CHAPTER THREE

SEX DETERMINATION

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse Act), 1994 (PNDT Act), was enacted to prevent misuse of preconception and prenatal diagnostic techniques for determining the sex of the foetus and to prevent disclosure of the sex to the pregnant woman or her relatives. In 2003, the PNDT Act was amended and renamed as the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act), in order to strengthen the PNDT Act and take note of the development of preconception sex-selection techniques. The amended legislation places a ban on sex selection before and after conception and regulates the use of prenatal diagnostic techniques for detection of certain abnormalities or disorders.[1] The law does not discuss abortion or providers of abortion, which are distinctly regulated under the Medical Termination of Pregnancy Act, 1971 (MTP Act).

In this section, we discuss the following issues pertaining to sex determination in India:

- Implementation of the PNDT Act and the PCPNDT Act
- Ban on Online Advertisements for Sex Selection and Sex Determination
- Constitutional Challenges to the PCPNDT Act
- Applicability of the PCPNDT Act to Surrogacy Arrangements

Implementation of the PNDT Act and the PCPNDT Act

The Supreme Court and High Courts have been approached frequently for issuance of directions to the concerned authorities for effective implementation of the PNDT Act and the PCPNDT Act.

In ***Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India***,[2] the Supreme Court noted the non-implementation of the PNDT Act even after five years of its enactment. It passed multiple orders with directions to the Central and State Governments, as well as authorities under the PNDT Act to, amongst other things, ensure proper implementation of the Act and examine the necessity of amending the PNDT Act in light of the emerging technologies.[3]

Several directions of the Court were incorporated in the amended PCPNDT Act. In its final order passed in 2003,[4] the Court recounted its previous orders[5] and directed the authorities to ensure their compliance, while also directing the Central and State Governments to increase public awareness through advertisements and electronic media, appoint the authorities required under the PCPNDT Act, and monitor and publish periodic reports on the implementation of the PCPNDT Act.

Another writ petition was filed before the Supreme Court in ***Voluntary Health Association of Punjab v. Union of India***,[6] highlighting the continuance of the practice of sex selection and decline in the female sex ratio in several states. The Court passed directions addressing the non-implementation of its orders passed in ***CEHAT***; lack of proper supervision of diagnostic centres, genetic clinics, and counselling centres by the appropriate authorities; failure of concerned authorities to seize ultrasound machines of violators; low rate of conviction in PCPNDT cases; and the pendency of PCPNDT cases. The Court also emphasized the need to raise public awareness regarding the purpose and necessity of the PCPNDT Act.

In its final order disposing this writ petition,[7] the Supreme Court issued specific directions for "fast-tracking" disposal of PCPNDT cases, constituting a judicial committee by the High Court for periodic monitoring of Courts that are dealing with PCPNDT cases, and training of judicial officers to develop requisite sensitivity in line with the object of the PCPNDT Act. In a connected writ petition filed by medical practitioners alleging misuse of certain provisions of the PCPNDT Act and undue harassment by the authorities and seeking further guidelines, the Court rejected their prayer for reading down the provisions because the petition did not assail the validity of the law or its regulation and advised them to seek legal remedy for abuse of law.

Ban on Online Advertisements for Sex Selection and Sex Determination

Section 22 of the PCPNDT Act prohibits advertisements relating to facilities of preconception and prenatal sex determination and selection. In ***Sabu Mathew George v. Union of India***,[8] a writ petition was filed before the Supreme Court seeking directions for blocking all websites and online advertisements related to gender-biased sex selection. The Court in a series of orders gave directions on the issue. Pursuant to the directions of the Court in one of its orders,[9] a nodal agency was constituted to monitor and report such advertisements to search engines for removal.[10] In addition, the Court has directed the nodal agency and search engines to jointly devise a solution for filtering advertisements in violation of Section 22 of the PCPNDT Act.[11]

Constitutional Challenges to the PCPNDT Act

High Courts have on multiple occasions ruled on the constitutional validity of the entire PCPNDT Act, as well as specific provisions of the Act. The Bombay High Court in ***Vinod Soni v. Union of India***[12] held that right to life and personal liberty under Article 21 does not envisage a right to choose the sex of the offspring, rejecting the petitioners' argument that the PCPDNT Act violated their personal liberty to determine the nature of their family. It further held that the PCPNDT Act was in furtherance of the right of every child, whatever its sex may be, to full development guaranteed under Article 21 of the Indian Constitution.

Thereafter, in ***Vijay Sharma v. Union of India***,[13] the petitioners contended that PCPNDT Act was violative of Article 14 of the Indian Constitution as it did not account for the grave mental injury caused to prospective mothers carrying an unwanted female or male foetus for the second time, while the MTP Act factored the mental injury caused by unwanted pregnancies. Upholding the constitutionality of the PCPNDT Act, the Bombay High Court observed that the two legislations operate in different spheres and have different objects. It held that sex selection offends the right to life and dignity of women as a group, and that mothers wishing to select the sex of their offspring form a different category from those desiring termination of pregnancy on grounds stipulated under the MTP Act.

In ***Saksham Foundation Charitable Society v. Union of India***,[14] the petitioner challenged the constitutional validity of provisions prohibiting disclosure of sex of the foetus [Section 5(2)] and banning sex determination [Sections 6(a) and 6(b)] before the Allahabad High Court. The petition sought directions for legalization of sex determination and compulsory disclosure of the sex of the foetus on the premise that such measures would record and prevent sex selection. Dismissing the writ petition, the Court held that PCPNDT Act did not violate Articles 14 and 21 of the Constitution of India, and that the object of the statute was to ensure that diagnostic techniques are not misused for sex determination and sex selection.

Applicability of the PCPNDT Act to Surrogacy Arrangements

In ***Amy Antoinette McGregor & Anr. v. Directorate of Family Welfare Govt. of NCT of Delhi***,[15] an Australian couple desirous of having a male child and a female child through surrogacy approached the Delhi High Court seeking a declaration that the PCPNDT Act is *ultra vires* with respect to the surrogacy process. The High Court rejected the challenge to the PCPNDT Act made on the grounds of hostile discrimination and unreasonable classification and held that there was no basis to treat such intending parents desirous of balancing their family through surrogacy differently.

Related Human Rights Standards and Jurisprudence

Below is a selection of human rights standards and jurisprudence relating to state obligations to ensure women's right to equality and non-discrimination, including both obligations to address discrimination in law and in practice that perpetuates the inferiority or superiority of either of the sexes and to ensure respect for women's reproductive rights. The selection below reflects the evolution in human rights law relating to discriminatory norms and harmful practices, such as son preference, to recognize that solutions should address systematic and structural root causes such as patriarchal attitudes while also emphasizing that such solutions should not violate women's rights, which would include reproductive rights and access to abortion.

The Government of India has committed itself to comply with obligations under various international human rights treaties to protect sexual and reproductive health and rights. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention for the Elimination of All Forms of Discrimination

Against Women (CEDAW), and the International Covenant on Civil and Political Rights (ICCPR).[16] Under international law, all government organs and authorities, including the judiciary, are obligated to uphold the laws and standards outlined in these treaties.[17] The Supreme Court has held that in light of the obligation to "foster respect for international law" in Article 51 (c) of the Indian Constitution "[a]ny International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into [fundamental rights] to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee."[18]

INTERNATIONAL TREATY STANDARDS

TREATIES

- **ICESCR, Articles 2(2), 3, 12(1)** (prohibiting discrimination on the basis of sex and guaranteeing the right to health).
- **ICCPR, Articles 2(1), 17, 23(2)** (prohibiting discrimination on the basis of sex and other grounds and protecting the right to privacy).
- **CEDAW, Articles 1, 2(f), 3–5, 12(1),** 16(e) (protecting women's right to equality with men in all fields including cultural life; obligating states to eliminate cultural patterns, prejudices, and customary practices "based on the idea of the inferiority or the superiority of either of the sexes"; urging the use of temporary special measures to realize de facto equality between men and women; and guaranteeing women the right to health and to decide the number and spacing of their children).

SELECTED GENERAL COMMENTS

- **CEDAW Committee,** ***General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19,*** U.N. Doc. CEDAW/C/GC/35 (2017), paras. 18–19, 31(a), 34–35 (outlining that criminalization of abortion and other restrictions on women's reproductive autonomy constitute gender-based violence; and instructing that states must repeal discriminatory laws, including those criminalizing abortion, and must implement laws that work to eliminate the underlying causes of gender-based violence, such as patriarchal attitudes and stereotypes and inequality in the family).
- **CEDAW Committee and the Committee on the Rights of the Child,** ***Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices,*** U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (2014), paras. 6–7, 9, 16–17, 31–34, 49–51, 55–60, 70 (identifying preferential treatment of boys as a harmful practice rooted in discriminatory sex- and gender-based attitudes; stressing states' duty to address the underlying systemic and structural causes of harmful practices, using demonstrably relevant, appropriate, and effective measures while "ensuring first and foremost that the human rights of women are not violated"; and recognizing that harmful practices should not be used to justify gender-based violence as a form of "protection" or control of women).
- **CEDAW Committee,** ***General Recommendation No. 24 on Article 12 of the Convention (women and health),*** U.N. Doc. A/54/38/Rev. 1 (1999), paras. 19, 22–23, 31 (establishing that ensuring the right to non-discrimination in health care requires that states must guarantee women's access to health care that respects their dignity, their needs and perspectives, and their right to fully informed consent; and instructing states to ensure the removal of all barriers to women's access to health services, education, and information, including by reforming laws that criminalize abortion).
- **CEDAW Committee,** ***General Recommendation No. 21: Equality in Marriage and Family Relations,*** U.N. Doc. A/49/38 (1994), paras. 22, 40–44, 50 (elaborating women's right to decide the number and spacing of their children on a basis of free and informed consent, without limitations from "spouse, parent, partner or Government"; and emphasizing states' obligation to "discourage any notions of inequality of women and men").
- **CEDAW Committee,** ***General Recommendation No. 19: Violence against women (1992),*** paras. 20, 22 (outlining that male child preference constitutes a harmful traditional cultural practice; and explaining that compulsory abortion infringes women's right to decide the number and spacing of their children).

- **Human Rights Committee, *General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life***, U.N. Doc. CCPR/C/GC/36 (2018), para. 8 (outlining that regulations that jeopardize women's access to safe abortion violate the right to life; recognizing that the right to life attaches only at birth; calling on states to prevent the stigmatization of women seeking abortion; and adding that states should not criminalize women who receive abortion or abortion providers).
- **Committee for Economic Social and Cultural Rights, *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (Art. 3 of the International Covenant on Economic, Social and Cultural Rights)***, U.N. Doc. E/C.12/2005/4 (2005), paras. 15, 19, 21, 29 (reiterating states' duty to implement laws and policies that accelerate women's equality and help eliminate "prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes"; and outlining that states must remove legal restrictions on reproductive health and address the ways in which women may have unequal access to water, food, and medical care).

UNITED NATIONS HUMAN RIGHTS EXPERT REPORTS

- **Working Group on the issue of discrimination against women in law and in practice, *Report of the Working Group on the issue of discrimination against women in law and in practice***, U.N. Doc. A/HRC/29/40 (2015), paras. 12–18, 65–67, 71–73 (highlighting the state's duty to counter social and cultural patterns that perpetuate gender inequality through awareness-raising and informational programmes; and instructing states to "set up effective services that respond to women's needs in the short, medium and long term").
- **Office of the High Commissioner on Human Rights et al., *Preventing Gender-Biased Sex Selection: An Interagency Statement OHCHR, UNFPA, UNICEF, UN Women and WHO*** (2011), p. V (emphasizing that states must address prenatal sex selection "without exposing women to the risk of death or serious injury by denying them access to needed services such as safe abortion to the full extent of the law," which would constitute further violations of their rights to life and health).
- **Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (SR Health), *Report on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health***, U.N. Doc. A/64/272 (2009), paras. 54–55, 57–60 (outlining that women may not be denied the right to consent-based health care on the basis of concerns about the best interests of an unborn child; calling for respect for women's rights to reproductive health care and emphasizing that "[g]uidance concerning situations of maternal-foetal conflict should capitalize on the potential of proper counselling and comprehensive support services through women's networks to mitigate restrictions of autonomous decision-making of the woman and any potentially harmful effects to the child").
- **Special Rapporteur on violence against women, its causes and consequences (SR VAW), *Report of the Special Rapporteur on violence against women***, its causes and consequences, Yakin Ertürk—Intersections between culture and violence against women, U.N. Doc. A/HRC/4/34 (2007), paras. 72(b), 72(c) (emphasizing that states should address the social, economic, and political factors that underpin harmful cultural practices against women, while avoiding "compartmentalized and selective approaches to the elimination of violence against women that de-link the problem from its underlying causes").
- **SR VAW, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/49: Cultural practices in the family that are violent towards women***, U.N. Doc. E/CN.4/2002/83 (2002), paras. 71–73, 79–80, 90 (outlining that prenatal sex selection is a manifestation of discriminatory son preference, which in turn reflects social and legal disempowerment of women; and reiterating that violations of women's sexual and reproductive health and rights constitute violence against women).

RELEVANT EXCERPTS FROM SELECT CASE LAW

(Arranged chronologically)

IN THE HIGH COURT OF BOMBAY

Vinod Soni & Anr. v. Union of India
2005 Cri LJ 3408 (Bom)
V.G. Palshikar and V.C. Daga, JJ.

This writ petition was filed by a married couple challenging the constitutionality of the PCPNDT Act on the ground that it violates their personal liberty to choose the sex of their offspring and determine the nature of their family. The Bombay High Court examined whether the PCPNDT Act, by placing a bar on sex determination and sex selection, violates their right to life and personal liberty under Article 21 of the Indian Constitution.

Palshikar, J.: "By this petition, the petitioners who are married couple, seek to challenge the constitutional validity of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 (hereinafter referred to Sex Selection Act of 1994). The petition contains basically two challenges to the enactment. First, it violates Article 14 of the Constitution and second, that it violates Article 21 of the Constitution of India. At the time of argument, the learned counsel appearing for the petitioners submitted that he does not press his petition insofar as the challenge via Article 14 of the Constitution of India is concerned.

2. We are, therefore, required to consider the challenge that the provisions of Sex Selection Act of 1994 are violative of Article 21 of the Constitution of India…

3. …Article 21, according to the learned counsel has been gradually expanded to cover several facets of life pertaining to life itself and personal liberties which an individual has, as a matter of his fundamental right. Reliance was placed on several judgments of the Supreme Court of India to elaborate the submission regarding expansion of right to live and personal liberty embodied under Article 21, in (sic) our opinion, firstly we deal with protection of life and protection of personal liberty. Insofar as protection of life is concerned, it must of necessity include the question of terminating a life. This enactment basically prohibits termination of life which has come into existence. It also prohibits sex selection at pre-conception stage. The challenge put in nutshell is that the personal liberty of a citizen of India includes the liberty of choosing the sex of the offspring. Therefore he, or she is entitled to undertake any such medicinal procedure which provides for determination or selection of sex, which may come into existence after conception. The submission is that the right to personal liberty extends to such selection being made in order to determine the nature of family which an individual can have in exercise of liberty guaranteed by Article 21. It in turn includes nature of sex of that family which he or she may eventually decided (sic) to have and/or develop.

4. Reliance was placed, as already stated, on several judgments of the Supreme Court of India on the enlargement of the right embodied under Article 21…

5. … These rights even if further expanded to the extremes of the possible elasticity of the provisions of Article 21 cannot include right to selection of sex whether preconception or post conception.

6. The Article 21 is now said to govern and hold that it is a right of every child to full development. The enactment namely Sex Selection Act of 1994 is factually enacted to further this right under Article 21, which gives to every child right to full development. A child conceived is therefore entitled to under Article 21, as held by the Supreme Court, to full development whatever be the sex of that child. The determination whether at preconception stage or otherwise is the denial of a child, the right to expansion, or if it can be so expanded right to come into existence. Apart from that the present legislation is confined only to prohibit selection of sex of the child before or after conception. The tests which are available as of today and which can incidentally result in determination of the sex of the child are prohibited. The statement of objects and reasons makes this clear. The statement reads as under.

> "The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders."

Then para 4 reads thus:

> "Accordingly, it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended."

7. It will thus be observed that the enactment proposes to control and ban the use of this selection technique both prior to conception as well as its misuse after conception and it does not totally ban these procedures or tests. If we notice provisions of section 4 of the Act it gives permission in when any of these tests can be administered. Sub-section (2) says that no prenatal diagnostic techniques can be conducted except for the purposes of detection of any of the (1) chromosomal abnormalities, (2) genetic metabolic diseases, (3) heamoglobinopathies, (4) sex-linked genetic diseases, (5) congenital anomalies and (6) any other abnormalities or diseases as may be specified by the Central Supervisory Board. Thus, the enactment permits such tests if they are necessary to avoid abnormal child coming into existence.

8. Apart from that such cases are permitted as mentioned in sub-clause (3) of section 4 where certain dangers to the pregnant woman are noticed. A perusal of those conditions which are five and which can be added to the four, existence on which is provided by the Act. It will therefore be seen that the enactment does not bring about total prohibition of any such tests. It intends to thus prohibit user and indiscriminate user of such tests to determine the sex at preconception stage or post-conception stage. The right to life or personal liberty cannot be expanded to mean that the right of personal liberty includes the personal liberty to determine the sex of a child which may come into existence. The conception is a physical phenomena. It need not take place on copulation of every capable male and female. Even if both are competent and healthy to give birth to a child, conception need not necessarily follow. That being a factual medical position, claiming right to choose the sex of a child which is come into existence as a right to do or not to do something which cannot be called a right. The right to personal liberty cannot expand by any stretch of imagination, to liberty to prohibit coming into existence of a female foetus or male foetus which shall be for the Nature to decide. To claim a right to determine the existence of such foetus or possibility of such foetus come into existence, is a claim of right which may never exist. Right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself to be a right. In our opinion, therefore, the petition does not make even a prima facie case for violation of Article 21 of the Constitution of India. Hence it is dismissed…"

IN THE HIGH COURT OF BOMBAY

Vijay Sharma & Anr. v. Union of India
AIR 2008 Bom 29
Swatanter Kumar, C.J. and Ranjana Desai, J.

In this writ petition challenging the constitutionality of PCPNDT Act, the petitioners contended that couples having children of same sex should be allowed to use preconception and prenatal diagnostic techniques to have a child of the opposite sex, in order to balance their family. They further argued that PCPNDT Act was discriminatory as it did not account for the mental injury caused to pregnant women carrying a female foetus or a male foetus for the second time, while the MTP Act allowed pregnant women to terminate their unwanted pregnancies. The Bombay High Court examined whether the provisions of PCPNDT Act violated the right to equality under Article 14 of the Indian Constitution.

Desai, J.: "In this petition filed under Article 226 of the Constitution of India, the petitioners have challenged the constitutional validity of Sections 2, 3-A, 4(5) and 6(c) of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, "the said Act") as amended by The Pre-Natal Diagnostic Techniques. (Regulation of Prevention of Misuse Amendment Act, 2002 (for short, "the Amendment Act, 2002)).

2. Before dealing with the contentions raised in the petition, it must be stated that challenge to the constitutional validity of the said Act on the ground of violation of Article 21 of the Constitution of India has been rejected by this Court in *Vinod Soni v. Union of India*, 2005 (3) MLJ 1131 : (2005 Cri LJ 3408). It is not open to the petitioners to raise the same challenge again. We shall, therefore, only deal with the petitioner's contention that the said Act violates the principle of equality of law enshrined in Article 14 of the Constitution of India.

3. The petitioners are a married couple having two female children. It is their case as disclosed in the petition that they are desirous of expanding their family provided they are in a position to select the sex of the child. It is obvious from the petition that the petitioners are desirous of having a male child. According to them, they can then enjoy the love and affection of both, son and daughter simultaneously and their existing children can enjoy the company of their own brother while growing up if they are allowed to select sex of their child and have a son. The petitioners have approached various clinics for treatment for the selection of the sex of the foetus by pre-natal diagnostic techniques. However, all clinics have denied treatment to them on the ground that it is prohibited under the said Act.

4. According to the petitioners, they have no intention to misuse the pre-natal diagnostic techniques. They contend that they are financially sound and capable of looking after and brining (sic) up one more child. They cannot be treated on par with other couples, who in order to have a male child, indulge in sex selective abortion. The provisions of the said Act cannot be made applicable without distinction. According to the petitioners, they only want to balance their family. They contend that a married couple, who is already having child belonging to one sex should be permitted to make use of the prenatal diagnostic techniques to have a child of the sex which is opposite to the sex of their existing child. In fact, ideal ratio of females to males can be maintained if the prenatal diagnostic techniques are allowed to be used. Burden of the song (sic) is that couples who are already having children of one sex should be allowed to have a child of the sex opposite to the sex of their existing children by use of the pre-natal diagnostic techniques at pre-conception stage.

…

7. It is necessary to quote Section 2 of the Amendment Act, 2002 and Sections 3-A, 4(5) and 6(c) of the said Act as inserted by the Amendment Act since the constitutional validity of the said provisions is under challenge. Section 2 of the Amendment Act, 2002 reads thus:

> "2. Substitution of long title. — In the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as the principal Act), for the long title, the following long title shall be substitute, namely:—
>
> "An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes 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 matter connected therewith or incidental thereto."
>
> Sections 3-A, 4(5) and 6(c) of the said Act read thus:
>
> "3. Regulation of Genetic Counselling Centers, Genetic Laboratories and Genetic Clinics. — On and from the commencement of this Act,—
>
> (1) to (3) xxxxxxxxx
>
> ((3-A) Prohibition of sex selection. — No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them).
>
> (4) Regulation of pre-natal diagnostic techniques. — On and from the commencement of this Act,—
>
> (1) to (4) xxxxxxxxx
>
> (5) no person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both.
>
> (6) Determination of sex prohibited. — On and from the commencement of this Act,—
>
> (a) xxxxxxxxx
>
> (b) xxxxxxxxx
>
> (c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception."

8. It is necessary to first deal with the submission that the use of the words "Regulation & Prevention of Misuse" in the Amendment Act, 2002 is indicative of the legislative intent only to regulate and prevent misuse because these words substitute the words "Prohibition of Sex Selection" in the said Act. This, in our opinion, is a totally fallacious argument.

The title of the earlier Act was the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (for short, "the 1994 Act"). It's long title prior to its amendment by the Amendment Act, 2002 was as under:

> 1. Substituted by the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 (14 of 2003, S. 2, for long title (w.e.f. 14-2-2003). Prior to its substitution, long title read as under:— "An Act to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital mal-formations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto."

By the Amendment Act, 2002, it was substituted by the following long title:

> "An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes 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."

9. By the Amendment Act, 2002, the 1994 Act i.e. the Pre-natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act was renamed as the said Act i.e. the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The Statement of Objects and Reasons of the Amendment Act, 2002 must be quoted. It reads thus:

> "Amendment Act 14 of 2003—Statement of Object and Reasons. — The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. During, recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.
>
> 2. The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detention of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the females (sic) sex and not conductive to the dignity of the women.
>
> 3. The proliferation of the technologies mentioned above may, in future, precipitate a catastrophe, in the form of severe imbalance in male-female ratio. The State is also duty bound to Intervene (sic) in such matters to uphold the welfare of the society, especially of the women and children. It as (sic), therefore, necessary to 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 of 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.
>
> 4. Accordingly, it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of prenatal diag-nostic (sic) techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended.
>
> 5. The Bill seeks to achieve the aforesaid objects."

10. The Statement of Objects and Reasons of the Amendment Act, 2002 therefore clearly indicates that the legislature was alarmed at the severe imbalance created in the male to female ratio on account of rampant use of the pre-natal diagnostic techniques made to detect sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. The legislature took note of the fact that certain techniques are being developed whereby even at preconception stage, sex of the child can be selected and, therefore, the title of the 1994 Act was amended to include the words "Preconception" and "(Prohibition of Sex Selection)" in it. The legislature categorically stated that there was a need to ban pre-conception sex selective techniques and made it clear that the 1994 Act was sought to be amended with a view to banning the use of sex selection techniques prior to conception and as well as misuse of pre-natal diagnostic techniques for sex selective abortions.

11. A look at certain important provisions of the said Act persuade us to reject the submission of the petitioners that the legislative intent is to only regulate the use of the said pre-natal diagnostic techniques. "Prenatal diagnostic procedures" are defined under Section 2(1) of the said Act as all gynaecological or obstetrical of medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo blood or any other tissue or fluid of a man or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception.

12. "Pre-natal diagnostic test" is defined under Section 2(k) of the said Act as ultrasonography or any test or analysis of amniotic fluid, chorionic, villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobin-opathies or sex-linked diseases.

13. Section 2(j) defines pre-natal diagnostic techniques. It states that pre-natal diagnostic techniques include all pre-natal diagnostic procedures and pre-natal diagnostic tests. Pre-natal diagnostic techniques (for convenience, hereinafter referred to as "the said techniques") can detect the sex of the foetus. Section 3-A prohibits sex selection on a woman or a man or on both of them or on any tissue embryo, conceptus, fluid or gametes derived from either or both of them and Section 4 regulates use of the said techniques. Section 4(2) states that the said techniques shall not be conducted except for the purpose of detection of (i) chromosomal abnormalities; (ii) genetic metabolic diseases; (iii) heamoglobin-opathies; (iv) sex linked genetic diseases; (v) congenital anomalies or any other abnormalities or diseases as may be specified by the Central Supervisory Board that too on fulfillment of any of the conditions laid down in sub-section (3). Thus the said techniques are to be used only to detect abnormalities in the foetus and not for sex-selection or sex-selective abortions Section 5(2) states that no person including the person conducting pre-natal procedures shall communicat (sic) to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner. Section 6(c) prohibits determination of sex by stating that no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.

14. Under the said Act machinery is created to ensure that there is no sex selection at pre-conception stage or thereafter and there is no pre-natal determination of sex of foetus leading to female foeticide. Therefore, the submission that the use of the said techniques is only intended to be regulated, must be rejected.

15. The challenge on the ground of violation of Article 14 rests on the comparison between the said Act and the MTP Act which are Central Acts. In our opinion, the object of both the Acts and the mischief they seek to prevent differ. They cannot be compared to canvass violation of Article 14. We have already quoted the Statement of Objects and Reasons of the Amendment Act, 2002. What it seeks to ban is pre-conception sex selection techniques and use of pre-natal diagnostic techniques for sex-selective abortions. Having taken note of the alarming imbalance created in male to female ratio and steep rise in female foeticide legislature has amended the Act of 1994. It, inter alia, prohibits sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gamest (sic) derived from either or both of them. It prohibits any person to cause or allowed to be caused selection of sex before or after conception.

16. The MTP Act is an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. Statement of Objects and Reasons of the MTP Act indicates that it concerns itself with the avoidable wastage of the mother's health, strength and sometimes life. It seeks to liberalize certain existing preovisions relating to termination pregnancy as a health measure — when there is danger to the life or risk to physical or mental health of the woman, on humanitarian grounds — such as when pregnancy arises from a sex crime like rape or intercourse with a mentally ill woman, etc. and eugenic grounds — where there is substantial risk that the child, if born, would suffer from deformities and diseases. It does not deal with sex selective abortion after conception of sex selection before or after conception.

17. It is true that under Section 3(2) of the MTP Act, when two registered medical practitioners form an opinion that continuance of the pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health, pregnancy can be terminated and, under Explanation II thereof, where any pregnancy occurs as a result of a failure of a devise used by the couple for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy is presumed to constitute a grave injury to the mental health of the woman. It must be remembered that termination of pregnancy under the MTP Act is not promoted because of the unwanted sex of the foetus. It could be a male or a female foetus. The MTP Act does not deal with sex selection, The (sic) petitioners want to equate the situation of a prospective mother under the MTP Act with the prospective mother under the said Act. They contend that anguish caused to a woman who is carrying a second or third child of the same sex as that of her existing

children and who is desirous of having a child of the opposite sex also constitutes a grave injury to her mental health. According to the petitioners, this aspect has been overlooked by the legislature. They contend that an exception ought to have been carved out for such women. It is their contention that inasmuch as both these Acts are Central Acts and deal with prospective mothers if by MTP Act certain rights are conferred on a prospective mother, the same cannot be denied to the prospective mother by the said Act. We are unable to accept this submission. Apart from the fact that both the Acts operate in different fields and have different objects acceptance of the submissions of the learned counsel would frustrate the object of the said Act. A prospective mother who does not want to bear a child of a particular sex cannot be equated with a mother who wants to terminate the pregnancy not because of the foetus of the child but because of other circumstances laid down under the MTP Act. To treat her anguish as injury to mental health is to encourage sex selection which is not permissible. Therefore, by process of comparative study, the provisions of the said Act cannot be called discriminatory and, hence, violative of Article 14.

18. It is well settled that when a law is challenged as offending against the guarantee enshrined in Article 14, the first duty of the Court is to examine the purpose and the policy of the Act and then to discover whether the classification made by the law has a reasonable relation to the object which the legislature seeks to obtain. The purpose or object of the Act is to be ascertained from an examination of its' title, preamble and provisions. We have done that exercise in the preceding paragraphs and we are of the considered opinion that the said Act does not violate the equality clause of the Constitution.

…

20. That there is decline in the number of girls is not seriously disputed by the petitioners. According to them, the imbalance is caused by the couples who have no children and who by using the said techniques choose male child. In our opinion, no such distinction is permissible. It cannot be denied that in India there is strong bias in favour of a male child. Various causes have led to this preference. It is felt that son carries the name of the family forward and only he can perform religious rites at the time of cremation of the parents. Sons are said to provide support in the old age. Several socioeconomic and cultural factors are responsible for this craving for a son. It is unfortunate that people should still be under the influence of such outdated notions. As long as such notions exist, the girl child will always be unwanted because it is felt that she brings with her the burden of dowry. These hard realities will have to be kept in mind while dealing with the challenge raised to the constitutional validity of a statute which tries to ban sex selection before or after preconception and misuse of the said techniques leading to sex selective abortions. None can be allowed to use the said techniques for sex selection. The justification offered by the petitioners is totally unacceptable to us.

…

22. …We have no doubt that if the use of the said techniques for sex selection is not banned, there will be unprecedented imbalance in male to female ratio and that will have disastrous effect on the society. The said Act must, therefore, be allowed to achieve its avowed object of preventing sex selection. In our opinion, the provisions of the said Act which are sought to be declared unconstitutional are neither arbitrary nor unreasonable and are not violative of Article 14.

23. It is then submitted that by sex selection before conception with the help of the said techniques, sex of the child is determined by using male/female chromosome before fertilization and the fertilized egg is inserted in the womb of the mother. There is, therefore, no foeticide and, hence it is not necessary to impose any ban on the said techniques.

24. It is not possible to accept this submission. Techniques like sonography which are useful-for the detection of genetic or chromosomale (sic) disorders or congenital malformations are being used to detect the sex of the foetus and to terminate the pregnancy in case the foetus is female. Similarly, preconception sex selection techniques which have now been developed make sex selection before conception possible. If prior to conception by choosing male or female chromosome sex of the child is allowed to be determined and fertilized egg is allowed to be inserted in the mother's womb that would again give scope to choose male child over female child. In such cases, even if it is assumed that there is no female foeticide, indirectly the same result is achieved. The whole idea behind sex selection before preconception is to go against the nature and secure conception of a child of one's choice. It can prevent birth of a female child. It is as bad as foeticide. It will also result in Imbalance in male to female ratio. The argument that sex selection at pre-conception is an innocent act must, therefore, be rejected.

25. We have so far laid stress on the possibility of severe imbalance in male to female ratio on account of artificial reduction in the number of female children caused by the use of the said, techniques. But there is yet another and more important fact of this problem That society should not want a girl child that efforts should be made to prevent the birth of a girl child and that society should given preference to a male child over a girl child is a matter of grave concern.

Such tendency offends dignity of women. It undermines their importance. It violates woman's right to life. It violates Article 39(e) of the Constitution which states the principle of state policy that the health and strength of women is not to be abused. It ignores Article 51A(e) of the Constitution which state that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Sex selection is therefore against the spirit of the Constitution. It insults and humiliates woman hood. This is perhaps the greatest argument in favour of total ban on sex selection.

26. We are of the considered opinion that the provisions of the said Act as amended by the Amendment Act, 2002 are clear, unambiguous and in tune with their avowed object. There is no uncertainty in any of the provisions as alleged in the petition. Therefore, it is not necessary for the Central Government to issue any order in the Official Gazette under Section 31-A of the said Act for removal of difficulties on the grounds stated in the petition. This submission of the petitioners is, therefore rejected.

…"

IN THE SUPREME COURT OF INDIA

Voluntary Health Association of Punjab v. Union of India & Ors.
(2013) 4 SCC 1
K.S.P. Radhakrishnan and Dipak Misra, JJ.

The Supreme Court had in a series of cases, issued directions for the effective implementation of the PCPNDT Act. However, the orders of the Court, as also the provisions of the Act were not being effectively implemented by a number of State Governments. In this case, the Court issued notice to the State Governments seeking their response on the implementation of the Act, and of the orders of the Court.

Radhakrishnan, J.: "Indian society's discrimination towards the female child still exists due to various reasons which has its roots in the social behaviour and prejudices against the female child and, due to the evils of the dowry system, still prevailing in the society, in spite of its prohibition under the Dowry Prohibition Act. The decline in the female child ratio all over the country leads to an irresistible conclusion that the practice of eliminating female foetus by the use of pre-natal diagnostic techniques is widely prevalent in this country. Complaints are many, where at least few of the medical professionals do perform sex selective abortion having full knowledge that the sole reason for abortion is because it is a female foetus…

2. Parliament wanted to prevent the same and enacted the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short "the Act") which has its roots in Article 15(2) of the Constitution of India. The Act is a welfare legislation…Unfortunately, facts reveal that perpetrators of the crimes also belong to the educated middle class and often they do not perceive the gravity of the crime.

3. This Court, as early as, in 2001 in *Centre for Enquiry into Health and Allied Themes v. Union of India* [(2001) 5 SCC 577] had noticed the misuse of the Act and gave various directions for its proper implementation. The non-compliance with various directions was noticed by this Court again in *Centre for Enquiry into Health and Allied Themes v. Union of India* [(2003) 8 SCC 398] and this Court gave various other directions.

4. Having noticed that those directions as well as the provisions of the Act are not being properly implemented by the various States and Union Territories, we passed an order on 8-1-2013 [*Voluntary Health Assn. of Punjab v. Union of India*, (2013) 4 SCC 401] directing personal appearance of the Health Secretaries of the States of Punjab, Haryana, NCT of Delhi, Rajasthan, Uttar Pradesh, Bihar and Maharashtra, to examine what steps they have taken for the proper and effective implementation of the provisions of the Act as well as the various directions issued by this Court.

5. We notice that even though the Union of India has constituted the Central Supervisory Board and most of the States and Union Territories have constituted State Supervisory Boards, Appropriate Authorities, Advisory Committees, etc. under the Act, but their functioning are far from satisfactory.

6. The 2011 Census of India, published by the Office of the Registrar General and Census Commissioner of India, would show a decline in female child sex ratio in many States of India from 2001-2011. The Annual Report on Registration of Births and Deaths, 2009, published by the Chief Registrar of NCT of Delhi would also indicate a sharp decline in the female sex ratio in almost all the districts. Above statistics is an indication that the provisions of the Act are not properly

and effectively being implemented. There has been no effective supervision or follow-up action so as to achieve the object and purpose of the Act. Mushrooming of various sonography centres, genetic clinics, genetic counselling centres, genetic laboratories, ultrasonic clinics, imaging centres in almost all parts of the country calls for more vigil and attention by the authorities under the Act. But, unfortunately, their functioning is not being properly monitored or supervised by the authorities under the Act or to find out whether they are misusing the pre-natal diagnostic techniques for determination of sex of foetus leading to foeticide.

7. The Union of India has filed an affidavit in September 2011 giving the details of the prosecutions launched under the Act and the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short "the Rules"), up to June 2011. We have gone through the chart as well as the data made available by various States, which depicts a sorry and an alarming state of affairs. Lack of proper supervision and effective implementation of the Act by various States, are clearly demonstrated by the details made available to this Court. However, the State of Maharashtra has comparatively a better track record. Seldom, the ultrasound machines used for such sex determination in violation of the provisions of the Act are seized and, even if seized, they are being released to the violators of the law only to repeat the crime. Hardly few cases end in conviction. The cases booked under the Act are pending disposal for several years in many courts in the country and nobody takes any interest in their disposal and hence, seldom, those cases end in conviction and sentences, a fact well known to the violators of law. Many of the ultrasonography clinics seldom maintain any record as per rules and, in respect of the pregnant women, no records are kept for their treatment and the provisions of the Act and the Rules are being violated with impunity.

8. The Central Government vide GSR No. 80(E) dated 7-2-2002 issued a notification amending the Act and regulating usage of mobile machines capable of detecting the sex of the foetus, including portable ultrasonic machines, except in cases to provide birth services to patients when used within its registered premises as part of the mobile medical unit offering a bouquet or other medical and health services. The Central Government also vide GSR No. 418(E) dated 4-6-2012 has notified an amendment by inserting a new Rule 3.3(3) with an object to regulate illegal registrations of medical practitioners in genetic clinics, and also amended Rule 5(1) by increasing the application fee for registration of every genetic clinic, genetic counselling centre, genetic laboratory, ultrasound clinic or imaging centre and amended Rule 13 by providing that an advance notice by any centre for intimation of every change in place, intimation of employees and address. Many of the clinics are totally unaware of those amendments and are carrying on the same practices.

9. In such circumstances, the following directions are given:

9.1. The Central Supervisory Board and the State and Union Territories Supervisory Boards, constituted under Sections 7 and 16-A of PN & PNDT Act, would meet at least once in six months, so as to supervise and oversee how effective is the implementation of the PN & PNDT Act.

9.2. The State Advisory Committees and District Advisory Committees should gather information relating to the breach of the provisions of the PN & PNDT Act and the Rules and take steps to seize records, seal machines and institute legal proceedings, if they notice violation of the provisions of the PN & PNDT Act.

9.3. The committees mentioned above should report the details of the charges framed and the conviction of the persons who have committed the offence, to the State Medical Councils for proper action, including suspension of the registration of the unit and cancellation of licence to practice.

9.4. The authorities should ensure also that all genetic counselling centres, genetic laboratories and genetic clinics, infertility clinics, scan centres, etc. using pre-conception and pre-natal diagnostic techniques and procedures should maintain all records and all forms, required to be maintained under the Act and the Rules and the duplicate copies of the same be sent to the district authorities concerned, in accordance with Rule 9(8) of the Rules.

9.5. States and District Advisory Boards should ensure that all manufacturers and sellers of ultrasonography machines do not sell any machine to any unregistered centre, as provided under Rule 3-A and disclose, on a quarterly basis, to the State/Union Territory concerned and the Central Government, a list of persons to whom the machines have been sold, in accordance with Rule 3-A(2) of the Rules.

9.6. There will be a direction to all genetic counselling centres, genetic laboratories, clinics, etc. to maintain Forms A, E, H and other statutory forms provided under the Rules and if these forms are not properly maintained, appropriate action should be taken by the authorities concerned.

9.7. Steps should also be taken by the State Government and the authorities under the Act for mapping of all registered and unregistered ultrasonography clinics, in three months' time.

9.8. Steps should be taken by the State Governments and the Union Territories to educate the people of the necessity of implementing the provisions of the Act by conducting workshops as well as awareness camps at the State and district levels.

9.9. Special cell be constituted by the State Governments and the Union Territories to monitor the progress of various cases pending in the courts under the Act and take steps for their early disposal.

9.10. The authorities concerned should take steps to seize the machines which have been used illegally and contrary to the provisions of the Act and the Rules thereunder and the seized machines can also be confiscated under the provisions of the Code of Criminal Procedure and be sold, in accordance with law.

9.11. The various courts in this country should take steps to dispose of all pending cases under the Act, within a period of six months. Communicate this order to the Registrars of various High Courts, who will take appropriate follow-up action with due intimation to the courts concerned.

…"

IN THE HIGH COURT OF DELHI

Amy Antoinette McGregor & Anr v. Directorate of Family Welfare Govt of NCT of Delhi & Anr. (2013) 205 DLT 96

N.V. Ramana, C.J. and Manmohan, J.

The petitioners, an Australian couple, were desirous of having children of opposite sex through surrogacy in India and wished to use prenatal diagnostic techniques for identifying the sex of the embryo before impregnation. They approached the Delhi High Court seeking a declaration that the PCPNDT Act is "ultra vires" in its applicability to the surrogacy process and a direction to the respondents to allow their application for exemption under it. The Court examined the constitutionality of the PCPNDT Act and whether there was a need to accord different treatment to intending parents wanting to balance their family through surrogacy.

Ramana, C.J.: "1. This writ petition is filed by two petitioners, residents of Sydney, Australia. The first petitioner is the wife and the second is the husband. It appears that due to some medical problem the first petitioner cannot physically conceive a child...The doctors therefore advised her to proceed with a Gestational Surrogacy...According to the petitioners, though they want a child, yet they do not want two children of the same sex in view of their principle of balanced family and accordingly they want to control the birth of same sex by using the advanced prenatal techniques.

2. For this purpose, it appears that the petitioners made an application to respondent No. 1 seeking to forward it to the concerned department and in that application they made a request that the provisions of The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'the said Act') cannot be made applicable to them and it is also further stated that couples who have no children and wish to have a male or female children should be allowed to make use of the pre-natal diagnostic techniques to have a child of both sex to balance their family. So these couples cannot be treated at par with the couples, who choose the sex of foetus in order to have a male child leading to imbalance in male to female ratio.

3. It is further stated that the unconstitutionality of the said Act is visible to the class of couples who are not having child/children and wish to have both male and female babies. Even though they made an application seeking exemption of these couples from the said Act, there is no response from the respondent authorities. The present writ petition is, therefore, filed seeking following reliefs:-

> *"i Issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondent No. 1 to grant a 'No Objection' to the petitioners with reference to their application pending disposal in their office.*
>
> *ii Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing that the Pre-Natal Diagnostic Techniques Act as ultra vires with respect to its applicability to surrogacy process."*

4. When the matter came up for admission, the learned counsel for the respondent No. 1 furnished a letter dated 17.09.2013 which is a reply to the representation submitted by the petitioners. Vide the said letter the request made by the petitioners has been declined stating that the said Act does not permit Sex selection on the pretext of family balancing as it would result in restricting the scope and meaning of the Act, to the detriment of the Government's endeavour to reverse the trend of declining female Child Sex Ratio.

5. Thus, in view of the above reply by respondent No. 1, the first relief sought by the petitioners has become infructuous. Now, for deciding the second prayer of the petitioners, let us examine the legal position.

6. The legislative purpose of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 reads as under:-

> *"An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes 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."*

7. The intention is, therefore, clear that one of the integral purposes of the legislation is prevention of misuse of pre-natal diagnosis for sex determination, since such determination is legislatively perceived to lead to female foeticide.

8. From a reading of the writ petition filed by the petitioners, it is clear that the assumption and the reason given is speculative and factually misconceived. The assumption of the petitioners that it is possible to identify the gender of the foetus before impregnation, has no basis in the science of genetics or any established principle of sexual reproduction currently.

9. It is not contended that the legislation is beyond the authorized legislative field of the Parliament. The singular ground of challenge is that the legislation is arbitrary and does not accommodate the 'exceptional category' of the petitioners who desire to have a balanced family comprising a male and a female child, a challenge which in substance means that the Act is unsustainable for the vice of unreasonable classification.

10. It is a well settled principle of the Doctrine of Classification that:

The Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest.

11. It is equally well settled principle of Doctrine of Classification that:

In order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of the times and may assume every state of facts which can be conceived existing at the time of legislation.

12. These principles are so well settled that they enjoy the status of being meta principles. These are also principles of classification uniformly declared without exception in all legal jurisdictions where rule of law or principles of equality are the cornerstones of a constitutional democracy, and have been reiterated in *Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar* AIR 1958 SC 538.

13. The challenge to the provisions of the Act on the ground of hostile discrimination and unreasonable classification is, therefore, misconceived. We need say no more.

14. The writ petition is, accordingly, dismissed…"

IN THE HIGH COURT OF ALLAHABAD AT LUCKNOW

Saksham Foundation Charitable Society v. Union of India
(2014) 5 All LJ 496
D. Y. Chandrachud, C.J. and D. K. Upadhyaya, J.

The petitioner challenged the constitutionality of Sections 5(2), 6(a) and 6(b) of the PCPNDT Act, which prohibit disclosure of the sex of the foetus and ban sex determination. The petitioner contended that prohibition of sex determination violated the right to life of the foetus and sought directions for legalization of sex-determination and compulsory disclosure of the sex of the foetus in order to record and prevent sex selection. The Allahabad High Court examined the validity of the said provisions in light of Articles 14 and 21 of the Indian Constitution.

Chandrachud, C.J. and Upadhyaya, J.: "1. These proceedings have been instituted by a Society registered under the Societies Registration Act, 1860, seeking to challenge the constitutional validity of Section 5(2) and Clauses (a) and (b) of Section 6 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Apart from challenging the constitutional validity of the provisions, the following reliefs have been sought:

"B. issue a writ, order or direction in the nature of mandamus, directing the Opposite Parties to legalize the sex determination and make it compulsory for the person conducting the sex determination test (specifically ultrasonography) to clearly and in detail disclose the sex of the foetus in the ultrasound report along with the print of the image of the foetus (which will be conclusive proof of the sex of the foetus) till the time it comes up with a better and more effective alternative provision for dealing with the evil practice of sex selection."

2. The first ground of challenge is that the prohibition of sex determination violates the rights of the unborn child and is, therefore, contrary to Article 21 of the Constitution of India. In the alternate, the second submission is that, it is only when a compulsory disclosure is made by the medical professional conducting an ultrasonography test of the sex of the unborn foetus, can a record be maintained of the sex of the foetus. In the absence of disclosure, it has been submitted, there is only a moral duty of the doctor not to disclose and in consequence, the female foetus is ultimately aborted. The PC & PNDT Act, 1994 was specifically enacted to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes 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 Statement of Objects and Reasons accompanying the Bill, which was introduced in Parliament, is to the following effect:

> "It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. A legislation is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.
>
> 2. The Bill, inter aha (sic), provides for:—
>
> (i) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;
>
> (ii) prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex;
>
> (iii) permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;
>
> (iv) permitting the use of such techniques only under certain conditions by the registered institutions; and
>
> (v) punishment for violation of the provisions of the proposed legislation.
>
> 3. The Bill seeks to achieve the aforesaid objectives."

The Act was amended by Amending Act 14 of 2003. The Statement of Object and Reasons is instructive:

> "Amendment Act 14 of 2003-Statement of Object and Reasons.— The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. During recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.
>
> 2. The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.
>
> 3. The proliferation of the technologies mentioned above may, in future, precipitate a catastrophe, in the form of severe imbalance in male-female ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children. It is, therefore, necessary to 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 of 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.
>
> 4. Accordingly, it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended."

…

Sub-section (2) of Section 5 of the Act, which is sought to be challenged, is to the following effect:

> "(2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner."

Section 6 of the Act, is to the following effect:

> "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 ultra-sonography, 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 ultra-sonography for the purpose of determining the sex of a foetus;
>
> (c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception."
>
> The expression 'pre-natal diagnostic procedures' is defined under Section 2(i) thus:
>
> "2. (i) "pre-natal diagnostic procedures" means all gynaecological or obstetrical or medical procedures such as ultra-sonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo, blood or any other tissue or fluid of a man, or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or prenatal diagnostic tests for selection of sex before or after conception."
>
> Section 3-A of the Act contains a prohibition of sex selection to the effect that no person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.

…

3. These provisions were enacted by Parliament in order to prohibit sex selection, before or after conception, and for regulating pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities. The enactment of the legislation is to prevent the use of pre-natal diagnostic techniques which were being and continue to be misused for sex determination. The rapid decline in the ratio of females to the male population is widely attributed to the prevalent practice of sex selection. The prevalence of female foeticide constitutes the most egregious violation of human rights in our society. The Act has been enacted in this background. Sub-section (2) of Section 5 of the Act consequently contains a wholesome prohibition to the effect that no person shall communicate to a pregnant woman or her relatives or to any other person the sex of the foetus in any manner whatsoever including while conducting pre-natal diagnostic procedures. Similarly, clauses (b) and (c) of Section 6 of the Act ensure that no prenatal diagnostic techniques including ultrasonography shall be conducted for determining the sex of foetus and that no person shall cause or allow to be caused selection of sex before or after conception.

…

6. 'Sex' refers to the biological and physiological characteristics that define men and women. Gender is a social construct and comprehends roles, behaviours, activities and attributes that a society considers appropriate for men and women [See in this context the Training Module and Handbook for Judicial Officers on Sex Selection and PC & PNDT Act —2014, published by the United Nations Population Fund — India.] . Dominant patriarchal notions have denied access to women to productive resources, decision making and social mobility. Opportunities within the family and at the workplace which are available to males are denied to females. These differences are not biological but reflect a deeply ingrained social attitude of a patriarchal society which denies equal status to women. In a patriarchal system, the dominance of men sanctified by social customs and conventions has resulted in an unequal access for women to social and economic opportunities that are available to men. Men control the productive and labour power of women, reproductive rights, sexuality, mobility and access to economic resources. A declining CSR is documented to have resulted in increasing violence against women and the denial of rights. Sex determination is known to lead to forced abortions. Women, both in the urban and rural areas, are subjected to psychological stress over the perceived pressure to produce a male child. Women are deserted, subjected to cruelty and deprived of their fundamental human rights in the process…

…

12. The Supreme Court in *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India* [Writ Petition (Civil) No. 301 of 2000: ((2001) 5 SCC 577 : AIR 2001 SC 2007).] issued detailed guidelines for the implementation of the Act. The latest guidelines, which have been formulated by the Supreme Court in its judgment dated 4 March, 2013 in *Voluntary Health Association of Punjab v. Union of India* [Writ Petition (Civil) No. 349 of 2006 : ((2013) 4 SCC 1 : AIR 2013 SC 1571).] are to the following effect:…

13. We now expect that the State, which is bound by the directions which have been issued by the Supreme Court, would ensure that the directions of the Supreme Court are implemented with the highest priority.

14. Articles 15 and 16 of the Constitution, prohibit discrimination on the basis of sex. In a recent judgment of the Supreme Court in *National Legal Services Authority v. Union of India* [Writ Petition (Civil) No. 400 of 2012, decided on 15 April, 2014 : ((2014) 5 SCC 438 : AIR 2014 SC 1863).] the Supreme Court has held that the prohibition of discrimination on the ground of sex encompasses discrimination on the ground of gender identity:

> "Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex dicscrirnination is a historical fact and needs to be addressed. Constitution makers, it can be gathered, give emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalizations of binary genders. Both gender and biological attributes constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of "sex" under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression 'sex' used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female."

15. Gender identity has been held to be at the core of personal identity. Gender expression and presentation are, therefore, a component of the freedom of speech and expression protected by Article 19(1)(a) of the Constitution. Recognition of gender identity is a core of the fundamental right to dignity which is comprehended by the right to life under Article 21 of the Constitution:

> "Recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution."

16. The constitutional validity of the PC & PNDT Act was upheld in a judgment of a Division Bench of the Bombay High Court in *Vijay Sharma v. Union of India* [AIR 2008 Bombay 29.] While rejecting the challenge, the Supreme Court (sic) observed that the hard realities of Indian social life were in the contemplation of the legislature when the law was enacted. The Bombay High Court held as follows:

> "…It cannot be denied that in India there is strong bias in favour of a male child. Various causes have led to this preference. It is felt that son carries the name of the family forward and only he can perform religious rites at the time of cremation of the parents. Sons are said to provide support in the old age. Several socio-economic and cultural factors are responsible for this craving for a son. It is unfortunate that people should still be under the influence of such outdated notions. As long as such notions exist, the girl child will always be unwanted because it is felt that she brings with her the burden of dowry. These hard realities will have to be kept in mind while dealing with the challenge raised to the constitutional validity of a statute which tries to ban sex selection before or after preconception and misuse of the said techniques leading to sex selective abortions. None can be allowed to use the said techniques for sex selection if the use of the said techniques for sex selection is not banned, there will be unprecedented imbalance in male to female ratio and that will have disastrous effect on the society. The said Act must, therefore, be allowed to achieve its avowed object of preventing sex selection. In our opinion, the provisions of the said Act which are sought to be declared unconstitutional are neither arbitrary nor unreasonable and are not violative of Article 14… That society should not want a girl child, that efforts should be made to prevent the birth of a girl child and that society should give preference to a male child over a girl child is a matter of grave concern. Such tendency offends dignity of women. It undermines their importance. It violates woman's right to life. It violates Article 39(e) of the Constitution which states the principle of State policy that the health and strength of women is not to be abused. It ignores Article 51 A(e) of the Constitution which states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Sex selection is therefore against the spirit of the Constitution. It insults and humiliates womanhood. This is perhaps the greatest argument in favour of total ban on sex selection."

17. We are in respectful agreement with the decision. A similar view has been taken by the Bombay High Court in another judgment in *Vinod Soni v. Union of India*. [2005 Cri LJ 3408.] The Delhi High Court has similarly upheld the constitutional validity of the provisions in *Amy Antoinette Mcgregor v. Directorate of Family Welfare, Govt. of NCT of Delhi* [(2013) 205 DLT 96 (DB).]

18. Having regard to the social evil, which Parliament sought to remedy by enactment of the provisions of the Act, we see no ground to hold that the provisions, which are under challenge, are unconstitutional. Parliament had the legislative competence to enact the law, in any event, under Entry 97 of List-I of the Seventh Schedule. The provisions are not either arbitrary or violative of Article 14 of the Constitution or for that matter, violative of Article 21 of the Constitution. On the contrary, the Act is designed to ensure that the fundamental human right of the mother and of the unborn foetus is not violated by the misuse of sex selection diagnostic procedures, resulting in female foeticide. The alternate submission is a point, which does not relate to constitutional validity, but to legislative, policy. The Court would not be justified in interfering with the wisdom of Parliament in implementing a legislative policy in a particular manner. Whether any alternate means would better implement the legislative policy, is for Parliament to determine. The constitutional validity of the Act cannot be struck down on that ground.

19. For these reasons, we find no ground to interfere in these proceedings. The petition is, accordingly, dismissed…"

IN THE SUPREME COURT OF INDIA

Voluntary Health Association of Punjab v. Union of India & Ors.
(2016) 10 SCC 275
Dipak Misra and Shiva Kirti Singh, JJ.

The petitioner in this case sought to bring to the attention of the Court the non-implementation of the PCPNDT Act and prayed for guidelines to be issued for proper implementation of the Act. Another petitioner, the Indian Medical Association, had contended that the provisions of the PCPNDT Act were being misused by authorities and were being used to harass medical professionals. The Association also sought guidelines and safeguards to ensure that the Act is not misused during its implementation.

Misra, J.: "The two writ petitions being interconnected in certain aspects were heard together and are disposed of by the singular order…

…

11. Be it stated immediately that the issues raised in Writ Petition (Civil) No. 349 of 2006 are not agitated for the first time, for they had been raised on earlier occasions and dealt with serious concern and solemn sincerity. It is because they relate to the very core of existence of a civilised society, pertain to the progress of the human race, and expose the maladroit efforts to throttle the right of a life to feel the mother earth and smell its fragrance. And, if we allow ourselves to say, the issues have been highlighted with sincere rhetorics and balanced hyperboles and ring the alarm of destruction of humanity in the long run. It is not a group prophecy, but a significant collective predication. The involvement of all is obvious, and it has to be. The heart of the issue that is zealously projected by the petitioner is the increase of female foeticide, resultant imbalance of sex ratio and the indifference in the implementation of the stringent law that is in force. In essence, the fulcrum of the anguished grievance lays stress on the non-implementation of the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for brevity "the Act") and the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short "the Rules") framed under the Act by the competent authorities who are obliged to do so.

12. The grievance has a narrative, and it needs to be stated.

13. Realising the rise of prenatal diagnostic centres in urban areas of the country using prenatal diagnostic techniques for determination of sex of the foetus and that the said centres had become very popular and had tremendous growth, as the female child is not welcomed with open arms in many Indian families and the consequence that such centres became centres for female foeticide which affected the dignity and status of women, Parliament brought in the legislation to regulate the use of such techniques and to provide punishment for such inhuman act. The objects and reasons of the Act stated unequivocally that it was meant to prohibit the misuse of prenatal diagnostic techniques for determination of sex of the foetus, leading to female foeticide; to prohibit advertisement of prenatal diagnostic techniques for detection or determination of sex; to permit and regulate the use of prenatal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders; to permit the use of such techniques only under certain conditions by the registered institutions; and to punish for violation of the provisions of the proposed legislation. The Preamble of the Act provides for the prohibition of sex selection before or after conception, and for regulation of prenatal diagnostic techniques for the purposes 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. Be it noted when the Act came into force, it was named as the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and after the amendments in 2001 and 2003, in the present incarnation, it is called the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

…

15. … Needless to emphasise, the predicament with regard to female foeticide by misuse of modern science and technology has aggravated and enormously affected the sex ratio. To eradicate the malady, Parliament, as stated earlier, had enacted the Act. In the first year of this century, a petition under Article 32 was moved for issuing directions to implement the provisions of the said Act by (*a*) appointing appropriate authorities at State and district levels and the Advisory Committees; (*b*) issuing direction to the Central Government to ensure that the Central Supervisory Board

meets every 6 months as provided under the PNDT Act; and for banning of all advertisements of prenatal sex selection including all other sex-determination techniques which can be abused to selectively produce only boys either before or during pregnancy.

16. Two-Judge Benches in *Centre for Enquiry into Health & Allied Themes v. Union of India* [*Centre for Enquiry into Health & Allied Themes v. Union of India*, (2001) 5 SCC 577] and *Centre for Enquiry into Health & Allied Themes v. Union of India* [*Centre for Enquiry into Health & Allied Themes v. Union of India*, (2003) 8 SCC 398] on 4-5-2001 and 10-9-2003 issued certain directions. Apart from the directions contained in the said orders, the Court, while finally disposing of the writ petition, issued the following directions: (*Centre for Enquiry into Health case* [*Centre for Enquiry into Health & Allied Themes v. Union of India*, (2003) 8 SCC 398] , SCC pp. 405-06, paras 6-7)

> "(*a*) For effective implementation of the Act, information should be published by way of advertisements as well as on electronic media. This process should be continued till there is awareness in the public that there should not be any discrimination between male and female child.
>
> (*b*) Quarterly reports by the appropriate authority, which are submitted to the Supervisory Board should be consolidated and published annually for information of the public at large.
>
> (*c*) Appropriate authorities shall maintain the records of all the meetings of the Advisory Committees.
>
> (*d*) The National Inspection and Monitoring Committee constituted by the Central Government for conducting periodic inspection shall continue to function till the Act is effectively implemented. The reports of this Committee be placed before the Central Supervisory Board and State Supervisory Boards for any further action.
>
> (*e*) As provided under Rule 17(3), the public would have access to the records maintained by different bodies constituted under the Act.
>
> (*f*) The Central Supervisory Board would ensure that the following States appoint the State Supervisory Boards as per the requirement of Section 16-A:
>
> *1*. Delhi, *2*. Himachal Pradesh, *3*. Tamil Nadu, *4*. Tripura, and *5*. Uttar Pradesh.
>
> (*g*) As per the requirement of Section 17(3)(*a*), the Central Supervisory Board would ensure that the following States appoint the multi-member appropriate authorities:
>
> *1*. Jharkhand, *2*. Maharashtra, *3*. Tripura, *4*. Tamil Nadu, and *5*. Uttar Pradesh.
>
> *7*. It will be open to the parties to approach this Court in case of any difficulty in implementing the aforesaid directions."

17. Despite the directions issued by the Court in *Centre for Enquiry into Health case* [*Centre for Enquiry into Health & Allied Themes v. Union of India*, (2003) 8 SCC 398] , there had not been proper implementation and that compelled the present petitioner, namely, Voluntary Health Association of Punjab to file the present writ petition seeking various directions. The Court on 8-1-2013 [*Voluntary Health Assn. of Punjab v. Union of India*, (2013) 4 SCC 401 : (2013) 2 SCC (Cri) 424] took note of the fact that the provisions had not been adequately implemented by the various States and Union Territories and accordingly directed for personal appearance of the Health Secretaries of the States of Punjab, Haryana, NCT of Delhi, Rajasthan, Uttar Pradesh, Bihar and Maharashtra, to examine what steps they had taken for the proper and effective implementation of the provisions of the Act as well as the various directions issued by this Court.

18. At a later stage in *Centre for Enquiry into Health case* [*Centre for Enquiry into Health & Allied Themes v. Union of India*, (2003) 8 SCC 398] , a reference was made to 2011 Census of India to highlight that there had been a sharp decline in the female sex ratio in many States. It was also observed that there had been no effective supervision or follow-up action so as to achieve the object and purpose of the Act. It was observed that mushrooming of various sonography centres, genetic clinics, genetic counselling centres, genetic laboratories, ultrasonic clinics, imaging centres in almost all parts of the country called for more vigil and attention by the authorities under the Act. The Court also found that their functioning was not being properly monitored or supervised by the authorities under the Act or to find out whether they are misusing the prenatal diagnostic techniques for determination of sex of foetus leading to foeticide.

19. A reference was made to various facets of the Act and the Rules and ultimately the Court in *Voluntary Health Assn. of Punjab v. Union of India* [*Voluntary Health Assn. of Punjab v. Union of India*, (2013) 4 SCC 1 : (2013) 2 SCC (Cri) 287] issued the following directions: (SCC pp. 6-7, para 9)

"*9.1*. The Central Supervisory Board and the State and Union Territories Supervisory Boards, constituted under Sections 7 and 16-A of the PC & PNDT Act, would meet at least once in six months, so as to supervise and oversee how effective is the implementation of the PC & PNDT Act.

9.2. The State Advisory Committees and District Advisory Committees should gather information relating to the breach of the provisions of the PC & PNDT Act and the Rules and take steps to seize records, seal machines and institute legal proceedings, if they notice violation of the provisions of the PC & PNDT Act.

9.3. The committees mentioned above should report the details of the charges framed and the conviction of the persons who have committed the offence, to the State Medical Councils for proper action, including suspension of the registration of the unit and cancellation of licence to practice.

9.4. The authorities should ensure also that all genetic counselling centres, genetic laboratories and genetic clinics, infertility clinics, scan centres, etc. using pre-conception and prenatal diagnostic techniques and procedures should maintain all records and all forms, required to be maintained under the Act and the Rules and the duplicate copies of the same be sent to the district authorities concerned, in accordance with Rule 9(8) of the Rules.

9.5. States and District Advisory Boards should ensure that all manufacturers and sellers of ultrasonography machines do not sell any machine to any unregistered centre, as provided under Rule 3-A and disclose, on a quarterly basis, to the State/Union Territory concerned and the Central Government, a list of persons to whom the machines have been sold, in accordance with Rule 3-A(2) of the Rules.

9.6. There will be a direction to all genetic counselling centres, genetic laboratories, clinics, etc. to maintain Forms A, E, H and other statutory forms provided under the Rules and if these forms are not properly maintained, appropriate action should be taken by the authorities concerned.

9.7. Steps should also be taken by the State Government and the authorities under the Act for mapping of all registered and unregistered ultrasonography clinics, in three months' time.

9.8. Steps should be taken by the State Governments and the Union Territories to educate the people of the necessity of implementing the provisions of the Act by conducting workshops as well as awareness camps at the State and district levels.

9.9. Special cell be constituted by the State Governments and the Union Territories to monitor the progress of various cases pending in the courts under the Act and take steps for their early disposal.

9.10. The authorities concerned should take steps to seize the machines which have been used illegally and contrary to the provisions of the Act and the Rules thereunder and the seized machines can also be confiscated under the provisions of the Code of Criminal Procedure and be sold, in accordance with law.

9.11. The various courts in this country should take steps to dispose of all pending cases under the Act, within a period of six months. Communicate this order to the Registrars of various High Courts, who will take appropriate follow-up action with due intimation to the courts concerned."

…

22. On 16-9-2014 [*Voluntary Health Assn. of Punjab v. Union of India*, (2014) 16 SCC 433] the Court took note of the directions already issued and proceeded to deal with IA No. 11 of 2013 and recorded the submission of Mr Sanjay Parikh, learned counsel that the Union of India has to animate itself in an appropriate manner to see that the sex ratio is maintained and does not reduce further. It was also urged by him that the Central Supervision Committee which is required to meet to take stock of the situation and the National Monitoring Committee who is required to monitor the activities, had failed in their duties.

23. Mr Parikh had also drawn the attention of the Court to the proviso to Section 4(3) of the Act which reads as follows:

"**4. *Regulation of prenatal diagnostic techniques***.—On and from the commencement of this Act—(1)-(3) ***

> Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of Section 5 or Section 6 unless contrary is proved by the person conducting such ultrasonography."

24. It was propounded by him that the authorities concerned have not acted in accordance with the aforesaid provision in all seriousness as a result of which the nation has faced the disaster of female foeticide. On that day, Mr Colin Gonsalves, learned Senior Counsel, appearing for the writ petitioner, had drawn our attention to the affidavit filed by the petitioner contending, inter alia, that the sex ratio in most of the States had decreased and in certain States, there had been a minor increase, but the same is not likely to subserve the aims and objects of the Act. After referring to the history of this litigation which has been continuing in this Court since long, he had submitted that certain directions are required to be issued.

25. The Union of India was directed to file an affidavit of the Additional Secretary of Health and/or any other Additional Secretary concerned clearly stating what steps had been taken and on the basis of the steps taken, what results have been achieved. It was also directed that all the States shall file their responses through the Health Secretaries concerned. The direction further contained that the affidavits shall be comprehensive and must reflect sincerity and responsibility.

26. On 25-11-2014 [*Voluntary Health Assn. of Punjab v. Union of India*, (2014) 16 SCC 426 : (2014) 16 SCC 427] the Court noted that affidavits by certain States had been filed and certain States, namely, Assam, Arunachal Pradesh, Bihar, Goa, Gujarat, Kerala, Madhya Pradesh, Meghalaya, Mizoram, Odisha, Tripura, and UT of Daman and Nagar Haveli and Puducherry had not filed the affidavits. Two weeks' time was granted to file the necessary affidavits. At that juncture, it was thought appropriate to advert to the States by dividing them into certain clusters. It was decided to deal with the situation pertaining to the States of Uttar Pradesh, Haryana and NCT of Delhi first. The affidavit filed by the State of Uttar Pradesh was considered and in that context, it was observed that the census conducted in 2011 cannot be the guideline for the purposes of the PC & PNDT Act. It was felt that a different methodology was required to be adopted by the State.…

…

30. Pursuant to the order dated 25-11-2014 [*Voluntary Health Assn. of Punjab v. Union of India*, (2014) 16 SCC 426 : (2014) 16 SCC 427] , the Committee verified the data submitted by three States, namely, Uttar Pradesh, Haryana and Delhi. As far as the State of Uttar Pradesh was concerned, on a perusal of the report, it transpired that the figures that were submitted by the State of Uttar Pradesh had been verified by the Committee and found to be correct. On a perusal of the report, along with the documents that had been annexed to, it was noticed that certain cases were pending for trial before the trial court. Regard being had to the fact that they had been instituted long back, a direction was issued to the effect that the proceedings that were pending before for trial and where there was no stay order of the High Court or this Court, the same shall be taken up in quite promptitude and be disposed of within a period of three months commencing 20-1-2015. Be it stated, certain other directions were issued to be complied with by the State of Uttar Pradesh.

…

34. The data furnished by the NCT of Delhi was contested on the ground that it was collected from 50 major hospitals. The Court in *Voluntary Health Assn. case* [*Voluntary Health Assn. of Punjab v. Union of India*, (2015) 9 SCC 740 : (2015) 9 SCC 745] noticed that there had really been no improvement with regard to the sex ratio. The Court took note of the submissions of Mr Gonsalves, learned Senior Counsel for the petitioner and Mr Parikh, learned counsel for the impleaded respondent(s) and observed that under Sections 16(2)(*f*)(*ii*) and (*iii*) there should be eminent women activists from non-governmental organisations and eminent gynaecologists and obstetricians or experts of *stri-roga* or *prasuti tantra* to be the members and thought it apt to state that there can be eminent women activists from non-governmental organisations, eminent gynaecologists and obstetricians or experts of *stri-roga* or *prasuti tantra* and eminent radiologists or sonologists but care has to be taken that they do not have conflict of interest.

35. On 15-9-2015 [*Voluntary Health Assn. of Punjab v. Union of India*, (2015) 9 SCC 740 : (2015) 9 SCC 753] , the Court noted the submission of Ms Anitha Shenoy, learned counsel appearing for Dr Sabu Mathew George, the newly impleaded party, that the appropriate authorities are not following the mandate enshrined under Rule 18-A of the Rules. Keeping in view the language employed in the said Rule, the Court directed that all the appropriate authorities including the State, districts and sub-districts notified under the Act shall submit quarterly progress report to the Government of India through the State Government and maintain Form H for keeping the information of all registrations readily available. The Court further directed that the States shall file the compliance report pertaining to sub-rule (6) of Rule 18-A of the Rules and also directed the counsel for the Union of India to apprise the Court about the information received from the various appropriate authorities.

…

39. We have adumbrated the history of the litigation, the directions issued by this Court from time to time and adverted to how this Court has appreciated the impact of sex ratio on a civilised society having regard to the legislative intendment under the Act, the suggestions given by the learned counsel for the petitioner, the verification done by the Monitoring Committee, and the crisis the country is likely to face if the obtaining situation is allowed to prevail. As is manifest, this Court had issued directions from 2001 onwards in different writ petitions and in the instant writ petition, as noticed earlier, number of directions were issued and, thereafter, certain clarifications were made. The narration shows the concern.

40. It needs no special emphasis that a female child is entitled to enjoy equal right that a male child is allowed to have. The constitutional identity of a female child cannot be mortgaged to any kind of social or other concept that has developed or is thought of. It does not allow any room for any kind of compromise. It only permits affirmative steps that are constitutionally postulated. Be it clearly stated that when rights are conferred by the Constitution, it has to be understood that such rights are recognised regard being had to their naturalness and universalism. No one, let it be repeated, no one, endows any right to a female child or, for that matter, to a woman. The question of any kind of condescension or patronisation does not arise.

41. When a female foetus is destroyed through artificial means which is legally impermissible, the dignity of life of a woman to be born is extinguished. It corrodes the human values. The legislature has brought a complete code and it subserves the constitutional purpose…

…

43. Having stated about the scheme of the Act and the purpose of the various provisions and also the Rules framed under the Act, the dropping of sex ratio still remains a social affliction and a disease.

44. Keeping in view the deliberations made from time to time and regard being had to the purpose of the Act and the far-reaching impact of the problem, we think it appropriate to issue the following directions in addition to the directions issued in the earlier order:

44.1. All the States and the Union Territories in India shall maintain a centralised database of civil registration records from all registration units so that information can be made available from the website regarding the number of boys and girls being born.

44.2. The information that shall be displayed on the website shall contain the birth information for each district, municipality, corporation or gram panchayat so that a visual comparison of boys and girls born can be immediately seen.

44.3. The statutory authorities, if not constituted as envisaged under the Act shall be constituted forthwith and the competent authorities shall take steps for the reconstitution of the statutory bodies so that they can become immediately functional after expiry of the term. That apart, they shall meet regularly so that the provisions of the Act can be implemented in reality and the effectiveness of the legislation is felt and realised in the society.

44.4. The provisions contained in Sections 22 and 23 shall be strictly adhered to. Section 23(2) shall be duly complied with and it shall be reported by the authorities so that the State Medical Council takes necessary action after the intimation is given under the said provision. The appropriate authorities who have been appointed under Sections 17(1) and 17(2) shall be imparted periodical training to carry out the functions as required under various provisions of the Act.

44.5. If there has been violation of any of the provisions of the Act or the Rules, proper action has to be taken by the authorities under the Act so that the legally inapposite acts are immediately curbed.

44.6. The courts which deal with the complaints under the Act shall be fast tracked and the High Courts concerned shall issue appropriate directions in that regard.

44.7. The judicial officers who are to deal with these cases under the Act shall be periodically imparted training in the judicial academies or training institutes, as the case may be, so that they can be sensitive and develop the requisite sensitivity as projected in the objects and reasons of the Act and its various provisions and in view of the need of the society.

44.8. The Director of Prosecution or, if the said post is not there, the Legal Remembrancer or the Law Secretary shall take stock of things with regard to the lodging of prosecution so that the purpose of the Act is subserved.

44.9. The courts that deal with the complaints under the Act shall deal with the matters in promptitude and submit the quarterly report to the High Courts through the Sessions and District Judge concerned.

44.10. The learned Chief Justices of each of the High Courts in the country are requested to constitute a committee of three Judges that can periodically oversee the progress of the cases.

44.11. The awareness campaigns with regard to the provisions of the Act as well as the social awareness shall be undertaken as per Direction 9.8 in the order dated 4-3-2013 passed in *Voluntary Health Assn. of Punjab*. [*Voluntary Health Assn. of Punjab v. Union of India*, (2013) 4 SCC 1 : (2013) 2 SCC (Cri) 287]

44.12. The State Legal Services Authorities of the States shall give emphasis on this campaign during the spread of legal aid and involve the para-legal volunteers.

44.13. The Union of India and the States shall see to it that appropriate directions are issued to the authorities of All-India Radio and Doordarshan functioning in various States to give wide publicity pertaining to the saving of the girl child and the grave dangers the society shall face because of female foeticide.

44.14. All the appropriate authorities including the States and districts notified under the Act shall submit quarterly progress report to the Government of India through the State Government and maintain Form H for keeping the information of all registrations readily available as per sub-rule (6) of Rule 18-A of the Rules.

44.15. The States and Union Territories shall implement the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 forthwith considering that the training provided therein is imperative for realising the objects and purpose of this Act.

…

45 [Ed.: Para 45 corrected vide Official Corrigendum No. F.3/Ed.B.J./78/2016 dated 20-3-2017.] . Before parting with the case, let it be stated with certitude and without allowing any room for any kind of equivocation or ambiguity, the perception of any individual or group or organisation or system treating a woman with inequity, indignity, inequality or any kind of discrimination is constitutionally impermissible. The historical perception has to be given a prompt burial. Female foeticide is conceived by the society that definitely includes the parents because of unethical perception of life and nonchalant attitude towards law. The society that treats man and woman with equal dignity shows the reflections of a progressive and civilised society. To think that a woman should think what a man or a society wants her to think tantamounts to slaughtering her choice, and definitely a humiliating act. When freedom of free choice is allowed within constitutional and statutory parameters, others cannot determine the norms as that would amount to acting in derogation of law. Decrease in the sex ratio is a sign of colossal calamity and it cannot be allowed to happen. Concrete steps have to be taken to increase the same so that invited social disasters do not befall on the society. The present generation is expected to be responsible to the posterity and not to take such steps to sterilise the birth rate in violation of law. The societal perception has to be metamorphosed having respect to legal postulates.

46. Now, we shall advert to the prayers in Writ Petition (Civil) No. 575 of 2014. The writ petition has been filed by Indian Medical Association (IMA). It is contended that Sections 3-A, 4, 5, 6, 7, 16, 17, 20, 23, 25, 27 and 30 of the Act and Rules 9(4), 10 and Form F (including footnote), which being the subject-matter of concern in the instant writ petition, are being misused and wrongly interpreted by the authorities concerned thereby causing undue harassment to the medical professionals all over the country under the guise of the "so-called implementation". It is also urged that implementation of steps and scrutiny of records was started at large scale all over the country and lot of anomalies were found in records maintained by doctors throughout the country. It is, however, pertinent to mention here that the majority of the defaults were of technical nature as they were merely minor and clerical errors committed occasionally and inadvertently in the filing of Form F. It is also put forth that the Act does not classify the offences and owing to the liberal and vague terminology used in the Act, it is thrown open for misuse by the implementing authorities concerned and has resulted into taking of cognizance of non-bailable (punishable by three years) offences against doctors even in the cases of clerical errors, for instance non-mentioning of NA (not applicable) or leaving of any column in Form F concerned as blank. It is further submitted that the said unfettered powers in the hands of implementing authority have resulted into turning of this welfare legislation into a draconian novel way of encouraging demands for bribery as well as there is no prior independent investigation as mandated under Section 17 of the Act by these authorities. It is also set forth that the Act states merely that any contravention with any of the provisions of the Act would be an offence punishable under Section 23(1) of the said Act and further all offences under the Act have been made non-bailable and non-compoundable and the misuse of the same can only be taken care of by ensuring that the appropriate authority applies its mind to the fact of each case/complaint and only on satisfaction of a prima facie case, a complaint be filed rather than launching prosecution mechanically in each case. With these averments, it has been prayed for framing appropriate guidelines and safeguard parameters, providing for classification of offences as well, so as to prohibit the misuse of the PCPNDT Act during implementation and to read down this Sections 6, 23, 27 of the PCPNDT Act. That apart, it has been prayed to add certain provisos/exceptions to Sections 7, 17, 23 and Rule 9 of the Rules.

47. In our considered opinion, whenever there is an abuse of the process of the law, the individual can always avail the legal remedy. As we find, neither the validity of the Act nor the Rules has been specifically assailed in the writ petition. What has been prayed is to read out certain provisions and to add certain exceptions. We are of the convinced view that the averments of the present nature with such prayers cannot be entertained and, accordingly, we decline to interfere.

48. In the result, Writ Petition (Civil) No. 349 of 2006 stands disposed of in terms of the directions issued by us and Writ Petition (Civil) No. 575 of 2014 stands dismissed..."

IN THE SUPREME COURT OF INDIA

Dr. Sabu Mathew George v. Union of India & Ors.
(2018) 3 SCC 229
Dipak Misra C.J., and A.M. Khanwilkar and D.Y. Chandrachud, JJ.

This writ petition was filed seeking directions to the respondents to block all websites and advertisements appearing directly or indirectly on the respondent search engines, related to sex determination and sex selection.

Misra, C.J.: "**1.** The instant writ petition has been filed by the petitioner, a public-spirited person, for issue of necessary directions for the effective implementation of the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for brevity "the 1994 Act"). The reliefs sought in the writ petition are to command Respondents 1 and 2, namely, Secretary, Ministry of Health and Family Welfare and Secretary, Ministry of Communication and Information Technology with the help of its agencies such as Computer Emergency Response Team (CERT) to block all such websites, including that of Respondents 3 to 5, namely, Google India, Yahoo! India and Microsoft Corporation (I) (P) Ltd. and to stop all forms of promotion of sex selection such as advertisement on their websites as these violate the provisions of the 1994 Act, and further to issue a writ of mandamus to the said respondents to post the directions of this Court on the front page of their search engines so that there is widespread public awareness and further constitute a separate monitoring committee of the CERT and civil society members to check against any future violations.

2. Before we address the *lis* that has arisen in the present writ petition and the orders passed on various occasions, it is necessary to state here that the 1994 Act was enacted by Parliament being conscious of the increase of female foeticides and resultant imbalance of sex ratio in the country. The Statement of Objects and Reasons of the 1994 Act reads as follows:

> ***"Statement of Objects and Reasons***
>
> It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. A legislation is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.
>
> **2**. The Bill, inter alia, provides for—
>
> (*i*) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;
>
> (*ii*) prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex;
>
> (*iii*) permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;
>
> (*iv*) permitting the use of such techniques only under certain conditions by the registered institutions; and
>
> (*v*) punishment for violation of the provisions of the proposed legislation."

3. Be it noted, initially the legislation was named as the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and by Section 3 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 the nomenclature of the 1994 Act has been amended which now stands as the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 with effect from 1-1-1996. Preamble to the

1994 Act reads as follows:

> "An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes 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."

4. At this juncture, we may profitably reproduce the "Introduction" to the 1994 Act:

> "In the recent past Pre-Natal Diagnostic Centres sprang up in the urban areas of the country using pre-natal diagnostic techniques for determination of sex of the foetus. Such centres became very popular and their growth was tremendous as the female child is not welcomed with open arms in most of the Indian families. The result was that such centres became centres of female foeticide. Such abuse of the technique is against the female sex and affects the dignity and status of women. Various organisations working for the welfare and upliftment of the women raised their heads against such an abuse. It was considered necessary to bring out a legislation to regulate the use of, and to provide deterrent punishment to stop the misuse of, such techniques. The matter was discussed in Parliament and the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill, 1991 was introduced in the Lok Sabha. The Lok Sabha after discussions adopted a motion for reference of the said Bill to a Joint Committee of both the Houses of Parliament in September 1991. The Joint Committee presented its report in December 1992 and on the basis of the recommendations of the Committee, the Bill was reintroduced in Parliament."

5. The Introduction, the Statement of Objects and Reasons and the Preamble unmistakably project the scheme which is meant to prohibit the misuse of pre-conception diagnostic techniques for determination of sex; to permit and regulate the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders; to permit the use of such techniques only under certain conditions by the registered institutions; and punish for violation of the provisions of the proposed legislation. Prior to the present incarnation of the 1994 Act, a writ petition was filed before this Court by the Centre for Enquiry into Health and Allied Themes (CEHAT) and others which has been disposed of on 10-9-2003 in *CEHAT v. Union of India* [*CEHAT v. Union of India*, (2003) 8 SCC 398] . In the said case, the two-Judge Bench expressed its anguish over discrimination against girl child and how the sex selection/sex determination adds to the said adversity…

6. The Court referred to its earlier order dated 4-5-2001 in *CEHAT v. Union of India* [*CEHAT v. Union of India*, (2001) 5 SCC 577] and taking note of various other directions which find place in *CEHAT v. Union of India* [*CEHAT v. Union of India*, (2003) 8 SCC 409] , *CEHAT v. Union of India*[*CEHAT v. Union of India*, (2003) 8 SCC 410] and *CEHAT v. Union of India* [*CEHAT v. Union of India*, (2003) 8 SCC 412] , issued the following directions: (*Centre for Enquiry case* [*CEHAT v. Union of India*, (2003) 8 SCC 398] , SCC pp. 405-06, paras 6-7)

> "*6*. … (*a*) For effective implementation of the Act, information should be published by way of advertisements as well as on electronic media. This process should be continued till there is awareness in the public that there should not be any discrimination between male and female child.
>
> (*b*) Quarterly reports by the appropriate authority, which are submitted to the Supervisory Board should be consolidated and published annually for information of the public at large.
>
> (*c*) Appropriate authorities shall maintain the records of all the meetings of the Advisory Committees.
>
> (*d*) The National Inspection and Monitoring Committee constituted by the Central Government for conducting periodic inspection shall continue to function till the Act is effectively implemented. The reports of this Committee be placed before the Central Supervisory Board and State Supervisory Boards for any further action.
>
> (*e*) As provided under Rule 17(3), the public would have access to the records maintained by different bodies constituted under the Act.
>
> (*f*) The Central Supervisory Board would ensure that the following States appoint the State Supervisory Boards as per the requirement of Section 16-A:
>
> *1*. Delhi, *2*. Himachal Pradesh, *3*. Tamil Nadu, *4*. Tripura, and *5*. Uttar Pradesh.

(*g*) As per the requirement of Section 17(3)(*a*), the Central Supervisory Board would ensure that the following States appoint the multi-member appropriate authorities:

1. Jharkhand, *2*. Maharashtra, *3*. Tripura, *4*. Tamil Nadu, and *5*. Uttar Pradesh.

7. It will be open to the parties to approach this Court in case of any difficulty in implementing the aforesaid directions."

7. The aforesaid directions show the concern of this Court as regards the strict compliance with the 1994 Act.

8. Prior to proceeding to note the nature of interim directions that the Court has passed in the present case, it is necessary to refer to two other decisions. In *Voluntary Health Assn. of Punjab v. Union of India* [*Voluntary Health Assn. of Punjab v. Union of India*, (2013) 4 SCC 1 : (2013) 2 SCC (Cri) 287] (the 1st), the two-Judge Bench reflected on the sharp decline in the female sex ratio and observed thus: (SCC p. 5, para 6)

"*6*. … There has been no effective supervision or follow-up action so as to achieve the object and purpose of the Act. Mushrooming of various sonography centres, genetic clinics, genetic counselling centres, genetic laboratories, ultrasonic clinics, imaging centres in almost all parts of the country calls for more vigil and attention by the authorities under the Act. But, unfortunately, their functioning is not being properly monitored or supervised by the authorities under the Act or to find out whether they are misusing the pre-natal diagnostic techniques for determination of sex of foetus leading to foeticide."

9. The Court, after dwelling upon many an aspect, proceeded to issue certain directions. In the concurring opinion, Direction 9.8 was elaborated and in that context, the opinion stated: (*Voluntary Health Assn. case* [*Voluntary Health Assn. of Punjab v. Union of India*, (2013) 4 SCC 1 : (2013) 2 SCC (Cri) 287] , SCC p. 8, para 14)

"*14*. Female foeticide has its roots in the social thinking which is fundamentally based on certain erroneous notions, egocentric traditions, perverted perception of societal norms and obsession with ideas which are totally individualistic sans the collective good. All involved in female foeticide deliberately forget to realise that when the foetus of a girl child is destroyed, a woman of the future is crucified. To put it differently, the present generation invites the sufferings on its own and also sows the seeds of suffering for the future generation, as in the ultimate eventuate, the sex ratio gets affected and leads to manifold social problems. I may hasten to add that no awareness campaign can ever be complete unless there is real focus on the prowess of women and the need for women empowerment."

…

10. Elaborating the concept of awareness, it has been noted: (*Voluntary Health Assn. case*[*Voluntary Health Assn. of Punjab v. Union of India*, (2013) 4 SCC 1 : (2013) 2 SCC (Cri) 287] , SCC p. 13, paras 33-34)

"*33*. It is difficult to precisely state how an awareness camp is to be conducted. It will depend upon what kind and strata of people are being addressed to. The persons involved in such awareness campaign are required to equip themselves with constitutional concepts, culture, philosophy, religion, scriptural commands and injunctions, the mandate of the law as engrafted under the Act and above all the development of modern science. It needs no special emphasis to state that in awareness camps while the deterrent facets of law are required to be accentuated upon, simultaneously the desirability of law to be followed with spiritual obeisance, regard being had to the purpose of the Act, has to be stressed upon. The seemly synchronisation shall bring the required effect. That apart, documentary films can be shown to highlight the need; and instil the idea in the mind of the public at large, for when the mind becomes strong, mountains do melt.

34. The people involved in the awareness campaigns should have boldness and courage. There should not be any iota of confusion or perplexity in their thought or action. They should treat it as a problem and think that a problem has to be understood in a proper manner to afford a solution. They should bear in mind that they are required to change the mindset of the people, the grammar of the society and unacceptable beliefs inherent in the populace."

11. As the matter was not finally disposed of, it came up on various dates and the Court issued further directions and eventually the matter stood disposed of by a judgment dated 8-11-2016 in *Voluntary Health Assn. of Punjab v. Union of India* [*Voluntary Health Assn. of Punjab v. Union of India*, (2016) 10 SCC 265 : (2016) 10 SCC 275 : (2017) 1 SCC (Cri) 56 : (2017) 1 SCC (Cri) 66] (the 2nd)…

12. …After recording various directions issued in earlier judgments and scrutinising the provisions of the 1994 Act the Court held thus: (*Voluntary Health Assn. case* [*Voluntary Health Assn. of Punjab v. Union of India*, (2016) 10 SCC 265 : (2016) 10 SCC 275 : (2017) 1 SCC (Cri) 56 : (2017) 1 SCC (Cri) 66] , SCC p. 289, para 40)

> "*40*. It needs no special emphasis that a female child is entitled to enjoy equal right that a male child is allowed to have. The constitutional identity of a female child cannot be mortgaged to any kind of social or other concept that has developed or is thought of. It does not allow any room for any kind of compromise. It only permits affirmative steps that are constitutionally postulated. Be it clearly stated that when rights are conferred by the Constitution, it has to be understood that such rights are recognised regard being had to their naturalness and universalism. No one, let it be repeated, no one, endows any right to a female child or, for that matter, to a woman. The question of any kind of condescension or patronisation does not arise."

13. Speaking about the constitutional status of women and the brazed practice of sex identification and female foeticide, the Court stated: (*Voluntary Health Assn. case* [*Voluntary Health Assn. of Punjab v. Union of India*, (2016) 10 SCC 265 : (2016) 10 SCC 275 : (2017) 1 SCC (Cri) 56 : (2017) 1 SCC (Cri) 66] , SCC p. 293, para 45)

> "*45*. Before parting with the case, let it be stated with certitude and without allowing any room for any kind of equivocation or ambiguity, the perception of any individual or group or organisation or system treating a woman with inequity, indignity, inequality or any kind of discrimination is constitutionally impermissible. The historical perception has to be given a prompt burial. Female foeticide is conceived by the society that definitely includes the parents because of unethical perception of life and nonchalant attitude towards law. The society that treats man and woman with equal dignity shows the reflections of a progressive and civilised society. To think that a woman should think what a man or a society wants her to think tantamounts to slaughtering her choice, and definitely a humiliating act. When freedom of free choice is allowed within constitutional and statutory parameters, others cannot determine the norms as that would amount to acting in derogation of law. Decrease in the sex ratio is a sign of colossal calamity and it cannot be allowed to happen. Concrete steps have to be taken to increase the same so that invited social disasters do not befall on the society. The present generation is expected to be responsible to the posterity and not to take such steps to sterilise the birth rate in violation of law. The societal perception has to be metamorphosed having respect to legal postulates."

14. The purpose of our referring to the earlier judgments is only to emphasise upon the dignity, right and freedom of choice of a woman. It needs no special emphasis to assert that she has the equal constitutional status and identity…

15. That being the legal position with regard to status of woman under the Constitution, we are required to analyse the relevant statutory provisions of the 1994 Act. Section 22 of the 1994 Act that occurs in Chapter VII which deals with "Offences and Penalties" reads thus:…

16. Section 23 deals with offences and penalties. Section 26 deals with offences by companies. It is as follows:…

17. Referring to the said provisions, it is submitted by Mr Sanjay Parikh, learned counsel for the petitioner that the respondents cannot engage themselves in what is prohibited under the 1994 Act as it is their obligation to respect the law in letter and spirit and this Court should direct the respondent authorities to take stringent action against search engines.

18. At this juncture, it is relevant to state that the Court on 16-2-2017 [*Sabu Mathew George v. Union of India*, (2017) 7 SCC 657 : (2017) 7 SCC 658 : (2017) 4 SCC (Cri) 126 : (2017) 4 SCC (Cri) 127], after reflecting on the anguish expressed in *Voluntary Health Assn. of Punjab*[*Voluntary Health Assn. of Punjab v. Union of India*, (2016) 10 SCC 265 : (2016) 10 SCC 275 : (2017) 1 SCC (Cri) 56 : (2017) 1 SCC (Cri) 66] (the 2nd), adverted to various aspects and observed thus: (*Sabu Mathew case* [*Sabu Mathew George v. Union of India*, (2017) 7 SCC 657 : (2017) 7 SCC 658 : (2017) 4 SCC (Cri) 126 : (2017) 4 SCC (Cri) 127] , SCC pp. 659-62, paras 3-5)

> "*3*. The present writ petition was filed in 2008 by the petitioner, a doctor in the field of Public Health and Nutrition, expressing his concern about the modus operandi adopted by Respondents 3 to 5 to act in detriment to the fundamental conception of balancing of sex ratio by entertaining advertisements, either directly or indirectly or as alleged, in engaging themselves in violation of Section 22 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for brevity "the 1994 Act"). Times without number, this Court has dwelt upon how to curb the said

malady. In pursuance of our orders dated 5-7-2016 [*Sabu Mathew George v. Union of India*, (2016) 14 SCC 418 : (2016) 14 SCC 419 : (2016) 4 SCC (Cri) 402 : (2016) 4 SCC (Cri) 403] and 25-7-2016 [*Sabu Mathew George v. Union of India*, (2016) 14 SCC 418 : (2016) 14 SCC 420 : (2016) 4 SCC (Cri) 402 : (2016) 4 SCC (Cri) 404] , an affidavit was filed by the competent authority of the Ministry of Electronics and Information Technology (MeitY), Government of India.

4. Be it noted, when the matter was taken up on 19-9-2016 [*Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 516 (2) : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 757], it was submitted by Mr Ranjit Kumar, learned Solicitor General that a meeting was held with the three software companies, namely, Google India (P) Ltd., Yahoo! India and Microsoft Corporation (I) (P) Ltd. and the companies were asked to respond to certain questions. For the sake of completeness, it is necessary to reproduce the said questions: (*Sabu Mathew case* [*Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 516 (2) : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 757] , SCC p. 517, para 4)

> '(*a*) Whether the respondents feel obligated to comply with the provisions of the PC-PNDT Act, especially Section 22 of the Act as directed by this Hon'ble Court vide its order dated 28-1-2015 [*Sabu Mathew George v. Union of India*, (2015) 11 SCC 545 : (2015) 11 SCC 549: (2015) 4 SCC (Cri) 492 : (2015) 4 SCC (Cri) 495] ?
>
> (*b*) Whether the respondents are ready to publish a "warning message" on top of search result, as and when any user in India submits any "keyword searches" in search engines, which relates to pre-conception and pre-natal determination of sex or sex selection?
>
> (*c*) Whether the respondents are ready to block "autocomplete" failure for "keyword" searches which relates to pre-conception and/or pre-natal determination of sex or sex selection?
>
> (*d*) Whether the words/phrases relating to pre-conception and pre-natal determination of sex or sex selection to be provided and regularly updated by the Government for the "keyword search" or shall it be the onus of the respondents providing search engine facilities?
>
> (*e*) Whether it is feasible for the respondents to place this Hon'ble Court order dated 28-1-2015 [*Sabu Mathew George v. Union of India*, (2015) 11 SCC 545 : (2015) 11 SCC 549 : (2015) 4 SCC (Cri) 492 : (2015) 4 SCC (Cri) 495] on their respective home page(s), instead of placing them on terms of service (TOS) pages?
>
> (*f*) What is the suggested timeline to incorporate "warning message", blocking of the "auto-complete" feature for keyword search and related terms, etc. relating to pre-conception and pre-natal determination of sex or sex selection?
>
> (*g*) Any other information as the respondents would like to share?'

5. The responses to those questions were given by Respondents 3 to 5 and, thereafter, delving into the submissions which were assiduously canvassed by the learned counsel for the respondents, the following order was passed: *(Sabu Mathew case [Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 516 (2) : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 757] , SCC pp. 521-22, paras 7-10)

'*7*. Explaining the same, it is submitted by the learned Solicitor General that all the three Companies are bound to develop a technique so that, the moment any advertisement or search is introduced into the system, that will not be projected or seen by adopting the method of "auto block". To clarify, if any person tries to avail the corridors of these companies, this devise shall be adopted so that no one can enter/see the said advertisement or message or anything that is prohibited under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short "the Act"), specifically under Section 22 of the said Act.

8. Mr Sanjay Parikh, learned counsel for the petitioner would contend that the Union of India should have taken further steps to see that the law of the country is totally obeyed by these three Companies, inasmuch as the commitment given by them or the steps taken by the Union of India are not adequate. He has pointed out from the affidavit filed by the petitioner that there are agencies

which are still publishing advertisements from which it can be deciphered about the gender of the foetus. The learned counsel would submit that Section 22 of the Act has to be read along with the other provisions of the Act and it should be conferred an expansive meaning and should not be narrowly construed as has been done by the respondents.

9. Mr Ranjit Kumar, learned Solicitor General at this juncture would submit that he has been apprised today only about the "proposed list of words" in respect of which when commands are given, there will be "auto block" with a warning and nothing would be reflected in the internet, as it is prohibited in India. We think it appropriate to reproduce the said "proposed list of words". It reads as under:…

10. At this juncture, Mr C.A. Sundaram, Mr K.V. Viswanathan, learned Senior Counsel, Mr Anupam Lal Das, learned counsel appearing for Google India, Microsoft Corporation (I) (P) Ltd. and Yahoo! India, respectively, have submitted that apart from the aforesaid words, if anyone, taking recourse to any kind of ingenuity, feeds certain words and something that is prohibited under the Act comes into existence, the "principle of auto block" shall be immediately applied and it shall not be shown. The learned counsel appearing for the search engines/intermediaries have submitted that they can only do this when it is brought to their notice. In our considered opinion, they are under obligation to see that the "doctrine of auto block" is applied within a reasonable period of time. It is difficult to accept the submission that once it is brought to their notice, they will do the needful. It need not be overemphasised that it has to be an in-house procedure/method to be introduced by the Companies, and we do so direct.'"

19. On the basis of the order passed, an affidavit was filed by the Union of India which reflected its understanding of Section 22 of the 1994 Act. Considering the same, on 16-11-2016 [*Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 523 : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 763] , the following order was passed: (*Sabu Mathew case* [*Sabu Mathew George v. Union of India*, (2017) 7 SCC 657 : (2017) 7 SCC 658 : (2017) 4 SCC (Cri) 126 : (2017) 4 SCC (Cri) 127] , SCC pp. 662-63, para 6)

"*6*. … '*19*. … "Section 22 and the Explanation appended to it is very wide and does not confine only to commercial advertisements. The intention of law is to prevent any message/communication which results in determination/selection of sex by any means whatsoever scientific or otherwise. The different ways in which the communication/messages are given by the internet/search engine which promote or tend to promote sex selection are prohibited under Section 22. The search engines should devise their own methods to stop the offending messages/advertisements/communication and if the compliance in accordance with law is not done Ministry of Electronics and Information Technology (MeitY), shall take action as they have already said in their affidavits dated 15-10-2015 and 8-8-2016. The Ministry of Health and Family Welfare is concerned about the falling child sex ratio and is taking all possible actions to ensure that the provisions of the PC-PNDT Act are strictly implemented."' (*Sabu Mathew case* [*Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 523 : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 763] , SCC p. 526, para 19)"

20. Thereafter the matter was heard at some length and pending the debate, the Court directed as follows: (*Sabu Mathew case* [*Sabu Mathew George v. Union of India*, (2017) 7 SCC 657 : (2017) 7 SCC 658 : (2017) 4 SCC (Cri) 126 : (2017) 4 SCC (Cri) 127] , SCC pp. 663-65, paras 7-14)

"*7*. … '*21*. At this stage, pending that debate, in addition to the earlier directions passed by this Court, we direct that the Union of India shall constitute a "Nodal Agency" and give due advertisement in television, newspapers and radio by stating that it has been created in pursuance of the order of this Court and anyone who comes across anything that has the nature of an advertisement or any impact in identifying a boy or a girl in any method, manner or mode by any search engine shall be brought to its notice. Once it is brought to the notice of the Nodal Agency, it shall intimate the search engine or the corridor provider concerned immediately and after receipt of the same, the search engines are obliged to delete it within thirty-six hours and intimate the Nodal Agency. Needless to say, this is an interim arrangement pending the discussion which we have noted hereinbefore. The Nodal Agency shall put the ultimate action taken by the search engine on its website.' (*Sabu Mathew case*[*Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 523 : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 763] , SCC p. 527, para 21)

8. In pursuance of the said order, the Union of India has filed an affidavit of the Joint Secretary, Ministry of Health and Family Welfare, Government of India. Paras 3 and 4 of the said affidavit read as follows:

'3. In compliance with the court's directive, this Ministry has set up a single point contact for the Nodal Agency to receive the complaints on violation of Section 22 of the PC & PNDT Act, 1994. Details of the Nodal Agency are as under:…

4. That, further in compliance with directions, for advertising in television, newspaper and radio, appropriate steps are being undertaken and same shall be complied with at the earliest.'

In view of the aforesaid affidavit, we direct the Union of India to comply with Para 4 within a week hence. It shall be clearly mentioned that it is being done in pursuance of the order passed by this Court.

9. At this juncture, Mr Sanjay Parikh, learned counsel appearing for the petitioner, has drawn our attention to the additional affidavit filed on behalf of Respondent 3, especially to Paras 6(*b*) and (*c*). They read as follows:

'6. (*b*) There are innumerable activities banned by law, e.g. using a bomb to kill people, murder, rape, prostitution, pornography, etc., nevertheless, there is no dearth of information available under each of these heads in both the offline and online world. Just because a particular activity is morally repugnant, illegal or prohibited under the provisions of the Indian Penal Code and other applicable laws, does not mean that everyone in the world is disentitled from having any form of information about the subject.

(*c*) This would be in complete violation of Article 19(1)(*a*) of the Constitution of India, which firstly includes the right to know, secondly, right to receive and thirdly, right to access the information or any content, etc.'

10. Refuting Para 6(*b*) of the affidavit, learned Solicitor General has submitted that he will file a response to the same. His instant reaction was that the said paragraph contravenes the letter and spirit of Section 22 of the 1994 Act. Additionally, it is contended by him that Para 6(*b*) is not saved by Article 19(1)(*a*) of the Constitution of India as asserted in Para (*c*). At this juncture, Ms Ruby Ahuja, learned counsel appearing for Respondent 3, has submitted that the said respondent has no intention to disrespect or disobey or even remotely think of contravening any law(s) of this country and she undertakes to file a clarificatory affidavit within three weeks.

11. It is necessary to take note of another submission advanced by Mr Parikh, learned counsel with the assistance of Ms Ninni Susan Thomas, learned counsel for the petitioner. It is urged by him that despite the order passed on 19-9-2016 [*Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 516 (2) : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 757] , that Respondents 3 to 5 shall undertake the exercise of principle of "auto block", the literature and write-ups that would tempt the people to go for male child which ultimately lead to reduction of sex ratio, is still being shown in certain websites. The said websites were shown to Mr K.V. Viswanathan, Mr Anupam Lal Das and Ms Ruby Ahuja. The learned counsel appearing for the respondents have submitted that they will verify the same and the context. Additionally, it is canvassed by Mr Viswanathan with immense vehemence that it does not come within the proposed list of words that find mention in the order dated 19-9-2016 [*Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 516 (2) : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 757] , and, therefore, it cannot be construed as a violation. Be that as it may.

12. We reiterate our direction dated 19-9-2016 [*Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 516 (2) : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 757] , and further add that Respondents 3 to 5 shall appoint their "in-house expert body" which shall take steps to see that if any words or any key words that can be shown in the internet which has the potentiality to go counter to Section 22 of the 1994 Act, should be deleted forthwith.

13. Presently, we shall advert to Paras 3 and 4 of the affidavit of the Union of India which we have reproduced hereinabove. As the Nodal Agency has already been constituted, it will be open to the petitioner or any person that the Nodal Agency shall take it up and intimate Respondents 3 to 5 so

that they will do the needful. That apart, the "in-house expert body" that is directed to be constituted, if not already constituted, shall on its own understanding delete anything that violates the letter and spirit of language of Section 22 of the 1994 Act and, in case there is any doubt, they can enter into a communication with the Nodal Agency appointed by the Union of India and, thereafter, they will be guided by the suggestion of the Nodal Agency of the Union of India. Be it clarified, the present order is passed so that Respondents 3 to 5 become responsive to the Indian law.

14. Let the matter be listed on 11-4-2017, for further hearing."

21. On 13-4-2017 [*Sabu Mathew George v. Union of India*, (2017) 7 SCC 657 : (2017) 7 SCC 665 (2) : (2017) 4 SCC (Cri) 126 : (2017) 4 SCC (Cri) 133 (2)] taking note of the submissions of the learned counsel for the parties and Section 22 of the 1994 Act, the Court passed the following order: (*Sabu Mathew case* [*Sabu Mathew George v. Union of India*, (2017) 7 SCC 657 : (2017) 7 SCC 665 (2) : (2017) 4 SCC (Cri) 126 : (2017) 4 SCC (Cri) 133 (2)] , SCC pp. 666-67, paras 20-25)

"*20*. Mr Parekh has drawn our attention to certain search results. One such result is "medical tourism in India". It is pointed out by Mr Parekh that it deals with "gender determination" in India which is prohibited by the aforesaid provision.

21. At this juncture, Mr Salve, Dr Singhvi and Mr Das, learned counsel for the respondents submitted that the keywords are "medical tourism in India" which do not offend the provision. It is the "originator" of the blog who has used the offensive words in the contents of the website and in such a situation the Nodal Officer of the Union of India can block the website as per the Act.

22. Be it noted, in pursuance of the order [*Sabu Mathew George v. Union of India*, (2017) 2 SCC 514 : (2017) 2 SCC 516 (2) : (2017) 1 SCC (Cri) 754 : (2017) 1 SCC (Cri) 757] passed by this Court, the respondents have appointed their own "in-house" experts. It is accepted by the learned counsel for the respondents that they have never indulged in any kind of advertisement as contemplated under Section 22 of the Act and nor do they have any kind of intention to cause any violation of the said mandate. It is further accepted by them that they will not sponsor any advertisement as provided under Section 22 of the Act. The learned counsel for the respondents would contend, and rightly, that they do not intend to take an adversarial position with the petitioner but on the contrary to play a participative and cooperative role so that the law made by Parliament of India to control sex selection and to enhance the sex ratio is respected. It is further accepted by them that if the Nodal Officer of the Union of India communicates to any of the respondents with regard to any offensive material that contravenes Section 22, they will block it.

23. Needless to say, the intimation has to be given to the respondents. The Nodal Officers appointed in the States under the Act are also entitled to enter into communication with the respondents for which they have no objection. The action taken report, as further acceded to, shall be sent to the Nodal Officer. Be it stated, the names of the Nodal Officers have been mentioned in the affidavit filed by the Union of India dated 11-11-2016.

24. At this juncture, it is necessary to state that volumes of literature under various heads come within the zone of the internet and in this virtual world the idea what is extremely significant is "only connect". Therefore, this Court has recorded the concession of the respondents so that the sanctity of the Act is maintained and there is no grievance on any score or any count by anyone that his curiosity for his search for anything is not met with and scuttled. To elaborate, if somebody intends to search for "medical tourism in India" he is entitled to search as long as the content does not frustrate or defeat the restriction postulated under Section 22 of the Act. It is made clear that there is no need on the part of anyone to infer that it creates any kind of curtailment in his right to access information, knowledge and wisdom and his freedom of expression. What is stayed is only with regard to violation of Section 22 of the Act. We may further add that freedom of expression included right to be informed and right to know and feeling of protection of expansive connectivity.

25. As agreed to by the learned counsel for the parties, let the matter be listed on 5-9-2017 so that the outcome of this acceptance will be plain as day."

…

23. The said submissions are refuted by Dr Abhishek Manu Singhvi and Mr K.V. Viswanathan, learned Senior Counsel appearing for Google India and Microsoft Corporation (I) (P) Ltd. respectively. Mr Anupam Lal Das, learned counsel appearing on behalf of Yahoo! India, would submit that "content" can only be removed, once it is pointed out by the Nodal Agency and further there are generators who can make permutations and combinations, which will be very difficult on the part of the search engine to remove.

24. At this juncture, Mr Parikh has drawn our attention to Paras 12, 13, 14 and 19 of Annexure C to the affidavit filed on behalf of the petitioner. They are extracted below:

> "12. Google also has automated systems that analyse the tens of millions of new ads created by advertisers every day. …
>
> 13. Google also relies on its users and on other advertisers to report improper advertisements. …
>
> 14. In 2014, Google has already disapproved over 428 million advertisements (most of which never generated a single impression), it has prevented ads from linking to over one million websites, and it has suspended or terminated over 9,00,000 advertiser accounts for violations of Google's AdWords policies. The vast majority of these actions were taken as a result of Google's proactive systems rather than as a result of outside complaints.

…

25. Ms Ruby Ahuja, learned counsel assisting Dr Abhishek Manu Singhvi, learned Senior Counsel, appearing for the Google India would submit that certain paragraphs which have been put forth in the affidavit filed by Mr Sanjay Parikh are not relevant as they do not relate to paid advertisements. Whether those paragraphs are relevant or not, we are directing the respondents to find out a solution. We make it clear that we have not expressed any opinion on the nature of the solution, which the experts of the abovementioned entities shall find and implement.

26. We have been apprised by Ms Pinky Anand, learned Additional Solicitor General appearing for the Union of India that pursuant to the directions of this Court, a Nodal Agency has already been constituted and it is working in right earnest and whenever it receives any complaint, it intimates the search engine and contents are removed.

27. Mr Parikh would submit that there are various other ways by which contents can be removed so that the impact would become evident.

28. Weighing the rivalised submissions at the Bar, we direct the Nodal Agency and the Expert Committee to hold a meeting and have the assistance of Mr Sanjay Parikh and his team so that there can be a holistic understanding and approach to the problem. The Nodal Agency and the Expert Committee shall also call upon the representatives of Google India, Yahoo! India and Microsoft Corporation (I) (P) Ltd., who are directed to appear before the Committee and offer their suggestions. There has to be a constructive and collective approach to arrive at a solution together with the Expert Committee and the search engine owners. They are obliged under law to find solutions if something gets projected in contravention of the 1994 Act. The effective solution is the warrant of the obtaining situation. We are using the word "solution", keeping in view our earlier orders and the suggestions given by the competent authority of the Union of India. The duty of all concerned is to see that the mandate of the 1994 Act is scrupulously followed. Keeping the aforesaid in view, a meeting shall be held within six weeks hence. All the suggestions or possibilities must be stated in writing before the Committee so that appropriate and properly informed measures are taken.

29. We are sure that the Union of India and its Committee will be in a position to take appropriate steps so that the mandate of the 1994 Act is not violated and the falling sex ratio in the country, as has been noted in *Cehat* [*Cehat v. Union of India*, (2003) 8 SCC 398] , [*Cehat v. Union of India*, (2001) 5 SCC 577] , [*Cehat v. Union of India*, (2003) 8 SCC 409] , [*Cehat v. Union of India*, (2003) 8 SCC 410] , [*Cehat v. Union of India*, (2003) 8 SCC 412] , *Voluntary Health Assn. of Punjab* [*Voluntary Health Assn. of Punjab v. Union of India*, (2013) 4 SCC 1 : (2013) 2 SCC (Cri) 287] (the 1st) and *Voluntary Health Assn. of Punjab* [*Voluntary Health Assn. of Punjab v. Union of India*, (2016) 10 SCC 265 : (2016) 10 SCC 275 : (2017) 1 SCC (Cri) 56 : (2017) 1 SCC (Cri) 66] (the 2nd), does not remain a haunting problem.

30. We are constrained to say so as many are guided by inappropriate exposure to the internet. The respondents have a role to control it and if any concrete suggestion is given by the petitioner, the same shall be incorporated. We command Google India, Yahoo! India and Microsoft Corporation (I) (P) Ltd. to cooperate and give their point of view for the purpose of a satisfactory solution instead of taking a contesting stand before the Expert Committee.

31. With the aforesaid directions, the writ petition stands disposed of. If there will be any further grievance, liberty is granted to the petitioner to file a fresh writ petition…"

Endnotes

1 Statement of Objects and Reasons, The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002.

2 (2001) 5 SCC 577.

3 Note that the case is not extracted in this chapter, since the guidelines issued by the Court were incorporated when the PNDT Act was amended subsequently.

4 (2003) 8 SCC 398.

5 CEHAT & Ors. v. Union of India & Ors., (2001) 5 SCC 577; CEHAT & Ors. v. Union of India & Ors., (2003) 8 SCC 406; CEHAT & Ors. v. Union of India & Ors., (2003) 8 SCC 409; CEHAT & Ors. v. Union of India & Ors., (2003) 8 SCC 410; CEHAT & Ors. v. Union of India & Ors., (2003) 8 SCC 412.

6 (2013) 4 SCC 1.

7 (2016) 19 SCC 275.

8 (2018) 3 SCC 229.

9 Sabu Mathew George v. Union of India, (2017) 2 SCC 514.

10 The setting up of such an agency was reported to the Court by an affidavit filed by the Union of India. This is noted in: Sabu Mathew George v. Union of India, (2017) 7 SCC 657, 663-664.

11 Sabu Mathew George v. Union of India, (2018) 3 SCC 229, 248.

12 2005 Cri LJ 3408 (Bom).

13 AIR 2008 Bom 29.

14 (2014) 5 All LJ 496.

15 (2013) 205 DLT 96.

16 U.N. Office of the High Commissioner for Human Rights, "Status of Ratification Interactive Dashboard—India," *accessed at* http://indicators.ohchr.org/.

17 Dr*aft Articles on Responsibility of States for Internationally Wrongful Acts,* adopted by the Commission at its fifty-third session in 2001 (Final Outcome) (International Law Commission [ILC]), contained in U.N. Doc. A/56/49 (Vol. I)/Corr.4 (2001), Arts. 3–4.

18 Vishaka v. State of Rajasthan, AIR 1997 SC 3011.