

Pre-conception and pre-natal diagnostic techniques essay sample



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Son preference and discrimination against the girl child is almost universal in India and manifests itself in many ways, including sex selection i. e. pre-birth elimination of female fetuses. This practice has led to decline in the Child Sex Ratio in most parts of India. The Child Sex ratio, which is the number of girls per 1000 boys in the 0-6 years age group has declined from 976 in 1961 to 914 in 2011.

The Child Sex Ratio in the State of Maharashtra declined from 940 in 1991 to 913 in 2001 to 883 in 2011. Child sex ratio in the State has declined at a rate of 3.28% between 2001 and 2011 as against 1.4% for the Country. The decline in sex ratio can severely impact the delicate equilibrium of nature and destroy our moral and social fabric. Sex selection is a reflection of the low status of women in society and a patriarchal mindset steeped in son preference.

Sex selection also occurs because of the perceived financial cost of having a girl child, which includes paying for her education, community customs that put burden on the family, the increasing commercialization of the institution of marriage because of which large sums have to be spent on the marriage ceremony and given away as dowry. In general this perception conjoined with the attitude that the girl is a “paraya dhan” creates a mindset that girls are indeed a liability and boys, assets because of reasons of lineage and the perception that they would provide old age support.

The consequences of declining sex ratio are serious, all pervading and far reaching. Lesser number of girls in society has resulted in increased violence against women and denial of basic rights to them. It has also led to increase

in sex related crimes (rape, abduction, forced polyandry). Sex selection, further, impacts health, especially reproductive health of women who are forced to go in for repeated pregnancies followed by abortions in the desire to have a male child.

Ironically the major reason for declining sex ratio is the proliferation of modern technology and easy and affordable access to such technology with its rapidly expanding use for the purpose of pre and post conception sex selection followed by elimination of foetus, if found to be of female. Misuse of the techniques like amniocentesis to determine the sex of the foetus and subsequent abortions if the foetus was found to be female was noticed by social activists in the 1980s.

Taking cognizance of this issue, the Government of India responded to the imperative need of the hour by passing Prenatal Diagnostic Techniques Act, 1994 to stop this practice and misuse of technology for prenatal sex determination. The Act Maharashtra was the first state in the Country to enact the Maharashtra regulation of use of Pre Natal Diagnostic Techniques Act in 1988, prohibiting the use of new scientific techniques for sex determination and sex selection treating it as totally insulting to the dignity of womanhood and against the spirit of Constitution in which the right to equality is embedded.

Thereafter the Central Government took up the initiative and passed the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (P. N. D. T. Act). Though this Act was passed on September 20, 1994, it came into force from 1/1/1996. During the course of years thereafter several

deficiencies, inadequacies and practical difficulties in the implementation of the Act came to notice of the Government, which necessitated amendments in the Act.

Moreover new technology was also being developed to select sex of the child before conception. Therefore to bring these pre-conception sex selection techniques within the ambit of the law and also in conformity with the directions of the Apex Court, certain amendments were carried out in the Act, making its provisions more comprehensive and the Act was titled as the “ Pre-conception and Pre-natal Diagnostics Techniques (Prohibition of Sex Selection) Act, 1994” (PCPNDT Act).

The amended Act came into effect on 14/2/2003. The Act prohibits sex selection, before or after conception and for regulation of pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

The offenders of the Act shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to Rs10, 000 and on subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to Rs 50, 000. However, as observed by the Apex Court, there was total inaction on the part of the Government in implementing the provisions of the Act.

Only after several directions were issued by the Supreme Court and the various High Courts, that Government took upon itself the task of creating general awareness, sensitization and also prosecuting doctors and clinics which were found violating the provisions of the Act. Even then, the Act was not being implemented with the zeal and vigour which was expected in implementation of this important piece of social welfare legislation. This was reflected by the fact that there were very few prosecutions launched and hence not many case laws were available.

The majority of rulings dealt with challenges raised to the Constitutional validity of the Act and to the directions issued by the Higher Courts for effective implementation of the Act. There are very few cases which are registered, prosecuted and are finally decided after full fledged trial. Hence vast body of decisional law of the district and the trial courts, where the bulk of the cases are ordinarily filed, fought and decided, is not available under this Act. Moreover most of the cases booked under the Act are still pending for trial and are also concerned with ultra sonography centres not having licenses and registrations.

Very few of them deal with the problem of sex selection. Very few provisions of the Act have come for judicial interpretation as the unfolding of the Act is yet to take place in the manner it was expected. There are several other social causes for the same. The Act aims and attempts to address technology and medical issues but not social issues. Sex selection is the result of unholy alliance between traditional values and modern technology. The Act regulates the use of technology but the mindset of the people who adopt and

practice this cannot be addressed by Law. Girl Child still remains unwanted in several households.

These hard realities of life cannot be ignored and are required to be addressed in implementation of the Act. It hence becomes the duty of the society as to eliminate this social evil by effective implementation of the provisions of the Act with the sensitivity it deserves. The burden of the legal community including the bench and the bar in such situation becomes onerous. If the mindset of society is not changed and it lags behind the legislation, it has to be the job of judiciary to fill this gap by adopting a realistic and sensitive approach for proper implementation of the legislation. The need of the hour s to mould and evolve the law so as to meet its Object by effective implementation.

With this intention in mind United Nations Population Fund India (UNFPA) Maharashtra has, in association with Bombay High Court , Maharashtra State Legal Services Authorities, State Health Systems Resource Centre and Public Health Department- Government of Maharashtra conducted various Judicial Colloquia at the State level and in all districts for Judicial Officers and sensitization workshops for newly inducted trainee judicial officers at the Maharashtra Judicial Academy on the issue of Sex selection and PCPNDT Act.

As on today 28 Judicial colloquia have been conducted covering all districts of Maharashtra. As part of these colloquia 1192 Judicial officers including District Judges, Chief Judicial Magistrates, Civil judges at Senior and junior level have been trained. In addition to this, around three hundred newly

recruited civil judges junior division and judicial magistrates first class have been trained at the Maharashtra Judicial Academy.