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Ministry of Health & Family Welfare
(PNDT Section)
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27/7/16

Nirman Bhawan, New Delhi.
Dated the 27July, 2016.

To,

As per the list enclosed.

Subject: Forwarding of minutes of meeting of Expert Committee on the proposed amendments to the PC & PNDT Act, 1994 –reg.

Sir/Madam,

I am directed to forward herewith the copy of minutes of the meeting of the Expert Committee on the proposed amendments to the PC & PNDT Act, 1994 held on 4th July, 2016 under the chairmanship of Smt. Vandana Gurnani, Joint Secretary (RCH/PNDT) for kind perusal and necessary action, if any.

Yours sincerely,

27/7/16

(Manoj Kumar Jha)
Under Secretary to the Government of India
Tel: 23061342

Copy to :

PPS to JS (RCH) alongwith the copy of minutes of the meeting.

LIST OF PARTICIPANTS

1. Smt. Vandana Gurnani, Joint Secretary (PNDT), MoHFW
2. Smt. Bindu Sharma, Director (PNDT), MoHFW
3. Sh. Manoj Kumar Jha, Under Secretary (PNDT), MoHFW
4. Dr. Veena Dhawan, Assistant Commissioner (MH) MoHFW
5. Sh. V.V. B. Raju, Deputy Secretary, National Commission for Women
6. Ms. Ashwini Lal, Joint Director, Ministry of Women and Child Development, New Delhi
7. Dr. Dharam Pal, Director (Family Welfare), Govt. of Punjab
8. Dr. Vandana Sharma, Deputy Director (PNDT), Govt. of Madhya Pradesh
9. Dr. Neelam Singh, Vatsalya, Lucknow
10. Dr. O. P. Bansal, President, Indian Radiological and Imaging Association
11. Dr. K. K. Aggarwal, Secretary General, IMA
12. Ms. Ira Gupta, IMA
13. Dr. Rajnikant Contractor, CSB Member
14. Dr. Pratima Mittal, Deptt. of Obs/ Gyn., VMMC, New Delhi
15. Ms. Anita Shenoy, Advocate, Supreme Court
16. Smt. Varsha Deshpande, Advocate, Maharashtra
17. Dr. Sabu M George, Social Activist, New Delhi
18. Dr. Vinay Aggarwal, MCI
19. Dr. Puneet Bedi, Gynecologist, New Delhi

MINUTES OF THE MEETING OF THE EXPERT COMMITTEE ON PROPOSED AMENDMENTS IN THE PC&PNDT ACT HELD ON 04.07.2016

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List of participants is enclosed.

2. At the outset, JS (RCH) as the Chairperson welcomed all the participants. After a brief round of introduction, JS (RCH) opened the discussion with the observation that there was a good representation of all stakeholders viz. State Governments, professional organizations and civil society which was a reflection of the concern for the issue.

3. JS (RCH) informed that the agenda circulated is the same as discussed last time and also contains some observations subsequent to discussion within MoHFW. JS (RCH) opined that the technology was moving faster than the Act and policy makers are confronted with newer technologies of sex selection & sex determination like blood tests, IVF, ART etc. The Act/Rules, therefore, need to be revisited to tackle problem emanating from latest technologies. This was discussed in the last CSB meeting on April 5, 2016.

4. Advocate Ms. Varsha Deshpande opined that there was no need to have this Committee Meeting. The Act was conceptualized well and only needs to be implemented efficiently. Dr. K. K. Agarwal, representing IMA informed that the agenda does not include the points raised by IMA in its meeting with Additional Secretary (Health) on which Dr. O.P. Bansal, President, IRIA, remarked that the proposed amendments flow from recommendations of the CSB and need to be discussed. However, JS (RCH) informed that it would be better to discuss the agenda point-wise and the views of members were invited accordingly.

5. Opening the discussion on the proposed amendment of Section 2 (p), Director (RCH/PNDT) informed that Section 2 (p) has been one of the core issues in recent judgement of Hon'ble High Court of Delhi, against

which Ministry of Health & Family Welfare is filing SLP in Hon'ble Supreme Court. The Committee was of unanimous view that since the issue is *sub-judice*, it would be better that the proposed amendment in Section 2 (p) should not be discussed.

6. **Amendment in Section 23 (1)**: It was informed that the phrase "who contravenes any of the provisions of this Act or Rules made thereunder" is proposed to be replaced by "who indulges in or assists or aids Sex Determination/ selection or for conducting pre-natal diagnostic techniques on any person for the purposes other than those specified in sub-section (2) of Section 4". Further, increase in the existing penal provisions are proposed. Director (RCH/PNDT) informed that in the last Expert Committee, it was recommended that the penal provisions should be made more stringent.

Adv. Ms Anita Shenoy opined that the existing provision of Section 23 (1), was very wide, as it says about contravention of **any** of the provisions of the Act. By restricting the contravention only for conducting pre-natal diagnostic techniques, it would narrow down the existing provision. Therefore, the amendment as such was not required.

Dr. O. P. Bansal remarked that under the provisions of Section 23 (1), only doctors have been convicted whereas others aiding or abetting the female foeticide have been left out and therefore, there was a need for the amendment of Section 23 (1) to make it more inclusive. Ms. Varsha Deshpande clarified that such provisions already exist in sections 4, 5, 23 (3), 24 and 25.

Dr. Sabu Mathew George informed that the law has not been used much to curb female foeticide except in Maharashtra.

Dr. Puneet Bedi said that the PC&PNDT Act has not been effectively implemented. He emphasized that there is a need is for medical audit. This is the only law where the accused has to prove his innocence. By medical audit of the records prescribed under PC&PNDT Act/Rules, the discrepancies could be noted effectively to catch the culprit. He further informed that while framing the Rules, all objections of medical

professionals have been taken into account by the legal experts. Hence, there is no need for any amendment.

Dr. K. K. Agarwal of IMA told that Section 4(3) read alongwith Section 23 made any contravention as a criminal offence. The idea of PC&PNDT Act is to improve child sex ratio and three insertions "who does", "who aids" and "who abets" is needed in the Section 23(1).

Dr. Neelam Singh remarked that every stakeholder is aware of the real cause of problem of increasing female foeticide. She said that from her experience she has learnt that mistakes are intentional. Medical professionals coming under the ambit of PC&PNDT Act must try to learn how to maintain specified records to prove themselves as law abiding, rather than seeking excuses on grounds of clerical errors.

Adv. Ms. Anita Shenoy further informed that replacing the phrase "imprisonment for a term which may extend to three years" with the words "which shall not be less than three years" may have the effect of judges becoming very restrictive in prescribing punishment. Therefore, the present provision is fine.

Representatives of IMA/IRIA/FOGSI requested to put on record the following:

"Sections 23, 25, 4(3) need to be amended for graded punishment"

Adv. Ms. Anita Shenoy countered by saying that proviso to Section 4 stipulates that any deficiency/inaccuracy found in records shall amount to contravention of provisions of Section 5 & 6 **unless contrary is proved by the person** conducting such ultrasonography. Thus, the opportunity already exists in the Act for the doctors/practitioners to prove innocence.

The Committee concluded that there was no consensus on the proposed amendment.

7. During the deliberations, Dr. Neelam Singh remarked that since the development of new technologies, there have been increasing incidents of female foeticide. There is a need to introspect that whether the conviction of law breakers is proportionate to the number of girl children missing. Also, there is impending need for the medical professionals to reasonably

and responsibly educate themselves for abiding by the provisions of PC&PNDT Act/Rules honestly.

Dr. O.P. Bansal informed that 600 criminal cases have been launched on minor mistakes and clerical errors should not be equated with sex selection.

Dr. K. K. Agarwal told that the mandate of the Committee is to suggest an amendment and not what the Act already contains. IMA is not against filling Form "F" per se, not against prohibition of sex selection/female foeticide or convicting the offenders of sex selection, but there should be a grading of offences into civil and criminal offence.

Further, the declaration in Form 'F' that ...." I have not detected the sex....." should be replaced by "..... I have not disclosed the sex.....".

JS (RCH) tried to ascertain as to whether there is any way to define minor clerical error" and "major clerical error".

Adv. Ms. Anita Shenoy informed that there are four judgments of Hon'ble Supreme Court in which the Court has taken into account why these forms are required. Proviso to Section 4 (3) specifies mandatory keeping of records by Sonologists. Since 2000, there is a presumption casted that if there is deficiency in record keeping, the concerned person is taken to be conducting sex detection. Law itself gives opportunities to the person to prove contrary to the presumption. She further told that, there might be some stray incidences of initiation of prosecution on slightest pretext but, some personal inconveniences should not undermine the Act and the judgement of the Supreme Court in this matter.

Adv. Ms. Varsha Deshpande told that for minor clerical mistakes there has hardly been any conviction, as the Appropriate Authorities also consider the circumstances in entirety. However, where there is a consistent violation of Section 5, this has been treated as a deliberate attempt to conceal the contraventions. These circumstantial evidences are necessary to prove in the absence of any direct evidence or where the witness has become hostile.

Dr. Puneet Bedi commented that the Act has come with a background. It was the job of MCI to ensure the adoption of ethical regulations by the doctors, which the MCI could not ensure. Then, the law came with the basic assumption that doctor who owns a USG and does not keep forms properly, does sex selection. This law is similar to one for rape offence and financial irregularities, where the onus to prove innocence lies with the culprit. The perfect way to implement the law is to do audit. It is not the job of Committee to change the focus of present law from doctor to minor clerical errors and therefore any amendment in this direction would completely preclude any audit.

Director (RCH/PNDT) informed that with intense consultation with and consent of medical professionals, Form "F" has been revised in 2014 and therefore, raising hue and cry about Form "F" after two years is not understandable.

Summing up the discussion, JS (RCH) told that CSB has invited suggestions from all as to how sex ratio has to be improved and therefore, all professional bodies should suggest as to how law should be implemented in a better way and now sex ratio should be improved.

8. The Committee, thereafter, discussed the proposed amendment in the Act by inserting Section 23 (1) (A) prescribing monetary penalty for not wearing apron, displaying board declaring not doing sex selection and making available copy of Act in the genetic clinic, ultrasonography centres. Though the representatives of IRIA, IMA and FOGSI were unanimously in favour of this amendment, other members of the committee from the civil society objected to grading these offences punishable by levying penalty. The Committee could not arrive at a consensus on this.

9. The Committee further discussed proposed amendment in Section 25 of the Act (which at present provides penalty for act, not provided elsewhere in the Act with an imprisonment upto three months and fine of Rs. 1000 on first occasion and Rs.500 additional fine per day for

continuing contraventions) suggesting increasing in fine to Rs. 10000 for first contravention and Rs. 1000 per day for continuing contravention and confiscation of sonography machine and other equipment used for commission of offence.

Adv. Ms. Anita Shenoy remarked that if a judge feels that even a single contravention is adequate then the phrase "continuous contravention" would become an impediment in deciding the case.

Representatives of IMA and IRIA were of the view that any offence under Section 25 should not be a criminal offence. Other members of the view that there should not be any change in the existing provisions.

Finally, the Committee could not arrive at a consensus.

10. Further, the Committee discussed the proposed insertion of Sections 26 (3) (A) and 26 (3) (B) thereby proposing punishment for defaulter companies.

Dr. O. P. Bansal informed that this amendment has been suggested as per deliberations in the last meeting on the basis that manufacturers should be equated with others for violation in terms of penalty and imprisonment.

Adv. Ms. Anita Shenoy informed that Section 23 is having wider application as it phrases "who contravenes" and therefore took care of the violation(s) by the Companies.

Dr. Sabu Mathew Geroge suggested that penalty on Companies should be in proportion to the turnover.

There was no unanimous decision on the proposed insertion.

11. The Committee, thereafter, discussed the proposed amendment in Section 31 intending to grant immunity to Social Organization.

JS (RCH) raised a query whether any existing Act provides for such immunity to Social Organization as any legislation provides for immunity only to Public servant for action done in good faith and in case of aberration a well laid down machinery exists in the Government to take care of malafide action.

Representative of IRIA and IMA were of the view that the immunity should not be extended to social organizations.

12. On the proposed amendment in Section 3 (B) inserting the phrase ".....**or in any other manner transfer** any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus....." the Committee agreed to this proposed amendment unanimously.

13. Thereafter, the Committee discussed the need to take into consideration the upcoming technologies like "Free Cell DNA Testing" and "Stem Cell Research" that would have adverse consequences in terms of sex selection/ determination as "Free Cell DNA Testing" is a new testing method that enlarges the prospect of probing the health (and sex) of baby early in pregnancy at 7 weeks.

Dr. K. K. Agarwal of IMA informed that touts are offering a customized package to prospective seekers of "Pink & Blue Tests" of blood to detect the sex in foreign countries and even in India and the episodes are on rise.

Adv. Varsha Deshpande informed that Govt. of Maharashtra have identified 15 processes in IVF technology where sex selection could be done and which needed to be deliberated at length.

Dr. O. P. Bansal opined that there should be a close watch on the emerging technologies and punishment should be same for them also.

Adv. Ms. Anita Shenoy informed that the Act takes care of the violation by IVF, ART centres or through emerging technologies as it phrases "any technology". However, the existing forms needed to be customized for these centre specific technologies.

Dr. Neelam Singh remarked that the IVF clinics are mushrooming in smaller towns, but not registered under the PC&PNDT Act, though they use the Ultrasound machines in their treatment. There would be a need to make record keeping of outcome of the pregnancy as mandatory.

JS (RCH) told that the Department of Health Research has to be communicated that on surrogacy law that they are making the PC&PNDT Act/Rules is to be taken into consideration. However, the issue has to be dealt as a two pronged strategy. In the first place, advisory has to be issued to States to keep a watch on the emerging technologies and report the cases of sex selection through these technologies to Appropriate Authorities. Later on, in long term these technologies have to be discussed to see whether the present Act is sufficient or there is a need to amend the Act/Rules.

14. Ms. Ashwini Lal, Joint Director, Ministry of WCD looking after BBBP scheme opined that 435 districts in the country are registering lower sex ratio and therefore the Committee has to think as to how the service providers and seekers of sex selection should be made afraid of using the technologies to make BBBP a great success. Proper documentation is one of the important legal obligations of medical professionals which they must abide by a sacrosanct way. The possibility of linking pregnancy with the AADHAR number is to be explored to track its outcome.

15. Adv. Varsha Deshpande emphasized that the ultrasound machines being used by the Veterinary doctors should also be registered under PC&PNDT Act/Rule. Similarly, health establishments under Ministry of Defence also need to submit reports which they are not doing now. She also suggested that in Section 28 (3), the phrase ".....Court <u>may</u> direct the AA to make available relevant records should be replaced by "..... the Court <u>shall</u> direct the AA.....".

Dr. Sabu Mathew George informed that lots of selective reduction takes place in IVF/ART centres but no documentation takes place for which we need to redesign proforma/format for reporting.

Dr. Neelam Singh said that details in MTP forms can provide lot of corroborating evidence for sex selection but ironically can't be sought for maintaining privacy of abortion and ensuring free, safe, unhindered abortions.

Adv. Ms. Anita Shenoy suggested that for each State/UT, a Standing Counsel needs to be designated for cases relating to PC&PNDT Act/Rules. For this, requests have to be made to the concerned.

16. JS (RCH) extended her thanks to all the participants for their concerns of the growing incidences of female foeticides, misuse of technologies and hoped that through prolonged deliberations, the Act/Rules might be made more effective to curb this crime against the society. She also suggested that a sub-committee would he formed to dwell on the mechanism to track IVF/ART and other technologies.

17. Meeting ended with thanks to the Chair.

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