravene section 5 and 6 which are the material section for which the punishment is prescribed so these presumptions is not in every case this presumption is only mostly in the two cases in respect of maintenance of record. if it is maintain it will be presumed that it is contravention you have committed the breach of section 5 and 6 and thereby committed the offence, of course whenever there is presumption there is an opportunity for you to ...for the accused to rebut that presumption.

Every presumption is rebuttal so accused can rebut that presumption by proving contrary thereto otherwise it will be treated as breach of section 5 and 6 similarly in case of section 24 also the presumption is that the pregnant woman has not gone for sex determination or sex selection of her own accord voluntarily but she has gone there being compelled by someone. If appropriate authority wants to say or anyone else wants to say that no she has come on her own then it will be for them to approach because here material aspect is that whose pregnancy is terminated that women's pregnancy, so she knows and why she has gone, why she allowed it to happen to her. So it means she has gone there voluntarily otherwise these things would not have happened that would have been said therefore act has taken proper care and precaution to see ensure that she is not unnecessarily made an accused 2 aspects are there one aspect is social conditions as I said they are such that no women will take these decisions voluntarily of her own accord, unless she is persuaded compelled or unless because of the social conditions as such she may be.... I mean you know compelled to take like as I have said mother in law there is ...prospect of husband marrying second time. Deserting in such situation. She might have taken that decision and therefore the presumption because of the social condition another aspect is that if she is made an accused. In one case relating to Punjab which we wish to always discuss she was made such an accused. And then it was held that, no evidence available because she said I have not done it. Then how to prove it or she may say. I have done it on my own. So it was very difficult for the prosecution to prove it. So always remember this presumption, exempts the pregnant woman who is the main culprit in that way because she is allowing her child to be aborted. But because, why she is doing it. That is why the legislature has taken into consideration and therefore the presumption is in her favor it would be presumed that she is compelled, so far as record is concerned. It is his bounded duty to maintain record because the record will show us whether this ultrasonography was done for detecting any abnormalities or for detecting sex. As we often repeat that this act does not totally ban the use of ultrasonography or diagnostic techniques.

It only regulates for which purpose for determining abnormalities in the fetus so when such ultrasonography or all these techniques are permitted by the law. How we can ascertain whether we misuse or not use properly. That can be ascertained only by way of maintenance of record and therefore her written consent should be there then rule 9 if you see, I mean there are various forms to be kept on which, from which detect that for which purpose the sonography or these techniques were used and therefore it is held that if such record is not maintained then it will be for the doctor to ...the burden will shift on the radiologist sonographic or whosoever who has not kept that record to show that, unless contrary is proved, if deficiency then breach of section 5 and 6 and it is mandatory so he will be liable for the consequences of the punishment so presumption is only shifted the burden but we are still under the penal provisions itself initial burden always on the appropriate authority that is the prosecution only due to this proviso due to this presumption to some extent we are making ..exceptions where in such cases we will say that record not maintained there is deficiency there is inaccurate, it means you have breached the provisions of section 5 and 6, therefore liable for punishmentkindly we did not get youif initial burden is appropriate authority ...that means prosecution ...then whether oral evidence of all the list of patients means women's ...that is relevant in the case.

Nai you know what we have to see. Appropriate authorities evidence, I mean mostly the cases are relating to maintenance of record, till now very few cases are there where actually we are convicting or trying the accused for committing the breach of this section 5 and 6..in the indirectly like conducting ultrasonography, disclosing sex of the fetus and then aborting. These cases are very few. Those cases are only in cases of decoy patient like under prevention of corruption act we send someone as a decoy and then we come to know that ...them hai whether he has accepted the bribe or not. Similarly such decoy cases are conducted where the decoy patient like a pregnant woman is sent as a decoy then she gives the money ...then the

accused accept the money then rights I...or Monday Tuesday or he discloses that it was ...and then she will not go for again, no when she is pregnant she will not go for abortion but the fact is she has conducted the sonography test for the determination of sex. It is sufficient to attract the provisions of the act and thereafter again he has disclosed the sex of the fetus so he has attracted. such cases we have conducted therefore pregnant women as such is never made the accused because these cases are very rare where you will find that actually sex selection or abortion has taken place as i said the women who has gone there i mean she has gone there, well in this case voluntarily because she is persuaded compelled so her consent, she will never know come and say that it was against me. Because she has gone there so those cases are absolutely ...that women have went there and subjected to sex selection then subjected to abortion also on that ground. Those cases are very kneel...absolutely no case so far we have been able to register because women who goes there why she will again come and say that no it has happened. And it was against her will it will arise only when such case goes before the, i mean women goes to make complaint who has been subjected to abortion so far no such case not a single women will go after going through all this that i have been aborted only in one case as i said appropriate authority has made her an accused because they on there, investigation what has happen she went today she went to the clinic she got her. She was running the 5th month of pregnancy.

She went to the clinic she got her sonography done. sonography, i mean that was the subsequent on that very night she was told that baby is fine everything is fine on that very night she had miscarriage which can be called as abortion because it was induced miscarriage and therefore the doctor was prosecuted saying that it was because of his treatment because it was detected that the fetus was of female child, this miscarriage has taken place so that pregnant lady was also made an accused in that case, then pregnant lady said that when she was called and her defense was taken then she said that it was a natural miscarriage he had not disclosed to me them sex of the fetus so crucial evidence which was of the lady. who could have said that this doctor has disclosed me that this was my fetus was of a female child that evidence was lost because she was made the accused and ultimately what happen she threw her hand because she was made an accused she said no doctor has not disclosed to be anything on the contrary doctor said that fetus was very hale and hearty and all of a sudden we don't know how it happen the miscarriage or and therefore i have not.... i mean i am not responsible, doctor is also not responsible no one is responsible now it was just you know logical thinking logical conclusion that in the afternoon she went to the doctor and she had this sonography and in the night she had the miscarriage how it happened so it was the you know reverse thinking logical thinking so inferential thinking that as she must have been disclosed that it was the female fetus she might have gone for the abortion of that child and therefore she was prosecuted then when the case came before the court said that she is not supporting.

I mean her defended is clear that she has not gone for that doctor has not disclosed to her there was no other evidence the doctor has disclosed she was the best witness, but she is not she is made accused, then court that there is natural 5th and 6th month it can happen in any case so we cannot presume we cannot infer that merely because on that day she had gone to the clinic and therefore she might have been told that there was a female fetus and therefore she had gone for abortion. so you know entire case ended into the acquittal so that was the only case where the women was made an accused and it has the adverse consequences and while she was made an accused because in the afternoon she had gone for the sonography clinic and done the sonography and immediately on that night. I mean natural person or logical, you know we all started thinking why it happens so it might be the female fetus she was told and then she went for, but otherwise we don't have the cases. i am again repeating we don't have as on today also the cases wherein actually the child was aborted or because the sex was detected sex selection was done abortion took place and thereafter the doctor or the women or her relative are being prosecuted. no such cases are coming, whatever cases we

are having are only of decoy patients where we send the decoy patient knowing that this doctor is indulging into these practices and therefore the voluntary organizations like Versa Deshpande who is conducting lot of activities in Maharashtra, so they send a decoy patient to the doctor and then the evidence is collected that the doctor is taken the fees from her, instead of 4 thousand 40 thousand 10 thousand and then on the sheet or somewhere he has disclosed the sex of the fetus, these are the only cases and the other cases are of non-maintenance of report because on the basis of non-maintenance of record we can catch them we can catch them because there is presumption in the proviso that if there is deficiency it means you are not, using the sonography technique properly if you were using you would have maintained the record properly, in some doctors cases the record you know on particularly showing that ...on that day, i mean several women from that particular locality on that day for sonography are coming and in that locality after one month when they took the search the women were not pregnant, so what implies that either the women's pregnancy was terminated otherwise on that day ...why so many pregnancy ...in the next month there was no pregnancy so you know this is follow-up so at the record which they found, they found that one address is written, in all the registered it shows that properly record was not maintained and therefore we have to infer now that there is breach of provision section 5 and 6 it is mandatory, now it will be for the accused to explain why the record was not properly maintained so you know this is something because it is very difficult to get the direct evidence.

Direct evidence will be only of the pregnant women who will never support who will never say anything against her, in laws or husband and if she has gone voluntarily no question of alland there is except for her testimony there will not be any other evidence and therefore we have to rely upon the record and nothing more.....any other question...normally you know punishment if you see offences non billable but maximum punishment what it is ...so generally in such cases grant the bail because you know unless even in 326 320han but you know normally it will create also against lot of, I mean we have to into consideration have the balance approach as a judge, what i will say ...if there is ...of sonography machine if there is strong evidence you know produce showing that you were repeatedly indulging like in Maharashtra there was case of Dr Mudeyhe used to ...I mean varsha is not there therefore I am taking this case, he and his wife they used to have the clinic, in lots of lots of cases, I mean women used to cue up in front of this clinic and it was a big racket conducted the fetuses removed from the womb used to be thrown to the dog, dogs were maintain for it like you know in other clinics we found that so in such cases you know considering the gravity and everything though there was no direct case as such but in considering all these the bail may be denied.

It depends upon but mere non maintenance of record. if you deny the bail at times you know it will appear to be too harsh because that is again to be proved whether the record is really not maintained, appropriate authorities has to come and show that according to this rule this record is to maintained, when we went and seize there record we found that all these columns were not filed, now it will be for the accused to put up his defense in such situation to deny bail to the accused at times may result into punishment before the offence is proved as such. So we will have to as usual we balance everything. ...but in some case nay nai, there is confusion because it is not yet clear and that's why have kept the process how the trial to be conducted and so far as the sonography machine is concerned even if the help of police is takenso far as release of sonography machine is concerned we are having a very good judgement of the Bombay high court, i mean if you read that judgement you will know that it is ...we have included in our compilation of case law, but you can read it room, what I would like to highlight in that case you know the argument advance was that, okay this some machine seized in the commission of the offence accepted but how long you can retain it. because supreme court says that whatever ...is seized in the course of investigation either by police or by any other authority, it should be released because it becomes decomposed like ...sunder

been Mehta judgement we know so it should be released so argument was advanced was ...another argument was that whether in any offence takes place in rickshaw or any offence takes place in a plane whether you will be seize and keep that property as such, so here some machine is used okay you take whatever evidence you want to collect from it like you know softcopy, etc. but now release it to me because my livelihood depends on it . then Bombay high court, our judge Rodham has held in this judgement that this is the offence of repetitive nature, it is not something which is an isolated incident will happens one time, like you know one murder one rape, nothing like that, if I release these machine to the accused he will again use it ...and 100 or more than those cases would come to the court. more than 100 fetuses will be aborted so case of such a repetitive offence which is against the constitutional mandate against all the fundamental rights of article 14 15 21, in such cases the court cannot take the casual approach court cannot take the technical or liberal approach but machine should not be released because it will give rise to similar offences being committed again and again.

That is what the Bombay high court has held so we are having a very strong case where it says ...mam what is you view ...so far sonography machine I will support that judgement, you know what has happened, if you are repeating the offence, immediately today i will release him, and tomorrow he will commit the offencemadam, the question is that he is the first time offender, he may be first time offender now at this time if we presume that he is again going to that offence, will be not be very harsh towards him ..no at this stage we are not presuming as such but this was the case machine which is used in the commission of the offence suppose knife is used in the commission of the offence, a bullet weapon is used,....madam secondly keeping that machine in malkhana in police station which is not a very ...during the trial it will ..be useless even if the accuse is acquitted that is the problem he is saying the accused is saying to me ...ki either you give to me and take a undertaking that i will not do anything with it otherwise shift it to some place which it remains safe yeah that is what she wants to say. You know in cases under the PNDDT ACT....the center is sealed. okay machine is kept at the center machine is not taken and kept at another place, center is sealed okay tala laga ke use seal dale khatam karate haiwhich is generally not the case which is donein PNDDT Act ...what is seal is the center registration is suspended and registration of the center is sealed.....see the point is that we need not even seal the center we can seal it in a row.....way i am saying so that the machine is in the PS the whole machine is in the PS, why should i do now the query is my ...my query is very specific, i know i understand....no my request to you iswhat i would request you is if you can what we can do normally we get a room closed room from the clinic and seal it in the room, and make sure that you know that the authorities also inspect periodically to make sure that is not been broken or used, i give you an example Madhya Pradesh we had a very strange case about 7- 8 years ago you know Gwalior high court was looking at the implementation of the PNDDT Act, i was shocked one district had reported saying that they have sealed the machine and kept it, okay so there is a very remote district on the border of Rajasthan, so we travelled 10 hours we reached the clinic because i knew this would not happen in north India, so we found yes the room was locked but the ultrasound machine was taken away from the window.

So what i am saying is that so you know so it is just not enough to seal but to make sure that these ...innovation that has come up in Maharashtra for this is once the appropriate authority seals the machine or seals the center is close government has said that appropriate authorities should put up board saying ki you know the machine is at center was sealed so that, people one now about it 2 the person does not say okay its lying sealed in one room i will continue to use another machine and, you know continue the practice. Like the other rooms so this is one thing that they had done. i just wanted to share, see like this very common recently when we went for inspection in Tamil and in author for instance the clinic which is already closed, she had brought another machine....so what i am saying is that....so fortunately the district

knew about it and informed us and so we did it so what i am trying to say is that my time is over we have to ...little if you have the patience then we can continueyou want me to talk what appropriate authority do.....no one min what i want to know is there are few more things. i would like to speak, if you would like to hear otherwise we canwhat would you like...okayvery quickly i will do, now before i go intoback to the Act.

See the context is very important, you know the context like in the US, context what is contested is the abortion like if you look at sitakalanti article here she talks about abortion in America, because there it is became a very political issue, you know where you know, highly politicized in terms of, if you are republican candidate like trump he was pro-abortion today if he had to win republican nomination he has to become anti-abortion ...so what i am trying to say is that ...so there several states have law which says before an abortion pregnant women should be shown an ultrasound okay, so why they want to intimidate that women before doing an ultrasound so in India, we are using ultrasound to determine sex and eliminate the girls in the US it is used. to ensure that abortion is not done so that context is crucial for you to understand andthere is reporting obligation like every district, every clinic has to report to the authority all the ultrasound forms of pregnant women, okay that's very important because so when you go inspection you would already have had record of what is been submitted, you already know how many ultrasound is been done in the last week, last month last year and when you go to the clinic you know what you see, so what i am trying to say is that this is very important, then the other thing which we find is that, any kind of which is common in many parts of the country whether its Delhi or Punjab or many other parts ...the appropriate authority finds a violation shows a show cause notice. Like if some clinics have not given f forms they...so month after month they keep on serving show cause notice, or ignoring like in Delhi you know when we did an examination of about 10 years ago shegiven us permission so we looked at all the 9 district all the 9 district at that time and we found 30 percent of the clinic where not submitting form f, okay now under the law you are not supposed to function here they should have been closed down.

So what i am trying to say basic elementary part of regulation is not...and see why they somewhat...when they give you record you are supposed to examine the authority has to examine and you know look at the likelihood of misuse etc. nothing of that happened in our country today so audits don't happen so please remember that lot of what is very strong evidence is just not even looked at here so it is mechanically people are dumping things and then you have to link it to births, is it clear, that is all over evidence today comes of the crimes of sex selection comes from the sex ratio at birth so now you have to look at hospital like you know some doctors are in big corporate hospitals are known for producing boys so you have to link the ultrasound records with the birth records, okay so none of that is being done so what we are really doing is just looking at giving registration for people to do sex determination, do you get what i am trying to say today so that is tragedy because we are really not doing audits we are really not examining records and therefore that is why we are not even getting .1% of the cases being filed for the crimes committed is that clear ..your lordship another question is there, under section 17 at the appropriate authority has been have powers in respect of matters namely, summoning of any person who is in possession of any information relating to violation of provisions of the act or rules made there under ...in this section whether appropriate authority has been allowed to record statement yes they do record ,...they conduct panchnama because they are conferred with all those powers if you consider their powers and the functions which are given to them under section 17 2 3 4 then they have been given these powers by the legislation itself, see section 17 sub clause 4 defines there functionsyou are having those an ...your lordship ...if it is not the case of sex selection it is the case of unauthorized use of the ultrasound machinethen in that case what should be measure to appreciate the evidence and to look for that a male person has been sent as a decoy patient ,...he has a complaint of pain in the stomach.....and she told the male doctor to apply the gel on dr basu was

saying so whether it amounts to violation of the provision of the act and if so doctor took the defense he was only applying the jelly so whether the defense can be taken in proper context because the doctor was also saying appropriate authority demanded so illegal gratification from them and in that case the illegal gratification was not advance to the authorities so that's why they instituted the case and that to after 8 months so when the inspection was conducted in the clinic.

Justice Shalini - it will ultimately depend on the fact and circumstances , this is the defense taken by each and every accused even in prevention of corruption act also the same defense is taken here also the same defense so it will depend upon which whose evidence you find on probable reliable ultimately beyond proof to satisfy yourself you can't give any answer in abstract as such you know what sort of evidence will come before you ...but lordship the act is for the prevention for the sex selection determination and regulation of the techniques and when the patient is a male ...when there is make patient this act will not applyno no mam the point. But please understand. see the point here is and this is the offence is that unauthorized doctor has done the ultrasound that is again a difference na but here we are dealing with sex selection ...mam please understand theyou have couple the wife is authorized to do the ultrasound but what the case put up before the judge is that the male person was doing the ultrasound ...on male patientit doesn't matter please mam understandthe point here is see listen the offence is because anbecause the person conducting the ultra sound was not authorized to do the ultra sound that is the offence no no that is the offence whether seeno but please understand the prosecution...i mean i am sorry the government authority had filed the case saying here is the example of a unauthorized doctor doing the ultrasound am i right mam ...yes that it doesn't matter it's a make patient or a female patient.

But the purpose of the act is different mam no mam....please be very clear mam the purpose of act see like. The point here is if you look at even in the us context we have seen the big mafia lords being put in jail on tax offences big mafia lords ...okay so point here is you know to collect evidence on some of these crimes is difficult but that is why one `see the point here is that see the authorities should examine what the records are kept authorities should look at what is the repetition of the institution all that has to be `put into taken into contextno no but please understandif a man does if women does ...an ultrasound on me this act would not be applicable on meno wait listenno who is conducting no the offence is on conducting ...no no wait listenno the point here is the ...when a clinic is registered there are 3 parts the place the doctor conducting and the ...so see the doctor is only the authorized person unauthorized person cannotbut the subject of the ultra sound this, if i am going for an ultra soundno please be very clear look at the madam please explain to them ...the act because it's not anybody who can do ultrasound it is only those who are granted permission by the authority can do the ultrasound it doesn't matter except the person that we agree for prenatal unless i conceiveno no mam please explain to them ...in the Delhi there is act Delhi medical counsel act ..No no ...so it is for the purpose of diagnostic the conception of prenatal.kay coming to you said how one or an appropriate authority should go about inspection of a center, quickly I take you through what all needs to be inspected. an appropriate authority can go at any you know appropriate time that's what the act says what all should `inspected has the registration certificate been displayed at a prominent place ...`an appropriate authority can go alone or a person who its authorized by the appropriate authority on his or her behalf authorization cannot be blanket authorization it has to be for a particular period of time and for a particular case or for a particular area or say for this month i am not going to doing it you are going to be doing for all centers something like that ..no absolutely rule 12 and section 30 will come...no what did you say okay this is exactly what I am saying and appropriate authority can go what all, what all an appropriate authority needs to see registration certificate which is given in form b he talked about it has it been displayed original has to be displayed at a prominent place of business that's what says section 19 4 and rule 6 has a notice stating disclosure of sex is prohibited under PCPNDT Act ha sit

ben displayed not just in English but also in the local language this is as per public information 17(1) does the center have a copy of the act and trill you know for and it is made available to public on demand 17(2) rule public information now this does not apply to everyone it sonly for Maharashtra then you know u can take the rather the appropriate authority can take the f forms and see who is conducting the sonography is it pg radiology or gynecologist or its gynecologist or is it a registered medical PR actioner who has undergone the 300 hours training so that you need to see if it is anybody else then for the purpose of detection of ...for the purpose of abdomopelvic reasons then it's a crime under the act then you need to see records what are the records as per rue 9(1) a five column register has to be maintained what is a 5 column register who has come the date of first coming the name of person, the name of the father or spouse and what did the come for so 5 column register is it maintained now.

Our form d e and f, now d is for genetic counselling center for me is for genetic laboratories and in most cases when we are talking of sonography they fall under genetic clinics so has form been ...be maintained for every case and is f form fully filled because even incomplete f form can be an offence and like madam said a little while ago you know in case of very big hospital in pine we realize that 48 f forms had the same address of the pregnant women and the same condition for coming for sonography tat wale road, pine address and mis abortion or something was the reason now can 48 woman in the same road be pregnant on the same day and go to the same clinic for sex selection then you know something hanky punky is happening okayif form f is maintained then is consent is taken you know form f has a column of declaration actually consent in case of invasive procedure but has declaration of the pregnant women been taken and has the declaration of the doctor been takenbecause declaration of pregnant women is not taken section 5 which means section 6 gets proved that sex determination was some which means burden shifts to the accused as per proviso jo madam ne bola that ...has doctor signed declaration he said that okay, are all f forms submitted to the appropriate authority by the 5th of the next month as per section 29(1) so all f forms all pregnant women if I as a pregnant women go to a clinic twice in a month. I am having a problem i go twice in a month two f forms need to be filled both needs to be given to the appropriate authority. It's not that aap aaye hai four days before. and i can just make do with one form again f form has certain conditionality who is the patient referred to is it a selfreferral all that has to be maintained as part of the f formwhen you see the f form is there it contains all the details and whatever she is saying it is at page no. 44 a of ...so you can see the various columns where in. so her client ke liye ek f form bhara jana chahiye every client has to have a f form filled and f form is now divided into 4 parts, part a is demographics name of the women age etc, part 2 is for noninvasive procedure part 3 is for invasive procedure and part 4 is declaration so f form needs to be filled in all cases, then another thing that the appropriate authority should do if you want to know is tally f form with opd register. OPD register you will find ki 20 log aaye hai whereas you have only 12 f forms where are the remaining 8 f forms then something you know the appropriate authority can actually try and correlate. okay then if records are not maintained then you know inspection ke time you need to write a complaint complete all formality of search seizure seize records seal machine and proceed with filing of case and i mention in the morning ...so motto v state of Gujrat is a full bench judgement which clearly says that non maintenance of records is not a procedural error but an independent offence and it again explain very nicely that if records are not maintained as per section 5 then section 6 that sex determination was done gets proven and the burden shifts to the accused and I think let me be very clear one of the reason why doctors are very reluctant to keep records is because it actually tells you the volume of practice like the you know when we go to inspection there are doctors who tell us okay we underreport because our tax people tell us you know the only way we can be save.

Because doctors are the few profession who ever pay any taxthat is inspection if you want search and seizure icon discuss...the same thing goes with corporate hospital also where there this tremendous pressure

on them to underreport the income.....wife is gynecologist clinic is registered in her name at the time of registration name of sinologist is given but her husband who is MS surgery he is conducting the sonography whether any offence is committedyes very clearly, if MS surgery is conducted it is an offence because very clearly it says pg. in ...unless that MS surgeon has undergone the training but that just see the section because these are the cases, i am reading section 3 which is the amendment yeah 3b amendment a sinologist, imaging specialist , radiologist or registered medical practitioner having post-graduate degree or diploma or six months training or one year experience in sonography so here number of or are saying that they are all district so an MS surgery is coming with a defense that since he is post graduate he is not required to undergo a six months training and he is an authorized to conduct the ultrasonography asap cones page no peg pad rah hai and this profession 24 page number.

See the thing is did he get permission from the authority to do ultrasound no altogether different name is written at the time of registration.....no then he cannot do it, in this particular section handthis particular section is authorizing me he is just taking this defense ...no see the thing is the whole idea of registration of clinic is you are looking at the place you're looking at the doctor you are looking at the machine so all the 3 info has to be consistent so if the doctor somebody else is doing who is not authorized that's a violation is there any provision no other than the person who is registered himself as a radiologist he can only operate the machine and no other person can operatesee one is there is been an amendment and there is now this new rule that has come and there is government order from the government of India which clearly says who can conduct abdomen pelvic sonography is any postgraduate degree or diploma in cynic or radiology or a registered medical practitioner who has undergone a 300 hour training hele Kya that this 6 month training etc. was there and a lot of clandestine activity were happening under that people were going to Chennai getting some certificates of 6 month training and all those things were happening in order to regulate that this was the new amendment that came I don't really have the copy of the act but i can tell youcode of conduct t section 18sinologist imagining specialist which is again ...radiologist registered medical practitioner having postgrad degree, we have a great importance of commons when we are interpretation the provisions of law we have a good interpretation or and commas and so we cannot just ignore those things ...no i am telling you this has now been amended and the latest amendment is this definitely i can share it again with yousee madam the section 18 subsection yeah subsection 6 okay that clearly saysSorry subsection 4may I add.....the earlier discussion which you are saying that in all cases only the authorized person alone can conduct the definition clause I and kcan we read togetheri defines pre-natal diagnostic procedure which says that means all gynecological or medical procedure such as ultrasonography fetus copy taking or removing the amniotic fluid ...chronic embryo blood or any other tissue or fluid of a menso it does not relate to a women also in section 2(i) even taking a tissue of a men also is covered under this act where under 2(k) prenatal diagnostic test it only deals with romans so if any doctor who want to conduct the any radiological test on a men also is required to be a qualified personof men or women before or after conception for being sent to a genetic laboratory or genetic clinic for conducting any type analysisnot only for the purpose of fetal diagnosis for any type of analysis and thereafter the word is or for conducting any type of analysis or prenatal diagnostic test see because please remember that particular section was put in because you have some sophisticated method of sperm separation.

Okay so where man's fluid are used so that why we put men there very clearly when you look at if you things you know in certain cases the men is also involved so very clearly this is like he said for those sophisticated techniquebasically ...i am agreeing with you even conducting on a men also the doctor who conducted these test shall be a qualified one yeah but this is different from a sonography so sonography we got section 18 rule 18 there is 10 1 2014 there is amendment this is the amendment i can show along

with this a.....issued a resolution which very clearly says pg. gynecology radiology i have it here or any ramp who has undergone a 300 hours ...i cannot project it is not connectedis there any other quest omits now 4oclockmam i think a speared programmertomorrow we will be dealing same that's what the section i showed yousection 18 code of conduct ..it is there page 35 section 4 code of conduct for appropriate authority yeahit's in the new 16 act 15 at and 16 Act it is available the code of conduct. Again madam its fanciful term.....that if any person other than the authorized person is conducting ultrasonography then it is and offence code conduct oils something we are expected to followi was talking of the code of conduct for the appropriate authority it sprat of rule that section oils called the code of conduct tats all its part of your rule it's part of the rule clearly.....now another rule has been introduced as code of conduct for appropriate authorities very clearly stating what the appropriate authority should do how inspection should be done if there is any gap or loophole how appropriate authorities can be held liable.

Session – 5 (SE-6)

Trial Process under the PC&PNDT Act

Resource Person – Justice Shalini S. Phansalkar Joshi, Mr Sanjay Parikh

Mr. Rajesh - Good morning everyone. This is the second and the last day of workshop and we have with us Madam Justice Shalini phansalkar joshi from Bombay high court and Mr. Sanjay Parekh Advocate in the Supreme court of India. Mr. Sanjay Parikh has represented many cases under this Act to ensure proper implementation of this act this today 2 sessions are on trial process and appreciation of evidence under the act. Despite more than 20 years of the enactment of the Act we are still saying that this Act is in nascent stage trial issues are not getting completed. When i reviewed high court judgement I could not find any single appeal against conviction even appreciation of evidence issue are quite rare. Things are stuck at the initial stages itself where appropriate authority conducts search and seizure and file a complaint and cognizance stage so still issues are not very mature under this act but definitely the pace of implementation is growing day by day. Awareness is increasing day by day and people are refraining from sex selection up to certain extent. so may be in future when more issues will come up you will going to confront all these issues in your court during the trial and one of the main problem judges will confront under this act that accused is a very powerful person he is a doctor with proper monetary capacity he can engage a very expensive advocate. So just like in corruption cases where accused tries to delay the trial as long as they can by hiring expensive advocate and by raising various technicalities in trial court in high court, so similarly under this Act also these things are happening. Doctors are hiring very expensive advocates and they are trying to delay the trial, they are trying to delay the issue process of summons and taking of cognizance. So that is why you will going to confront intensive technical issues under this act and i request you to kindly focus on the discussion and also raise issues which have come in your court. Thank you so much I request honble justice Dr. Shalini S. Phansalkar Joshi to initiate the discussion.

Dr. Shalini S. Phansalkar Joshi - Welcome back once again and its a very warm good morning to each and every one it is again a really a pleasure to be with Rajesh, Shruti and Sanjay parekh he will be highlighting mostly being...the senior advocate he will be highlighting on the trial process what i would like to deal with today is again some decided cases because as i said we dont have many cases where after the trial the conviction has reached up to high court and thereafter we are having some decisions but there are cases where in writ jurisdiction. definitely the high court and supreme court has given certain directions while

interpreting the provisions of the act, some of these decision may be helpful because some of these decisions also deal with about the seal seizure of the sonography ,machine whether it can be done under the act or not or some of the decisions will so deal with the bail plea whether anticipatory bail plea can be entertained depending on facts and most importantly these case law will be of really relevance to all of us considering that the case laws deal with the object and the very purpose of the act and how to look at these proviso from a broader perspective instead of talking a technical outlook so some of these case laws with the help of the case law we will be able to interpret the relevant provision of the act also the way the spirit of the act is meant to be implemented.

So yesterday we have seen some cases, now today we will have some more cases and as i said some of these cases are really relevant like the initial first stage cases which we deal with the constitutional validity the various directions given by the Supreme Court high court for effective and speedy implementation of the act. and then we are having those cases which actually deal with the sections and the rules there the question whether the power to cancel registration of clinic because if you read section 20 sub clause 3 of the Act it gives the power to cancel registration that power is given of course to the appropriate authorities, advisory board who are supposed to be act under the said act what is essential for us. As a court only after the framing of charges we should at least inform so they can suspend these registration. But so for as cancellation of registration that power goes to it .now here this power whether it includes suspension also. appropriate authorities power was to cancel registration the question which was raised before the High Court was whether it will also include suspension of the registration, so what will be your opinion about this same, because if we want to construe the provisions of very strictly because it is after all a penal provision at times. Inviting even the penalties so whether it will include ...come up yesterday you were very vocal and i was really happy to have interaction with you.

Now i would like to have some of your opinions, it will you know give us also to introspect to think. Alternately how will you interpret if there is power of cancellation of registration whether it will also include the power of suspension of registration you know when the suspension takes place. You know when cancellation takes place. Cancellation is the last remedy, most penal consequences in between suspension, so whether appropriate authority can do it ...yes anyone else ...so it can under this power because the argument advance is always that this provisions are to be construed strictly, but then it was held that considering the provisions of a welfare enactment so you know. How the provisions are to be interpreted we have to highlight and focus on these aspects because this is an enactment which is meant to achieve some social purpose. some welfare purpose and therefore when these provisions will come before you, you should also bear in mind, the object and reasons of the act the particular purpose for which the act is really inactive, so you can really raise the ..that definitely these power include because the legislation is a welfare enactment, here in the case this Uttarpradesh high court has really taken serious note about the problem of sexual ...of sex selection and sex determination by saying that we are virtually sitting on a time bomb so you can imagine the condition which must be very serious when we are talking about the declining child sex ratio, the next question is whether appropriate authority are competent to ensure due compliance of the PCPNDT Act from the clinics which are unregistered under the act, because lot of controversy yesterday also we read whether the all the clinics are to be registered and whether the appropriate authority can visit those clinic which are really not registered under the provisions of this act whether they are supposed to ..So whether the compliance of the act is to be ensured or...from those clinics which are unregistered. If you have read the provisions of the act, yesterday night or only watch the movie. I hope you like the movie. it was really impactful forceful impact and touching, giving a sound and loud message, but along with it you have gone through the provisions of the Act.

Because we were discussing the issue yesterday, so therefore we thought it fit to include. if thought it fit to include in it. Only the registered clinics are to comply with the provisions of the act or unregistered clinics also, just think over, I mean you can easily come out. Exactly, right because we don't want this misuse of diagnostic techniques to occur at any place. Whether you register or unregister otherwise everyone will keep his clinic unregistered and then avoid the compliance of the provisions of the act. Sometimes you know know some strange cases come before the court and then the Kerala high court has to hold that appropriate authorities are competent to ensure compliance of the act. See the wide statement made from all...at all places and all institutions whether registered or unregistered wherever the ultrasound sonography machine is installed, then immediately all the compliance is mandatory. So no one can raise an exception no one can raise an argument that as my clinic is not registered under the act I am not bound to comply with the provisions of the act so make it very clear. that what the act intends to do is prohibit regulate prevent, misuse of the techniques wherever there are carried out we are bound to implement those provision, now here the argument advance was that PCPNDT ACT provisions invite 2 penalties, if you see one is criminal prosecution, right if there is any breach of sections or rules there is criminal prosecution which is done by the court. I mean appropriate authority files the case in the court then we conduct the trial and then gives the appropriate punishment, another penalty which is also contemplated under the act is that the appropriate authority can cancel the registration suspend the registration and therefore the argument advance was that whether cancellation of registration and criminal prosecution for the offence can simultaneously be taken or whether it will be attract the bar of double jeopardy. so if you read the provisions properly then it will be very clear that both the proceeding can be taken up simultaneously there is absolutely no bar and there it will not also attract double jeopardy ...bar of double jeopardy, it was held that so far as cancellation or suspension of registration is concerned it is directed against the ultrasonography center ...whereas criminal prosecution is against a particular person who is doing that proceeding and therefore both the proceeding are independent.

Because at times these argument may be advanced before you, when you are conducting the criminal prosecution that already the action is taken, now you cannot charge me and take penal action. yes ...yes ...one is suspension during trial or immediately after the inspection yes ...suspension immediately after the framing of charge you can inform the appropriate authority or appropriate authority is expected to take note of the same and camel suspend cancellation is after/ entire trial after conviction especially if it is acquittal then ...*generally the charges are being framed we have to just see the prima facie case...so it does not affect the right of the parties...*no no that is what we have to keep in mind it is a trial which is conducted on the complaint filed otherwise then on police report, so in such cases we record evidence before charge it is not like a police station ...immediately the charge sheet is filed we are issuing the process of framing the charge. it is not like that so we record evidence before charge at that stage also the accused is having the opportunities to cross examine the witnesses the appropriate authorities pinches if they are examined, i mean if the appropriate authority thought it fit, the court really applies its mind...whether the charge to be framed or not. It is not like police trial. Are we not restricting the right of an employment of the medical practioner ...subsequently he is acquitted ...no no of course not and trial do takes at least four to five years in the courts it will not. Because that is the consequence provided under the act itself and that validity is not challenged so far as the act is concerned. Those provision are not actually ...it could be suspension qua operation of sonography machine, yes that much only.

So far the part is concerned. So far is PCPNDT Act is concerned. Again here the challenge was to the suspension of registration of the clinic. Seizure and seal of sonography machine exactly the same ground as you were saying that because it is stopping my practice. It is everything affecting my livelihood article 21 and everything. So Supreme Court saysPunjab and Haryana high court says that person ...to operate

sonography machine and for that purpose he must have requisite qualification then we are having these case of pretender Kaur yesterday we have referred to it. Because we were discussing a lot about the scope of section 28 of the act. whether it restrict the scope of the persons who can file a complaint or whether it widens the scope because we were saying that if appropriate authorities are not taking action then whether we are to sit quiet and allow the things to happen because police are not supposed to take any action. Police don't have any locus standi to lodge complaint in view of section 28 of the act and therefore what i want to highlight because this is just a re-interpretation of the provision. Provision itself says appropriate authorities any person appointed by the appropriate authority everything but then high court says that section 28 does not narrowed out on the contrary. So you see how the provisions are being interpreted looked at when we look at section 28. it is restricting the scope of the person who can lodge the complaint but the high court says that ...no no it is not so it broadens the scope of section 28 giving authority to wide class of person to initiate actions it being again see the object to prevent the social evil so we have to always ...yesterday we were discussing informally with some of you it was felt that there are so many technical aspects. How we can convict the accused. I mean those technicalities are not complied with. So of course it will always depend on the facts and circumstances, but then in doing so, we have to keep the broader perspective we have to look into the object of the act. What is the object of the act, what is the object is to prevent social evil. And therefore you can at times give some liberal interpretation or broader interpretation. This case is landmark because it was a full bench decision and all the issue which yesterday which we were discussing about the presumption. Under the proviso of section 4 sub clause 3 of the act we said that if any deficiency or inaccuracy is found in maintenance of the record. Especially form no 9 which pertains to the pregnant women ultrasonography.

If there is such an inaccuracy deficiency then automatically the presumption will follow so what it says that it is deeming provision and we all know what a deeming provision means is. so it was held that even if in the complaint it was not stated expressly that by not maintaining the record properly he has committed contravention of section 5 and 6 of the act and therefore he is become liable for punishment even if there are no such express averments in the complaint even then in view of this deeming provision whenever it is proved on record that inaccuracy of the record and also deficiencies in maintenance of the record then section 5 and 6 are automatically attracted so got it so we don't have to worry about those things. whether it is proved pleaded avert stated or not if it is proved by appropriate authority that just record contains several inaccuracy several deficiencies then there is contravention and most importantly it holds that deficiency or inaccuracy in filing of form no 9 is not merely a procedure ...we often feel that okay some detail are not written because that is not the job of doctor that is the clerical job, but then the Gujrat full bench held that know because it is an independent offence and it invites serious consequences the question which raise for consideration in the case was interesting because section 30 of the act only provides for seizure sealing of any material, any other material object like record registers and any other material object, the argument advance was that any other material object does not include the sonography machine. Sonography machine if the legislation really intended to seal or seize it.

Legislation should have mentioned this specifically its absence means that legislature did not intended but then supreme court or Bombay high court held that rule 12 of the act. clearly, rule 12 is a delegated legislation on that count also it was challenged ...it was held that substantive provision does not provide so how the delegated legislation in rule 12 can say that sonography machine can be seized but then Bombay high court says that know when it is said any other object it also include sonography machine especially it is the main you know weapon or when may call a tool or an instrument by which the offences are committed or breach of provision is committed and therefore it was held that no such argument can be accepted or considered because sonography machine can be definitely sealed and seized and for that purpose the

provision of section 30 and rule 12 of the Act were interpreted accordingly. this was the case as we were yesterday discussing about the silent observer or tracker, so in Kolhapur what was noticed Kolhapur district that there was steep decline in female sex ratio and in the collector who was very enthusiastic in his initiative so he said that by installation of the silent observer or by providing for you know filing of form of online it will solve the issue and therefore he take up the case and he said that all the forms number 9. Should be filed up by the doctors online and should be submitted to the concerned authority before 5th of every date and then it was held challenge again because they are to be submitted according to the act after next month. and then it was held that know online filing of forms will also stop under reporting and also false reporting and while the technology is advancing we should always available the benefits of such technology so far as silent tracker and everything is concerned the issue of privacy was raised and it was also considered there will ...there are lots of controversy about this whether silent observer has really been effective or not. It is said that it does not get so effective there is also the controversy whether it is having adverse impact on the pregnant women's right for medical termination of pregnancy but that issue is again under consideration so we will not enter into it. It may not raise before you. Yes that's what I am sayingbut there is again the judgement of Delhi high court which is included in our compilation also by the academy in which it is approved. If you see, I mean chief justice judgement is there Delhi high court so it depend you know. It is included in the academies compilation. Know but she has said that judgement is no not mandatory. but she has quoted it with approval maybe that ...of course it is always left to the concerned authorities that's why I said that is an issue, which is lot of. I mean under consideration there are pros cons there are views counterviews so it will always depend on the particular interpretation. So far as we are concerned we have to consider these issues like the judgement of Gujrat high court wherein the issue was whether appropriate authority can seize and seal sonography machine without issuing showcase notice. so what you will say whether appropriate authority can seal and seize the sonography machine without issuing a showcase notice....yes madam ,.....I have given the answer yes it can beyes*Because already 15 day notice will be given* for inspection appropriate authority has gone there whether it can seize and seal at the time of inspection itself or it will require 15 day notice to be complied with before seizure.

It can be seized mam, it can be seized because after all it is used in the commission of offence and when we are seizing any article which is used in the commission of the offence like knife like other weapon of assault. Like the vehicle used in the commission offence we don't give 15 day notice to the accused to produce evidence...or to seal it and thereforeyeah but even then they are given the powers because if you see the sections they can do it. it was held that there is no express provision in the PCPNDT Act or rules for issuance of show cause notice before making panchanama and sealing sonography machine it was further held that sealing and seizure of the machine is to furnish the evidence just as in criminal trial, we seize the weapon of offence here also we are doing the same thing and therefore there is no question of any show cause notice ...again the reasoned order whether it is necessary for appropriate authority to pass a reasoned order before sealing and seizure of machine. yes. They are required to right reason to believe on what basis they have come to. She would like toso you can anyone else ...my lord it is required because as like that of police are preparing Panchami when the commission of offence. It is required to write some reasoning order. Why they are seizing. What happened otherwise, it will be reason for acquittal also at the time of ...no no here we are doing there will not be...suppose if seizure is not done properly whether we acquit the accused on that point no so whether there is any reasoned order necessary for seizure of any weapon of offence ...your lordship...good morning your lordship the seizure is only as per the provisions of criminal procedure court. he has to draw the Panchami and seize the as per provisions of 451-457 of the criminal procedure court chapter 36 of the Crpc. the appropriate authority draw the merger and cease the property and same to be reported to the court thereafter the provisions of CrPC applies for release or any

other. Already my friend discussed that show because notice is ...show because notice is necessary only to suspend and cancel the registration under section 20(2) of this act.

The appropriate authority need not read the ongoing investigation of the criminal case the appropriate authority directly suspend or is satisfied that there is a prime facie case. Without waiting for the ongoing investigation before the court ...also cancel the registration. yes yes of course that is the exact provision yeswhen we go for inspection the doctor will jump out of the window and run away and you know so put off the machine and run away so unless you inspect the machine you may not sometimes get the kind of evidence which is which will substantiate the violence. yes they go for generally inspection otherwise they give the 15 day notice, if they directly surprise inspection and they found, they can immediately seize seal, if they are decide to go because merely on the complaint they decide to go for show cause notice, then they will may be it be necessary for them to pass reasoned order as we are saying but so far as the provisions of PCPNDT Act are concerned the Gujarat high court says the Bombay high court also says the same thing that it doesn't provide or does not make it mandatory that there should be reasoned order. Mam, yes that's again an issue really we are discussing and discussing. He will be answering let us have some new view outlook on that...yes it would be really useful thenmam another question we will be confused. Appropriate authority being not a police authority whether they can arrest or not. *Mam another question whether on conviction, whether court can confiscate the materials seized. Court can confiscate on conviction whether court can confiscate the material which was already seized. Confiscate...* yes that is the ultimate order we are having, in some of...i will show you the decided cases actually decided cases by the trial court where the the trial court has confiscated the sonography machine. Because ultimately the offence was proved. what we do if some weapon some instrument you used is found to be used in the commission of the offence and the accused is convicted what we do, we confiscate similarly here also sonography machine is ordered to be confiscated it is judgment delivered by one of the trial court in the state of Maharashtra and we quote it very with approval because you know exactly the criminal law, it is meant to be applied is ...is applied in the instant case also...he is saying about the unreported..

Mr. Sanjay Parekh- there is unreported judgement of the Supreme Court same thing happened in Gujarat what they were doing actually there were number of orders which are passed. After seizing them giving it actually to the same person saying that it will be used by him why keep it. in this condition for a long time so then against that order we came to supreme court and suptem court said the provision of crpc you know 451 onwards they apply yes so ultimately conviction is done then if you read i think 452 it is that it will be either be destroyed or it will sold. Supposed this machine is ...we auction it in the market....*sir what procedure we have to follow at the time of auction sir because. if once again we auction then there may be changes of using the sameas of now the sale of machine is restricted...* that's correct i was coming to that so therefore see there are so many restrictions which are there ...so those restriction will apply that the machinery can be sold only to a particular clinic ...registered clinic ..Yes everybody cannot can come and purchase ...the same doctor cannot come and say he is convicted and he says no i want to purchase the machinery. I will continue the same illegal activity yes, thankyou. Sorry...nai nai please please tell me because...

there is little bit of grey area ...so as of now this whole thing now you know buyback scrapping resale is all at a standstill machines are lying wherever they are ...some clarification in rule 18(a) do you find something no it was to be given ...infact in Maharashtra we had a small group meeting and we discussed it which was to be send by frame and advise me but as of now things are at a standstill....

Mr. Parikh - as a matter of fact because of this reason the case which you argued judgement is pending and i brought actually those legal issues ...which have to be actually be one of the issue is precisely the same that what should be done. it has to be t....because 3 basis and based on section 3(b) those states have also taken out advisory that people who are selling manufacturer seller assembler are also have to be registered with us of course. So that is the reason that even if the court confiscates cannot auction the machine....in cases of arms which you are condition ...public domain. Appropriate authority should keep an eye on it that where the machine is going ultimately we can actually trace the machine ...from a to b to c...sir in my opinion the concerned authority has to give some certificate to the court to auction the materials in case of confiscation as madam said, court auctions the same then there is no authority for the court as per the registration requires, then concerned department. It gives some permission to the court to auction the sonography machines at the time of confiscation then it will be well. There is no problem to court also ...no no its quite clear that's not a problem because in the court will be reading the provisions of pcpondt act which says that it can be sold only to somebody which registered clinic so it can be done only to a registered clinic naturally then the court will follow the procedure which is given under the act. It doesn't requires any body's permission. It doesn't require anybody permission it will certainly inform the appropriate authority. Yes that this is going to be sold to such and such person and appropriate authority will then note down that this is a registered clinic which has purchased this. So that in future if there is any violation or it has to be tracked for any purpose then the appropriate authority can do that. Whether court can send an order of auction to the concerned appropriate authority. Courts power it can certainly for implementing provision of the act you have all the powers...yes yes see you have to read this along with the CRPC, both go together, you know section 4 and 5 of the CRPC and this one...

Justice Shalini- So far as the registration and show cause notice is concerned same similar view was taken by Bombay high court also in the case similar issues were raised whether opportunity to showcase or being heard was required to be given to the petitioner before seizure of machine. Whether approval of advisory committee was necessary whether suspension of license ...again the issue raised by you. Suspension of license for indefinite period was in complete violation of principle of natural justice and hence violate of contrary to the section of the act. And the argument advance was that after framing of charge at the time after seizure and seal of the sonography machine. If you are suspending the registration then trials may take years together to complete, then appeal and then again. so for indefinite there will be cancellation or suspension not cancellation suspension of registration and therefore it may violate the provision of section 20 principles of natural justice and then it was held that in order, again I am saying, every time the high court and supreme court is taking note of the object of the act the purpose of the act and it was held that appropriate authorities has been given exceptional powers under sub clause 3 of section 20 to suspend registration and seize sonography machine even without issuing showcase notice or opportunity of hearing to the accused so that was because the section itself gives such power in exceptional case now as regards ...section 4 proviso we have already seen that the burden will lie on the accused and he can discharge that burden only at the time of trial not before that yesterday we were discussing that issue also that how long and when that presumption will apply so till the trial takes place and evidence is laid by the parties the stage of rebutting the presumption will not arise and ultimately it was held that suspension of registration cannot be said to be for indefinite period because it is only up to the conclusion of the trial.so all the issue raised were answered in such a way that the object of the act is taken further and not obstructed in any way what is the object that the person who is doing the machine which is used for doing it should not be repeatedly again used for the committing the same and registration of such person should be visited with a serious consequences this relates to the portable sonography machine now the again the rules are also brought about the portables sonography machine whether they can be taken out.

Whether registration is required for portable sonography machine from being taken from one clinic to another it was argued that technology is enabling us to have such portable sonography machine so how you can expect the registration at each and every place wherever that portable sonography machine is taken and it was held that again taking note of declining female sex ratio of object and purpose of the act it was held that...such direction as the most reasonable in public interest does not violate the provision of act it is also in consonance with the provision of act and to prevent possible misuse...again the qualified person can run ultrasonography or the person who is not qualified can also run such machine. it was argued that he was a register under the medical council act so why the necessity of registering or having some extraordinary qualification for conducting the sonography machine but it was held that if you want to do the sonography then you must have that extraordinary ...which is required under the provisions of the act but the Delhi high court judgement which is also included in the com in our compilation also by the academy in which it is approved. If you see, i mean chief justice judgement is there Delhi high court so it depend you know. It is included in the academies compilation. Know but she has said that judgement is no not mandatory. but she has quoted it with approval maybe that ...of course it is always left to the concerned authorities that's why i said that is an issue, which is lot of. I mean under consideration there are pros cons there are views counterviews so it will always depend on the particular interpretation. So far as we are concerned we have to consider these issues like the judgement of Gujrat high court wherein the issue was whether appropriate authority can seize and seal sonography machine without issuing showcase notice. so what you will say whether appropriate authority can seal and seize the sonography machine without issuing a showcase notice....yes madam ,.....i have given the answer yes it can beyes*Because already 15 day notice will be given* for inspection appropriate authority has gone there whether it can seize and seal at the time of inspection itself or it will require 15 day notice to be complied with before seizure. It can be seized mam, it can be seized because after all it is used in the commission of offence and when we are seizing any article which is used in the commission of the offence like knife like other weapon of assault. Like the vehicle used in the commission offence we don't give 15 day notice to the accused to produce evidence...or to seal it and thereforeyeah but even then they are given the powers because if you see the sections they can do it. it was held that there is no express provision in the pcndt act or rules for issuance of show cause notice before making panchnama and sealing sonography machine it was further held that sealing and seizure of the machine is to furnish the evidence just as in criminal trial, we seize the weapon of offence here also we are doing the same thing and therefore there is no question of any show cause notice ...again the reasoned order whether it is necessary for appropriate authority to pass a reasoned order before sealing and seizure of machine. Yes. They are required to right reason to believe on what basis they have come to. She would like toso you can anyone else ...my lord it is required because as like that of police are preparing panchnama when the commission of offence. It is required to write some reasoning order. Why they are seizing. What happened otherwise, it will be reason for acquittal also at the time of ...no no here we are doing there will not be...suppose if seizure is not done properly whether we acquit the accused on that point no so whether there is any reasoned order necessary for seizure of any weapon of offence ...your lordship...good morning your lordship the seizure is only as per the provisions of criminal procedure court.

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Mr. Parekh - as a matter of fact because of this reason the case which you argued judgement is pending and i brought actually those legal issueswhich have to be actually be one of the issue is precisely the same that what should be done. It has to be t.....*because 3 basis and based on section 3(b) those states have also taken out advisory that people who are selling manufacturer seller assembler are also have to be registered with us of course. So that is the reason that even if the court confiscates cannot auction the machine....in cases of arms which you are condition ...public domain. Appropriate authority should keep an eye on it that where the machine is going ultimately we can actually trace the machine ...from a to b to c...sir in my*

opinion the concerned authority has to give some certificate to the court to auction the materials in case of confiscation as madam said, court auctions the same then there is no authority for the court as per the registration requires, then concerned department. It gives some permission to the court to auction the sonography machines at the time of confiscation then it will be well. There is no problem to court also ...no no its quite clear that's not a problem because in the court will be reading the provisions of PCPNDT Act which says that it can be sold only to somebody which registered clinic so it can be done only to a registered clinic naturally then the court will follow the procedure which is given under the act. It doesn't requires any body's permission. It doesn't require anybody permission it will certainly inform the appropriate authority. Yes that this is going to be sold to such and such person and appropriate authority will then note down that this is a registered clinic which has purchased this. So that in future if there is any violation or it has to be tracked for any purpose then the appropriate authority can do that. Whether court can send an order of auction to the concerned appropriate authority. Courts power it can certainly for implementing provision of the act you have all the powers...yes yes see you have to read this along with the CRPC, both go together, you know section 4 and 5 of the CRPC and this one...

Justice Shanlini- So far as the registration and show cause notice is concerned same similar view was taken by Bombay high court also in the case similar issues were raised whether opportunity to show cause or being heard was required to be given to the petitioner before seizure of machine. Whether approval of advisory committee was necessary whether suspension of license ...again the issue raised by you. Suspension of license for indefinite period was in complete violation of principle of natural justice and hence violate of contrary to the section of the act. And the argument advance was that after framing of charge at the time after seizure and seal of the sonography machine. If you are suspending the registration then trials may take years together to complete, then appeal and then again. so for indefinite there will be cancellation or suspension not cancellation suspension of registration and therefore it may violate the provision of section 20 principles of natural justice and then it was held that in order, again i am saying, every time the high court and supreme court is taking note of the object of the act the purpose of the act and it was held that appropriate authorities has been given exceptional powers under sub clause 3 of section 20 to suspend registration and seize sonography machine even without issuing show cause notice or opportunity of hearing to the accused so that was because the section itself gives such power in exceptional case now as regards ...section 4 proviso we have already seen that the burden will lie on the accused and he can discharge that burden only at the time of trial not before that yesterday we were discussing that issue also that how long and when that presumption will apply so till the trial takes place and evidence is laid by the parties the stage of rebutting the presumption will not arise.

Ultimately it was held that suspension of registration cannot be said to be for indefinite period because it is only up to the conclusion of the trial.so all the issue raised were answered in such a way that the object of the act is taken further and not obstructed in any way what is the object that the person who is doing the machine which is used for doing it should not be repeatedly again used for the committing the same and registration of such person should be visited with a serious consequences this relates to the portable sonography machine now the again the rules are also brought about the portables sonography machine whether they can be taken out ..whether registration is required for portable sonography machine from being taken from one clinic to another it was argued that technology is enabling us to have such portable sonography machine so how you can expect the registration at each and every place wherever that portable sonography machine is taken and it was held that again taking note of declining female sex ratio of object and purpose of the act it was held that...such direction as the most reasonable in public interest does not violate the provision of act it is also in consonance with the provision of act and to prevent possible misuse...again the qualified person can run ultrasonography or the person who is not qualified can also run

such machine. it was argued that he was a register under the medical council act so why the necessity of registering or having some extraordinary qualification for conducting the sonography machine but it was held that if you want to do the sonography then you must have that extraordinary ...which is required under the provisions of the act but the Delhi high court judgement which is also included in the compilation of academy you will find there is judgement of the division bench which says that whether such 6 months training is again necessary or not that is an issue it is held.

You read that judgement so there are issues their views there are counter views also, but basically what we have to keep in mind as time and again we are saying this is the act yet in infancy because the implementation is not wide as it was expected to be and naturally all the provision are having somewhat grey areas somewhat not drafted skillfully or properly and therefore lot of scope for interpretation, it was held that in Delhi high court judgement. It was found that, i mean, in some minority aspect also if we start implementing the harsh penalty or punishment then we have to at times take moderate view also, so the point to be stressed is that ultimately what we have to see is the object and purpose of the act and take note of declining sex ratio. as i said some of judgments has really good, despite some witnesses turning hostile the trial court has held the accused guilty ...impose punishment on all the counts on the basis of the evidence which came in the form of documentary evidence because witnesses had turn hostile ...yesterday i discussed the case with you this case pertain to the article advertisement in the newspaper, it was in respect of how to conceive a male child through naturopathymobile will be confiscated ...argument was that it was a research paper and not an advertisement ..and clearly the case of breach of the provisions of the act it was held that it was in violation of section 22 which prohibits advertisement in any way whether on the basis of article research article or on the basis of any advertisement in the media or newspaper. We will continue subsequently...

Dr. Anuja- and there is an advisory which i think you need to circulate very clearly saying only pg gynecologist and radiology can conduct or any registered medical practitioner who has undergone 300 hour training which is prescribed, now as per the newly amended rule 3 jan opf 2014 and by 2017 jan all those people who are practicing and i am clarifying that and who are not pg. radiology or gynecology who have clinics and are doing sonography should undergo a skill based test they don't have to undergo the 300 hour training and those registered after the rule has come in you know or has been amended need to undergo a 300 hour training. The rule also its a very very you know lengthy and very well defined described rule, very clearly stating the contents of the 300 hour training and also saying clearly that the state government need to designate government medical colleges to take up this 300 hour training and in certain places in west Bengal for example this is already been started with the university of health sciences there and its been considered in state like Maharashtra so just clarifying ...because,... but already states are moving on that so but the advisory is there and also there is another thing which says an advisory of the government which says, even those orders which have been stayed but have become a rule need to be followed so,

Mr. Sanajay parekh- Dr. Justice Shalini ..and my dear friends...justice Shalinu has actually taken you through the important judgements of the supreme court and different high court and you will find when you will read the judgements ...i think you must have read the judgements that at so many places you know there is some kind of a confusion which still prevails and that is reason. Why in a recent case which you argued before the Supreme Court where judgement has been reversed ...if necessary i will read out some of those points which you have raised. and we have told the supreme court that it needs some kind of clarification because ultimately it is at the stage of trial these things are decided so if the law is clearly interpreted naturally then it is also applied in a clear way by the judicial officers who are dealing with these matters at the initial stage now this something which is very very important and for that purpose as far as i

am concerned i feel that judgement are certainly but more importantly that's what my senior told me is to read and read the statute again and again 2 times 3 times and 4 times if necessary and that's the i actually when justice Shalini was putting a question with regard to the suspension under section 23 and a question was asked ...see generally you can say you have power, i think rightly you said that if you have a power to do something you also have power to suspend in service jurisprudence you know stand of thingthat if you are framed a charge and the enquiry is started and it is necessary in the public interest but the person in suspension then it person can be put under suspension for which no principles of natural justice are required because it is not a punishment which is imposed these are all actually general principle which have been explained but besides the general principle which we look into when we are arguing in the high court and in the supreme court but at the trial stage you have to look actually at the statute first of all and see what the statute is saying so for example if you look at this question section 23 then what do you find ...just look at section 23.

I am sorry I started abruptly only to tell you one instance that what we are supposed to do is we look at the judgement later on firstly we read the statute under which that's the purpose of actually start actually at the trial stage or for the judicial officers in the beginning its a wrong kind of training actually if you start reading the judgements first and read the statute later, i think you apply your mind read the statute clearly understand it then apply the law and see how ...because it may happen not that you will say something which is contrary to the high court or supreme court because there is judicial discipline but then certainly when you will read it you may find a way to say that this is the court interpretationand proceed further section 23 its says not standing anything contained ...if the appropriate authority is of the opinion that it is necessary or expedient so to do in public interest as i told you even in case of not all the cases of ..in services matter, there suspension is required of a person it is only in public interest because if he is going to interfere or he is discharging a duty which will really interfere in the manner in which the enquiry is going to be conducted or prejudice inthen it is necessary to put him under suspension so what will be done for reasons to be recorded in ...so therefore when reasons have to be recorded in writing for what purpose necessary expedient so to do in the public interest so the when you are putting when the appropriate authority is putting the this particular registration in suspension then what is to recorded it is to be recorded that it is expedient so to do in public interest ...reasons have to be there reasons need not to be elaborate but you must mention orthe appropriate authority must mention that it is necessary and expedient in the public interest or so to do in one of the cases actually again Gujarat high court has said that know there is no power in the 23 there is judgement which has been given that in no case this power can be exercised which you are challenge before the supreme court.

Supreme Court is looking into it. But again this is the kind of confusion which is created when the Trojan itself is very clear that you can do it. now this is just to tell you that one has to read provision before like as i told you one Gujrat high court has said something which is which says that no 23 cannot be exercised. now i am supposed to tell you that how the trail is to be conducted now we will look into the how the entire process is initiated how it starts actually and if you look at that then you will find section 28 because these 2 things are important then i will take you back into some other things ...no 27 28 there are 2 important provisions it says that every offence under the this act shall be cognizable non bail able non compoundable and everybody understands actually the meaning of what is cognizable non bail able and non-compoundable, now if it is cognizable what is the meaning of it anybody can justwhat is the meaning of cognizable offencecan arrest without warrant so it doesn't say the provision only says that the policemen can arrest because now there will be one question which is put whether police officer can arrest that will also arise and if i ...don't read 28 and only 27 is there ...and therefore police can arrest somebody can go and lodge the FIR and the person can be arrested because its a cognizable offence. Now we come to

28 ...no court shall take cognizance of an offence under this act except on a complaint made by the appropriate authority concerned or any officer authorized in this behalf and central government or state government as the case may be or the appropriate authority... so the concerned appropriate authority officer authorize on behalf of the central government or state government or the appropriate authority these are three things which are mentioned that we can do it now suppose and there are many cases many cases and Dr Sabu will tell you were in spite of the appropriate authority knowing it they don't take any action then what should be done that is where the NGOs where working in this field they have been given this authority to file the complaint and in one of the recent cases actually this was the first case of Dr khurana na ..dr sabu neetu khurana that she had actually lodged this complain under 28(b) and somehow there is judgment which has been given recently it is not reported by the high court dismissing her complain has been bared by limitation because another question which i will answer to you if you pose a question or i will answer myself both pose a question and answer myself.

What about the question of limitation whether these kinds of complaints can be dismissed on limitation ground so there recent judgment which has come which will be challenging that her complain which is made under 28(b) has been dismissed on the ground of limitation that's slight digression this is that a person will give a notice not less than 15 days to the appropriate authorities of the alleged offence and his intention to make the complaint person includes a social organization. And the no court other than metropolitan court judicial magistrate shall try any offencei wish to ask task you that this trial which will take place under this provision. The metropolitan magistrate will be what kind of trial it will be summon trials or some other trial ... the trial which will take place ...it will be warrant trial because the punishment is 3 years...upto 3 years means it will eat as in any case in more then 2 years so therefore the warrant trial will be there now if we talk of cognizable then cognizance in such cases will be taken when in a complaint case it will be taken when we will come to the FIR later on but suppose its a purely somebody the complain which is either filed by the appropriate authority or if not by appropriate authority by this person after giving notice of 15 days. 15 days appropriate authority doesn't file I hope this is very clear because it should not happen that only appropriate authority there number of cases as justice Shalini pointed out that where there is no authority with the appropriate authority even delegated to him, but that apart who are the complainants under this provision please answer who can be appropriate authority and if appropriate authority doesn't do it then after 15 days' notice an NGO which is actually doing and any person interested anybody can be there not necessary including social organization can also because even i can be there may there is social organization but you are concerned as an individual you can also come and file the complaint now when you file a complaint what document will be with you how you will get the documents now kindly that's what i am saying the best thing is to read now read it further what does it say 28(3) read it says where a complaint has been made court may on demand by such person direct the appropriate authority to make available the copies of the relevant records in its possession to such person now if you are saying that a particular clinic is not maintaining form f or it is running without registration you know about it.

But either you apply RTI and get some information suppose that information is not with you you file a complaint. you also along with the complaint also file another application saying that i need all these document which are with the appropriate authority and appropriate authority is not giving me these document so the court will summon those documents otherwise on what basis what will be because in the next session it will come what is the evidence on the basis of which will you decide this men please understand is coming and filing a complaint he is saying that such and such clinic or such and such doctor has violated the provisions of the act then what happens he doesn't have or she doesn't have actually have documents how he or she will proceed one is to get under RTI suppose the RTI application is given and appropriate authority says no we are not supposed to give you this document may be because the appropriate

authority those doctors and the other persons is also known to him or her in that situation what the magistrate will do. What the magistrate will do...please tell me appropriate authority to provide so that you know ultimately because who has to do the justice the judges who are sitting there the magistrate who are sitting there they have to do the justice and implement the provisions of the act like we say who implement the provision of ...not the parliament not the executive it is for supreme court or high court to really implement you have to implement the provisions of this act therefore you will see that the implementation is done properly and for that purpose you will ask for the documents now we will come to the cognizance part of it now in a this kind of trial who will what will be stage of taking cognizance warrant trial ...in case of private complaint.

Whether enquiry is required before taking cognizance because in case of 138 and other cases...no dont digress into dont go into 138 for the time being no if NGO files any case then whether we have to dispense with the enquiry ...and directly we can take the register the case as cc no no what you are talking of 156(3) enquiry which enquiry you are taking ofno no that's what i am saying when you are talking of enquiry under....If the government official files the case, private complaint or complain then we can dispense with the enquiry and we can register the case. no in this case what will happen the appropriate authority will ...the appropriate authority comes before you and appropriate authority will give a complain along with the document yes then you will record the statement ...in 190 of crpc if a private complain files a complain then we have to enquire then ...because I don't know because that's a government authority but then appropriate authority is a complainant here you can dispense with the recording statement on the basis of document then you will register the case and issue summons no sir *my question is if a private person* i am going one by one actually i am also trying to understand since suppose we approve it ...give the document what do you do you dispense with this issue the person on the basis of document, yes now if the private person will come then and private person will come then what you will doprivate person along that there will be complaint because if the private person has all the document then you will record the statement and issue the summons isn't it and if there are no documents then what will you do, you will call for the documents from the appropriate authorities and then probably examine and then record the evidence and issue the process now once you issue the process then you have taken cognizance of it isn't it when you issue co...proceed under correct proceed then it is cognizance which has been taken so in a way that's correct unless you want to do an enquiry if you want to do an enquiry ...correct you issue the process ..Another question is there sir whether court can record a statement of a complainant in case of government official files a complaint before framing the charges or we have to record only in a private person who files a complaint no that's what exactly.

Justice Shalini - I mean complaint lodged by the private person and not by appropriate authority even then the procedure will be the same warrant trial on the complaint otherwise filed by the police so we will have to go by recording . before framing of charge we will have to see whether his evidence is sufficient evidence of witness is sufficient to record because in case of private criminal case like 420 we record the evidence of complainant before framing of charges same procedure you will have to adopt here also .

Mr. Parekh - Now the is actually you have taken once you have start to proceed then you are taking cognizance of it. now if we apply the case you know where somebody has gone and recorded a complaint or lodged FIR before the police and police has started investigation then the investigation is not actually at the stage of taking cognizance whether the police can now it is at this juncture you will have to deal the provision of section 4 and 5 of the CRPC along with which are things which have been taken or if you know this section 4 and 5 of CRPC if you have just. If you have CRPC please open it it will be , this is very important part and i think this is where things may go ...thats why i am taking time and one of the supreme

court cases you will find there is table which has been formed which are the areas which are covered then i will come to the provisions and tell you which are which is not covered so who is doing investigation in one sense in this case that one has to ask now 4 is all offences under the IPC shall be investigated inquired into tried and otherwise dealt with according to the provision hereinafter contained all offence under any other law shall be investigated inquired into tried and otherwise dealt with according to the same provision. but subject to any enactment for same being enforced regulating the manner of place of investigation enquiring into trying or otherwise leaving in such offences so if there is special provision to that extent the provision CRPC will not apply then notwithstanding contained ...specific provision of contrary effect any special or local law for the time being in force or any special jurisdiction power conferred or any special power. Or any special form or procedure by any other law for the time being in force so therefore if there is procedure which has been given in the special law, then the special law will prevail over that.

Now if we look take into consideration 4 and 5 and this one then if the investigation is done now it says its a cognizable offence, cognizable offence therefore the police can arrest without warrant if an action is taken for investigationinvestigation which is certain powers are covered here certain provision are not covered the question will be whether the investigation which has been done by the police will be something which will be totally contrary to the provisions of the act that's the question or when you take the ...because you can take the magistrate can take cognizance only on the basis of a complaint that's very clear that is very very clear you cannot take cognizance on the basis of investigation which is done and the charge sheet which is ...that is not your domain but the investigation is done and there is some material which comes out in the investigation and ultimately there is a FIR which is filed on the basis of which you are taking cognizance whether the entire investigation which has been done is washed of is the question ...*no sir because there are 2 part one is investigation and another one is the taking cognizance the provision is that the person who investigate the matter he has to file a complaint in the form of complaint only there is no bar to investigate the ...no no when he is investigating he is police which is investigating its not a complaint don't mix up these 2 things yes what a charge sheet no he has to file a complaint in a form of complaint no no you are mixing up 2 things when you go before police and the firm has to be investigated by the police and then ultimately results in the charge sheet where is the question of complaint the police doesn't go and file the complaint ...sir in case of wildlife protection act sir wildlife is different ...they also register the FIR and they also conduct merger and they also ..see I was coming to that please understand now just keep it in mind two things by mistake let me tell you very clearly when I am pointing out this to you you just to say that those is to be tried as a complaint case this is to tried as complaint case I am not mixing up two things.*

I am trying to only clarify because one question was put what is the meaning of been cognizable now look at rule 18 a because there was some problem and that is been there is some clarification which has been put under 18 a , 18 a 3 just see that ..see 3 which is important this is investigate all the complaints just look at that 18 3, 18 numerical 3 then roman three rule did I say section it is very important if you don't look at 18 a ...page no 36 ...all the complaints that is to the appropriate authority within 24 hours or receipt of the complaint and complete the investigation within 40..or as far as possible now this is important why this term has been used as far as possible not involve police for investigation of cases under the act as the cases under the act are tried as complaint cases under the code of criminal procedure 1973 so these are all tried as complaint cases and therefore don't involve the police now the question comes that by mistake somebody has gone before the police and police has started investigation and there is no power to arrest here with the appropriate authorities now we look at the powers and see under 4 and 5 as i pointed out to you which are the areas which are covered which are the areas which are covered ..which are areas which are not covered now please look at for that purpose 17 a now 17 a section 17a the appropriate authority shall have the power in respect to the following matters summoning of any person who is in possession of any information

relating to violation ...production of any documents on material object relating to clause a issuing search warrant for any place suspected to be indulging in sex selection technique pre-natal sex determination any other matter which may be prescribed.

Prescribed by the rules section 30..30 says appropriate authority has reasons to believe that offence under this act has you know committed at any genetic counselling center laboratory clinic or any officer authorized, subject to rules has been prescribed at all reasonable times with such assistantor any other material object found there seize and seal the same as a authority or officer has reason to believe any furnish evidence of commission of offence then provisions of CRPC relating to search and seizure shall so far as may be applied as ..every search and seizure under this act so therefore which are a;;powers which have been given for the purpose of investigation have been given to the authority concern okaysir may i raise a question please now there are cases coming where the savior itself become a terminator the appropriate authority themselves are taking steps mindset to save the wrong doers i mean the doctors so suppose a complaint comes to my court i proceed for an enquiry and issue a notice to the appropriate authority to furnish the records to the complainant or to the court the authority does not do it then what happens. The authority does not give the records to the complainant or to the court then what the magistrate can do because the records are absolutely necessary so is it not proper for a magistrate to go on...and send warrant to the state and house officer to conduct search at the appropriate authority its obvious to seize the records and to produce it now this is actually a very slightly complicated question in this way that you are saying that suppose it comes up before the magistrate take a case of any other IPC OFFENCE and you find that the investigation which is been done by the police is not proper investigation because you know from privy council onwards the law is that ultimately it is domain of the police the court cannot interfere in the investigation the suppose it comes to the knowledge you can only say i am talking of generally not these IPC offences what do you do in IPC offences you say know there should be a under 156(3) some material can comes in you say you again investigate but in generally you find so many cases it is happening that some final report is being filed then what do you do you look into then the objections which are put before you and you say an offence is made out ultimately or you treat actually that for which is filed as complain and proceed on that basis you know the law by supreme court is very clear so this is thing when they are not doing but I can only tell you that under section 18a again there is provision which says that the protection which is available to him as a public servant will not be available to him if he violates it ...31 ..if the clinic is unregistered then the appropriate authority is not supposed to have any record then what happens under 28 yes yes.....okay if the clinic is unregistered I am coming ...very good question now the question is if the clinic is unregistered and it is not doing any ultrasonography on a pregnant women then it is not committing any offence here but if it is..please please complain will always be of the now please listen so therefore the complaint will be look at it there is clinic which is unregistered and it is doing ultrasonography on a pregnant women so therefore there will be some record that ultrasonography is being done on a pregnant women somebody record will come in some way who will lodge a complaint before you either the pregnant women or some other person will say that this is being done.

No my learned colleagues has told we can have certainly use the provision under section 202 CRPC correct we can confer enquiryyou are right which is ...rather a better yes that's the correct thing know you arelike you have we can also direct appropriate authority to conduct ...he is right because before you say that I am taking cognizant you can always do the enquiry so initially collect the material and then call him that's possible that can be done and that can be done by you are right ... i am actually very thankful to him because that can be done by a police officer ...then the authority named a person himself on the accused ohsir i have a small queryby ...we can direct a Show to conduct a ...if he is not doing it ...any other person you can as sir actually the wholeis created by section 27 sir i was ...if the complaint is forwarded

by the appropriate authority to the police suppose police register the FIR the appropriate authority goes to the police in number of cases it has taken place let me tell you in Rajasthan in Gujarat i am dealing with a case where it has happened and now the charge sheet is filed before the magistrate ...what should we do yeah ...if charge sheet is filed before the magistrate the magistrate cannot take cognizance on the basis of charge sheet let me very clear i am dealing with let me tell you ... i am dealing with precisely the same case from Gujarat high court where the appropriate authority went before the High court ..before the police and police then filed a charge sheet now what happened thereafter that on the basis of complaint also the complaint is now there before the magistrate there are 2 things let me tell you that case high court has stayed the proceedings one charge sheet the other one is complaint which is been filed by the appropriate authority sir there is no complaint.

No just listen to me if there is no complaint then nothing you cant take cognizance as simple as that the appropriate authority just make a complain to the police ..police register the FIR no you can't do anything to sir will we decline the cognizance you cannot take cognizance except on the complaint ...sir another queryif it is cognizable then police can arrest if police can arrest ...i am coming to that provision i am coming to that just a different thing .. I am coming to that ...sir sir another thingyou are right there is confusion there that's why I wanted to discuss and this is a very important thing for all of you sir another very specific query for me alsoa complaint is forwarded by the appropriate authority the police and police arrest the accused the doctor is arrested and the police comes up with the jc remand would we say that it an illegal arrest because they don't have the power to investigate you cannot say because ...when we say the act that the police is not under the power to investigate and its lies with the appropriate authority then the arrest is certainly illegal no no that's why i was reading the provisions and i read actually 4 and 5 for what purposes let us understand one by obe now there are certain things which are mentioned there which are components of investigation which have been given to the appropriate authority now as far as like search seizure etc etc they are concerned it can done only by the appropriate authority because thats what the CRPC provisions say now it doesn't talk of arrest as such that the appropriate authority can arresy one question is whether the police has power to arrest because in a cognizable offence the police has power to arrest and if arrest has been made whether the arrest was proper or not that's a valid question and one can answer it by saying that know this is ...there are 3 judgements which have been put in this compilation there are two judgment or probably 3 judgement which are in favor of that it is not as if the police power is totally taken awy its only at the stage of cognizance you have seen those judgements ...no there is no epress bar also ...that's correct...just mark. Sir then another query will arise...then just go slowly slowly not ...see there i have mark this one 3 judgements, i am not saying as i told you read the provision first and judgement slater but then just for your there is serial number 32, 32 says that there is a complete bar and 32 there is complete ...32 there is judgement of Punjab and Haryana high court which says that there is a complete bar ...no no in compilation just mark if compilation I am going to the sections immediately for your purposes i am saying just so you can ...when you go back 32 is a judgement of single judge of Punjab and Haryana High Court which says that it is completely bared that you cannot do on the basis on police charge sheet.

Sir you can also see actually see 238 very quickly 238 para 13 just see para 13..quashed you find, now you come to the second judgement which is 249this is same single judge taking a different view now you come to para 7 which is highlighted a plain reading only three lines plain reading of 27 in para 7 last three lines makes out the police as power to arrest a person just read it ...person who is formed to indulging in an offence, is committed under this act. 2(c) of the CRPC as per 2(c) of the CRPC the cognizable offence which...to arrest a person without warrant there is no bar or prohibition at the stage of investigation and then 10. 27 was not amended and therefore the police investigating 27 is not prohibited, the division bench of Allahabad High court had an occasion to consider the provision .and has held that police has every right

to investigate any offence committed violation of the provision of the act and no case is made out to quash the proceeding at FIR at the stage of investigation so those so the view, now take the division bench which is also there, which is at page ...268 question no 1, this is by division bench ...whether there is a bar on investigation ...28 of the act. in our view the said prohibition does not apply to stage of investigation ...only relates to the stage, when cognizance is sought to be taken by concerned court in this regard, dealing with question of such and such bar applies when the court take cognizance of offence and not at the stage of investigation so now, you got actually it is a division bench and senior judge. Now this is the law and by the way this question I have raised which I have argued recently and I have put it there that this is required to be clarified but if you will ask my answer I will give my answer to you ...now this is what I have said which is submission I have made before the court.

Section 27 of the act makes every offence under this act cognizable non bail able section 28 states that no court shall take cognizance of an offence under this act except on a complaint made inter alia by an appropriate authority concerning several states the police have acted under section 27 of the act and conduct the investigation and in some cases registered FIRS these firms have then gone on to be quashed by the on the grounds that police have no power to act under this act, it is suggested that all investigation done by police could be dated if a complaint is filed by the appropriate authority under section 28 infect rule 18(A) 3 4 of the PCPNDT act states as far as possible the police should not be involved in investigation of cases ...as the case are tried as complaint cases under the CRPC therefore there is no bar in exceptional cases for the police to be involved in investigation. that is the session which I have given there is no bar in exceptional cases for police to be involved in investigation this suggestion would aid in the effective implementation of the act keeping in view the extremely difficult objective sought to be achieved that is to say because so many times they don't know how to....no now one by one now I will summarize it because you know then it will be crossing the, see it is like this no.1 is that cognizance is different from investigation okay when you say investigation of an offence one can go and file a complaint before the police lodge FIR, police will investigate and ultimately file a charge sheet before the court this is one partthe person can also go 156(3) the it can be ordered the investigation be done and the court can also take it a complaint as such recording the statement of that person and issuing the process. These are 3 ways, now it is the 3rd way which has been suggested in this particular act. the question is that the powers of investigation search seizure etc they have been given to the appropriate authority, the police cannot actually take that power. Police cannot take the power of appropriate authority and do search and seizure, summoning of documents etc. that can be done only by the appropriate authority somebody goes before the police. The only area which is left out is because the cognizable offence and if the police arrest somebody then what happens, because if the arrest is made by the police.

And after arresting the person, person is produced before the magistrate whether the magistrate can act on the basis of suppose, he has to be again. Then appropriate authority has to file a complaint, saying that the person has been arrested so cognizable offence and then seeking a remand that they have to collect some material.....sir whether ...so therefore that's what because power of arrest is not there the division bench says and the single judge says that in this case because there isit is not covered by the special act, therefore the arrest can be made. Because it is a cognizable offence. This is one grey area where things have to be clarified and as I said that this question has been put beforeotherwise tell me that suppose in a complaint case a cognizable offence what stage you will say that the person should be arrested. Just tell me ...according to you ...he will not be released on bail correct ...absolutelybefore that if the police has arrested somebody ...suppose I am asking...police has arrested you look into the provisions now there is no power to arrest, so you say under the CRPC, this power remains with the police because it is a cognizable offence. Now after arrest, he is brought before you and you say that no has been brought investigation has been done in a

cognizable offence. then how do I proceed father because can you really say he should be on whose application he should be sent for furthercorrect(x2) ...actually now let me, i feel that though it has to be clarified by the supreme court but then number of other cases where they said no immediately you should not proceed and arrest etc.specifically it has been put here that only on the basis of complaint it can be done ...the powers have been given to the appropriate authority to conduct the investigation, therefore it will be more that the appropriate authority or the other person files a complaint on the basis of complaint while issuing process and when the person appears you take decisions on it whether he should be really send to jail for further thing which is required to be done or bail has to be granted . I think that seems to be the correct procedure.

Till the clarifications comes we should be followed by subject to what she has to add because otherwise if you will act in the other way. Act on the basis of there is all likelihood. And there are number of judgements that if you take cognizance on that basis then you cognizance will be faulted and it will be ultimately quashedonly one problem which is there is suppose the investigation has been done by the policethe complaint which air am facing which i am arguing before the court, i am saying that may be you don't rely upon that because once there is complaint therefore you have to base proceed on the basis of complaint now only problem is whether some material which is come in the investigation whether that material which i have to really think about and answer whether that material can be looked into or that material cannot be looked into....according to me in my opinion is that material, if the appropriate authority looks into that material becomes the part of their investigating process then it can be looked into if the material is collected only by the police then there will be difficulty that's why i am giving the question and answer of my view on that this would be the correct decisionsir in my view sir after arrest whether the police can forward the accused before the concerned proper authority, to file a complaint after arrest because police cannot file the charge sheet in this case after investigation whether they can forward the materials to the appropriate authority to file a complaint no we already discussed it and I clarified it cannot be done that's what i said the correct procedure is for the appropriate authority because appropriate authority has been given all the powers that they should do the investigation they should file the complaint put the material thereafter follow the complaint procedure warrant trial which is followed if you find that the person has to be really send to jail ...you should not grant bail then you decide accordingly if material has to be collected suppose the appropriate authority says that we have to collect some more material and the material is not coming forward from the accused ...then you okay he should be sent to judicial custody till the material the entire thing is done by the appropriate authority. that's the correct way, it is actually and that's why rule 18(a) has made it very clear that the police has to be avoided in this thing and its only complaint case which should be followed we should not mix up two things that is to say the this one and other one.

Though there is no power as I said in four and five of CRPC to arrest but even then exercising that power of arrest will not fit into the entire scheme of the act. and therefore one has to follow this and my suggestion subject to what ...justice says about it that it is you should follow the procedure of a complaint only don't go by the charge sheet which is put because then you will be putting yourself into difficulty in the sense the case including the difficulty because somebody will go and file a petition for quashing and then it will be.....excuse me sir, i am surbhi parshar i am from punjab, i am posted at savana in Patiala and recently case of this sort his come before me, i was on ...i was duty magistrate ...though I was not having the jurisdiction of police station but i dealt with the remand purpose the purpose of duty, so a request for judicial remand had come before me and that was the complainant was a police official. And he had sought the remand of accused, the jurisdiction remand of the accused under the act. so it was forwarded by the public prosecutor and there was no mention of appropriate authority so in the routine only i have sent him to judicial custody for 14 daysof course now when i will be dealing with the case so i am very sure that

they are going to file the charge sheet also because it has been dealt in the regular manner. It has not been treated as a private complaint. so in case the charge sheet is filed. which i am sure it will be filed, in due course of time so how should we proceed further in....see as i feel that's what we are discussing you have some difficult situation because there are 2 conflicting judgements of the Punjab and Haryana high court, the other one justice ritu behre judgement, i think she relies upon a division bench, the earlier judgement which is given by justice dayachoudhary doesn't rely upon the division benchbut even the second judgement what the division bench says that the bar is at the time of cognizance so therefore you cannot take cognizance on the basis of charge sheet which has been produced. you can take cognizance only on the basis of the complaint which is filed by the appropriate authority sir my question is now, when the charge sheet is filed then we can't just be sitting idle when the charge sheet is filed, then you tell the police that you under the provision of this act the appropriate authority and summon properly the appropriate authorityLordship whether whenever ...when you can't take into cognizance you can't take the cognizance. You can only say as you do, as a judicial officer that who is the appropriate authority ...appropriate authority should come and file the complaint on the so youyou have to file the case citing to section 28.

Dr. Shalini - what i would like to clarify is you know we are having, such similar proceeding, complaint is for bigamy under section 494 of IPC, what you do, 494 of the IPC, when you take cognizance only when the complaint is filed by the particular person. Like wife, right so what you do if the police arrest and bring the charge sheet whether police do it. And if they do it. what you will be doing similar here also, here the complaint when you will take the cognizance when it is filed by an appropriate authority otherwise you can't take cognizance so put police investigation and file a charge sheet under section 494 of the IPC will you take cognizance no you are very clear about it because you know that you will not take cognizance because section, in CRPC itself prescribe that no court shall take cognizance of such complaint except on the complaint filed by wife or on her behalf so at that time when you are not taking cognizance, you will take cognizance in such proceedings also because the cognizance is prohibited strictly unless and until the complaint is filed by the appropriate authority. So similarly if the police cannot arrest under section 494 of the IPC for bigamy the accused here also unless and until we issue the process it cannot be done. Have the similar parallel proceeding which we are having. at present we are really conducting and we are having no confusion about the same here there should not be any confusion because cognizance itself is prohibited and when the cognizance is prohibited except on the complaint of appropriate authority you should not bother about other aspects .

Mr. Parekh- see when you come to know that there is very serious offence which has been committed and merely because of wrong procedure you are not able to do anything then as a judicial officer can you not ask the public prosecutor or the state really to drawing attention to the provision saying that or to the NGOS that you must come and take it up because

Dr. Shalini - yes at the time of passing orders you can definitely refer the proper authority to lodge the complaint to the appropriate authority, i am sure i am confident that now the appropriate authority will take the necessary steps. instead of giving directions you can say and that will be the sufficient signal. So that because merely on the account of technicality serious offence should not go...

Mr. Parekh - Now i have a question now, my question is that whether the magistrate will dispose of the case or magistrate will only put it to the state that this has been done and asking whether, what action state is taking suppose before disposing of the case when you are not taking cognizance you are only asking the public prosecutor the state calling them and saying that this is provision which says that the appropriate

authority and who is the appropriate authority and asking them to take proper that's possible because you are not taking cognizance by saying that, proactive thing is not something which is bared or which is illegal under any provision so if you do that then it will be step further.. no doubt sir intimidation would be sent to appropriate authority whether this kind of an offence has been committed but due to theif the appropriate authorities, its very important because the appropriate authority for some reasons is not taking cognizance of this thing and filing a complaint in that situation the appropriate authority will dealt with because the protection under section 31 will not be available because now it says now i tell you this 18(a) is very important it says that ...i will just read ittake actionimmediately on receipt....under 28(1b) and if he she fails to do so shall not be entitled for protection under 31 of the act and defend the case so this is i am reading actually 18(a) new 9 just look at ninethat is for the state to take action against him. You know b 9(2) so you can always draw attention towards.....of the state locate it he won't get protection under d ...so he will immediately come the moment you do that the protection which is available to you will not be available and then action may be taken against you ...followed it you got it that is 18(a) 9 b 9(2) sir principle of natural justice is that nobody can be a judge in his own cause.

This legislation lays down that the appropriate authority will be the complainant and will be investigating the matter. The complainant as well as investigating matterlike cases under section 279 of IPC police themselves lodge the complaint police themselves may conduct enquiry ...mam the difference is that the same complainant that sub-inspector or complainant does not investigate the matter. In this case appropriate authorityfood inspector forest inspector. When they are conferred. There is no question arises...yes 2 enactments are there ...i did not bring actually i will bring a series of judgements under special act which are there so that doesn't apply.

Participant: Sir it is very clear that we can take cognizance on receipt of complaint. But now question is sir i am having one confusion from section 202. actually after receiving complaint we can postpone the issue of process and instead of conducting an enquiry, we can direct an investigation to be made by police officer and that is not like 156(3) now it is you know that's what i was saying that if you read the four and five of the CRPC, then these special law prevail over the general law. so special law says that this can be done only by the appropriate authority only thing which is possible is that the appropriate authority is not doing something then you can actually the other appropriate authority or there officer to come but then you cannot, actually give it to some other police officer for investigation. You understand that it has to be in consonance with that not in derogation of the special law.

Session - 6

Appreciation of Evidence under the PC&PNDT Act

Resource Person - Justice Dr. Shalini S. Phansalkar Joshi, Mr. Sanjay Parekh and Mrs. Varsha Deshpande

Mr. Sanjay Parekh - I hope the first part which we dealt with which is very very important is clear to everybody because that you will be encountering again and again please deal this as a complaint case. Take cognizance as a complaint case. And if there is any after investigation charge sheet has been produced then you ask the state authorities which is under your power because the social offence what state is going to do whether the appropriate authorities are coming and filing something. If they don't come forward, then

probably the state whatever action has to be taken they will take but then you can't take cognizance and proceed further. So that chapter actually ends there. Yeah, that's you are right then actually they can treat that as a FIR case because there is judgment which has been given by the Supreme Court. If you want to note down the citation.

You can note down that is ...that deals with the case of sand mining case, justice Iqbal's Judgement if i get the citation i will give it to you. I'll get it because in that case same thing happened that there was something which was in violation of the sand mining act and rules and also an offence of theft. So theft they said can be investigated because if you are taking away something then this will amount to theft. And they said it can be FIR is there then certainly the police investigation can be there and they can put theand the court can under both the offences. yes police case ...in respect of PC&PNDT act also there is judgement of Dr. Munday from Maharashtra wherein section 313, 312 of IPC were also attracted because of you know abortion and lot of killing of MTP.

So in that case the anticipatory bail application was also rejected holding that this is the case falling under IPC, though there are provision under, PC&PNDT Act also. So charge sheet is filed and the trial is being conducted so there is also i mean similar such cases under this act. Also so whenever there is medical termination of pregnancy also unauthorisely illegally then it can be done, then ...so that's clear if there are both. I think, i am very happy you put that question because that's another question which we have asked actually Supreme Court to answer. My answer is that if there is IPC offence then the charge sheet can be filled and they can proceed. Based on the judgements which have been given number of judgements which are there the recent one. By Justice Iqbal pertaining to sand mining I'll just get the citation Sanjay v. Union of India or Delhi Administration. Haan correct, see only one thing which i have covered probably. Who can lodge the complaint? Complaint lodged the FIR, i just noted down. cognizance records to be maintained i think, one question which was put on, 451-452 for that again just look at one provision so that, it will clear because that's another question which you have raised before the supreme court and where judgements have been given. Look at section 29. 30 as you know and Justice Shalini must have explained to you that this amendment has come and now search seizure ...seal and seizure both are there. 29 is maintaining the records during pendency because the question comes in that after the judgement is delivered when appeal is given and up to Supreme Court.

Whether it will apply because in my reading of this is that it has to be maintained till the proceedings judicial proceedings come to an end even up to the...then high court has given ..then Gujarat high court has given a different judgement saying it can be preserved only up to the appellate stage not beyond that question is also pending but just look at it, all records charts forms reports consent letters and all documents, required to maintained under this act and rules shall be preserved for a period of 2 years and for such period as may be prescribed. provided that if any criminal or other proceedings are instituted against such and such then the records and other documents are center laboratory clinic shall be preserved till the final disposal of such proceedings so the term which is used is till final disposal of proceedings all such record shall be made available inspection of appropriate authority i am just giving you because we come across judgement. the judgement is that know till appellate stage but then our interpretation is no it should be till final disposal of proceeding which will also include the proceeding which are available in the supreme court. Now another important thing is let me point out which is again these things are coming more from Gujarat High Court that it doesn't mention about the ultrasonography machine. If you look at 29(1) because you may 29(1) doesn't mentions about recordsreports consent letters documents required to maintain under the rules. So the interpretation which has been given, i think again there is division bench judgement of Bombay High Court which gives interpretation.

That this includes also all material objects which are mentioned will include the ultrasonography so you cannot say the 29 that the ultrasonography machine will not be preserved. I hope this is clear. you don't find the term material object in 29, 29 says the records have been preserved so doctors comes they come and move and application that what is to be preserved for 2 years. It's not the ultrasonography machine other records which are there they say. You take out all the evidence which is available in the machine and written the machine to us so that we can continue whatever operations we are doing. which you are saying cannot because once it is a part of the crime which has been committed then the ultrasonography machine cannot be released please this is very important thing which again because, it may come they may move an application for releasing under 451-452, even during 451, during pendency,

Dr. Shalini- Whether we can have it that there is one really a good case law for Bombay high court which says that not only pending trial it should beas there is likelihood of the machine being used in a repetitive offence. Because it is a sort of weapon and therefore it should not be allowed to desealed also. Repetition of such crime has to be prevented so cannot be made mechanical order of the delink or release of the machine. Court must consider the effect and impact of such order. So a very good judgement. You see they are saying.

Mr. Sanjay Parikh - Sir, there are two things ...as far as this part is concerned one is the during pendency whether you can release the machine and after the conviction what happens with the machine which i answered actually in the beginning now you can go to your question...so that this part will also then we go to third, yesterday we were told by perhaps MS Gulati that digger machines are sealed inside the premises now the license of the medical practitioner has been suspended the machine is sealed the fellow comes you please take away the machine wherever you want to keep it .at least give me back my premised i want to rent it out, can we perpetually hold the machine inside his premises where should we take away the machine. Where this machine could be placed in safe custody, during the pendency of the trial as you said. now the seized machine usually when there isshould we hand over the machines to the home of the district concerned so that it could be put to a better use till the pendency because otherwise it is wasted resources of the country at least. It could be put to better use. See this argument is usually put by that no this is ultimately ways because there are ultrasound machines.

You give to us and then we will be using it, and then we will be maintaining the records this is said even by the accused whose machine is this. now you are saying that no why it should not be allowed to be used once its a seizure ,.....seized article then premise is the same not the machine ...because of machine the premises is sealed ...generally machines are sealed not the premises and....machines and all the probes and all the operating areas are sealed and that particular notice ismachine is to be yeah that's an actually what happens is that suppose you seize some articles then you keep them them in some malkhana or someplace some where you police has to keep them so once its a seized material then it is to be under state control, so state has to take it away unless the premises is ...even if it is cancelled . Even if the registration is cancelled. Even then he is entitled to use the premises because that's his property. i feel so, that is very hypothetical because no doctor will take the risk of sending his machine to meykhana, no whatever even if it is there, thenhe is better satisfied that my machine is just before my eyes. It's a seized material so state has to take control of it. I understand, it's not hypothetical question ...now please tell me you will give me the answer. Once a material is seized this kind of machine who is supposed to keep control of the machine. The prosecution. state has to keep nab so when state has to keep then state has to find out because the seized, till it is actually ultimately because after confiscation, a thing can be destroyed or can be auctioned as we discussed after the judgement or supposeit's in his favor, then it will be released in to him but till then it remains under the control of the state.so state has to ...he can say so that you remove it sir actually they

go to the appropriate authority and appropriate authority says that the matter is pending before the court, you go and get the order from the court correct now the ball is in our court.

So you have to decide according to the, then you have to tell them, that it is your property we will not allow those to be released but then you cannot occupy then there are 2 conflicting rights one right is that he is a tenant. How you can ask him to pay or you pay the rent then ...of the act ...obviously, if you want to do. That's correct. your jurisdiction is to see as magistrate that the property which is a part of trial is safeguarded that's all beyond that its not yourso you safeguard that now i come to, i think this is all, now i come to only the last portion of this thing and then immediately come to the question of trial, which is the condonation of delay...now i will ask actually you that in these kinds of offences, offences against women. The offences which are committed against this society grave offences the provisions you find. if you want to look at the CRPC 467 onwards just look at it and tell me that which, you know the period will be here how much more than one year will be 3 years i think so more than 3years is the period and ill hypothetically i will not say even that the period will start running but i am asking you that in a given situation. there is a delay of say three years then which provision will apply 473473 is notwithstanding anything contained foregoing section that means section 467 to 472, 467 deals with definition clause. 473, if the offence is ...fine only six month one year for 3 years thereafter commencement. known to the accurate person ...the last portion 473 is the exception to the section 468 of the CRPC what, 473 deals with notwithstanding anything contained in the foregoing section that means, section 467 to 473 the court can take cognizance after the expiry of period mentioned in the sub clause 2 of the section 468 of CRPC by condoning it to do in the fact and circumstances of the interest of Justice court can take cognizance after the lapse of period mentioned in the subsection 468 ...correct now i will give you hypothetical case now there is pregnant women and the husband and other relatives they had taken her saying that she started vomiting and they said we will take you to the doctor and when she was not aware the ...did the ultrasonography saying that liver and other things we are examining and ultrasonography was done.

Of even the fetus she came to know this fact after a long time. she found when you know when she was looking at the documents she found that even the ultrasonography of the fetus was done now naturally ultrasonography of fetus was done then all form f was not done her consent was not taken all those things have been violated virtually but the court says no you have come to us after a delay of say 3 years more then 3 years then what should we do that is justified delay that can be condoned it can be condoned becausesee with lordships permission. the section 28 clause 2 3, if the appropriate authority does not produce the document on demand the court may to produce the document to take the cognizance, i don't want to discuss it further ...because it judgement delivered not pending actually judgement delivered recently then as i said by the high court Delhi high court the first judgement you know first lady who filed a complaint ...dr neetu khuran it's a reported judgement so therefore i can discuss there is no pendingi have not filed any appeal so there is no harm in discussing about it. Where the Delhi High Court has dismissed the complaint on the ground that this is bared by limitation after 3 years she has come. now the question is besides actually this fact whether the 472- 473 will apply because there are number of judgements which have been given by the supreme court when there is a crime against women like even dowry cases you know, demand of dowry cases and some mother...offences they was said that it will be either treated as continuing offence or looking at the situation we will condone the delay whatever is in this circumstances, now do you feel that these are cases where the delay should be because these will also come before you how you will treat these cases whether you will treat these cases as a routine cases and dismiss merely because of some delay or you will treat them as continuing offence or condone the delay that's actually based on supreme court judgments there are number of judgements which are there.

How do you, what's your reaction to this whether....the example which i give you is correct but then in spite of that High Court has done that we will take up. i am not talking about that, because she said i give you actual example that it was done on her she came to know latter on through RTI she got the information and naturally it is an admitted case that none of these things were done form f was not filled up her consent was not taken so there is violation ...no that violation continues actually inspire of the whatever limitation you talk about. she did not know about it, but i am saying that suppose the 3 years have expired in certain cases and she comes to know after that then what will or then whether how you will treat with this kind of thing ..Not only this one when she comes to know...when she files a complaint...she had knowledge earlier suppose she had knowledge and she did not, she was not able to come immediately whether how you will deal with it say. whether you treat this kind of offence as a continuing offence or where you feel there is delay to be condoned merely because she was deterred for example the fear of the husband relatives there may be 100s of circumstances she did not come before the court how i am only asking whether you will treat this case as normal case or treat this case is a different case that's all i want to know.469 will apply from the date of knowledge but 472 suppose you shared knowledge but she did not approach in time. But why not continuing offence because ultimately this act which happens in the society that you eliminate the girl child and elimination of girl child has an impact not on individual person but the entire society. Sir, one incident no one incident actually has a repercussion on what has the repercussion like even dowry cases. the court has said will be treated as continuing offences...sir i have small query whether we are talking condonation of delay taking cognizance but section 30 says that CRPC would be applicable for search and seizure also whether limitation clause will be applicable because application of the CRPC is restricted by particular section whether we can apply no no that is only search seizure it will apply, but then it is....otherwise you know what you are saying is then even the warrant trial summon trial everything will be excluded ..its not that way you can't read it is not that ...if you the CRPC, all the provisions will apply, that provisionthen how will you conduct the trial then there is no provision for trial here. summon trial warrant trial it doesn't mention, so where it is not mentioned you go by ...that's a different question now see that's a very good you put me but then this is all special offences you find ...unless excluding in some waysir in this case the situation and the circumstances is also very important sir to condone the delay in this case the situation exist at the time whether she has to give complaint or not and the circumstances we have to look into the same it plays an important role while condoning the delay, no condoning the delay you can give, i am not asking that I am just asking actually because you willi am asking you very simply whether you treat this offence as a normal offence where you strictly look at the limitation or you will treat the offence as a special kind of thing against the society, where the girl child is eliminated which is creating a problem in the entire society and therefore you will say ...no its a serious thing and we will condone the delay in the interest of justice. Because 473, if you look at just 473, talks of that...

Dr. Shalini - it is necessary to do in the interest of justice, and especially we have to again to the object and reasons of the act we know for which purpose the act is enacted that is to curb the social evil to stop such practices which are resulting into decline in female sex ratio, which are also affront to the constitutional guarantees fundamental rights of equality protection against discrimination and therefore naturally we have to take again in broader perspective so that is what I wanted to askjust elaborately that even you deal with it continuing offence you may have different view my view will be. i will treat that as continuing offence because according to me when the offence is committed and you eliminate the girl child because of some reason then that elimination has an impact on all times to come whether it will be so therefore one can treat these offences as a continuing offence because they have an impact, but in any case, it will fall under 473 which talks of thenow this ends actually as far as important aspects are concerned now there are few other things which i wish to point out, which is the ...that question was put that suppose somebody

is find guilty ...kindly look at the ...this chapter 2 very quickly, i will not read them chapter 2. 3 for example deals with the registration part of it there are different aspects of it. Place registered you can skip that, 3a is prohibition of sex selection and then sale of ultrasonic machine....4 is important and justice Shalini has probably elaborated.

You have done already four i will not read it. Just look at 4(2) again i will it only says no pre-natal diagnostic technique shall be connected except for the purpose of any of the following abnormalities. and then no pre-natal diagnostic technique shall be used unless the person qualified to do so is satisfied for reasons to be recorded and any of you following conditions are fulfilled so there has to be these abnormalities have to be noted and then 3 is the reasons have to be mentioned and then proviso is there you know very very important thing is that it has been put if inaccurate found shall amount to contravention of provision of that's a deeming provision please mark it this is deeming provision she must have explained to you there is judgement yes suo motto very important,judgement of Gujarat kindly mark it yes i am not reading it. i am not pointing out, its a , am i clear that suo motto part of it the judgement which has been given that this will be treated as so the moment inaccurate are there ..The burden will be shift and the other person has to point out now, the when you take when some complaint is filed then which are the other actions. Which are taken one is the complaint for which ultimately it may result in prosecution and whatever penalty or punishment he has to award then there is under section 20. section 20 did you see that ...20 cancellation suspension or registration that has also been discussed then we come to 23(2) ...that's one 23(2) now it says this is third one all three can be done simultaneously that is to say that you are trying that is your trial will end in conviction or may acquittal whatever it is 20 is in action which will be taken by the appropriate authority and 2 is again it will not be taken by you but its a part of thing punishment which will be suffer punishment in the sense termination of registration the name of the registered medical practioner shall be reported by the appropriate authority to the state medical council concerned for taking necessary action including suspension of registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the registrar of the council for a period of 5 years of first offence and permanently for now it is necessary if the appropriate authority doesn't take this action again. I hope you are, just listening to this part.

This one is that the appropriate authority. why i am emphasizing this is that you can...the suspension is when charges are framed by the court now number of cases you are talking about, not digressing it like conviction on conviction ultimately that you will say person will not be allowed to contest the election or even if is contesting the election then he will not continue. We are trying to say and arguing before the court and saying it should be amended when the charges are framed because when you say charges are framed then there is application of judicial mind. please understand there is the reason, there is application of judicial mind when you are framing the charges, so once you frame the charges then there is automatic ...then on appropriate authority, there has to be suspension and it has to be ..Continue till the cases is disposed of. Now you are not concerned with this because you are not exercising this power. But i am saying as a judicial officer in order to see. That these provisions are properly implemented. You can certainly ask the appropriate authority whether this action has been taken or not. And you can record ...that we have conveyed because it is your duty also after the charges are framed. You can say that we have framed the charges and we ask the appropriate authority to convey it to the state medical council that you can say and then report us what action has been taken. Because again its not your because you will be doing something which is wonderful in one sense. If it is done by the magistrate so no nothing like that. what will happen is because there are so many High Court Judgements that's the problem actually you suffer that the High Court Judgement says that no if there is a rule he must the principles of natural justice will be followed and then he will be given hearing etc. etc. which in both situations don't apply it doesn't apply in this

situation of 23(2) it doesn't apply in the situation of 20(3). In 20(3) there is suspension, it doesn't apply, it doesn't apply in the situation of 23(2) which is a part of trial. You can actually in both situation ask what is happened that can be done by the judicial officers which will promote virtually thought it's not a part of ...promote the implementation of the act.

Dr. Shalini - I would like to say a success story because after we started conducting various training programs in Maharashtra and we trained above more than 2000 judicial officer the judgements which were coming were really encouraging, because in this case not only. The evidence was appreciated properly, but at the end after the conviction order was pronounced he said that, sonography machine is ordered to be confiscated to state and in another case. I mean he said that, copy of the judgement be sent to the appropriate authority and medical council of India. So that with a direction to take necessary actions. so the court is you know going taking somewhat mixed step not only relying on the appropriate authority to take cognizance of such judgements but making it a point that ...copy of the judgement be sent and if thereafter also appropriate authority. does not take action then he is also liable but the point to stress is that whenever you are ending into conviction any case you can also go step further in addition to confiscation and other aspects. Ensure that. The copy of the judgement is sent to the direction accordingly. Even during pendency after framing of charge also you can inform. You can say that this order maybe informed that charges framed against the accused for necessary action it will be for them to take such necessary action but definitely you can do. I mean some judgements in that respect. Are really encouraging that they are implementing the provisions of the act.

Mr.Sanjay Parekh - now on the question of what kind of documents will be there, the evidence. I am just coming to that just mark one thing which is very important again for the trial. For the trial two things are important. Four proviso there is a deeming provision. You know proviso. Which is with regard to the inaccurate in deficiency now if you go to 24 there is a presumption. Presumption in relation to 4(2) and 23(3) just see that one ...now this is important. this presumption ...applies only to the situation that presumption which is mentioned in 4(2) applies to a situation where there is deficiency inaccuracy correct now we come to the offences now 23 is mainly deals with the contravention of the provisions of acts and rules if you just look at it. I am just trying to classify the offences 23 looks at contravention of the act and rules for punishment is 3 years. Now you apply this provision. Contravention of act and rules one is two a situation which is under 4(2) now we are talking of actually evidence so you actually put questions to me that will be, now when we are taking of this one deficiency or inaccuracy then you are talking actually which will be contravention of 5 and 6.

5 and 6 will be that as if the doctor has determined sex of the child it will be presumed as if he is determined and he is to prove to the contrary now which will be documents in this case the forms which are being filed up we will find out whether before conducting this ultrasonography the consent was taken just look at form f you know that's again important there are 3 4 things of form. I think directlysee this is sometimes we forget you know which are form f is just skip the entire form come to the end. You will find there is declaration. Declaration of the person undergoing pre-natal diagnostic test or procedure. I declare that by undergoing pre-natal diagnostic, i do not want to know the sex of my fetus. Before that there is..Then there is a declaration by the doctor this is when a lady accused that she is undergoing the diagnostic procedure. This is to be done now this particular consent under the rule which is mentioned has to be taken before the procedure is done they said rules says before the procedure. yeah of course this is done after ... the doctor will do after so she will send before the doctor will do after but even before that is form g the form of consent which is to be filled up now form consent is signed by pregnant women so that there will be again seen signature and seal of the genetic clinic institute gynecologist etc. so two form when she will go she

will be examined that it is necessary then consent will be taken below consent it will be signature will be there.

Then the doctor will say you have to undergo ultrasonography then she will sign this declaration. Which will be before. then this will be before, then this will be filled up then again the declaration will come these are all the forms which are required to be maintained so if they are not maintained then there is a very serious offence. There is violation of act and rules if there is inaccuracy or deficiencies then there is a presumption so documents are very clear once the appropriate authority will bring those document. I think you don't require any other document because when i came ten years back let me tell you because there were district judges they said no we require because this that time it was not very clear the provisions were not very clear. now the provisions are clear so what you require is only those document if you find documents are not there or inaccuracy or deficiency in both situation will proceed that there is an offence which is committed now tell me if there is anything which you want to ask that whether any additional material will be required because according to me once you have this then it should be over within a six month period maximum the trial should be over in six month period what more you require , he has to prove actually the in defense.

You don't have to do much the presumption is there ...no i am just saying... i am appropriate authority. I am giving this documents to you in evidence I will come evidence i will certainly exhibit these documents. My evidence will be over in 5 mins. I will exhibit and say this is over. This is what a ...then naturally. I will be, if the appropriate authority, appropriate authority will be cross-examined then defense witness will come then defense whatever they have to say may take time you know one or two, but who will come at .but whosoever may come they come because on the face of it when there inaccuracy or deficiency its not technical in nature it has to be.

And I disagree with all the judgements all the judgements which says that there can technicality there can't be technicality because the moment you allow the technicality the law provides inaccuracy deficiency where there is no offence which is prescribed here then section 25 3 months can't go into technicalities and all it cannot be done, it has to be strict implementation of the provisions of the act so, if you want that any other evidence we require, I can answer otherwise proceed further now take in the case of the clinic which is not registered and doing some kind of ultrasonography now in situations if it...no take in the case of the clinic which is not registered and doing some kind of ultrasonography now in those situation if it is not registered and keeping a machine there that itself is an offence you can't keep the machine unless it is registered if you are doing something there is a allegation that you are doing then without registration you can't do so it.

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implementation of the provisions of the act so, if you want that any other evidence we require, i can answer otherwise proceed further now take in the case of the clinic which is not registered and doing some kind of ultrasonography now in situations if it.....so what the appropriate authority will come ...appropriate authority will say it is not registered number 1 number 2 take a photograph it is lying there panchnama that it was lying where the machine so you look at panchnama then thereafter suppose the ultrasonography has been done then the records of that, if they are available those records will be look at it without this even if form f has been filled up suppose it is filled up.

But without registration it is done then this is again will be an offence. now we come to slightly complicated part which is ...now we come to which i was telling you 4(2) look at and come to and i will also need your help in this one an 23(3) okay 4(2) says that no this is where actually you put questions because there you will say no pre-natal diagnostic technique shall be conducted except for the purpose of detection of any of the following abnormalities 6 says any other abnormality or disease as may be specified by central supervisory board so they have mention probably something here any other indication of genetic disease anomaly etc which has been put by ...you have that thing ...then comes it should be there that one pre-condition then no pre-natal diagnostic technique shall be used or conducted unless the person qualified to do so it satisfied for reasons to be recorded in writing that any of the following condition are fulfilled namely these things are mentioned so these abnormalities should be there then these conditionality should be fulfilled then you must record in writing that it is required to be done then your proviso comes in now 4 is important no person including a relative husband or pregnant women shall seek or encourage the conduct of any pre-natal diagnostic technique on her except for the purposes specified in clause 2 and 5 is no person including relative husband women shall seek or encourage the conduct of sex selection technique on her or both, this is that except for the purpose 4 2 they will not be encouraged now this has the link with the offence that's why i am reading it.

Now come to 33, now read it carefully and then i think you will be unless there isany person who seeks the aid of any genetic counselling center genetic laboratory genetic clinic or imaging clinic or a medical geneticist etc. etc. or registered...or any other person. For sex selection or for conducting pre-natal diagnostic technique both are included sex selection and pre-natal diagnostic technique on any pregnant women. For the purpose other than those specified in 4(2) he shall be punishable for term which may extend to 3 years and fine which may extend to 50 thousand rupees etc. etc. now this is clear person who seeks the aid or any person doing it. Other than the purpose which is mentioned in 4(2). Will be punished below that is mentioned for removal of doubts...the provision of section 3 shall not apply to women who has compelled to undergo such diagnostic technique for such selection. She was compelled. Then she will not be otherwise she will also become an accused. then 24 not standing anything contained evidence act, the court shall presume unless contrary is proved that the pregnant women was compelled by her husband or any other relative as the case may be. To undergo a prenatal diagnostic technique for the purpose other than those specified in 4(2) such person shall be liable for abetment of offence under 23(3) shall be punished.

With such and such. So it's very clear that if this is done. Then there is a presumption which is given for as far as the husband or relatives are concerned. Presumption against them. If this is done. Then the doctors there is no presumption. There is no presumption against the doctors. But the question is that what kind of material will be there and how will you get the material. To show that the test which is done either of sex selection or of pre-natal diagnostic technique is for purpose. Other than 4(2). If the record is maintained. One is that reasons have to be given in writing.that she has to say. In reasons ...these abnormalities are there and he may say so. Even a false statement can be made. He can also give the reasons that this is for such and such purpose. It is being done. The appropriate authority, will then have to look into the kind of

procedure which were applied on the pregnant women collect that material. And say with the help of a doctor. Because you won't be able to do it then you have to take opinion of a doctor saying that none of these abnormalities exist. Am I clear on this .see how it happen...the appropriate authority ...it will be signed. It is told to some say outsider NGO that this has what happened. Actually the lady was not suffering from any abnormalities it was not covered by 4(2).

But still this ultrasonography has been done. Then how actually it will be detectedno no then it will end everything. Because if you do ultrasonography for that purpose. Then every case, it will be done ...shall we except for the purpose of detection of any formal abnormalities. 4(2) so there has to be.....the six of these abnormalities...then please read third one. No pre-natal techniques should be used. Unless the age of pregnant women is about 35 years. So if a women pregnant women is below 35 then these the prescribed under 2. They could also not be conducted. Isn't this a contradiction? No no see number one the doctor will look into it and will say that for ...what is purpose of inserting age ...that for the purpose of chromosomal abnormalities. I want to do this test. So we cannot do this test even under the 4(2). Yes upon that women. And if the doctor is doing...yes you are right. It says that age of the pregnant women has to be above 35 years...then every doctor would be in custody sir. Because the first thing they do on the first trimester is the chromosome. And are always in the window of 25-35. You are saying that if the age of pregnant women is below 35 years, but she is actually suffering from chromosomal abnormalities. No no i am talking about the relation between 4(2) and 4(3) that's what i am saying. If the women is beyond 35. Then a pre-natal diagnostic test for ...i am taking your example only. I am not contradicting you. I am saying that a lady who is below 25 years. Suffers from chromosomal abnormalities. It cannot be done ...but the reproductive age group is between 18-35. Sir, sub clause 3 is the extended portion or the, exception to 2 that is what the problem, every doctor. ..Where is Doctor Dr Sabu come Dr.Sabu? You also come and answer. This question. Sir us. Sir i think that the subsection 3 is not the exception. Because in case of for the detection of the abnormalities it is not required that women should be, above the age of 35 ...she may be having abnormalities even below the age of 35,so its not only age there are number of conditions. ...because if you do in a normal way ultrasonography.

Below 35 years of age how could you indulge in 4(2), 4(3) is the extra condition or the exception. ..Basically sir which are written in the subsection 2 for the detection of the abnormalities basically i have medical background also so my brother also surgeon and he his pursuing is his pg. from Delhi so when i, we talk about this act, he tell me the problem. When couple came to them they have, that whether the pregnant women has any abnormalities or not or basically when there is no abnormality detected. Even then the doctor explained to the couple they told them what is the sex of child, but basically when the prosecutionand the doctor ...they have ...whether the child is not going through any abnormality or not ...when we call for medical opinion or any expert that is also doctor...and doctor always favours the doctor. Where we are supposed to grant driving license to person beyond 18 years of age 3 but 3 is like a situation you cannot have the driving license...its like aap driving test ho ga but aapko driving licence diya jayega ...section 4 ...i explain now you are right that 4 ..(1 2 3) they are integrated provisions 2 is for the except for the purpose which is mentioned here now into look at 6look at the form now, the form gives you ..Section 10 also and then the things which are mentioned here 10. No 10 just look at 10. Just look at 10 you will understand for all these purposes it has been added now...so central supervisory has added these things which have now become a part of for all these purposes...it can be done ...form f serial no 10. usmein 10 serial no hoga....i am coming to thatlet us go one by ...so 2 is...number because naturally the women organization said that you cant do this because so many times it happens as she was also pointing out.

So it is the part of the act now because now we are coming to what you are saying now look at this 3 no pre-natal diagnostic test....any of the following conditions are fulfilled. Not necessary that the pregnant woman is above 30 yearsmy wife just undergone ultrasound she does not fall under of these consent. ...sir wife of younger brother whose age was 25 years. Hail and hearty. So whether she can undergo a sonography test. no no because we want to ...i am going by law because under law the routine cannot be there otherwise then 4 then offence will become redundant.....the doctor has to sayDr Sabu is saying that then he is wrong. 4(2) the abnormalities which are mentioned. In the form doctor has to say that she falls under this particular category. The doctor has to further say this is the ...the thing that i am satisfied. He has to give reasons.

Dr. Sabu - The law allows predetermined sex diagnostic techniques for any other reason other than sex determination , okay the only reason when sex determination is allowed for is for diseases , please remember so , fortunately there are people who know law there not from NGO sector look at the law and we have wonderful judge with us who will ultimately decide on it, now the question is very simple , see we are reading fusions , okay can we hear...can we just listen to sir, we look at the provision ,the provision says it is an underrated thing linked ultimately with article 23 (3) which says that only for what is mentioned for to plus whatever has been added and for three reasons have to be given , when you say reasons have to be given , reasons have to be given after ultrasonic review or before ultrasonography , you to give it before ultrasonography. Let us not go into what happens when you give the reasons, there after the ultrasonography is done , pregnant woman's consent is taken then he writes for what purpose he's doing , then she writes that no sex of the child has not been detected , I don't want to know sex , that's all the procedure which is followed, now what is being said is and rightly so, that if you look at the form virtually everything is included there everything is included , that will show the moment some lady is pregnant she goes before the, and she signs anything this is how actually how the provision has been diluted, by our central supervisory board now provision is diluted , now my very good friend Dr Sabu, she talks about stagnating the provision but she doesn't know that once he gives this power that in every case you can do it. then its become redundant that's what i was trying to tell you, so the act only prohibits section actions and it prohibits other methods, prohibition is only for the pre embers an act to provide the prohibition of section action before or after the conception and for regulation of pre dental diagnosis of for other purpose, so the the technique can be used for section 4(2) .

When we read provision 23(3), when an offense has been made punishable it is made punishable for a particular act. Read then 23 (3) how do you read it.

any person who seeks the aid of any genetic counselling center / genetic laboratory / genetic clinic or ultrasound clinic or imagine clinic or of a medical geneticist or gynecologist / sinologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre natural diagnostic techniques on any pregnant for the the purpose other than those specified in subsection 2 of section 4,

and if you come to this one , for purpose other than that it is a different thing that it becomes redundant because everything is included it says so for purposes other than those described in section 2 of 4, suppose the other things were not there and only one two three four were there , and a person who is otherwise pregnant and has some minor kind of a problem . Punished only if he conducts the test for any detection other than , so 4 (2) is clearly omitted from the punishment , no no 4(2) is not omitted , if for 4(2) you are doing it. then it is justified, but other than 4(2) you are doing it is not justified for example, if you could understand and correct me please, suppose there is a pregnant woman and she is not suffering from any of

these problems which are mentioned for to, she goes for the purpose of ultrasonography according to you, what is the meaning of 3, whether it should be allowed or should not be allowed. What what does it say?

You think the technique can even find out whether she was having that disorder or not, by placing hand on stethoscope you cannot find weather the fetus is suffering from any genetic disorder , you make everything that's what is happening , then what happens you know let me tell you, anybody goes , Sir on section 2 is prohibited ,

Nodilutationlets be clear there are medical indications for when a doctor decides a pregnancy requires it, you have to do it, and otherwise it is unethical.

So what I'm trying to say is , no because that was referring to the genetic test see what happens with the advance nope, for what I'm saying is for genetic test because women at older age have a higher risk, so that provision was put see what I'm trying to tell you is please understand that there is no dilution of the act, what i am saying is that ultrasound is allowed everywhere in the world, the only difference between in our country and another country is where sex is communicated , okay the only difference , no what I'm saying is that please remember if it is very simple to say that, any pregnant woman for ultrasound will be allowed except that detection of sex will not be there, then there will not be need to put so much there, please understand that's what they are trying to tell you, we are actually dealing with law, when it was very simple anything could have been said any pregnant woman is allowed the ultrasonography except the doctor's will not detect the sex. That's all. Just one minute, the pre natural diagnostic techniques include genetic techniques and ultrasound, so what I was trying to say is please understand, ultrasound is permissible, genetic techniques you would require, for those conditions...Please listen, you keep form f because if sex determination is done, then you can detect it, see that...

According to me there was a purpose, that in a routine way, ultrasonography should not be done, because this machine was creating a problem that's why they said, these machines should not go to the rural areas, that's why the portable ultrasound has been... some restrictions have been put, the entire thing was that in the routine the ultrasonography should not be done on pregnant women , only in certain cases it should be done , so that doctor's do not keep on doing the routine thing and keep on charging from the pregnant woman, and this out doctor , Dr Puneet Bedi has been repeatedly pointing out , he says that no it is not necessary on a pregnant woman that you do, but what is happening is , the moment you go to a Doctor he or she will say that you have find out and do it, if you look at form f , this has become virtually brought to an end...and that's why we say that people were from rich class thry get it done , and that's the reason why studies have shown , that you find `the is continue - the male and female not done because poor people

1 cannot afford or 2 if they can afford they can pay little much of money, 3 sometimes tribal don't want to know whether it is a boy or the girl. this what we wanted actually if my friend is right we wanted this bane of ultrasonic machine, or this new techniques to be controlled and regulated in some way, was the entire purpose of this particular act and if you allow a pregnant woman to the whims of a doctors any kind of test which is being done, fill the form then according to me 4, 2, 3, 23 they all become redundant

To the f form, no. 10 implications of the delusive procedures what you need to do is to specify the referrals in the request and take the regular slip or a self reference form,

There are 23 conditions that say diagnose intra ultra and endorectopic pregnancy and confirmed viability. Estimation of gestational age , the list says.. And is not allowed for sex determination. We cannot ban

sonography its a boon that is been available , and like i mentioned yeaterday this act has prohibitory ,preventive and regulatory provisions and this is regulating the use of sonography for these techniques and not for determining sex.

Madam please understand it was very simple for the legislature to say a pregnant woman, because of inherent danger , the doctor can certainly do it, the only thing that is prohibited is he'll tell the sex of the child . Nothing else was required. We are on a different thing, I was trying to discuss with them or to understand them it's a kind of interactive theme. To know that how the different kind of offences which are their they will collect the evidence and they will ultimately punish the offender so when i was coming to this particular thing, i was reading 4, 2, 3 read with 23(3) and 24. Because there has to be some purpose of the legislature mentioning it, that's how we understand the law. That it is not for any reason the words are used. even when a single word may or shall is used there is some kind of meaning behind it, as lawyer and probably judges we also understand that it cannot be done interpretation which we think you know from the air , no this is what we thought , that cannot be the interpretation and one looks at the interpretation if you bring everything there, then you what you are saying that all these things can be conducted that makes 4,2, 3, 23 (3) redundant actually , as i understand correctly subject to , now she has to finally say that's my understands say.

I have another one small point to make, that out of these diseases certain diseases are sex seen diseases, if you talk to a medical practitioner he or she will tell you that this list was put because certain of these diseases are carried on basically from a female to a female, sealing disorders okay for that you can detect but just to detect sex for the purpose of elimination is not allowed.

What is not allowed here is determination and communication of sex, you are conveying something which think is contrary to the proper proceeding of the act, purpose was not to do it, if this was the act then it was no need to have such a big aculo, we have brought this act to ultimately control, this routine kind of ultrasonography.

Just one minute when you do ultrasonic, it gives you lots of conditions for which ultrasound is required, now if you look at item 10, form f item 10 that is page 41, i.e., in form f, if look at the detection of chromosomal abnormalities, structural defects and other abnormalities that follow up, now so you know that it's only a small proportion of children that fetuses will have this abnormalities. What am, let me just complete please, see what i am trying to say is that there are fetuses which are abnormal like for instance section 10, just let me finish please.

Ms Shalini please speak about it, so far what is prohibited is pre natural diagnostic test, now what is the definition of those techniques you will find in section 2 right, so what it says , it defines pre natural diagnostic techniques, if you go to the definition clause, it is section 2(a), it defines the procedure defined , it also includes, because section 2(j) , defines pre natural diagnostic techniques include all pre natural diagnostic procedures and test which are those test and procedures are are further defining section 2 (i) and section 2(k) because technique includes both procedure and test now it also include , ultra-sonography was very much within the concept of pre natural diagnostic techniques and in section 4 , clearly says that when it will be permitted only when the conditions mentioned in 2(r) are satisfied, right and subsection 3 what it says , in case of death conditions , it can be the pregnant woman 35 years or older has undergone 2 or more spontaneous abortions or fetal loss so it may be in addition to sub clause 2, in those cases it may in other

cases if woman is below 35 years and she's not satisfying any of these conditions or conditions laid down in sub clause 2, then ultrasonography is also not permitted, that is clear.

This interpretation is accepted, then take example in Bhopal City there are 100 sonography center which are catering the need of the pregnant women , in routine we are finding that during the gestation period at least a woman is asked to go for 4th sonography or 5 sonography after every months or if this interpretation is allowed then only 2 or 3 will be required to cater the need, because doctor has to examine and there will be very few patients on whom we requirement of conducting the ultrasound. Then instead of doing this just like organ transplantation are very steep law,

Now what you are trying to say is something which is happening in the society, no pregnant women are there if this doesn't happen what will happen. We are today not talking of that this is because of in this moment , ultrasonography machine can , she just read out the definitions, included win the definitions that ultrasonography is one of the things, when we are arguing the matter, let me tell you that this kind of a chromosomal separation was not there it was a doctor from Bombay, melanin, who came and said, No i am not violating anything because vis a vis not a pregnant woman i am doing anything, I'm doing something outside, i.e., to say I am bringing XX and YY separately and that's how he enlightened all of us. And then the judges said ma'am please look into it..And at that time Attorney General was appearing then he informed the central govt that you have to bring legislation that's how the legislation was changed. The long and short of it is that what we are trying to look at it is the as the science is advancing new and new techniques are coming even beyond that.

The moment ultrasonography machine came which was,when we were arguing the matter let me tell you that this kind of a chromosomal separation was not there there was one doctor from Bombay malpani who came and said that no i am not violating anything. Because it's not viz a viz pregnant women. I am doing something outside. That is to say in am bringing xx and my separately and that's how actually because of the enlightened us and then the judges said. Now please look into it. That time the attorney general was appearing then he informed the central government that you have to bring change in the registration that's how the registration was changed.

Dr. Shalini - the provisions to be interpreted and i am sure these workshop or these, two day workshop will really throw a lot of challenges at the same time will have a broader perspective for all of you to interpret the provisions of the act so it was really. Thankful to senior counsel Sanjay parekh to Rajeshji to Anuja to doctor Sabu to Shruti and everyone. On behalf of you all and myself also i thanks the National Judicial Academy and everyone for having such a good interaction and especially to all of you. Who have come from all the places in India and you have contributed a lot to these discussion as shri parekh will also agree because your inputs had made this interaction, lively and also thrown open several new issues for him to argue him in the Supreme Court. So the things will become far clearer now so thank you.

Mr. Sanjay Parekh - Just add one thing that the entire debate is about the mindset so. I keep on looking at my own mindset and i said judges you have to look at your own mindset, you know sometimes you do not know the male domination. You know when it occupies so one has to keep on observing. I think this all the time and for judges it becomes more important than for any other. Thank you.
