

# NATIONAL JUDICIAL ACADEMY



PROGRAMME REPORT [SE - 04]

## ORIENTATION PROGRAMME FOR THE MAGISTRATES FOR IMPLEMENTATION OF THE P.C. & P.N.D.T. ACT

February 4th & 5th, 2017.

Programme Coordinator :

Mr. Yogesh Pratap Singh,  
Research Fellow,  
National Judicial Academy.

Rapporteur:

Mr. Debojyoti Sengupta,  
Under-graduate Intern,  
National Judicial Academy.

## **PROGRAMME REPORT**

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## **INTRODUCTION**

The National Judicial Academy at Bhopal organized an “*Orientation Programme for the Magistrates for Implementation of the P.C. & P.N.D.T. Act*” on 4th & 5th, February, 2017. The colloquium was aimed at augmenting the awareness and perception of the participating Judicial Magistrates as regards the cultural, social and economic factors that promote gender bias; the grey areas concerning medical termination of pregnancy and sex selection; the role and functions of authorities, trial processes and appreciation of evidence under the P.C. & P.N.D.T. Act.

The orientation programme was divided into six sessions over the duration of these two days. The agenda for the first day consisted of four sessions punctuated by tea and lunch, and followed by a movie-screening at the auditorium of the National Judicial Academy. The remaining two sessions were on the agenda for the second day of the orientation programme concluding with lunch.

Fifty-seven Judicial Magistrates from all over India participated in the two-day orientation programme, which was graced by the following legal luminaries as the distinguished resource persons:-

<b><u>Resource Persons</u></b>		
1.	Hon'ble Dr. Justice Shalini P. Joshi	Judge, Bombay High Court.
2.	Hon'ble Ms. Justice Manju Goel	Former Judge, Delhi High Court.
3.	Hon'ble Ms. Justice K. Hema	Former Judge, Kerala High Court.
4.	Mr. Sanjay Parikh	Senior Advocate, Supreme Court of India.
5.	Ms. Varsha Deshpande	Advocate & Social activist.
6.	Dr. Neelam Singh	Secretary, Vatsalya.
7.	Ms. Anuja Gulati	State Programme Coordinator, U.N.F.P.A.

## **DAY – 1**

The orientation programme was commenced by the Programme Coordinator, Mr. Yogesh Pratap Singh, Research Fellow at the National Judicial Academy, extending a hearty welcome to the Resource Persons and the Judicial Magistrates participating in the orientation programme, which was followed by a brief ice-breaking exercise, wherein the distinguished Resource Persons cordially introduced each other to the conglomeration of participating Judicial Magistrates, and subsequently the participating Judicial Magistrates introduced themselves. Thereafter, Hon'ble Dr. Justice Shalini Phansalkar Joshi was requested by the Programme Coordinator, Mr. Yogesh Pratap Singh, to proceed with the discourses for the first session, the theme for which was “*Jurisprudence on Implementation of the P.C. & P.N.D.T. Act*”.

### **SESSION-1**

**Theme:** “*Jurisprudence on Implementation of the P.C. & P.N.D.T. Act*”.

**Speakers:** *Hon'ble Dr. Justice Shalini P. Joshi and Mr. Sanjay Parikh.*

**Chair:** *Hon'ble Ms. Justice Manju Goel and Hon'ble Ms. Justice K. Hema.*

#### **Hon'ble Dr. Justice Shalini Phansalkar Joshi:**

At the very outset, Hon'ble Dr. Justice Shalini Phansalkar Joshi emphasized the need to understand the extent to which the participants are acquainted with the subject of this orientation programme, namely the P.C. & P.N.D.T. Act, and also highlighting how the diverse social conditions prevailing in different parts of India provide for diverse legal scenarios, for instance, issues of gender bias and sex selection being very rare in the North-eastern states, and also in Kerala. In order to initiate an interactive session and to stimulate sharing of individual views and perceptions by the participating Judicial Magistrates, questions were posed by the speaker as to what, in the perception of the participants, is implied by the terms ‘sex

determination' and 'sex selection'. During the course of such interactive session, the various methods of sex selection and sex determination that are resorted to by prospective parents, were discussed, and it was highlighted that the P.C. & P.N.D.T. Act aims at preventing and mitigating not only sex determination of the foetus during the course of the pregnancy but also sex selection at the pre-conception stage by using artificial insemination and in-vitro fertilization (I.V.F.) procedures.

Thereafter, the question as to what would be the preference of couples in India if they are given an option/choice of the sex of the foetus, as is available to couples in certain foreign legal systems where sex selection has been legalized, and what could be the factors dictating their preference in such a case, was considered. In light of this question, the question as regards the right of the foetus to be born conflicting with the right/liberty of the couple to determine the composition of their family and to choose between a male child and a female child was also deliberated upon.

From the interactions between the Resource Persons and the participants, an inference was drawn as regards the general behavioral trend in India being in favour of couples usually choosing a male child over a female child, particularly so in the case of the first child. This general behavioral trend of preference to a male child over a female child was indicated as the reason which necessitates the P.C. & P.N.D.T. Act in India, in order to protect and preserve the Constitutional promise of gender equality, as guaranteed under the fundamental right to equality in Article 14 of the Constitution, and to give effect to certain Directive Principles of State Policy, namely Article 39 as well as to secure the fundamental duty of citizens under Article 51-A, that is to renounce practices that are derogatory to the dignity of women. A brief historical account was provided of legislations concerning regulation of pre-conception and pre-natal diagnostic techniques, commencing from the enactment of *The Maharashtra Regulation of Pre-natal Diagnostic Techniques Act, 1988*, which was the pioneering legislative endeavour in this respect in India, also highlighting the deficient implementation of *The Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994*, and eventually leading up to the landmark

judgement of the Supreme Court in *Center for Enquiry into Health and Allied Themes (C.E.H.A.T.) Vs. Union of India*.<sup>1</sup>

Subsequently, attention was drawn towards another dilemma that the Courts were faced with, which stemmed from the absence of a complainant/aggrieved person in such cases, who would file a complaint regarding the misuse/abuse of these pre-conception and pre-natal diagnostic techniques, which necessitated provisions in the P.C. & P.N.D.T. Act laying down certain presumptions in order to deal with the crisis created by the absence of a complainant/aggrieved person who would file a complaint on the basis of which the investigation and prosecution would be conducted. It was also mentioned that in order to resolve this crisis, the Act provides for close monitoring of the sale/purchase and use of ultra-sonography (U.S.G.) machines, requiring the maintaining of proper records as only the proper records would testify whether the pre-conception and pre-natal diagnostic techniques were used *bona fide* for detection of abnormalities and congenital defects, or misused for determining the sex of the foetus, and even going to the extent of laying down under the proviso to Section 4(3) of the Act, that any inaccuracy, inadequacy or omission in this respect would lead to the presumption that the pre-conception and pre-natal diagnostic techniques were misused for determining the sex of the foetus. Another similar provision of the Act was also highlighted, namely Section 24, wherein it is laid down that if a pregnant woman undergoes pre-natal diagnostic techniques for determining the sex of the foetus, it would be presumed that she was coerced or compelled to undergo the same by her in-laws/family members and consequently, the burden of proof would shift to the in-laws/family members of the pregnant woman. Hence it was opined that the P.C. & P.N.D.T. Act could be said to have employed all conceivable safeguards, as far as possible, to ensure the mitigation and prevention of sex selection and sex determination by the use of pre-conception and pre-natal diagnostic techniques.

However, caution was sounded regarding the implementation of the Act still being deficient and several of the provisions of the Act not being implemented in the way as it is conceived by the Act, with reference being made to the opinion of the Supreme Court that mere legislation will not suffice, emphasizing the need for generation of public awareness and sensitization, as regards the equal status of women in society and the dire consequences of sex

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1. *C.E.H.A.T. and Ors. Vs. Union of India and Ors.*(2001) 5 SCC 577.

selection of the foetus, as expressed by the Supreme Court in the P.I.L. initiated by C.E.H.A.T.<sup>2</sup> in 2003, as well as the Supreme Court's opinion in the P.I.L. initiated by Voluntary Health Association of Punjab<sup>3</sup> in 2013, wherein the Supreme Court observed that whatever directions were issued by the Apex Court of the country in the P.I.L. initiated by C.E.H.A.T. in 2003, have not yet been complied with. Reference was also made to the very recent P.I.L. initiated by Voluntary Health Association of Punjab<sup>4</sup> in 2016, wherein the Supreme Court reviewed the compliance of the provisions of the P.C. & P.N.D.T. Act and has again issued detailed directions to secure implementation of the provisions of the P.C. & P.N.D.T. Act and to ensure expeditious trial of cases under the Act.

### **Mr. Sanjay Parikh:**

The speaker commenced his discourse by narrating the historical account of how, even after being enacted in 1994 and being brought in to force in 1996, the P.C. & P.N.D.T. Act was not implemented until as late as 2000 and had remained a legislation merely on paper due to apathy and inaction on the part of the government.

Subsequently, the mindset of the society at large was highlighted as an important factor with regard to effective implementation of the provisions of the P.C. & P.N.D.T. Act and for securing the objective underlying the Act, which led to the question being posed as regards how to change the prevailing mindset of the society, which prefers a male child over a female child and inculcate a mindset that does not discriminate against the girl child. It was highlighted that the medical fraternity – diagnostic clinics, doctors, paramedics, technicians, etc. have played a despicable role in escalating the problem by exploiting the mindset of the society, with the ulterior motive of financial gains. The advancements in medical science and healthcare technology that were intended for detection of abnormalities and treatment of congenital defects requiring medical termination of pregnancy have been abused by their utilization for sex selection and determination of the sex of the foetus, contributing to a sharp decline in the child sex ratio in India, which necessitated the enactment of the P.C. & P.N.D.T. Act. The difficulty in

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2. *C.E.H.A.T. and Ors. v. Union of India and Ors.* (2003) 8 SCC 406.

3. *Voluntary Health Association of Punjab v. Union of India and Ors.* (2013) 4 SCC 1.

4. *Voluntary Health Association of Punjab v. Union of India and Ors.* 2016 SCC Online SC 1244.

exposing offences committed by medical professionals by contravening the provisions of this Act due to the absence of a complainant/aggrieved person or witnesses who would testify before the Court was also emphasized. In light of this difficulty, the different means and practices evolved and adopted by activists to expose offences committed by medical professionals in contravention of the provisions of the P.C. & P.N.D.T. Act were discussed, reiterating the fact that the forms to be filled up in connection with records to be maintained under the provisions of the P.C. & P.N.D.T. Act could be the only viable method of doing so and any inaccuracy, inadequacy or omission in this respect would lead to the presumption that the pre-conception and pre-natal diagnostic techniques were misused for determining the sex of the foetus. The state of Haryana which had a dismal child sex ratio owing to the patriarchal culture prevalent among the population of the state, was cited as an example, for two things – firstly, the generation of public awareness and sensitization of the society at large, as regards the equal status of the girl child and women in general, as compared with men; and secondly, the rigorous and thorough implementation of the provisions of the P.C. & P.N.D.T. Act, which ultimately yielded a positive result in the form of an increase in the child sex ratio.

While concluding his discourse, the speaker chose to refer to the recent Supreme Court decision in 2016 in a P.I.L. initiated by Voluntary Health Association of Punjab<sup>5</sup>, quoting from the text of the judgement that it needs no special emphasis that a female child is entitled to equal enjoyment of all the rights that a male child is entitled to. The Constitutional identity of a female child cannot be mortgaged to any kind of societal norms or concepts that has developed to be prevalent in the society, allowing no room for any kind of compromise and only permitting affirmative steps that are constitutionally postulated. Attention was drawn to the directions that have been issued by the Supreme Court in the present case, in addition to the directions that had been issued in earlier cases. Lastly, the applicability of the principles of inter-generational equity and the doctrine of trusteeship to the issue of sex selection and declining child sex ratio was emphasized in light of the observations made by the Supreme Court in its judgement that “the present generation is expected to be responsible to the posterity and not to take such steps as to sterilize the birth rate in violation of law.

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5. *Voluntary Health Association of Punjab v. Union of India and Ors.* 2016 SCC Online SC 1244.



## **SESSION– 2**

**Theme:** *“Cultural, Social and Economic Factors that Promote Gender Bias – Context of the P.C. & P.N.D.T. Act in India”.*

**Speakers:** *Hon'ble Ms. Justice Manju Goel and Hon'ble Ms. Justice K. Hema.*

### **Hon'ble Ms. Justice K. Hema:**

At the very outset, the distinguished speaker proposed to conduct an interactive session which would be fruitful for the exchange of ideas and perceptions among the participants. The deliberations were commenced by posing a question to the participants as to what is meant by gender bias. It was opined that to construe what is ‘gender bias’; one has to understand what ‘bias’ is in a general sense of the term. It was observed that bias stems from prejudice or pre-conceived opinions harbored by people, which are not based on reason or actual experience. Various causes/factors that lead to people entertaining a bias towards a thing, situation or group of people were highlighted, for instance, the culture and traditions prevalent in a society, the upbringing and socialization of an individual, past experiences, lack of knowledge or ignorance, the impression created by the media being a few of the several factors that cause an individual to entertain a bias. Various examples were cited by the speaker by way of questions posed to the participants, to illustrate as to how each and every person possesses certain pre-conceived notions that create an un-intentional bias in their thinking process.

It was emphasized that a judicial officer cannot afford to allow any sort of a bias to creep into his/her judicious mind, and must at all times base his/her perception on a thorough perusal of the facts and circumstances in each and every case. Precedential bias/prejudice was highlighted as another pertinent factor that causes bias in the decision-making process, observing that a judicial officer must at all times and in all circumstances avoid being prejudiced by any kind of bias, even so precedential bias/prejudice. Obviously, the judicial officers are bound by the law of precedents while deciding a matter brought before them, but precedents ought to be applied in cases presenting similar facts and circumstances, rather than blind application of precedents.

## **SESSION– 3& 4**

**Theme:** *“Medical Termination of Pregnancy and Sex Selection – Grey Areas”.*

**Speakers:** *Dr. Neelam Singh and Ms. Anuja Gulati.*

**Chair:** *Hon'ble Ms. Justice Manju Goel and Hon'ble Ms. Justice K. Hema.*

### **Ms. Anuja Gulati:**

The distinguished speaker started out by defining ‘sex ratio’, which usually refers to the population sex ratio that denotes the number of females per thousand males in the overall population. It was highlighted how the population sex ratio is not just determined by pre-birth elimination of female fetuses, but also affected by other factors such as migration and differential mortality. It was also highlighted how the structure of our population is changing leading to a skewed sex ratio, owing to the fact that, Indian women on an average live 3.25 years more than men. Hence, the population sex ratio would not be the best definition; rather sex ratio at birth would be a better definition of the sex ratio of the population.

It was mentioned how the technologies of ultra-sonography and amniocentesis, which were originally intended to detect genetic abnormalities and congenital disorders, have been used rampantly between 1980-90 for the purpose of female foeticide; thereby diminishing the sex ratio of the population. Reference was made to statistical data to illustrate the trends followed by the sex ratio in the country over the past few decades, also citing reasons that were instrumental in impacting the sex ratios. Parts and regions of the country that vary in their geographical locations, socio-economic conditions, predominant characteristics of the population living in those areas, etc. were contrasted in order to portray the declining patterns of sex ratio in the country, with inference being drawn as to greater instances of sex-selection at birth being practiced by the socio-economically well off regions/communities and affluent families, thereby resulting in a declining sex ratio in these areas.

It was also highlighted that in areas/regions where women have greater access to economic resources, women exercise greater liberty in decision-making as regards giving birth to

a female child, resulting in better sex ratio in those areas, which indicates the effect of economic empowerment of women on the sex ratio. Statistical data was revealed which indicates that, on the basis of the average sex ratio at birth in India over the last twelve years, it becomes evident that every year on an average, 4.5 lakh female fetuses are eliminated before birth in our country. Statistical data also exhibited the tendency of sex ratio at birth remaining normal in the case of the second child, if the first born child is a male child, showing the preference for a male child which is evidently higher among the educated and affluent classes of Indian society.

As the concluding remarks to her deliberation, the speaker stated how gender discrimination stems out of power relations in a patriarchal society, leading to unequal treatment and subordinate status of women, depriving women of their rights, opportunities and productive resources; which give rise to the preference for male children.

**Dr. Neelam Singh:**

The distinguished speaker while initiating her discourse rightly pointed out that an important factor affecting the empowerment of women is the age of marriage. If a girl gets married at an early age, she would eventually be deprived of all means and ways of empowerment. Attention was drawn to the alarming decline in the sex ratio in rural areas of India, as evident from the 2011 census, while compared to the decline in the sex ratio in urban areas of India. It was also highlighted that the decline in sex ratio is widespread across all religions, communities, castes and sections of the Indian population without any exception. Attention was also drawn to various instances of violence perpetrated upon women for having given birth to a female child or on sex determination of the foetus, it was discovered that she was carrying a female foetus in her womb.

Subsequently, it was mentioned that the M.T.P. Act and the P.C. & P.N.D.T. Act were enacted to be pathways for empowerment of women with the intention of providing reproductive rights to women. The reasons due to which an unwanted pregnancy would have to be terminated were cited as the backdrop which validates a medical termination of pregnancy, as provided under the provisions of the M.T.P. Act. Attention was drawn to the confusion resulting from the M.T.P. Act legally allowing abortion, whereas the P.C. & P.N.D.T. Act disallowing

abortion as an unlawful offence under the Act. The urgency of the malady of sex determination and sex selection of the foetus was emphasized along with the imminent need to curb these practices by ensuring effective implementation of the P.C. & P.N.D.T. Act and stringent measures being taken against medical professionals who are involved in such practices. Instances of medical clinics rampantly carrying on sex determination were narrated to illustrate the gravity of the situation, even after more than a decade has passed that the P.C. & P.N.D.T. Act has been enacted and brought into force. The apathy and indifference on the part of the administration towards effecting strict implementation of the Act and bringing to task, the individuals acting in violation of the provisions of the P.C. & P.N.D.T. Act was also highlighted.

Attention was drawn to the abuse of the drug '*misoprostol*', which is to be administered under medical supervision but is widely available across the country, and is being used to cause illegal abortions after sex determination of the foetus. On ingestion of this drug, the foetus is killed inside the womb and the pregnant woman starts bleeding profusely, posing a threat to the life of the pregnant woman, and under such circumstances, termination of pregnancy is lawfully allowed under the M.T.P. Act to save the life of the woman. It was observed that the provisions of the M.T.P. Act and the P.C. & P.N.D.T. Act are in line with each other, and in the interest of efficacious implementation of both the legislations, either of them should not be looked into in isolation from the other, rather integrated implementation of the legislations ought to be carried out to facilitate corroborative evidence to strengthen implementation of the legislations.

It was concluded that more often than not, sex selection is wrongly confused with abortion, creating an impression that abortion is illegal, thereby resulting in women being deprived from their right of access to safe and lawful termination of pregnancy. Medical termination of pregnancy or abortion is a conditional right of a woman, which she is entitled to, under the four conditions as expressly provided in the M.T.P. Act, 1971. The need to distinguish the basis of the two legislations was emphasized, while it was observed that the purpose of the P.C. & P.N.D.T. Act is to prevent sex selection and sex determination, while the M.T.P. Act is aimed at preventing unsafe abortions and to promote safe abortions. It was also remarked that any communication addressing sex selection should not be such as to jeopardize a woman's right of access to safe and lawful abortion, neither any other of her reproductive rights.

## **DAY – 2**

### **SESSION – 5**

**Theme:** *“Trial Processes under the P.C. & P.N.D.T. Act”.*

**Speakers:** *Hon'ble Dr. Justice Shalini Phansalkar Joshi.*

**Chair:** *Hon'ble Ms. Justice K. Hema.*

#### **Hon'ble Dr. Justice Shalini Phansalkar Joshi:**

The distinguished speaker initiated her deliberations by stating how sex selection and sex determination is not only an issue concerning the rights of women, but is also an issue pertaining to violation of human rights since women's rights is ultimately human rights as well. They are declared to be so by the United Nation's Charter, the Universal Declaration of Human Rights, as well as the Convention for Elimination of All Sorts of Discrimination Against Women (C.E.D.A.W.), which is a United Nations convention that has been ratified by India. The rights of women were hailed to be inalienable, non-transferable, non-negotiable, and also a part of Human Rights. Every effort ought to be made to protect these rights, and as far as India is concerned, they are also considered to be Fundamental Rights, the Constitutional Rights which cannot be compromised at any cost.

It was observed that if the broader context of protecting the human rights and the fundamental rights is borne in mind while implementing the laws in respect of these rights of women, then naturally a wider interpretation and purposive interpretation which will advance the object and purpose of the legislation. The significance of a purposive interpretation in implementing the provisions of the P.C. & P.N.D.T. Act was emphasized in the light of its poor implementation even after two decades of its enactment in 1994, which is evident from statistical data as regards the few cases of offences or violations of the provisions of the P.C. & P.N.D.T. Act that have been filed, and the even fewer cases which have reached the stage of trial.

The significance of the role of the Judge of a trial Court was highlighted in the light of the fact that very few cases under the P.C. & P.N.D.T. Act eventually reach the High Court, or further to the Supreme Court in appeal, while observing that the responsibility to ensure that the Act is interpreted in a proper sense and the trial of a case under the Act proceeds in the correct direction, has been bestowed on the shoulders of the Magistrates presiding over the trial Courts.

Subsequently, deliberations took place on section 28 of the P.C. & P.N.D.T. Act, as regards the question of this section limiting the *locus standi* of persons who can file a complaint under the P.C. & P.N.D.T. Act. It was observed that section 28 of the P.C. & P.N.D.T. Act must not be read as constituting a narrow class of person but it must be subjected to purposive interpretation and given a wider meaning to pave way for the provisions of this legislation to be set into motion.

Thereafter, questions were also posed to the participants as to whether the police are permitted to take persons in custody for interrogation and thereafter, carry further investigation in a case under the P.C. & P.N.D.T. Act; as well as, whether the seizure of investigation by police will vitiate the investigation. It was opined that it cannot be claimed that since the police adopted a particular course of action, it led to the entire investigation being vitiated. However, it was remarked that it would be preferable for the investigation to be carried out by the appropriate authority but the action of the police does not vitiate the trial. A question was also raised pertaining to the issue of the interim custody of the seized sonography machines, with comparison being drawn to the seizure of arms and weapons, which are not returned on bond in a case pending trial, on account of there being a high probability of its repeated use in committing a subsequent offence. In the light of the above deliberations, it was concluded that the Courts ought to look into the object and purpose behind the legislation before taking action. It was also opined that effective implementation of the provisions of this Act calls for active participation by the Judicial Officers in the proceedings in order to ensure that there is no miscarriage of justice and the provisions of the Act are effectively implemented.

## **SESSION– 6**

**Theme:** “*Appreciation of Evidence under the P.C. & P.N.D.T. Act*”.

**Speakers:** *Hon'ble Ms. Justice K. Hema, Ms. Anuja Gulati and Ms. Varsha Deshpande.*

### **Ms. Anuja Gulati:**

The distinguished speaker continued with her discourse on sex determination that had remained incomplete in the fourth session, by highlighting instances of the implication of sex determination. Examples taken from a photo-essay available on the CNN-IBN website under the title “*Female Foeticide*” were cited to illustrate the extent to which women or couples can go to fulfill their obsession for a male child. It was opined that giving more opportunities to women could be effective towards elevating their position in the society and thereby protecting them from any sexual or reproductive violence.

It was observed that the consequences of sex determination and sex selection will appear not immediately, but surely in a few decades. The concluding remarks highlighted the need to interpret the law in the broader context, in view of how it impacts the social and cultural fabric of the country, with an effort to link the issue of sex selection and sex determination with other gender related laws.

### **Ms. Varsha Deshpande:**

Statistical data relating to sex determination were presented to illustrate the gravity of the implications of sex determination. Statistical data which was presented revealed that in Maharashtra alone, 311 cases of sex determination were received by the Trial Courts. It was also revealed that every year more than six lakh unborn girl children are eliminated in India. In Maharashtra alone, fifty-three thousand unborn girl children are eliminated every year due to

the practice of sex determination; and it was opined that it would not be wrong to consider and term these incidents as '*medical terrorist attacks*' on the female sex.

The need for the amalgamation and coordination of medical knowledge with legal knowledge was expressed, prescribing seven aspects that must be borne in mind during inspections by appropriate authorities, which are as follows:-

1. Whether a board displaying that sex determination is a punishable offence, has been put up or not outside the hospital or clinic and the sonography room.
2. Whether the proper registration certificate was displayed or not.
3. Whether the consent of the woman has been obtained by the medical professional (doctor/radiologist) or not.
4. Whether the declaratory signature of the woman has been obtained or not.
5. Whether the declaratory signature of the medical professional who will be performing the test has been obtained or not.
6. Whether the forms required to be filled in and maintained as records are being maintained or not.
7. Whether a Referral Slip has been produced or not.

These seven points must be considered during an inspection by the appropriate authorities and observance or non-observance of the same must be mentioned in the inspection report. Even in the absence of witnesses, a concrete and detailed inspection report significantly aids and augments the case on the side of the prosecution. Another issue that was highlighted was that of the machines which are taken into custody being released after some time, which aids and ensures the smooth and uninterrupted operation of this heinous practice. Also, it was observed that the dismally low rate of convictions fails to act as a deterrent for the people involved in this unlawful practice.

Thereafter, attention was drawn to one of the most essential elements in cases of prosecution under the P.C. & P.N.D.T. Act, which is the '*panchnama*'. It was observed that how even though it is one of the most essential elements of the case, yet in practice, it is not taken



seriously by the persons responsible for drafting the '*panchnama*'. In the case of absence of the '*panchnama*' or it not being drafted in a proper format, the case of the prosecution stands to be prejudiced. In this interest, it was opined that the '*panchnama*' must be drafted by the collective involvement of a medical professional, a police officer, and a legal professional.

Subsequently, it was remarked that during the course of inspections at hospitals/clinics, the appropriate authority must ask for Birth registration register, as it would reveal the actual number of births that have taken place within a specified period, thereby indicating whether the hospitals/clinics have been practicing sex determination or not. The detailed records pertaining to use of ultra-sonography machines must be maintained by the hospitals/clinics, which must be produced before the appropriate authority during inspections. Failure to produce such records and non-maintenance of such records being a major offence ought to be strictly dealt with. It was observed by the speaker that, it is quite astonishing that there is no specific provision laid down in the law regarding affidavit to be submitted by the person engaged as the decoy during sting operations, while emphasizing on the need of submission of affidavit by the person engaged as the decoy during sting operations, while an alleged offence under the P.C. & P.N.D.T. Act is being prosecuted before the Court.

**Hon'ble Ms. Justice K. Hema:**

While commencing a discourse on "*Appreciation of Evidence under the P.C. & P.N.D.T. Act*", the basic principles of evidence which are instrumental in shaping up a case before a Court of law were highlighted. The definition and ambit of the term '*evidence*' was discussed. In the course of the discussions, it was stated that all statements made in the Court are not to be considered as oral evidence; however, all the statements which the Court permits or requires to be made before it by the witnesses in relation to matters of fact under inquiry are to be considered as oral evidence.

The definition of documentary evidence was discussed with mention being made of the inclusion of all electronic records produced before or inspected by the court, within the definition of electronic evidence. Thereafter, emphasis was laid on the very purpose of appreciation of evidence. It was observed that the primary purpose is to find out whether alleged

or asserted facts are relevant facts and ought to be proved or not. Deliberations were also devoted to the definition of the term '*fact*' which was defined by the speaker as anything that is capable of being perceived by the human senses. Section 59 of the Indian Evidence Act, which deals with proof of facts by oral evidence, as well as Section 61 of the Indian Evidence Act which deals with proof of contents of documents were also deliberated upon.

As the concluding remarks to the ongoing discourse, it was observed that although there is no specific rule laid down under any legislation as regards the process or manner of appreciation of evidence, a Judicial Officer's appreciation of any evidence placed before the Court, ought to be dictated by judicious reasoning while always upholding the general principles of the law of evidence, as they are laid down under the Indian Evidence Act, 1872.