

P-1106: WORKSHOP ON PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994

31st August 2018 to 2nd September, 2018

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The Academy organised 3 days “Workshop on the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994” from 31st August, 2018 to 2nd September, 2018 for Judicial Magistrates from all States. The workshop was organized to enhance the capacity of Judicial Magistrates for better implementation of the provisions of the PC & PNDT Act [hereinafter Act] and the expeditious disposal of cases. The workshop involved discussions with and guidance from experts engaged in implementation of the Act including judges, advocates and civil society organizations. The workshop focused on issues regarding social context of the PC & PNDT Act; grey areas between medical termination of pregnancy and sex-selection; role and functions of authorities under the Act; jurisprudence concerning implementation of the Act; and trial process and appreciation of evidence under the Act. The emphasis in session was on clinical, case law analysis and interactive discussions.

Major Highlights and Suggestions from the Workshop

Session 1: Cultural, Social and Economic Factors that Promote Gender Bias: Context of PC & PNDT Act in India

The speakers initiated the discussion by sharing data on missing girls in India. It was highlighted that child sex ratio in India is consistently falling over the decades. The sex selection has now pervaded into rural and tribal areas as well. The speakers said that prosperous States have worse sex ratio in India. The speakers discussed causes for sex selection which included patriarchal mindsets that prefer boys over girls, dowry system, family lineage, males being considered to be old-age support and last rites to be performed by males. One major cause is easy accessibility to technology for sex determination. The speakers further discussed implications of sex ratio decline which include increase in violence against women and sex related crimes (such as rape, polyandry, abduction and bride trafficking), adverse effect on the condition of women in society, increase in sexual exploitation of women, marriage squeeze and increase in male bachelorhood. The origin of the Act in India was discussed. The Constitutional roots of the Act was highlighted and the speakers discussed landmark judgments of the Supreme Court of India for proper implementation of the Act.

Session 2: Role & Functions of Authorities under the PC & PNDT Act

Appropriate authority plays a crucial role in the enforcement of the Act. The speakers discussed the provisions of the Act concerning the powers and functions of the appropriate authority which included powers to grant, suspend and cancel registration of clinics, seek advice of Advisory Committee for registration/ renewal of clinics or suspension or cancellation of registration, ensure that standards prescribed for clinics are followed, investigate complaints of breach of provision of Act, take appropriate legal action against use of any sex selection technique by any person, create public awareness on related issues and to supervise implementation of the Act and Rules. Judgments of the Supreme Court of India and of various

High Courts of the country were highlighted and issues concerning appointment, powers and functions of appropriate authority were discussed.

Session 3: Medical Termination of Pregnancy and Sex Selection: Grey Areas

The session focused on laws prohibiting sex selection and its implications on medical termination of pregnancy. The speaker discussed various aspects of termination of pregnancy and legal framework to regulate the termination. The speaker emphasized that due to fear of laws prohibiting sex selection, many times doctors decline intervention in genuine cases for termination of pregnancy such as in situation of rape cases and fetus having genetic abnormalities. The grey areas where services of abortion are declined were highlighted in the session. The speaker shared her experience dealing with such situations where doctors refuses to terminate pregnancies involving legitimate causes. The speaker said due to lack of facilities for safe abortions, most of abortions are done in an unsafe environment and with improper methods of abortion which puts life of women at stake. Various causes for misuse of the diagnostic technology were highlighted such as high cost of equipments and scarcity of experts for operating sonography machine. The demand for sonography experts is very high and due to scarcity many times the machines are operated by less qualified people who do not make proper assessment. The speaker further highlighted lack of capacity to file proper complaint by appropriate authority and sub standard investigation undertaken by appropriate authority.

Session 4: Jurisprudence on Implementation of the PC & PNDT Act

The speaker initiated the discussion by explaining the meaning of “gender” and differentiated it with “sex”. The gender is attributes of male and female personality decided by society whereas sex is biological. The speakers discussed causes of declining sex ratio including social and cultural factors. The practice of giving dowry was discussed which is one of the major factor behind preference for male child. The historical origins of the Act was explained to the participants. The laws prohibiting sex selection was first brought in Maharashtra and PCPNDT was subsequently passed at national level. There were many challenges to the Act and speakers discussed judgments upholding the Constitutional validity of the Act. The Act witnessed many hurdles in its implementation and through public interest litigation, the Supreme Court framed many guidelines for effective implementation of the Act. The speakers discussed the jurisprudence of the Supreme Court in detail.

Session 5: Bail and Search & Seizure under the PC & PNDT Act

The speakers discussed provisions of Act for search and seizure of the medical premises. Sec. 27 and 28 of the Act and the role of appropriate authority were discussed at length. The difference in the role of police and appropriate authority in investigation was discussed. The role of police is limited under the Act but it is not totally excluded. The court can only take cognizance on the complaint filed by appropriate authority. The procedure for search and seizure to be followed by appropriate authority is given under Rule 12 of the PC & PNDT Rules. This rule gives power to the appropriate authority or any authorized officer to search and seize the property if there is reason to believe that it may furnish evidence of commission of an offence punishable under the Act. The offences are cognizable, non-bailable and non-compoundable under the Act. There is no express provision conferring role on police. Police has every right to investigate any offence

committed in violation of any of the provisions of the Act. Court, however cannot take cognizance on the F.I.R. or Charge-Sheet filed by Police. Some landmark judgments on the point are *Dr. Arvind Pal Gambhir v. State of Punjab* [2012 Ind Law 4424] and *Dr. Varsha Gautam v. State of U.P.* [2006 (5) ALJ 221].

Session 6: Major Challenges in the Implementation of the PC & PNDT Act

The session was a round table discussion and involved discussion on challenges in implementation of the PC&PNDT Act. The participants asked a query about regulation of advertisement on sex selection. The speaker explained laws and judgments on regulation of advertisement on sex selection. Sec. 22 of the Act prohibits advertisement on sex selection. One query from participant was on absence of victim in sex selection which was responded by resource persons. Many participants emphasized on enhancing awareness about the laws prohibiting sex selection, strengthening the capacity of appropriate authority, proper management of the witness production, strengthening capacity of prosecution services and provision of experts and senior advocates for supporting prosecution and use of active tracker in the sonography machines. The session was concluded by speaker after responding to the views and suggestions of participants.

Session 7: Trial Process under the PC & PNDT Act

The session was initiated by the speaker by explaining the processes to be followed by appropriate authority and police in executing the complaint of sex selection and presenting it before the court. The judicial role in ensuring timely and proper hearing of the complaint was highlighted by the speakers. The differences in the role of police and appropriate authority in trial process was discussed at length. The speakers said that although role of police is limited but police cannot be excluded from the process of executing complaint. The speakers suggested that if a judge observes that there is contradiction in legal principle concerning the Act then he/she should refer the question of law to respective high court. The speakers focused on various issues relating to trial of offences under the Act including production of evidences and witnesses, filing of charge sheet, examination of prosecution and defense evidences, statement of witnesses and final arguments. The discussion also focused on whether pregnant woman can be an offender under this Act. The speaker said that pregnant woman cannot be an offender and presumption is made in favour of pregnant woman that she is compelled by her husband or other relatives to undergo the sex determination test. Husband or other relatives are therefore liable for abatement of such offences.

Session 8: Appreciation of Evidence under the PC & PNDT Act

The session focused on the appreciation of evidence under the Act. The speakers initiated the discussion by explaining the assessment of complaint filed by the appropriate authority. The burden of proving all elements of offences is on the appropriate authority. It was suggested that judges should refrain from filling gaps in prosecution version. The process of evidence gathered under decoy operation was discussed. Evidence collected during decoy operation can be used for corroboration and contradiction. There should not be any illegality in search operation and evidence collected in illegal way is non-admissible in court. It was suggested that judges must use common sense in appreciation of evidence and should be guided by legal principles. Appreciation of various forms of evidence including, receipt, form "F", consent letter,

sonography report, prescription, clip of audio-video recording etc. were discussed. It was emphasized that object of the Act must be kept in mind while appreciating the evidences. It was suggested that after charge, copy of the order should be sent to Medical Council for suspension of registration and after conviction, copy of the order should be sent to Medical Council for cancellation of registration. In the judgment, final order for confiscation of sonography machine should be mentioned. The speakers discussed many judgments of the Supreme Court concerning assessment of evidence under the Act.
