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Control of Female Foeticide in India: A Plea for Fair Use of Sex- Determination Tests

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Swami Vivekanand says “No nation can progress unless it respects the women.” Men and women are creature of God and God has bestowed them different qualities, different functions to perform in life. Without women, men are incomplete. Women play very important role in the life of men. But in the Indian society, women have been discriminated, harassed and exploited. They are victims of many violences. One of the violences against women is the female- foeticide. The girl child are killed in the mother’s womb so that they could not come in existence. Therefore, there is decline of sex determination. It is alleged that these techniques are misused and becoming a tool to female-foeticide.

Girl Child Oppression through murder of foetus: Annual survey of Crime Record Bureau shows as female foeticide is serious concern. Decline of sex-ratation is matter of concern According to Webster’s Dictionary foeticide means the act of killing foetus.² Foeticide means murder of foetus or more elaborately ending the life span of the foetus. The term foetus is difined in Section 2 (bc)³ of the Pre-conception and Pre-natal Dianostic Techniques (Prohibition of Sex Selection) Act, 1994, commonly known as PNDT Act. Foeticide is an act causes the

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² Webster’s Their New International Dictionary, 1961

³ S.2 (bc) “Foetus means a human organism during the period of its development beginning on the fifty-seventh day following fertilization or creation (excluding anytime in which its development has been suspended) and ending at the birth.

death of fetus.¹ The act of aborting or terminating a foetus while it's still in the womb, because it is female, is known as female foeticide. This can be done after determining the sex of the child before it's born through ultrasound scans.² According the **Wharton's Law Lexicon**, the term "Foeticide" means criminal abortion and in the Webster's Comprehensive Dictionary it is "the felonious killing of an unborn child."

In *Hans v. State*³, the term 'foeticide' was defined as "the unlawful destruction of an unborn child, in *ventra sa mere*, in any stage of gestation", and it was made it clear that "the statute defining offences of foeticide does not require an arbitrary and technical distinction to be used between the terms" embryo"⁴ and "foetus"⁵. In *Gilpin v. Gilpin*⁶, it was said that "Foeticide is the destruction of the life of the foetus in utero and constitute manslaughter" and distinct form infanticide which is the felonious taking of the life of a new born child and constitutes murder. Foeticide is distinct from infanticide. To constitute "Infanticide" the child must have been totally expelled alive from its mother's body, must have lived in an independent existence after such expulsion, and its death must have been caused by violence inflicted upon it by some other person after the commencement of its independent existence.⁷ According to **Wharton's Law Lexicon**, "infanticide is the killing of a child immediately after it

¹ definitions of feticide from dictionary.com

² en.wikipedia.org/wiki/female-foeticide-in India.

³ 22 NW.2d 385, 388, 147 Neb.67 see words & phrases, (17) Permanent Edition, p.300

⁴ The germ of viviparous animal in the first stages of its existence (in the human species the first two months) Webster's Comprehensive Dictionary.

⁵ Fetus literally means 'young one'. Dictionary meaning of foetus is the unborn young of a viviparous vertebrate having a basic structural resemblance to the adult animal. In humans, the unborn young from the eighth week after conception to the moment of birth as a distinguished from the earlier embryo. Fetus, term used to described the unborn offspring in the uterus of vertebrate animals after the embryonic stage. In humans, the fetal stage begins seven to eight week after fertilization of the egg, when the embryo assumes the basic shape of the newborn and all the organs are presents. This stage continues until birth.

⁶ 94 N.Y.S. 2d 706, 708, 197 Misc. 319 see words & Phrases, (17) Permanent Edition P.300

⁷ *Cardes v State*, 112 S.w. 943, Tex. Cr.R. 204 see words and Phrases Permanent Edition

is bron”, but according to **Chamber’s Dictionary** it is “killing of a child within 12 months of its birth”. The **Webster’s Comprehensive Dictionary** says that infanticide is “child murder”. Female foeticide is spreading like an epidemic in our society. It has been a common practice in our country since centuries Female Foeticide is a practice that involves the detection of the sex of the unborn baby in the womb of the mother and the detected as a girl. As a result of selective abortion, between 35 and 40 million girls and women are missing from the Indian population. In some parts of the country, the sex ratio of girls to boys has dropped to less than 800:1000. The United Nation has expressed serious concern about the situation.

CONTROL ON FAIR USE OF TECHNOLOGY

There are several means provided by the legislature to control misuse of sex determination tests. First is Pre-natal Diagnostic Technique (Regulation and Prevention of Misuse) Act had to be passed in 1994, second Medical Termination of Pregnancy Act, 1971. In this regards I have dealt few aspects that has strengthen these provisions with the various versions of judicial pronouncement by courts in India.

(i) Regulation of Pre-natal Diagnostic Techniques

S.4¹ of PNDT Act, 1994 provides that pre-natal diagnostic techniques should be conducted for the purpose of detection of any of the following abnormalities:

- (i) Chromosomal abnormalities
- (ii) Genetic metabolic disease
- (iii) Haemoglobinopathies
- (iv) Sex linked genetic disorders
- (v) Any other abnormalities or diseases specified by central supervisory Board.

In *Dr. Kalpesh J. Patel v. State of Gujarat*,² petitioner was

¹ See S. 4. Regulation of pre-natal diagnostic techniques:

On and from the commencement of this Act: (1) no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in Clause (2) and after satisfying any of the conditions specified in Clause (3); it also give certain exceptions also.

² Manu/GJ/0994/2011

found to have violated the S.4(2) of the PNDT Act by Appropriate Authority, therefore Authority, District PNDT Advisory committee suspended the allotment of clinic till the further order and observed that perusal of scheme of the PNDT Act and the rules framed there under makes it clear that no pre-natal diagnostic techniques shall be conducted, except for the purpose of detection of abnormalities as mentioned in sub-section (2) of section 4 of the PNDT Act.

(ii) Irregularities in Form

The PNDT Act, 1994 is primary Act to regulate prohibition of sex-selection. S.4 explains regulation of pre-natal diagnostic techniques According to this section, it is relevant to fill form 'F'. Similarly S.5 or 6 of the Act as written consent of pregnant women and prohibition of communicating the sex of foetus and determination of sex is prohibited respectively.

In *Dr. Manish C. Dave v. State of Gujarat and Anr.*¹, the appropriate authority has carried out inspection and found certain irregularities in filling forms during the diagnosis and therefore filed complaint against the petitioner for the commission of offenses punishable U/s 4 and 5 of the PNDT Act, 1994.

On this the learned Advocate submitted that looking to the provisions of the Act, the petitioners have not committed any irregularity and the respondent authority even prima facie failed to establish that the pregnant women or her relative or any other person has been communicated the sex of foetus or there has been either sex determination or sex selection by the petitioners at any point of time. Therefore, the complaint do not disclose any offence being committed by the petitioners even on prima facie basis, and therefore, they are required to be quashed and set aside. On this, Court held that when there was allegation of alleged deficiency or inaccuracy, it should follow contravention of provision of section 5 and 6 as for as section 4 (3) concerned, it was case of petitioners that register was maintained with all columns which is the duties and functions of petitioners. Further, such deficiency or inaccuracy was merely procedural lapse, which did not in any manner contravene provisions of section 5

¹ 2008 GLH (I) 475

and 6 of Act. In view of above, when it was not established that there was contravention of provisions of sections 5 or 6, contention on regarding any inaccuracy or deficiency in form-F would not be applicable and therefore, complaints, themselves were not maintainable.

In *Suo Motu v State of Gujarat*¹, the question arises before court whether any deficiency of inaccuracy in filling form- F as required under the statutory provisions is merely a procedural lapse. On this the opinion of the larger bench is that deficiency or in accuracy in filling Form F prescribed under Rules made under the PNDT Act, being a deficiency or inaccuracy in keeping record in the prescribed manner, it is not a procedural lapse but an independent offence amounting to contravention of the provisions of section 5 or 6 the PNDT Act and has to be treated and tried accordingly. It does not, however mean that each inaccuracy or deficiency in maintaining the requisite record may be as serious as violation of the provisions of section 5 or 6 of the Act. And the court would be justified, while imposing punishment upon conviction, in taking a lenient view in cases of only technical, formal or insignificant lapses in filling up the forms. In *Varsha Laxmanrao Deshpande v. Dr. Sujit Govind Dagne and Others*², The licence of petitioner was suspended due to the existence of discrepancies, irregularities in maintenance of form 'F' which had undoubtedly in causing deficiency or inaccuracy in maintaining and preserving record which would amount to an offence in contravention of provisions of sections 5 or 6 PNDT Act, 1994 unless contrary was proved by petitioner who had conducted ultrasonography test. Court held order passed by Appropriate Authorities were sustainable in law because petitioner have admitted existence or deficiency and inaccuracy which would amount to an offence and could be treated be sufficient reason for Appropriate Authority to invoke provisions of section 20 (3) of Act in larger public interest.

(iii) Registration

¹ 2009 CriLJ 721

² 2012 (5) ALL MR 801

S. 18¹ of the PNDT Act compels registration of Genetic Counselling Centres, Genetic Laboratory or Genetic clinics without which no person shall open any such centres, laboratory or clinic, after the commencement of the Act. In *Qualified Private Medical Practitioners and Hospitals Association v State of Kerala*², question arises for consideration is as to whether hospitals which are equipped with ultra sound scanning equipment for the purpose other than conducting any pre-natal diagnostic test require registration and whether such hospitals will come within the purview of the this Act.

Court held that registration will be compulsory only in case of Genetic Counselling Centres, Genetic Clinic, and Genetic Laboratory etc, which are used for conducting any pre-natal diagnostic procedures or pre-diagnostic test. However, if any of the hospitals are found using such pre-diagnostic techniques and/or does any act in violation of the provisions contained in the Act, necessarily the authorities will have the power to proceed in accordance with law.

There is the maxim “ignorantia juris no excusat” means ignorance of law is no excuse. Therefore, if any one argues that not knowing about the PNDT Act, it would not be an excuse. As in case of *Manish Agrawal v. State of Gujarat and Ors*³, the authority passed order of suspending registration of petitioner with immediate effect as he found that there was contravention of

¹S. 18. Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics. (1)No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic after the commencement of this Act unless such Centre, Laboratory or Clinic is duly registered separately or jointly under this Act.

² 2006 (4) Kar LJ 81

³ (2010) 51 GLR 977

S.4 (3) and Rule Nos.9¹, 11²(1) and 13³ of the P.C.P.N.D.T. Act, 1994 on this, it was replied that “Our hospital did not have knowledge of P.C. & P.N.D.T. Act, 1994, its mandates and provisions so there are resultant irregularities and details are not completely filled in. The Court finds that this plea is insignificant and court not accepted this argument and held it can not restrained authority under P.N.D.T. Act from acting in accordance with law. In *Dr. Devender Bohra v.State of Haryana and Others*,⁴ the order of suspension of registration of a sonogram installed in the hospital run by the petitioner and sealing of the equipment was challenged before the court. Court held that if the PNDT Act requires the possession of certain degrees and if the petitioner does not possess the same, then, there ends the issue and the question of allowing the petitioner to continue the registration does not arise. In *Anil Kumar Mishra v. State of U.P. and Others*,⁵ three appellants have filed a common writ petition. They, all are registered in different medicine board. All petitioners are running ultrasound clinic. Under Rule 6 (2), 6 (5) and 8 (2) on Form ‘B’ of the PNDT Act, 1996. The Registration certificate issued by CMO was valid upto date and all these registered certificates were valid for pre-natal diagnostic procedures approved from non-invasive tests by using ultrasound machine. Later on dated 21st August 2008, CMO office has issued a notice that all these practitioners are not qualified persons who can perform ultrasound under PC & PNDT Act on the ground that section 2(h) of Medical Council Act, 1956 makes it mandatory to

¹Rule 9. Maintenance and preservation of records.- (1) Every Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic shall maintain a register showing, in serial order, the names and addresses of the women must mention.

² Rule 11. Facilities for inspection.- Every Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic shall afford reasonable facilities for inspection of the place, equipment and records to the Appropriate Authority or to any other person authorized by the Appropriate Authority in this behalf.

³ Rule 13. Intimation of changes in employees, place or equipment. – Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall intimate every change of employee, place, address and equipment installed, to the Appropriate Authority within a period of thirty days of such change

⁴ (2010) 159 PLR 446

⁵ 2011 (4) ADI 672

be enrolled in state medical register, and possess post graduate degree in sonography/image scanning or a diploma or six month's training or one year's experience: they may show cause within a week, whether they are qualified to be registered, failing which their registration will be cancelled.

On above fact, the High Court has dealt exhaustively S.3¹ of PC & PNDT Act, 1994 as well as S. 2²(C), (d), (e), (f), (h), (k), (m), (o), (p) that respectively relating to the term Genetic Counseling Centre, Genetic Clinic, Genetic Laboratory, Gynecologist, Paediatrician, Pre-natal diagnostic techniques, prenatal diagnostic test, Registered Medical Practitioners, Sex-selection, sinologist.

Finally, the High Court held that these petitioners are not medical practitioners under clause (h) of S.2 of Indian Medical Council Act, 1956. So they are not entitled to run an ultrasound centre although they have got a certificate from CMO in past.

(iv) Suspension or Cancellation of Registration

S.20³ of PNDT Act, 1994 provides that if Appropriate Authority is of the opinion that cancellation of registration of any Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic, is necessary or expedient in the public interest and must record reason in writing, it may suspend the registration. In *Malpani Infertility Clinic Pvt. Ltd. and Ors. v. Appropriate Authority, PNDT Act and Ors*⁴, the order of the registration of the first petitioner's Diagnostic centre under the S.20 (3) of PNDT Act was challenged and submitted by counsel of petitioners that if the S.20(3) is pressed into service, that sub-section requires reasons to be given in writing. On this, the counsel of Respondent submitted that where there is a conflict of private interest to carry on a particular activity which the public authority considers as

¹ S.3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.-.

² See section 2. *Definitions*.- In this Act,

³ See S.20. Cancellation or suspension of registration

⁴ AIR 2005 Bom 26

damaging to the social interest, surely, the power under the statute has to be read as an enabling power. In the instant case, S. 20(3) provides an adequate power to the authority concerned to suspend the license. In *Dr. Sujit Govind Dange v. State of Maharashtra, Through its Department of Public Health & Family Welfare, Mantralaya, Bombay and Ors, and in Varsha Laxman rao Despande v. Dr. Sujit Govind Dange & Ors*¹, the order of suspension of licence of diagnostic center by Appropriate Authority was challenged and questioned whether impugned orders passed by Appropriate Authorities were sustainable in law. It was held that in the instant case, the petitioner having admitted the existence of deficiency and inaccuracy in keeping and maintaining the record which is contravention of the provisions constrained in S.5² or 6³, therefore, would amount to an offence and can be treated to be sufficient reason for the appropriate authority to invoke the provisions of S.20(3) of the Act in the larger public interest and therefore the action of suspension of registration of the genetic centre of the petitioner is sustainable in law.

(v) Duty of State

Due to the proliferation of the technologies for sex-selection, like amniocentesis and sonography the female foeticide is growing rapidly. Therefore, state is also duty bound to prevent the female foeticide by implementing the spirit of legislation like PNDT Act, 1994 and MTP Act, 1971. In *State v. S. Suvitha Saravanan*,⁴ it is said that the state is also duty bound to intervene in such matters to uphold the welfare of the society,

¹ 2012 (5) ALMR 801

² S.5. Written consent of pregnant woman and prohibition of communicating the sex of foetus.

³S. 6. Determination of sex prohibited.- On and from the commencement of this Act,--(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;(b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

⁴ 14.02.2012 (decided on)

especially of the women and children. It is, therefore, necessary it enact and implement in letter and spirit a legislation to ban the pre-conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex-selective abortions and to provide for the regulation to such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the larger interests of the society. In *Hemanta Rath v. Union of India (UOI) and Ors*¹, complaint is made that the state of Orissa is not implementing the provisions of Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and it was submitted that the Act has a broader human right perspective in as much as it has been enacted to prevent the killing of a foetus on a gender bias, these is against the essence of our constitutional principles. The Act has been enacted to serve public purpose. On this, the court directed that the state is under both a statutory and constitutional obligation to implement the provisions of the said Act.

(vi) Appropriate Authority

The Central Government shall appoint one or more Appropriate Authorities for each of the Union Territories for the purposes of this act. The State Government is empowered to appoint one or more Appropriate Authorities for the whole or part of the state for the purposes of the Act taking into consideration the intensity of the problem of pre-natal sex determination leading to female foeticide.

According to S.17² of the PNDT Act, 1994, the Appropriate Authority performs the following functions viz.,

- (a) To grant, suspend or cancel registration of genetic counseling centre, genetic laboratories or genetic clinics,
- (b) To enforce standards prescribed for the genetic counseling centres, genetic laboratories or genetic clinics,
- (c) To investigate complaints of breach of the provisions of this Act or the rules made thereunder and take

¹ AIR 2008 Ori 71

² S.17. Appropriate Authority and Advisory Committee.

immediate action, and

- (d) To seek and consider the advice of the Advisory Committee constituted under the Act an application for registration and on complaint for suspension or cancellation of registration.

In *Suo Motu v. State of Gujarat*¹, question arises before the court, whether under the provisions of section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of sex selection) Act, 1994, a Court can take cognizance of an offence under the Act on a complaint made by any officer authorised in this behalf by the Appropriate Authority. On this, offer the analysis and appreciation of the scheme and provisions of the Act and Rules made thereunder, opinion on issues referred to the larger bench is that under the provisions of section 28² of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, a court can take cognizance of an offence under the Act on a complaint made by any officer authorized in that behalf by the Appropriate Authority.

In *Dr. Dada Saheb S/o Popatra Tarte v. The State of Maharashtra through the Minister of Health and Family welfare Mantralayand Others*³, the petitioner's Ultra Sonography Machinery was seized by the Authorities and it was submitted that under the provisions of section 30⁴, the Appropriate Authority is empowered to seize the documents, record, register, book, pamphlet, advertisement or any material

¹ 2009 Cri LJ 7 21

² S.28. 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 authorised 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.

³ 2009 (III) Bom, L.R. 3650

⁴ See section,30. Power to search and seize records, etc.

object found in the Genetic Center. Nowhere in the state provided for the seizure of the machinery/machine, used in the Genetic clinic. Hence, the Authority is not empowered to seize the Ultra Sonography machinery and the court set aside the orders of the seizure of the Machinery.

S.30 of the PNDT Act, 1994 empowered Appropriate Authority to seize and seal any record, register, document, book, pamphlet, advertisement or any other material, if it has reason to believe that an offence under this Act has been committed. In *Dr (Mrs.) Suhasini Umesh Karanjkar, Through her Constituted Attorney Dr. Umesh Murlidhar Karanjkar v Kolhapur Municipal corporation through its Health officer and Appropriate Authorities and The District Collector*,¹ the question arises before Division Bench of the High Court whether the power to search, seize and seal “any other material object” conferred by S.30 of the PNDT Act 1994, includes the power to search, seize and seal on ultrasound machine or any other machine or equipment if the Appropriate Authority or Authorised officer has reasons to believe that it may furnish evidence of the commission of an offence punishable under the Act. On this, Court find that alleged made over the Appropriate Authority was not sustainable on basis of the interpretation of S.30 that the power under section 30 of the Act, to seize and seal “any material object” includes power to seize and seal ultrasound machines and other machines and equipments, capable of selection of sex or capable of performing any procedure, technique or test for pre natal detection sex of foetus.

Pre-Natal Diagnostic Techniques Rules

Under section 32² read with section 30 the Central Government have power to make rules for carrying out the provisions of the PNDT Act, 1994. In exercise of this power the Central Government has made the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of sex Selection) Rules 1996. In *Radiological and Imaging Association v. Union of India*³, the

¹ 2011 (4) ALLMR 804

² 32. Power to make rules.- (1) The Central Government may make rules for carrying out the provisions of this Act.

³ AIR 2011 Bom 171 (HC)

Petitioners was a registered society. Members of this society were Medical Practitioners who were imaging specialist sonologists/Radiologists. On dated 10th March, 2010, District Magistrate Kolhapur issued circular directing Radiologist and sonologist to submit online form 'F' to overcome the blatant violation of false reporting and also to install a silent observer SIOV for all the sonography machines. Aforesaid circular was challenged by petitioner on the ground of breach of confidentiality and privacy. Court on this Court held that Preamble of the PNDT Act, 1994 was initially enacted for the prohibition of sex-selection, before or after conception and for regulation of Pre-natal diagnostic technique and for prevention of their misuse for sex-determination leading to female-foeticide, in such situation online submission of form 'F' will be useful. The right to privacy terms of Article 21 is not an absolute right and is a subject to restriction on public interest and rules of procedure are hand maiden of justice and are meant to advance and not to obstruct the cause of justice. The directions of the District Magistrate was valid and not invades privacy. It is clear that elaborate provisions have been made in this Act not only to regulate pre natal diagnostic techniques conducted by various clinics, but also to prohibit the clinics from determining the sex of foetus. The PNDT Act, however, for all intents has proved to be toothless piece of legislation. The problem with the Act is twofold.

- Interpretation of the Act and
- Implementation of the Act.

Despite the intent and purpose of the Act being wide and all encompassing, it has been interpreted by the ultrasonologists, the abortionists, the doctors and more shockingly the government alike, to exclude pre-conceptual sex selection.¹

(2) Medical Termination of Pregnancy Act, 1971

Following the report of the Shantilal Shah Committee, the Medical Termination of Pregnancy (MTP) Act was enacted by the Indian Parliament in 1971 and came into force from 01 April, 1972 to provide for the termination of certain pregnancies by registered medical practitioner and others matters connected there

¹ Swati Msehta & Jayna Kothari, "It's A Girl! Pre-Natal Sex Selection and the Law", *Lawyers Collective*, Nov, 2001

with or incidental thereto. The MTP Act was again revised in 1975. A registered medical practitioner shall not be guilty of offence if any pregnancy is terminated by him in accordance with the provisions of the Act. S.3 of the MTP Act, 1971 provides that when registered medical practitioners may terminate the pregnancies¹.

In *Nand Kishore Sharma v. Union of India*², the court had to decide the validity of the MTP Act. It was argued that the Act particularly Section 3(2)(a) and (b) and Explanations I and II to Section 3 of the Act as being unethical and violative of Article 21 of the Constitution of India. The court in the case had to determine when the foetus comes to life and hence if his right to life is violated by the said provisions. The court in this case refused to comment on the attribution of the status of a "person" to the foetus, however it declared that the Act is valid³.

In *Suchita Srivastava and Anr. v. Chandigarh Administration*⁴, a mentally retarded woman had become pregnant as a result of an alleged rape. After the discovery of her pregnancy, the Chandigarh Administration had approached the High Court seeking approval of the termination of her pregnancy as being mentally retarded in addition she was also an orphan who did not have any parent or guardian to look after her or her prospective child. The High Court had the opportunity to peruse a preliminary medical opinion and chose to constitute an Expert Body, and it is presumed that the findings of the Expert Body would be given due weightage in arriving decision. However, the High Court directed the termination of the pregnancy in spite of the Expert Body's findings which show that the victim had expressed her willingness to bear a child. On this, the appellants moved before Supreme Court. Supreme Court held that victim is above age of majority and did not consent for termination of her

¹ S.3- When pregnancies may be terminated by registered medical practitioners

² 2005 INDLAW RAJ142

³ The court said that, "The object of the Act being to save the life of the pregnant woman or relieve her of any injury to her physical and mental health, and no other thing, it would appear the Act is rather in consonance with Article 21 of the Constitution of India than in conflict with it."

⁴ AIR 2010 SC 235

pregnancy. The MTP Act clearly respects personal autonomy of mentally retarded persons. The gestation period is 19-20 weeks, and abortion during this period poses significant risks to physical health of victim, therefore abortion is not in best interests of victim. Finally, judgment of High Court disapproved by Supreme Court and it is ordered that best medical facilities to be provided to victim.

CONCLUSIONS

These above Acts was made to facilitate abortion for birth control, considered a national priority then, and not quite the ‘enlightened legislation’ one hoped for. This legislation has several safeguards in favor of doctors that they may find grey area. Due to this grey are its impossible judges to prosecute doctors It does not empower women but allows medical practitioners to perform abortion whenever they want, for ‘family planning’ or for money in private practice. In India, the policy environment is supportive of the reproductive choices of women and men. The medical termination of pregnancy is legal under certain conditions. The Medical Termination of Pregnancy Act, 1971 allows for induced abortion in instances where pregnancy carries the risk of grave injury to a woman’s physical and/or mental health endangers her life or when it is a result of contraceptive failure or rape. But the different approaches of the court have show the light for the fair use of sex determination test. So its need of time to fight against mis-use of sex determination test conducted in society. So its plea for the “we the people of India, Arise! Awake! And stop not till the goal is reached.