

SUMMARY OF WORKSHOP PAPERS OF THE JUDICIAL OFFICERS, GONDIA , 2014-2015

Topic of Paper:- The Pre-conception and Pre-natal
Diagnostic Techniques (Prohibition of Sex
Selection) Act, 1994.

INRODUCTION:-

1] The worst manifestation in our country of gender discrimination is female foeticide. Unfortunately, female foeticide is committed not only by the illiterate and the impoverished, it is being committed in cities and among the educated and well-to-do. It is shocking that there are higher incidents of female foeticide in the more developed districts and regions of our country. Society has to be made aware that a girl child is a boon and a gift. [quoted by Hon'ble the then President of India, Smt. Pratibha Devisingh Patil, at the 17th convocation of Mother Teresa Women's University]. When There Is Going To Be No Girl Child On Earth, Who Will Nurture The Earth? Since She Is The Producer, Nurturer And Preserver, Without Her How Do You Expect The Earth To Exist ?

2] That the society should not want a girl child; that efforts should be made to prevent the birth of a girl child and that society should give preference to male child over a girl child is a matter of grave concern. Such tendency offends dignity of women. It undermines their importance. It violets woman's right to life. It violates Article 39(e) of the Constitution which states the principle of state policy that the health and strength of women is not to be abused. It ignores Article 51A(e) of the Constitution which states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Sex selection is therefore against the spirit of the Constitution. It insults and humiliates womanhood. This is perhaps the greatest argument in favour of total ban on sex selection.

3] The habit of son preference in our society about sex selective abortion has been a critical depict unfairly sex ratios. A strong socio-cultural favouring to the birth of son in family and religious biases regarding that attracts preference of society for sons. In many parts of India, son are trated as a security for old age though it may be not. As this attraction about male child is not new in our society, in last few decades we are witnessed the unfolding of a disturbing, and now alarming trend – to give son preference. Use of technology has created the opportunities to the people wishing a male child.

4] Government and a plethora of organizations opposing the sex selection has streched the need of some watch

on this practise because sex selection was fast catching up, surely as a serious fallout of the low status overall of women in society over the years. In view of this, first yield on the part of the Government of India is the out come of Pre-natal Diagnostic Techniques Act (PNDT) in 1994, and the same was further amended into the Pre-Conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act in 2004 as a powerful legal instrument to nurtur positive change in this modern sociological trend.

PURPOSE OF THE ACT

5] The basic purpose of the Act is three-fold, with a focus on averting further decline in sex ratio:

- Regulation of Pre Natal Diagnostic Techniques only for legitimate uses as prescribed under the Act;

- Complete ban on misuse of pre-conception diagnostic techniques‘ (PCDT) and pre-natal diagnostic techniques‘ (PNDT) for sex selection / determination;

- Absolute prohibition of selection of sex of the foetus, both before and after conception, except for detecting sex-linked diseases

The Pre-conception & Pre-natal Diagnostics Techniques (PC & PNDT) Act, 1994

6] The Pre-conception & Pre-natal Diagnostics Techniques (PC & PNDT) Act, 1994 was enacted in response to the decline in Sex ratio in India, which deteriorated from 972 in 1901 to 927 in 1991. Female infanticide had been prohibited through legislation in pre-independence period and certain provisions were included in the Indian Penal code, 1860 for punishing causing miscarriages and other such offences, but with the advent of diagnostic technology to detect the sex of the foetus very early during pregnancy, a need was felt for a specific law to prevent the misuse of technology which could lead to female foeticide.

What was the need for such an Act ?

7] The hon'ble Supreme Court, taking a serious view of the onslaught of sex-selective discriminatory practices by medical fraternity, and connection it may have with the use of pre-natal sex determination, directed the Centre to implement the PC & PNDT Act in all its aspects [AIR 2003 SC 3309]. The order came following a public interest petition filed by the centre for the Enquiry of Health and Allied Themes (CEHAT), the Mahila Sarvangeen Utkarsh Mandal (MASUM) and Dr. Sabu George, who had done extensive research in this area.

8] In 1988, the State of Maharashtra became the first in the country to ban pre-natal sex determination through enacting the Maharashtra Regulation of Pre-natal Diagnostic

Techniques Act. At the national level the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted on September 20, 1994. This act came into force in the year 1996.

9] The Act was amended in 2003 following a PIL filed in 2000 to improve regulation of technology capable of sex selection and to arrest the decline in the child sex ratio as revealed by the Census 2001. With effect from February 14, 2003, due to the amendments, the Act is known as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

10] The main purpose of enacting the PC & PNDDT (prohibition of Sex Selection) Act, 1994 has been to:

Ban the use of sex selection techniques before or after conception.

Prevent the misuse of pre-natal diagnostic techniques for sex selective abortions.

Regulate such techniques

Amendments to the Act mainly covered:

- i) bringing the technique of pre-conception sex selection within the ambit of the Act,
- ii) Bringing the use of Ultrasound Machines within the purview of the Act more explicitly,
- iii) Further empower the Central Supervisory Board for monitoring the implementation of the Act,
- iv) Constitution of State level Supervisory Boards and a

multi-member State Appropriate Authority for better implementation,

- v) More stringent punishments,
- vi) Empowering the Appropriate Authorities with the powers of the Civil Court for search, seizure and sealing the machines/equipments/records of the violators, including sealing the premises and commissioning of witnesses,
- vii) making mandatory the maintenance of proper records in respect of the use of ultrasound machines and
- viii) Regulate the sale of ultrasound machines only to the registered bodies.

11] Offences under the Act

- Conducting or associating or helping in the conduct of PND techniques/tests in an un-registered unit: Liable person is the owner or person responsible for conducting the PND test;
- Sex selection on a woman or a man or both or on any tissue, embryo, conceptus fluid or gametes derived from either or both of them: Liable person is the specialist or team of specialists;
- Taking the services of an un-qualified person, whether on honorary or payment basis: Liable person is the Unit owner or person responsible;
- Conducting a PND test for any purpose other than those mentioned as permissible in the Act: Liable person is the Unit owner, person responsible or person conducting the procedure;

- Sale, distribution, supply, renting, allowance or authorization of use of any ultrasound machine or any other equipment capable of detecting sex of a foetus to non-registered units: Liable person is any organization, company, manufacturer, Importer, Dealer, supplier;
- Advertisement or communication in any form in print, electronic media or internet by units, medical professionals or companies on the availability of sex determination and sex selection in the form of services, medicines, or any kind of techniques, methods or ayurvedic medicines: Liable person is the unit owner, person responsible, distributor, printer, publisher, website host, website developer or anyone connected with the issuance of any such communication or advertisement.

12] Penalties under the Act

- Breach of any provision by the service provider: 3 years imprisonment and/or a fine of Rs. 10,000/-; For any subsequent offence: 5 years imprisonment and/or fine of Rs. 50,000/- (Section 23 (1));
- Medical Professionals: Appropriate Authorities will inform the State Medical Council and recommend suspension of the offender's registration if charges are framed by the court and till the case is disposed off; removal of name from the register for 5 years on 1st conviction and permanently in case of subsequent breach (Section 23 (2));

- Persons seeking to know the sex of the foetus (A woman will be presumed to have been compelled by her husband and relatives): Imprisonment extending up to 3 years and a fine of up to Rs. 50,000/-; For subsequent offences: Imprisonment upto 5 years and or a fine of Rs. 1,00,000/- (Section 23 (3));
- Persons connected with advertisement of sex selection/sex determination services: Imprisonment up to 3 years and/or a fine of Rs. 10,000/- with additional fine of continuing contravention at the rate of Rs. 500/- per day (Section 22 (3));
- Advertisement for the purpose of Section 22 (3) includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes visible representation made by means of any hoarding, wall painting, signal, light, sound, smoke, gas, etc.;
- Contravention of provisions of the PC & PNDT Act, 1994 for which no specific punishment is provided in the Act are punishable with imprisonment up to 3 months and/or fine of Rs. 1,000/- with additional fine of continuing contravention at the rate of Rs. 500/- per day (Section 25);

- Such contraventions can be presumed to be the non-maintenance of records, non-compliance with standards prescribed for the maintenance of units, etc.

13] The PCPNDT Act prohibits a person including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, concepts, fluid or gametes derived from either or both of them.

14] **Cognizance of offences**

- 1) No court shall take cognizance of an offence under this Act except on a complaint made by-
 - a) the Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or
 - b) a person who has given notice of not less than thirty days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation:- For the purpose of this clause, “person” includes a social organization.

2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

3) Where a complaint has been made under clause (b) of subsection (1), the Court may, on demand by such person direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

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CITATIONS:-

Petition challenging constitutional validity of the Act :-

1] Vinod Soni and Anr. -Vs- Union of India (UOI) 2005 Cri.LJ 3408, 2005 (3) MhLJ 1131.

:- A very interesting argument was advanced in this case by the Petitioner that the right to life guaranteed under Article 21 of the Constitution includes right to personal liberty which in turns includes the liberty of choosing the sex of the offspring and to determine the nature of the family.

Therefore, it was contended that the couple is entitled to undertake any such medical procedure which provides for determination or selection of sex. The High Court however exposed the fallacy of this argument by observing that, "right to personal liberty can not be expanded by any stretch of

imagination to liberty to prohibit to coming into existence of a female or male foetus which shall be for the nature to decide.” After making reference to the decisions of the Supreme Court, which explain that Article 21 includes the right to food, clothing, decent environment and even protection of cultural heritage, the High Court held that “these rights, even if, further expanded to the extremes of the possible elasticity of the provisions of Article 21, cannot include right to selection of sex, whether preconception or post-conception.” It was observed by the High Court that “this Act is factually enacted to further the right of the child to full development as given under Article 21.

A child conceived is, therefore, entitled under Article 21 to full development, whatever be the sex of that child.” Accordingly High Court dismissed the Petition by holding that it does not even make a prima facie case for violation of Article 21 of the Constitution.

2] In the case of **Vinod Soni And Ans. Vs. Union of India,2005 Cril. L.J. 3408**, the petitioners who are married couple, seek to challenge the constitutional validity of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994. The Hon'ble Apex Court held that, “cases are permitted as mentioned in sub clause 3 of section 4, where certain dangers to the pregnant woman are noticed. A perusal of those conditions which are five and which can be added to the four, existence on which is provided by the Act. It will therefore be seen that the enactment does not bring about total prohibition of any such tests. It intends to thus prohibit user and indiscriminate user of such tests to determine the sex at preconception stage or post conception stage. The right to life or personal liberty cannot be expanded to mean that the

right of personal liberty includes the personal liberty to determine the sex of a child which may come into existence. The conception is a physical phenomena. It need not take place on copulation of every capable male and female. Even if both are competent and healthy to give birth to a child, conception need not necessarily follow. That being a factual medical position, claiming right to choose the sex of a child which is come into existence as a right to do or not to do something which cannot be called a right. The right to personal liberty cannot expand by any stretch of imagination, to liberty to prohibit coming into existence of a female foetus or male foetus which shall be for the Nature to decide. To claim a right to determine the existence of such foetus or possibility of such foetus come into existence, is a claim of right which may never exist. Right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself to be a right.”

Mr. Vijay Sharma And Mrs. Kirti Vs. Union of India AIR
2008 Bom. 29

3] While upholding the constitutional validity, the Hon'ble Bombay High Court has held that the section 4 can not be called that it violates Art 14 of constitution of India. Section 4 regulates use of the said techniques. Section 4(2) states that the said techniques shall not be conducted except for the purpose of detection of (i) chromosomal abnormalities; (ii) genetic metabolic diseases; (iii) heamoglobinopathies; (iv) sex linked genetic diseases; (v) congenital anomalies or any other abnormalities or diseases as may be specified by the Central Supervisory Board that too on fulfillment of any of the

conditions laid down in subsection 3. Thus the said techniques are to be used only to detect abnormalities in the foetus and not for sex selection or sex selective abortions to couples who are desirous to have a male child even after birth of daughter.

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DISTRICT COURT GONDIA

LEGAL WORKSHOP

DATE :- 10.01.2015

List of Selected Judgments to be discussed.

Sr. No.	Citations	Law points	Date of Judgment
1	MHLJ 2014 (5) Page No. 53 W.P.No. 2499/13	On the point of joinder of necessary party at any stage of the suit.	18/01 /14
2	Suhasini Umesh Karanjekar V. Kolhapur MunicipalCorpora-tion and Anr. 2011 (4) M.H.L.J. Page No.21.	Power to search, seize and seal “any other material object” conferred by section 30 of PNDT Act	06/06/11
3	State of Rajasthan and another Vs. Surendra Mohont and others. - AIR 2014 SC 2925.	Selection grade – Period for grand of selection grade has to be reckoned from date of regularigation in service & not prior to that	30/06/14
4	Sadanand Madhukar Ingle Vs. Maharashtra Medical Council & another 2014 (4) Mh.L.J.360 W.P. No. 320/14 (Nagpur)	Challenge to order dt . 26/12/13 passed by Maharashtra Medical Council Mumbai in exercise of powers conferred by section 22 of Maharashtra Medical Council Act, 1965. (Suspending the registration of the petitioner as a Medical Practitioner.)	19/03/14