E-Book
On
Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

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Judicial Training & Research Institute, Uttar Pradesh
Vineet Khand, Gomti Nagar, Lucknow – 226010

E-Book

On

Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

A

Result

Of

One Day Online Orientation & Sensitization Programme

On

"Sociological & Legal Aspects of PCPNDT Act, 1994 & The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013"

Organized

On

Sunday, February 6th, 2022

Prepared by

Rajneesh Mohan Verma,
Deputy Director,
Judicial Training and Research Institute

Preface

Principles of gender equality are an integral part of the Constitution. The Constitution confers equal rights and opportunities on women; bars discrimination on the basis of sex and denounces practices derogatory to the dignity of women. In spite of this, discrimination against women and girls is almost universal. Forced abortions of female foetuses and prenatal sex determination results in millions of girls not being allowed to be born just because they are girls. Taking cognizance of this issue the Government of India has put in place a law entitled the PCPNDT Act, 1994 that prohibits the use of preconception and prenatal diagnostic techniques to determine the sex of the unborn child.

It has, however, been difficult to implement the Act because sex selection happens within the confines of the doctor-client relationship. The burden on the legal community including the bench and the bar in such a situation becomes onerous. If the mindset of society is not changed and it lags behind the legislation, it has to be the job of the judiciary to fill this gap by adopting a realistic and sensitive approach for proper implementation of the legislation.

The need of the hour is to mould and evolve the law so as to meet its object by effective implementation. The Judicial Training & Research Institute has undertaken the task to prepare this book with the hope that its compilation will help serve as a guide and reference book on the issue of sex selection for judges working in District Courts, advocates, researchers, public spirited organizations and anyone else interested in this field.

I must acknowledge the fact that our faculty members in the institute have put in a lot of hard work in bringing out this publication. The institute appreciates the efforts made by Mr. Kushalpal, Additional Director, Mr. Manmeet Singh Suri, Additional Director (Training), Dr. Humayun Rasheed Khan, Additional Director (Research), Mr. Rajneesh Mohan Verma, Deputy Director, Mr. Vijay Kumar Katiyar, Deputy Director, Ms. Priti Chaudhary, Deputy Director & Mrs. Twishi Srivastava, Deputy Director. Mr. Rajneesh Mohan Verma, Deputy Director needs special appreciation for preparing this e-Handbook.

I hope and pray that this book turns out to be helpful for readers and serves the cause for which it is prepared.

(Vinod Singh Rawat)
Director, JTRI U.P., Lucknow

The Judicial Training & Research Institute, Uttar Pradesh, Lucknow

In pursuance of the vision and direction of the Hon'ble Supreme Court of India in the case of **Voluntary Health Assn. of Punjab v. Union of India, reported in (2016) 10 SCC 265**, & all other pronouncements of the Hon'ble Apex Court and Hon'ble High Courts in view of the needs of the society, the Judicial Training & Research Institute Lucknow is making a continuous effort to impart training and to develop the requisite sensitivity as projected in the objects and reasons of the PCPNDT Act,1994 amongst all the stakeholders of criminal justice delivery system. On 6th of February, 2022 one-day Orientation & Sensitization Programme on the topic "Sociological & Legal Aspects of PCPNDT Act, 1994 & the Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013" was organized on virtual Zoom platform in which all the Judicial Academies from across the country, CJMs/CMMs, ACJMs/ACMMs of the State of Uttar Pradesh, Officers from prosecution department, Officers from Various Appropriate Authorities and Medial Officers have participated through virtual platform as well as live streaming on YouTube link provided by JTRI.

The Programme started with a brief account by Rajneesh Mohan Verma Deputy Director, Introduction of the Subject by Additional Director (Training), Sri Manmeet Singh Suri and an Opening Address by the In-charge Director, Sri Kushalpal.

In technical sessions, we had a total of 6 sessions. In the first session, Dr. Humayun Rasheed Khan, Additional Director (Research) & Ms. Priti Chaudhary, Deputy Director enlightened the participants about the salient features of the PCPNDT Act, 1994. In the next session, Director In-charge, Shri Kushalpal and Additional Director (Training), Sri Manmeet Singh Suri delivered their talk on the topic "Offences, bail and release of Property Seized under PCPNDT & Rules, with the help of case studies, with a special focus on the Practical Approach." Thereafter Rajneesh Mohan Verma and Sri Vijay Kumar Katiyar, Deputy Directors delivered their talk on various stages of complaints about the offences under the PCPNDT Act and Appreciation of evidence.

After lunch break, Dr. Neelam Singh, the Chief Functionary of "VATSALYA" and member of state supervisory board constituted under PCPNDT Act, delivered her talk on the Concept of Gender Lens, Female Foeticide and sex Ratio in India. Thereafter, Smt. Twishi Srivastava spoke on the topic "An overview of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013." In the Last technical session, Dr. Ashwani Kumar, Joint Director of Health & Family Welfare Shared his views and Latest GOs, Notifications and Recent Developments on PCPNDT Act. In the end, the summing up valediction was addressed by Additional Director

(Research), Dr. Humayun Rasheed Khan & the Director In-charge, Sri Kushalpal. In this webinar, it was felt that a handbook on PCPNDT Act focusing on the implementation must be prepared by the Institute.

This e-Book is prepared after the completion of the webinar with a view to facilitate better understanding of the implementation process of PCPNDT ACT, 1994, and to create requisite sensitivity amongst all the stakeholders of the criminal justice delivery system. This Book is based on the lectures delivered by all the faculty members, materials available on the official portal of the State on PCPNDT Act, and research done by Rajneesh Mohan Verma (Dy Director) on various issues.

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SYNOPSIS

Salient Features of PCPNDT Act

Important Definitions

Mandate of Registration

Process of Certification:

Cancellation or Suspension of Registration:

Prohibitions under the Act:

Prohibitions on Places:

Prohibition on Persons:

Miscellaneous Prohibitions:

Prescriptions and Regulations:

Link with the Medical Termination of Pregnancy Act, 1971:

Maintenance and Preservation of Records:

Offences & Penalties:

(A) Offence by persons

(B) Offence by a company:

(c)Nature of the Offence:

Investigation & Case Studies:

Search and Seizure:

Safeguards or Prerequisites during Search and Seizure:

Preparation of List:

Sealing:

Collection of Evidence during Investigation:

I.Evidence of Illegal Advertisement:

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III.Evidence in case of non-registration, cancellation or suspension of registration:

Case Study - 1

Case Study - 2

Case Study - 3

As to whether, an FIR could be lodged for the Offences under PCPNDT Act?

Release of Property Seized under PCPNDT Act:

Prosecution before the Court:

- Who can make a Complaint before the Court?
- The Complete Evidence to be Submitted before the Magistrate:
- The courses open to a Magistrate on a complaint made under Section 28 of PCPNDT Act:

Bail of the Accused:

Framing of Charge:

Appreciation of Evidence:

Relevant Excerpts from Case Law

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SALIENT FEATURES OF PCPNDT ACT

"Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind."

- Swami Vivekanand

The Constitution of India stipulates equal rights for all, regardless of gender. Therefore, a woman should not be discriminated against for being a female, she has an equal role in society. However, in practice, the discriminating powers of the societies at large over the unbiased constitutional rights of all have led to the violations of female's rights including female's reproductive rights. Victimization against a girl child is the worst form of discrimination. Various factors such as strong male preference, gender bias, discrimination against the girl child, deeply-rooted prejudices and vulnerability status attached to females are the fundamental causes for increasing female foeticide cases in the country despite advancement in education and development in economics. Unfortunately, the progress in science and technology in this regard is furthering female foeticide to the extent that it has been used as a replacement for female infanticide.

The right to live is part and parcel of human rights and denial of the same to a girl child is one of the heinous violations. Therefore, in order to protect the rights, existence and dignity of female forks, the legislature has enacted the statute namely, the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of sex selection) Act, 1994 [PC&PNDT Act or Act]. Following are the main salient features of the Act:

- The Act provides for the prohibition of sex selection, before or after conception.
- It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect: Genetic abnormalities, metabolic disorders, chromosomal abnormalities, certain congenital malformations, haemoglobinopathies and sex-linked disorders.
- No laboratory or centre or clinic will conduct any test including ultrasonography for the purpose of determining the sex of the foetus.
- No person, including the one who is conducting the procedure as per the law, will communicate the sex of the foetus to the pregnant woman or her relatives by words, signs or any other method.
- Advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any document, or through the internet or other media in electronic or print form or in any visible representation made by means of hoarding, wall painting, signal, light, sound, is prohibited and made punishable under the Act.
- It prohibits the functioning of every unregistered laboratory or centre or clinic.

- It prohibits the functioning of a laboratory or centre or clinic at any unregistered place.
- It prohibits the employment of any unregistered and unqualified medical practitioner or its assistants.
- It prohibits the sale of ultrasound machines and other equipments to any unregistered laboratory or centre or clinic.
- PC & PNDT Act is a legal order to address social disorder 'It is different from other social legislations as it does not involve any change in social behaviour and practice rather regulates and demands ethical medical practice & regulation of medical technology that have the potential to be misused'

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IMPORTANT DEFINITIONS

Appropriate Authority:

Appropriate Authority means the Appropriate Authority appointed under section 17;[1]

Under Section 17, The Central and the State Government Appoints the Appropriate Authorities for the state as well as for districts and Tehsils.

In the State of Uttar Pradesh District Magistrates of For every District and SDMs For Tehsil Were Appointed as Appropriate Authority Vide Notification No. 3020/V-9-2007-6(74)-94-T.C. Dated Lucknow, November 30, 2007, and No.103/5-9-2013-6(74)/94TC dated Lucknow February 8, 2013

Techniques:

Pre-natal diagnostic techniques include all pre-natal diagnostic procedures and pre-natal diagnostic tests.[2]

(A) Pre-natal diagnostic procedures mean all gynaecological or obstetrical or medical procedures such as

- Ultrasonography;
- Foetoscopy;
- Taking or removing samples of
  - -amniotic fluid
  - -chorionic villi
  - -blood
  - -any tissue
  - -fluid

of a man or 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.[3]

(B) Pre-natal diagnostic test means:

- Ultrasonography
- Test or analysis of:
  - -amniotic fluid
  - -chorionic villi
  - -blood
  - -any tissue
  - -fluid

of any pregnant woman or conceptus conducted to detect:

- ➔ genetic disorders
- ➔ metabolic disorders

[1] Section 2(a)
[2] Section 2 (j)
[3] Section 2 (i)

- ➔ chromosomal abnormalities
- ➔ congenital anomalies
- ➔ haemoglobinopathies
- ➔ Sex-linked diseases.[4]

(C) Sex selection includes:

- Procedure
- Technique
- Test
- Administration
- Prescription
- Provision

of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex.[5]

Places:

(A) Genetic Counselling Centre means:

- An institute
- Hospital
- Nursing home
- Any place by whatever name called which provides genetic counselling to patients.[6]

(B) Genetic Clinic means:

- A clinic
- Institute
- Hospital
- Nursing home
- Any place by whatever name called which is used for conducting pre-natal diagnostic procedures.[7]

(C) Genetic Laboratory means

- a laboratory; and
- includes a place:
  where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic tests.[8]

An explanation has been added by the amendments of 2002, which provides that "for the purposes of this clause, "Genetic Laboratory" includes a place where ultrasound machine or imaging machine or scanner or other equipment capable of determining the sex of the foetus or portable equipment

[4] Section 2 (k)
[5] Section 2(o)
[6] Section 2 (C)
[7] Section 2 (d)
[8] Section 2 (e)

which has the potential for detection of sex during pregnancy or selection of sex before conception, is used."

It has been clarified under the amended Rules that every Genetic Counselling Centre/ Genetic Laboratory/ Genetic Clinic would include an ultrasound centre/ imaging centre/ nursing home/ hospital/ institute or any other place, by whatever name called, where any of the machines or equipments capable of selection of sex before or after conception or performing any procedure, technique or test for pre-natal detection of sex of the foetus is used.[9]

Qualified Persons:

(A) **Gynaecologist** means a person who possesses a post-graduate qualification in gynaecology and obstetrics.[10]

The Rules[11]framed under the Act further qualify the qualifications by providing additional requirements for a gynaecologist when employed by a genetic counselling centre or a genetic clinic but do not necessitate the engagement of a gynaecologist by a genetic laboratory.

For a genetic counselling centre, the gynaecologist must have:

- 6 months experience in genetic counselling; or
- 4 weeks training in genetic counselling.[12]

For a genetic clinic, the gynaecologist should have adequate experience in pre-natal diagnostic procedures i.e. should have performed at least 20 procedures in chorionic villi aspirations per vagina or per abdomen, chorionic villi biopsy, amniocentesis, cordocentesis foetoscopy, foetal skin or organ biopsy or foetal blood sampling etc. under supervision of an experienced gynaecologist in these fields.[13]

(B) **Medical Geneticist** includes a person who possesses:

- degree, or
- diploma

in genetic science in the fields of sex selection and pre-natal diagnostic techniques; or has experience of not less than two years in any of these fields after obtaining-

- any one of the medical qualifications recognized under the Indian Medical Council Act, 1956; or
- a post-graduate degree in biological sciences.[14]

Under the amended definition, possessing a certificate does not make one a qualified medical geneticist.

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[9] Explanation (1) to Rule 12

[10] Section 2 (f)

[11] The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996 which came into force w.e.f. 1.1.1996.

[12] Rule 3 (1) (i) under the PNDT Rules

[13] Rule 3 (3)(1)(a) under the PNDT Rules.

[14] Section 2 (g)

(C) **A Paediatrician** means a person who possesses a post-graduate qualification in paediatrics.[15]

The Rules framed under the Act further qualify the qualifications by providing additional requirements for a paediatrician when employed by a genetic counselling centre.

For a genetic counselling centre, the paediatrician must have

- 6 months experience in genetic counselling; or
- 4 weeks of training in genetic counselling.[16]

(D) **Registered Medical Practitioner** means

- a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956; and
- whose name has been entered in a State Medical Register.[17]

The Rules framed under the Act further qualify the qualifications by providing additional requirements for a registered medical practitioner when employed by a genetic clinic. For the purposes of a genetic clinic, the registered medical practitioner should have a Post Graduate degree or diploma or six months of training or one year of experience in sonography or image scanning.[18]

Certain miscellaneous definitions have been added to clarify concepts used for the first time in the amended Act. These are

(A) **Conceptus;** means any product of conception at any stage of development from fertilisation until birth including extraembryonic membranes as well as the embryo or foetus.[19]

(B) **Embryo;** means a developing human organism after fertilisation till the end of eight weeks (fifty-six days).[20]

(C) **Foetus;** means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth[21]

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[15] Section 2 (h)

[16] Rule 3 (1)(i) under the PNDT Rules

[17] Section 2 (m) of the Act. In ***Prakash Motiram Khobragade v. State of Maharashtra AIR 2000 Bom. 137,*** the Bombay High Court has held that persons who are otherwise not qualified for registration under the Medical Practitioner Act, under the Indian Medical Council Act and the State Acts are not entitled to claim any right to practice medicine.

[18] Rule 3 (3) (1) (b) under the PNDT Rules.

[19] Section 2(ba)

[20] Section 2 (bb)

[21] Section 2 (bc)

MANDATE OF REGISTRATION

All bodies under the PC & PNDT Act namely Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic as defined in the Act cannot function unless registered.[22] The requirement of registration is mandatory whether the body is government, private, voluntary, honorary, part-time, contractual or consultative. However, the PNDT Act allows registration of these bodies either separately or jointly when a body is for instance both a centre and a clinic.

There are different minimum requirements for different bodies as regards the minimum qualifications of the employees and the minimum equipment for each of the bodies under the PCPNDT Act. All the requirements relating to qualifications and equipment are mandatory.[23] Documentary proof of requisite qualifications and experience as specified under the PC & PNDT Act and rules of persons employed by the facility should be annexed with the application for registration.

Under the amended Rules, the Schedules appended to the earlier Rules have been done away with and the requirements for a Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic have been added under Rule 3 itself by redrafting the same though the requirements remain the same, more or less.

The bodies can be owned by any person and he need not have the qualifications required under the Act as long as he has employees that fulfill the minimum qualifications required under the PCPNDT Act. If an institute, hospital, nursing home or any place provides services jointly of any of these bodies then such a place should fulfill the minimum requirements of both the bodies in order to be registered.

Process of Certification:

a) Every application received by the appropriate authority will firstly be scrutinised by it and an enquiry into whether such a body fulfils all the requirements under the PCPNDT Act will be done. [24]

b) An enquiry by the Appropriate Authority includes an inspection of the premises after giving due notice to the applicant.[25]

c) After the appropriate authority is satisfied that the applicant has fulfilled all minimum requirements, the application will be placed before the Advisory Committee. The Advisory Committee shall thereafter scrutinise the application and give its advice on the same to the appropriate authority.

d) The Appropriate Authority after considering the advice will grant a certificate of registration.[26]

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[22] Section 3 (1) of the Act.
[23] Rule 3 (1) under the PNDT Rules
[24] Rule 6 (1) under the PNDT Rules.
[25] Rule 6 (4) under the PNDT Rules.

e) The certificate of registration shall be given in duplicate and in the form as prescribed in Form B annexed to the rules under the PCPNDT Act. The grant of certificate of registration shall be communicated within 90 days from the date of receipt of an application for registration.[27]

f) It is **mandatory** for everybody registered under this Act **to display the certificate of registration** at a conspicuous place in such centre, laboratory or clinic.

g) In some cases the appropriate authority depending upon the requirements available at such centre, laboratory or clinic may grant a certificate only to conduct one or more specified pre-natal diagnostic tests or procedures.[28]

h) The certificate of registration shall be non-transferable.[29]

i) In the event of a change of ownership or change of management or when the centre, laboratory or clinic ceases to function as one both copies of the certificate of registration shall be surrendered to the Appropriate Authority.

j) Each new owner or manager of a centre, laboratory or clinic has to apply afresh for grant of certificate of registration.[30]

k) All centres, laboratories and clinics registered under the PCPNDT Act shall give an affidavit affirming that they will not indulge in the pre-natal determination of sex as mandated by the Supreme Court in the case of **CEHAT & Ors v. Union of India.**[31]

1) The Registration Certificate must mention the number of ultrasound machines in the centre. Further, the registration certificate must also mention all the portable ultrasound machines in the said centre. In case of registration certificates already issued, the list of ultrasound machines portable or otherwise must be mentioned on another paper and the said paper must also be displayed along with the registration certificate at a conspicuous place in the centre.

Cancellation or Suspension of Registration:

The Appropriate Authority can at any time, either on its own or on a complaint by anyone, issue a show-cause notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, Ultrasound Clinic or Imaging Centre as to why its registration should not be cancelled or suspended for breach

[26] Rule 6 (2) under the PNDT Rules.
[27] Rule 6 (2) read with Rule 6 (5) under the PNDT Rules.
[28] Proviso to Rule 6(2) under the PNDT Rules.
[29] Rule 6(6) under the PNDT Rules.
[30] Rule 6(7) under the PNDT Rules.
[31] (2003) 8 SCC 412

of any of the provisions of the PCPNDT Act or the rules. The reasons for every such notice should be mentioned in the notice itself.[32]

Thereafter the clinic, laboratory or centre must be given an opportunity to defend itself against the charges. After giving the centre, laboratory or clinic a reasonable opportunity of being heard and after taking into account the advice given by the advisory Committee, the Appropriate Authority may either suspend the registration of such a place or cancel the registration depending upon the gravity of the charge. Action can be taken by the Appropriate Authority irrespective of any criminal action that will be taken against such a place.[33]

In certain exceptional cases like in the case of public interest, the Appropriate Authority may suspend or cancel the registration without issuing a show-cause notice. However, the reasons for waiving show cause notice have to be given in writing.[34]

In the case of ***Dr. Anil Kumar Mishra vs State Of U.P. And Others,***[35] All the petitioners had applied for and were registered by Chief Medical Officer/ Competent Authority for running ultrasound clinic. The registration certificates issued by the Chief Medical Officer, Siddharth Nagar to Dr. Anil Kumar Misra on 13.5.2002 was valid upto 12.5.2007 and was renewed for a period upto 13.5.2012. The registration certificate issued to Dr. Dinesh Chand Pandey on 12.12.2001, was valid upto 11.12.2006 and was renewed upto 12.12.2001 and the registration certificate in favour of Dr. Faizan Ahmad was issued on 15.6.2005, and was valid upto 14.6.2010. All these three registration certificates were valid for prenatal diagnostic procedures approved for non-invasive tests by using ultrasound machines.On 21st August 2008 the Chief Medical Officer, Siddharth Nagar in pursuance to the letters of the Principal Secretary, Medical & Health, Government of U.P., Lucknow dated 11.7.2008; the Chairman, State Competent Authority/ Director General, U.P. Lucknow dated 5.8.2008 and of the District Magistrate dated 11.8.2008, issued notices to the petitioners, that since they are not qualified person, who can perform ultrasound tests under PC & PNDT Act, in which it is provided that only those doctors can perform ultrasound test, who are registered as medical practitioners under Section 2 (h) of the Indian Medical Council Act, 1956 (102/1956), and whose name has been entered in State Medical Register, and possess post graduate degree in Sonography/ Image Scanning or a diploma or six month's training or one year's experience; they may show cause within a week, whether they are qualified to be registered, failing which their registration will be cancelled. All the three petitioners in the three writ petitions allege that since they

[32] Section 20 (1) of the Act.
[33] Section 20 (2) of the Act.
[34] Section 20 (3) of the Act.
[35] Civil Misc. Writ Petition No.57791 of 2008,57794 of 2008 Dr. Faizan Ahmad Vs. State of U.P. & Ors.,57795 of 2008 Dr. Dinesh Chand Pandey Vs. State of U.P. & Ors.(All Decided in one judgment dated 1 April, 2011)

have qualifications to practice as medical doctors under the U.P. Homeopathic Medical Council Act and Indian Medicine Central Council Act, 1971 and that since all the three are registered with the U.P. Homeopathic Medical Council in respect of Dr. Anil Kumar Mishra and Dr. Dinesh Chand Pandey and under the Indian Medical Board U.P. in respect of Dr. Faizan Ahmad, they are qualified and eligible under the PC & PNDT Act, 1994, and PNDT Act, 1996 to run their clinics and perform ultrasound tests.

In these three writ petitions, The Hon'ble Allahabad High Court was called upon to decide the question about the qualifications and eligibility of the person entitled to be registered under Section 3 of the PC & PNDT Act, 1994 for carrying out the ultrasound tests. Hon'ble Court held as under-

> "16. Rule 3 of the PNDT Rules, 1996 prescribes the qualifications of the employees, the requirement of equipment etc. for a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre. The qualifications prescribed in sub-rule (1) provides that qualification both of the person and the employee under (i) to be a gynaecologist or a paediatrician having six months experience or four weeks training in genetic counselling; or (ii) medical geneticists, having adequate space and educational charts/ models/equipment for carrying out genetic counselling in a centre, which may be registered as the genetic centre. The relevant sub-rule (2) provides that any person having adequate space and being or employing (i) a Medical Geneticist and (ii) a laboratory technician, having a B.Sc. degree in Biological Sciences or a degree or diploma in medical laboratory course with at least one year experience in conducting appropriate prenatal diagnostic techniques, tests or procedures, may set up a genetic laboratory.
>
> 17. The petitioners are not gynaecologists or paediatricians and they do not have any qualification in genetic counselling; they are not medical geneticists having any qualification as medical geneticists. They would thus, at best, fall under Rule 3 (3).
>
> 18. A Sonologist, imaging specialist, or Radiologist or Registered Medical Practitioner who has Post Graduate degree or diploma or six months of training for one year's experience in sonography or imaging scanning can only perform ultrasound tests, in a genetic clinic, ultrasound clinic and imaging centre, registered under Rule 3 (2). The registered medical practitioner is defined under Section 2 (m) of the PC & PNDT Act, 1994. The definition provides that such a registered medical practitioner means medical practitioner, who possesses any recognised medical qualifications as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956, and whose name has been entered in State Medical Register.
>
> 19. The petitioners are not medical practitioners having recognised medical qualifications under clause (h) of Section 2 of the Indian Medical

Council Act, 1956; and they are not entered in the State Medical Register. They are qualified differently under the Homeopathic Medicine Central Council Act and the Indian Medicine Central Council Act, 1971. The petitioners are thus not qualified and eligible to run an ultrasound centre/ clinic, and they could not be registered by the Chief Medical Officer, for carrying out ultrasound tests/ sonography. They were not entitled and were wrongly allowed registration by Chief Medical Officer under the PC & PNDT Act, 1994.

20. The registration of a person under the PC & PNDT Act, 1994, if he is not qualified and eligible under the Act for such registration, will not give him any right to continue and to seek renewal in contravention of the provisions of the Act. The plea of estoppel is not applicable against a clear statutory prohibition. The public purpose for enacting the PC & PNDT Act, 1994 also does not give any right to the petitioners to claim to continue to run the ultrasound centre/ clinic on the basis of registration, which could not be given under the Act. All the petitioners were given show-cause notices on the directions of the Chairman, State Competent Authority, Director General U.P. dated 5.8.2008 and the District Magistrate dated 11.8.2008, and that their registrations were cancelled by the Chief Medical Officer, Siddharthnagar by a reasoned order.

…..

23. The horrible acts of crime committed by unethical persons in readily aborting female foetuses, of which sex is determined by the modern techniques, gave rise to the need of statutory regulations of the prohibition on sex determination and sex selection by pre-conception and prenatal diagnostic techniques. The regulation provided by the PC & PNDT Act, 1994 for carrying out these tests only by qualified medical personnel and for registration of the genetic counselling centre, genetic clinic, genetic laboratory and ultrasound centres, was found necessary in the public interest.

…

26. The PC & PNDT Act, 1994 has been enacted to serve a larger public purpose, to curb female foeticide and to check the declining ratio of the female population as against the male population. It is also important social welfare legislation to prevent abortion of female child to avoid brutal discrimination and to ensure gender justice at conception and birth. Sex determination and sex selection, and consequent abortion of a female foetus with the help of modern techniques is a horrendous crime against the entire humanity. The millions of female foetuses were aborted in the country by unqualified and unethical medical practitioners, with the aid of modern scientific techniques in comparison to ethnic cleansing and genocide by dictators.

…..

28. A combined reading of the definition of registered medial practitioner under Section 2 (m), with Section 3 of the PC and PNDT Act, 1994 and Rule 3 (3) of the PNDT Rules, 1996, clearly prohibits medical practitioners, except those, who are registered under Section 2 (h) of the Indian Medical Council Act, 1956 and are entered in the State Medical Register to carry out the ultrasound tests and prohibit registration of centres, which do not have in their employment, such medical practitioners. The registration of a medical practitioner under the Indian Medicine Council Act, 1956, and inclusion of his name in the State Medical Register is an essential qualification for registration of ultrasound clinics to conduct tests, other than tests for sex determination and sex selection. The requirement of registration of genetic clinic/ ultrasound clinic/ imaging clinic under Rule 3 (3) of the PNDT Rules, 1996, is necessary for any person having adequate space and equipment. He must either possess himself or employ a person, who is qualified under Rule 3 (3) of the PNDT Rules, 1996. Further, even for a registered medical practitioner, the additional qualifications of possessing post graduate degree or diploma or six months training or one year's experience in Sonography or image scanning is also must for registration."

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PROHIBITIONS UNDER THE ACT

The PNDT Act is a comprehensive piece of legislation that prohibits sex selection before or after conception and misuse of pre-natal diagnostic techniques for the determination of the sex of the foetus, leading to female foeticide as also advertisements in relation to such techniques for detection or determination of sex. The Act also specifies the punishment for violation of its provisions. Accordingly, the Act imposes the following Prohibitions:

1. Prohibitions on Places:

No genetic counselling centre or genetic clinic or genetic laboratory shall

- conduct; or
- associate with; or
- help in conducting pre-natal diagnostic techniques unless registered.[36]

Moreover, the registration certificate has to be displayed prominently on a board in such a place.[37]

- employ or cause to be employed or take services of any person, whether on the honorary basis or on payment who does not possess prescribed qualifications.[38]

  A qualified person could be:

- Gynaecologist
- Medical Geneticist
- Paediatrician
- Registered Medical Practitioner
- Radiologist
- Sonologist
- Imaging Specialist

Who fulfils the requirements laid down under the Act

- conduct or cause to be conducted a pre-natal diagnostic technique except for the purposes specified in the Act.
- conduct or cause to be conducted a pre-natal diagnostic technique including ultrasonography for the purpose of determining the sex of the foetus.[39]

Note: Every genetic counselling centre or genetic clinic or genetic laboratory is required to display prominently a notice in English and in the local language or languages that conduct sex-determination tests/disclosure of sex of the foetus is prohibited.[40]

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[36] Section 3 (1) of the Act.
[37] Section 19 (4) of the Act.
[38] Section 3 (2) of the Act.
[39] Section 6 (a) of the Act.
[40] Rule 17 (1) under the PNDT Rules.

2. Prohibition on Persons:

- No person shall open any genetic counselling centre, genetic clinic or genetic laboratory including clinic, laboratory or centre having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of the foetus and sex selection unless such centre, clinic or laboratory is duly registered separately or jointly. [41]
- No qualified person shall conduct or aid in conducting himself or through any other person a pre-natal diagnostic technique at any place other than the place registered.[42]

ILLUSTRATION:

A. No one can conduct a pre-natal diagnostic technique at home unless the facility at home is also registered.

B. No one can conduct a pre-natal diagnostic technique either on a voluntary basis or on a charitable basis unless the body is registered after meeting all necessary qualifications of persons, place and equipment.

- No person shall render any services to any facility, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such facility is duly registered under the Act.[43]
- No person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2) of Section 4 of the Act. [44]
- 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.[45]
- No person shall conduct or cause to be conducted any pre-natal diagnostic technique including ultrasonography for purpose of sex determination.[46]

In fact, a good doctor should counsel the patient that sex determination is illegal and should also positively propagate about the girl child. A doctor is highly regarded in society and any counselling by him/her will have a great impact on the implementation of the Act.

- 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

[41] Section 18 (1) of the Act.
[42] Section 3 (3) of the Act.
[43] Section 18(1) of the Act.
[44] Section 4 (4) of the Act.
[45] Section 4(5) of the Act.
[46] Section 6 (b) of the Act.

both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.[47]

- No person shall, by whatever means, cause or allow to be caused the selection of sex before or after conception.[48]
- 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 whatsoever.[49]

ILLUSTRATION:

A. Dr Lata tells Ramu it is time to celebrate, give me a packet of sweets. This is illegal as indirectly the Doctor is communicating to the father that it is a baby boy.

B. Dr.Lama told Geeta, Oh! your shoulders have become heavy now. This is also illegal as the same indirectly conveys the fact that it is a baby girl.

C. Dr Singha used to tell all his patients "You see I have all the latest techniques from America, I can tell the sex of the child within 10 weeks of pregnancy". In every case, the doctor used to tell his patients it was a girl and his wife Mrs Singha used to conduct the abortions the very next day. Dr.Singha's actions are in clear violation of the PNDT law. Dr Singha's actions also amount to misrepresentation and fraud.

D. Dr.Himmat never told his patients anything, he used to raise his left eyebrow when it was a boy and right eyebrow when it was a girl. Dr.Himmat's actions though creative are also in violation of the PNDT law as the same amount to signs and gestures which is also prohibited.

Note: The Central Supervisory Board has laid down a code of conduct under section 16 (iv) of the Act to be observed by persons working in bodies specified therein and as such the same has to be strictly followed.[50]

3. Miscellaneous Prohibitions:

- No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of the foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet,

[47] Section 3A of the Act.
[48] Section 6(c) of the Act.
[49] Section 5 (2) of the Act.
[50] The Supreme Court has also stressed the formulation of such a code of conduct. The same has now been incorporated under Rule 18 of the amended PNDT Rules.

regarding facilities of pre-natal determination of sex or sex selection before conception available at such centre, laboratory, clinic or at any other place.[51]

ILLUSTRATION:

A. A Magazine published in America but distributed by AB Co in India with an office in Delhi carries an advertisement for sex determination. Such an action on the part of the company in Delhi is in violation of the Act.

Advertisement includes any notice, circular, label, wrapper or other documents including advertisement through the internet or any other media in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal, light, sound, smoke or gas.[52]

B. Wrappers of Meera Milk food with a colourful picture of a baby boy—if you want a baby boy contact Meera Diagnostic Center and they will help you, otherwise a money-back guarantee. This is clearly illegal.

- No person shall sell, distribute, supply, rent, allow or authorize the use of any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus whether on payment or otherwise to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person or body not registered under the Act.[53]

"Person" includes manufacturer, importer, dealer or supplier of ultrasound machines/imaging machines or any other equipment capable of detecting sex of foetus" as also any organization including a commercial organization.

Further, the provider of such machine/equipment to any person/body registered under the Act shall:

a) send to the concerned State/UT Appropriate Authority and to the Central Government, once in three months a list of those to whom the machine/equipment has been provided; and
b) take an affidavit from such body or person purchasing or getting authorization for using such machine/equipment that the machine/equipment shall not be used for detection of sex of foetus or selection of sex before or after conception.[54]

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[51] Section 22 (1) of the Act.
[52] Explanation to Section 22 of the Act.
[53] Section 3B of the Act read with Rule 3A under the amended PNDT Rules.
[54] Rule 3A(2) and (3) under the amended PNDT Rules.

PRESCRIPTIONS AND REGULATIONS

The PCPNDT law is a prohibitory and regulatory statute; it seeks to put in place a mechanism that prohibits sex selection while preventing the misuse and over-use of the pre-natal diagnostic techniques. At the same time, the Act permits and regulates the use of such techniques for the purpose of detection of specific genetic abnormalities or disorders and for the larger benefit of mankind. The Act further permits the use of such techniques only under certain conditions by the registered bodies. The PCPNDT Act prohibits the conduct of pre-natal diagnostic techniques for the determination of the sex of the foetus but allows the conduct of pre-natal diagnostic techniques for purposes that have also been specified under the Act. These are for detection of:

- chromosomal abnormalities;
- genetic metabolic diseases;
- haemoglobinopathies;
- sex-linked genetic diseases;
- congenital anomalies;
- other abnormalities or diseases as specified by the Central Supervisory Board.[55]

The Central Supervisory Board has laid down a representative list of indications for an ultrasound during pregnancy (see new **Form F** under the amended Rules).

The conduct of pre-natal diagnostic techniques is further permissible if the person qualified is satisfied for reasons to be recorded in writing that any of the following conditions exist:

- age of the pregnant woman is above thirty-five years;
- the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
- the pregnant woman has been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
- the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease;
- any other condition specified by the Central Supervisory Board.[56]
- The doctors conducting pre-natal diagnostic techniques should maintain proper documentation. Under the amendments, it has been made mandatory that the person conducting ultrasonography on a pregnant

[55] Section 4 (1) read with Section 4 (2) of the Act.
[56] Section 4 (1) of the Act read with Section 4 (3) of the Act

woman shall **keep a complete record** thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to a contravention of provisions of section 5 or section 6 unless the contrary is proved by the person conducting such ultrasonography.[57]

Once the doctor follows all the necessary requirements under the law and does the necessary paperwork as mentioned below, he can have no fear from the law. ***The woman must not only make sure that her consent is taken in case of invasive procedures but must ask for a copy of every document that she signs. If she does not understand anything she must ask for an explanation and it is her right to be told.***

Pre-implantation genetic diagnosis or a pre-natal diagnostic technique/test /procedure such as amniocentesis, chorionic villi biopsy, foetoscopy, foetal skin or organ biopsy or cordocentesis can be conducted:

- **ONLY** after obtaining the written consent of the woman in the prescribed format in a language that she understands. The format for the written consent is provided in **Form G** under the Rules.

However, an exception is that where a Genetic Clinic has taken a sample of any body tissue or body fluid and sent it to a Genetic Laboratory for analysis or test, it shall not be necessary for the Genetic Laboratory to obtain fresh consent in Form G.

- ONLY after giving her a copy of the same, and
- ONLY after explaining all known side and after-effects of the procedures to the pregnant woman.[58]

Under the amended Rules, a distinction has been made between invasive and non-invasive techniques for the purpose of obtaining consent and consent is required in the case of invasive techniques. However, in the case of ultrasonography, other documentation is now required. Any person conducting ultrasonography/image scanning on a pregnant woman shall give a declaration on each report on ultrasonography/image scanning that he/she has neither detected nor disclosed the sex of the foetus of the pregnant woman to anybody.The pregnant woman before undergoing ultrasonography/image scanning declares that she does not want to know the sex of her foetus[59].

Link with the Medical Termination of Pregnancy Act, 1971:

[57] Proviso to Section 4(3) of the Act.
[58] Section 5 of the Act.
[59] Rule 10 (1A) under the amended PNDT Rules.

It is important to mention that the PCPNDT Act has an important link with the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the MTP Act). Prior to 1971, abortions were considered illegal in our country and in fact the same could be punishable under the Indian Penal Code. In 1971, the MTP Act was passed which provides for the termination of certain pregnancies by registered medical practitioners (as defined under the MTP Act). Thus it is clear that abortion is not provided for in all cases of pregnancy but only in the case of certain pregnancies. Under the Act, termination of pregnancy is possible where:

- the length of the pregnancy does not exceed twelve weeks;
- the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks: in this case, the opinion of two registered medical practitioners in favour of the termination of the pregnancy is essential.[60]

It is Permitted only:

i. if the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health[61]; or
ii. if there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.[62]

It has been clarified under the Act that where the pregnancy is alleged to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.[63] Thus, **pregnancy due to rape** can be **validly terminated.**

Further, where the pregnancy occurs as a result of the failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.[64] Thus, ***failure of methods of family planning*** could also give rise to ***a ground for termination of the pregnancy***.

While considering whether the continuance of the pregnancy would involve risk or injury to the health of the pregnant woman, the account may be taken of the pregnant woman's actual or reasonable foreseeable environment.[65]

There is another provision under which the pregnancy can be terminated validly irrespective of the length of the pregnancy and the opinion of two registered medical practitioners. In this case, the registered medical practitioner

[60] Section 3 (a) and (b) of the MTP Act.
[61] Section 3 (i) of the MTP Act.
[62] Section 3 (ii) of the MTP Act.
[63] Explanation 1 to Section 3 of the MTP Act
[64] Explanation 2 to Section 3 of the MTP Act
[65] Explanation 3 to Section 3 of the MTP Act.

should be of the opinion, formed in **good faith** that the termination of the pregnancy is immediately necessary ***to save the life of the pregnant woman.***[66]

The opinion of the registered medical practitioners should be formed in good faith. Such opinion has to be certified in **Form I** under the MTP Regulations[67] framed under Act[68]. In this form, the reasons for forming the opinion also has to be stated. Further, every registered medical practitioner who terminates any pregnancy is required within three hours from the termination of the pregnancy to certify such termination in the said form ***where again the reason for terminating the pregnancy has to be specified***[69].

It is clear from what is above mentioned that termination of pregnancy is possible only in certain cases and where the pregnancy is more than 12 weeks old, opinion of two registered medical practitioners as defined under the MTP Act is essential, and then also abortion is possible only up to the twentieth week. Thus if a woman were to go in for abortion after 12 weeks of pregnancy, the opinion of two registered medical practitioners would be essential.

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[66] Section 5 of the MTP Act.
[67] The Medical Termination of Pregnancy Regulations, 1975 published in the Gazette of India dated
4.10.75.
[68] Regulation 3 (1) under the MTP Regulations.
[69] Regulation 3 (2) under the MTP Regulations.

MAINTENANCE AND PRESERVATION OF RECORDS

The Act and the Rules also deal elaborately with the maintenance and preservation of records. Maintenance of proper records has a dual advantage:

– from the point of view of the centre or clinic or laboratory, if there is any complaint against them, through the records they can prove that their action was in accordance with the law and the rules.

– from the point of view of the implementing authorities, while non-maintenance of proper records can itself give rise to a cause of action, the fact that proper records have not been maintained or that for certain cases no records have been maintained can be indicative of the fact that the centre or the clinic or the laboratory is conducting pre-natal diagnostic techniques for the purpose of determination of the sex of the foetus or in violation of the Act.

Every Genetic Counselling Centre, Genetic Clinic or Genetic Laboratory, Ultrasound Clinic and Imaging Centre is required to maintain certain records:

Register showing in serial order:

- names and addresses of men or women given genetic counselling and/or subjected to a pre-natal diagnostic procedure or test;
- names of their spouses or fathers;
- the date on which they first reported for such counselling, procedure or test.[70]

Further,

- Record by every Genetic Counselling Centre of each woman counselled is to be as specified in *FORM D* under the Rules;[71]
- Record by every Genetic Laboratory of each man or woman subjected to pre-natal diagnostic test is to be as specified in *FORM E* under the Rules;[72]
- Record by every Genetic Clinic of each man or woman subjected to the pre-natal diagnostic procedure is to be as specified in *FORM F* under the Rules.[73]

The other kinds of records include:

- Case records
- Forms of consent
- Laboratory results
- Microscopic pictures

[70] Rule 9 (1) under the Rules.
[71] Rule 9 (2) under the Rules
[72] Rule 9 (3) under the Rules.
[73] Rule 9 (4) under the Rules

- Sonographic plates or slides
- Recommendations and letters

A person conducting ultrasonography on a pregnant woman shall keep a complete record thereof in the clinic in such manner, as may be prescribed, and ***if any deficiency or accuracy is found in the same, that would be treated as a contravention of provisions of section 5 or section 6 unless the contrary is proved*** by the person conducting the ultrasonography.[74]

Moreover, every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall send a complete report in respect of all pre-conception or pregnancy-related procedures/ techniques/ tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority.[75]

These records are required to be maintained for a period of 2 years[76] from the date of completion of counselling, pre-natal diagnostic procedure or pre-natal diagnostic test or in the event of any legal proceeding, till the final disposal of the legal proceeding.[77]

In case the records are maintained on a computer or other electronic equipment, a printed copy of the record is required to be taken and preserved after authentication by a person responsible for such record.[78]

Records, at all reasonable times, are to be made available for inspection to the Appropriate Authority or a person authorized by the Appropriate Authority on this behalf.[79]

The Appropriate Authority is to maintain a permanent record of**:**

- applications for grant of certificate of registration;
- applications for renewal of the certificate of registration as specified in Form H under the Rules;
- letters of intimation of every change of employee, place, address and equipment installed.[80]

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[74] Proviso to Section 4 (3) of the Act.
[75] Rule 9(8) under the amended PNDT Rules.
[76] Section 29 (1) of the Act.
[77] Proviso to Section 29 (1) of the Act read with Rule 6 under the Rules.
[78] Rule 9 (7) under the Rules
[79] Section 29 (2) of the Act.
[80] Rule 9 (5) under the Rules

OFFENCES & PENALTIES

(A) Offence by persons

I. If any person acts contrary to the prohibitions listed above including under Sections 22(1) and 22(2) relating to the advertisement, he will be liable to be punished with:

- imprisonment which may extend to 3 years; and
- a fine which may extend to Rs.10,000/-.[81]
- Any subsequent conviction entails:
- imprisonment which may extend to 5 years; and
- a fine which may extend to Rs.50,000/-.[82]

II. In case of a person seeking the aid of the bodies or persons referred to above for sex selection or for conducting pre-natal diagnostic techniques on any pregnant woman for purposes other than those specified in Section 4(2), he shall be liable to be punished with:

- imprisonment which may extend to three years; and
- fine which may extend to Rs.50,000/-.
- Any subsequent conviction entails:
- imprisonment which may extend to 5 years; and
- a fine which may extend to Rs.1 lakh.[83]

III. In the case of a registered medical practitioner, his name shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action:

- including suspension of the registration if charges are framed by the court and till the case is disposed of; and
- for the removal of his name from the register of the council on conviction for the period of:
  -five years for the first offence;
  -permanently for the subsequent offence.[84]

IV. Husband and relatives of the pregnant woman who undergoes a pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4 shall be:

- presumed to have compelled the woman to undergo the pre-natal diagnostic technique unless the contrary is proved;[85]and
- liable for abetment of an offence under Section 23 (3); [86]and
- punishable for the offence under Section 23 (3). [87]

[81] Sections 22 (3), 23 (1) and 23 (3) of the Act.
[82] Sections 23 (1) of the Act.
[83] Section 23 (3) of the Act.
[84] Section 23 (2) of the Act.
[85] Section 24 of the Act.
[86] Section 24 of the Act.

If the contrary is proved, the woman can also be likewise punished. For the removal of doubts, it has been made clear under the amendments that the provisions of Section 23 (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.[88]

V. If any person contravenes any provision of the Act or the Rules made thereunder for which no penalty has been specified, he will be liable to be punished with:

- imprisonment which may extend to three months; or
- fine which may extend to Rs.1000/-; or with both.[89]
- Any subsequent contravention entails an additional fine which may extend to Rs.500/- for every day during which such contravention continues after conviction for the first such contravention.

(B) Offence by a company:

A company:

- means anybody corporate;
- includes a firm or other association of individuals.[90]
- In case of offence by a company:
- every person in charge of; and
- every person responsible
- to the company for the conduct of the business of the company at the time the offence was committed
- the company
- shall all be deemed to be guilty and accordingly proceeded against and punished.[91]

The aforesaid liability of such person of the company is subject to the qualification that if any such person proves that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence, he may not be so liable.[92]

If consent, connivance of or that it was attributable to any neglect on the part of:

- Director and in relation to a firm, a partner in the firm
- Manager
- Secretary
- Other officers

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[87] Section 24 of the Act.
[88] Section 23(4) of the Act
[89]Section 25 of the Act.
[90] Explanation (a) to Section 26 of the Act.
[91] Section 26 (1) of the Act.
[92] Proviso to Section 26 (1) of the Act.

they shall also be deemed to be guilty and accordingly proceeded against and punished.[93]

Hon'ble Apex Court in the case of ***S.M.S. Pharmaceutical Ltd. Vs. Neeta Bhalla***[94] held that the necessary averments ought to be in the complaint before a person can be subjected to a criminal process by way of fastening vicarious liability on him in his capacity as director of the company. Those necessary averments are that the Director of the Company was in charge of and responsible for the conduct of the business of the company.

(C) Nature of the Offence:

Every Offence under this Act shall be cognizable, non-bailable and non-compoundable.[95]

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[93] Section 26 (2) of the Act
[94] 2005 (8) SCC 89
[95] Section 27 of the Act.

INVESTIGATION & CASE STUDIES

Ordinarily, any person can set the criminal law in motion. The Parliament, however, keeping in view the sensitivity and/ or importance of the subject, have carved out specific areas where violations of any of the provisions of a special statute like PCPNDT Act can be dealt with only by the authorities specified therein.

Section 17 & 30 of the PCPNDT Act talks about the authority to investigate the offences under the Act and the powers of the appropriate authority regarding the investigation.

According to Section 17(4) (c & e): The Appropriate Authority shall have the following functions, namely: -

(a)..(b)..

(c) **to investigate** complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;

(d)...

(e) to take **appropriate legal action** against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also **to initiate independent investigations** in such matter;

For the purpose of above-mentioned Investigation, the Appropriate authority can exercise following powers conferred on it by Section 17A & Section 30 of the Act:

1. It can summon any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;
2. It can summon to produce any document or material object relating to violation of the provisions of this Act or the rules made thereunder;
3. It can issue a search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and any other matter which may be prescribed.[96]
4. It can enter, search at all reasonable times any premises and seize & seal any material object found therein if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.[97]

Rule 18A has been inserted vide notification No. 86 Dated 26 February 2014, Which provide the following **Code of conduct to be observed by**

[96] Section 17 A of the Act.
[97] Section 30 of the Act.

Appropriate Authorities ***for processing of complaint and investigation,*** namely:

i. to Maintain appropriate diaries in support of registration of each of the complaint or case under the Act;
ii. to attend to all complaints and maintain transparency in follow-up Action of the complaint;
iii. to **investigate** all the complaints ***within twenty- four hours*** of receipt of the complaint and ***complete the investigation within forty-eight hours*** of receipt of such complaint;
iv. as for as possible, not to involve the police for investigating cases under the Act as the cases under the Act are tried as complaint cases under the code of Criminal procedure,1973(2 of 1974)

By analyzing the above provisions of the Act & Rules, it is clear that the duty and powers to investigate the offences under the Act are only of the Appropriate authority appointed under the Act. Rule 18A (3) generally prohibits the involvement of police for investigating cases under the Act as the cases under the Act are tried as complaint cases under the code of Criminal procedure,1973(2 of 1974). The powers of the appropriate authority are well defined under the Act, but it does not expressly include the power to arrest, although the offences under the Act are cognizable.

Search and Seizure

A search is an integral step in a criminal investigation. Whenever an appropriate authority or any other authorized officer has reason to believe that an offence under the Act has been or is being committed, he may search a genetic counselling centre, a genetic laboratory or genetic clinic or any other place which is suspected of conducting pre-natal diagnostic techniques.

The scope of the powers of the appropriate authority to search and seize is very wide and it includes the power to:

- Enter freely into the place of search.
- Search at all reasonable times.[98]
- Examine and inspect all documents like:

i. Registers
ii. Records including consent forms, referral slips, charts, laboratory results, microscopic pictures
iii. Forms
iv. Books
v. Pamphlets

[98] Section 30(1) of the Act read with Rule 12 (1) under the PNDT Rules

vi. Advertisements
vii. Material objects like sonographic plates or slides
viii. Equipment like ultrasonography machines, needles, foetoscopes etc.[99]

- Seize and seal any document, record, material object or equipment etc. if there is reason to believe that it may furnish evidence of the commission of an offence punishable under the Act.

It has been clarified that 'material object' would include records, machines and equipments; and 'seize' and 'seizure' would include 'seal' and 'sealing' respectively.

The Act has to be read in conjunction with the rules under the Act and the Code of Criminal Procedure to ensure that the search and seizure are done in a fair and non-arbitrary manner.

Safeguards or Prerequisites to be followed during the Search and Seizure:

Search and Witnesses:

a. During the search at least two independent witnesses of the locality should be present;[100]
b. If no such persons are available or willing to be witness to the search, then two such persons of another locality should be present;
c. The search should be made in the presence of the two or more independent witnesses;[101]
d. The witnesses are to be selected by the appropriate authority or the officer duly authorized to conduct a search;
e. The witnesses so selected should be unprejudiced and uninterested as the object of the section is to ensure fair dealing and a feeling of confidence and security amongst the public;
f. The witnesses may be summoned by Court to appear as witnesses.
g. Any person suspected of having any object on his person may also be searched. However, if such a person, is a woman, the search can be done only by a female officer.

Preparation of List:

a. A list of documents, records, material objects etc. seized during the search should be prepared in duplicate and both copies of such list shall be signed on every page by the appropriate authority or the officer authorized and the witnesses to the seizure;[102]

[99] Section 30 (1) of the Act.
[100] Rule 12(1) under the PNDT Rules.
[101] Proviso to Rule 12(2) under the PNDT Rules
[102] Rule 12(2) under the PNDT Rules.

b. Assistance of your office staff can always be taken during the process of search and seizure;
c. The list should be prepared at the place affecting the seizure and if it is not practicable to do so at the place affecting the seizure then for reasons to be recorded in writing it can be done in any other place but it has to be in the presence of the witnesses;
d. A copy of the list prepared must be handed over to the person from whose custody the document, record or material object etc. is being seized or his representative under acknowledgement or sent by registered post to him if he is not available at the place of effecting the seizure;[103]
e. The person from whose custody the document, record or material object etc. is being seized or his representative should be permitted to attend during the search and seizure;
f. The appropriate authority or the officer duly authorized on this behalf may seize any document, material object, record or equipment and take the same into safe custody;
g. It is preferable that along with the preparation of a list of objects seized, a slip is made and pasted on each object seized along with the date, time and the signature of the witnesses;
h. After a list of seizures is prepared the same must be sent to the Magistrate having jurisdiction or in charge of the case within 24 hours of the seizure by the appropriate authority or officer duly authorised. **Permission to retain the seized objects should be obtained from the Court.** *The owner of the seized object may make an application to the court for the release of the same. The court may do so after imposing conditions for custody and taking a bond to the effect that, the objects must not be misused for conducting sex-determination tests and that the objects must be produced in Court as and when required etc.*
i. Police aid can be taken if the appropriate authority apprehends a law and order problem during the process of search and seizure. But only in exceptional cases because Rule 18A (3)(iv) prohibits the involvement of police as for as possible.

Sealing:

a. If any material object seized is perishable in nature then arrangements shall be made promptly by the appropriate authority or officer duly authorised for sealing, identification and preservation of the same and send the same to a facility for test if so required;[104]

[103] Rule 12 (3) under the PNDT Rules and the prroviso to the same.
[104] Rule 12 (4) under the PNDT Rules.

b. And till such arrangements for safe removal are made the refrigerator or other equipment used by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic for the preservation of such material object seized shall be sealed; In case of such sealing it is important to mention the same in the list of seizure prepared;[105]
c. If the search and seizure is not completed in a day then the appropriate authority or officer duly authorised may either seal the premises or mount a guard for safekeeping to prevent any tampering of the documents, records, material objects etc;[106]
d. After the seizure the seized objects can be removed to your own premises or may be left in the custody of a respectable person of the locality. If it is not possible to remove the seized objects, they may be retained where they are found after taking a bond from the owner that the same would be produced before the court as and when required.

The machines of the facility that are seized and sealed may be released if such organization pays a penalty equal to five times the registration fee to the Appropriate Authority concerned and gives an undertaking that it shall not undertake detection of sex of the foetus.[107]
The appropriate authority is duty-bound to maintain systematic records of the search and seizure and the same would also safeguard the appropriate authority against any allegations of abuse.

Collection of Evidence during Investigation:

The evidence that needs to be collected in order to make out a case under the PNDT Act varies depending upon the nature of the violation and in some cases, the pieces of evidence can overlap.

I. Evidence of Illegal Advertisement:

In case any genetic counselling centre, genetic laboratory, genetic clinic, ultrasound clinic or imaging centre advertises the facilities for pre-natal determination of sex or sex selection before or after conception, the advertiser, the distributor, the person or centre who issues or causes to be issued an advertisement for the aforementioned purpose will all be equally liable under the PNDT Act.

The documentary evidence may include:

[105] Proviso to Rule 12 (4) under the PNDT Rules.
[106] Rule 12 (5) under the PNDT Rules.
[107] Rule 11(2) under the amended PNDT Rules.

(A) the paper cutting of the advertisement, the name of the newspaper or magazine or any other document which carries the advertisement, the date of the issuance of the advertisement;

(B) the name of the advertiser, his place of business;

(C) the name of the owner of the clinic, centre or laboratory issuing such advertisement, the address of the said centre, laboratory or clinic;

(D) the name of the distributor, his place of business;

(E) the photograph of the advertisement, the photograph of the hoarding, board, wall on which the advertisement is present etc.

(F) the letters heads, memorandum of association, annual reports, statements showing organizational structure and ownership of the newspaper, or a distributorship, or the centre. This information has to be collected in order to link the person to the violation.

The aforementioned list is not exhaustive but merely illustrative.

II. Evidence In case of conducting a test for determination of sex or communication of the sex of the foetus:

The investigation of cases of this nature is difficult because of the collusion between the doctor and the persons wanting the test. Nevertheless, there are ways and means to collect evidence in such cases as well:

The documentary evidence may include

1. referral slips
2. consent forms
3. laboratory results
4. microscopic pictures
5. sonographic plates or slides
6. registers containing names and addresses of patients and their families
7. case history of the patient
8. records of clients maintained on the computer or other electronic equipment can be taken on a floppy or a printed copy of the same
9. floppy or printed copy of the ultrasound image of the foetus
10. Receipt of the fee paid for the test, details of cheque payment etc.

Other Evidence & Decoy Operations:

Apart from documentary evidence, decoy witnesses namely pregnant women can also be sent to suspected centres to find out if the pre-natal determination of sex is done. If it is found that such centres are conducting the tests the statements of such witnesses can be recorded by the appropriate authority. That hidden tape recorder or camera can also be used to record the conversation between the decoy witness and the doctor. When decoy witnesses are sent for getting the tests done then the Chief Medical Officer or appropriate

authority can at the same time raid the premises or inspect the premises and collect the evidence on the spot.

As and when decoy witnesses are used their statement should be taken on affidavit that they are getting the tests done on humanitarian grounds and on the grounds of public interest in order to assist the appropriate authority.

In some cases, women may themselves complain that they were forced to get the sex of the foetus determined. Then that woman's statement can be recorded and she can also be called as a witness to depose about the doctor, the centre and the family members who forced her to get the test done.

III. Evidence in case of non-registration, cancellation or suspension of registration:

The collection of evidence in these cases is not very difficult as most of the records are available with the appropriate authority itself.

The documentary and oral evidence may include

(a) a Copy of the registration certificate
(b) a Copy of the affidavit given by the owner that he will not conduct pre-natal determination of sex.
(c) a Copy of the particulars given about the qualifications of the employees while registration
(d) Documents collected from the MCI, the degree certificate of the medical practitioners (employees of the centre) etc.
(e) Statements of decoy witnesses
(f) The tape and video recording
(g) Other materials collected as evidence in case of conducting tests.

Case Study- 1

On the 10th of September 2020 Mr. A was shopping in the busy market in Lucknow. Suddenly he was distracted by a bright hoarding near a temple premises which displayed the name and address of a clinic which specialised in dispensing medicine which was effective and guaranteed the birth of a male child to couples who took the medicine.

The man being himself a father of two girls was disgusted by the advertisement of gender discrimination. He went back home, got a camera and clicked a photograph of the advertisement. He then mailed his complaint regarding the matter and the photograph as evidence to DMs office requesting him to take action.

The DM acted upon the complaint and an inspection under the PCPNDT Act was conducted on the premises of said clinic. The inspection team found samples of medicines whose packet displayed the above advertisement, samples were seized. It was also noted that neither was the doctor nor was the clinic

registered under the PCPNDT Act. The clinic was sealed, seized and legal proceedings were filed in CJM Court under the PCPNDT Act.

Questions and Responses

Q-1. What violations were committed in the instant case under the Act?

Section 22(1), (2), Section 3A, Section 6(C)

Q-2. Who all will be acted against as accused in the instant case and who will be prosecuted?

Owner of the clinic, publisher, printer, distributor of advertisement, manufacturer of drug/medicine

Q-3. What evidence would be adequate for the Court to reach a verdict?

Photograph, 1st click/printout, mail sent to DM, Order of Inspection by AA, as per Rule 12 authorization order, inspection note, the oral evidence of two witnesses, seizure of records, registers, pamphlet, advertisement, a sample of medicines, display stickers etc.

Q-4. What punishment would the court grant in the case?

Section 22(3), Section 25, Section 23

Q-5. Can this clinic be registered under the PCPNDT Act?

No

Case Study -2

In a district, a decoy operation was planned by an NGO. A pregnant female employee of the organisation approached one of the USG centres with a man, posing as her spouse, and complained of severe stomach cramps. Some quarries were put to the woman and she responded to all the quarries. The attending doctor did not get Form-F and Form-G (consent form) filled and signed by the decoy. He proceeded to explain to her that the ultrasound procedure would be conducted without any hassles but did not explain to her the side effects and after-effects of the procedure.

The man along with the decoy asked the doctor if they could know the sex of the foetus to which the doctor replied in the affirmative. When the doctor was asked about any problem which can be caused, enquiring the sex of a child, the doctor dismissed their concern.

He pointed to a miniature temple inside the ultrasound room in which the idols of female and male deities were placed and told the decoys that he would point to one or the other to indicate the sex of the foetus.

However, before the procedure, a planned phone call interrupted them and claiming a family emergency, they scheduled an appointment for a future date.

The audio and video of the entire conversation were recorded by the decoy using a hidden camera and microphone. This was submitted by the NGO to the District Magistrate.

The inspection was carried out by the Appropriate Authority at the USG centre it was found that the centre did not regularly maintain the register, copies of Form-F and consent Form of the patient as were required under the PCPNDT Act. A copy of the registration certificate was not displayed in the centre and neither was a copy of the Act and Rules found.

Section 4(3), Section 5(a,b,c), Section 3A

The centre was sealed, articles were seized and legal proceedings were initiated in the Court of CJM.

Section 22(2,3), Section 29(1), Rule 9(4), Rule 17(2), Rule 18

Question and Responses:

Q-1. Is conducting a decoy operation legally permitted?

It is legal under the Mukhbir Yojana Notified by State Government.

Q-2. What violations/offences have been committed under the Act?

Section 22(3), Section 25, Section 23

Q-3. Who all can be prosecuted against?

Owner of the centre, doctor, employees assisting the doctor,

Q-4. What evidence would be adequate for court?

Authorisation of Decoy, marking of currency note given to the decoy to deposit as requisite fees, digital evidence if any, the oral evidence of decoy and person accompanying Order of Inspection by AA, as per r/12 authorisation order, inspection note, documents (consent form, referral slip, lab report, microscopic pictures, forms, books, advertisements, sonography plates, slides), equipments (sonography machines, fetoscopic, etc)

Case Study 3

An inspection was conducted by a team formed at the behest of the District Magistrate of District Allahabad on 3rd August 2021. The inspection was conducted in 12 USG centres and it was a spontaneous procedure of which nobody was informed earlier.

Many UltraSound Centres in the city were found to be in gross violation of many of the provisions of the PCPNDT Act. Some of the violations found during the inspection are as follows: -

- There was no notice on the premises of the centre to the effect that disclosure of sex of the foetus is not done at the centre and that it is an offence under the law.

Rule 17(1) Public Information

- Copy of the registration certificate was not displayed in a conspicuous place.

Section 19 (Display)

- Copy of Bare Act and Rules made thereunder was not available at the centre when asked by the inspection team?

Section 17(2)

- Register carrying the name and full addresses of the persons who had undergone ultrasound procedure/tests, name of their spouse/father and date of their first reporting in serial order was not maintained regularly at the centre.

Rule 9(1), Section 4(3), Section 5, 6, Section 29

- Copies of Form-F were visible with blank columns. The entries with the register did not match with the full addresses of patients and their serial numbers.

Section 4(3), Rule 9(4)

- Doctor conducting the ultrasound procedure/test was not the same as the one whose name had been submitted at the time of applying for registration in Form A.

Section 3(2), Rule 18(2)

- Name and Designation of the Doctor conducting the ultrasound procedure/test was not displayed on the USG Reports found at the centre.

Section 4(3)

- In light of findings during the inspection the centre was sealed and seized as per the PCPNDT Act and legal proceedings were filed by the appropriate authority in the CJM Court.

Q.- What punishment would the Court grant if the case is proved?

Section 22(3), Section 23(1,2,3)

Whether a FIR could be Lodged for the Offences under PCPNDT Act?

If we go through the provisions under sections 17, 17A, 28 of the Act & Rule 18A (3) of the Rules, one can say that only the appropriate authority has been assigned the duty & powers to Investigate the violation of the provisions of the Act & Rules. The intention of the Legislature is quite clear under the Rules. The rule vividly and expressly states that the appropriate authorities are entitled to conduct for processing of complaint and investigation, as far as possible, not to involve the police for investigating cases under the Act, as the cases under the Act are tried as complaint cases under the CrPC which manifests the intention of the Legislature that it is only the Appropriate Authority concerned as enumerated in Section 28(1)(a) and notified under Section 17(1) of the PCPNDT Act to investigate the offence and to file a complaint under Section 28(1)(a) and as such, police officers including Station House Officers are not empowered

under the PCPNDT Act to investigate the offences alleged to have been committed under the Act which is in consonance with Section 5 of the CrPC.

But in many cases, sections 27 and 28 of the PCPNDT act were interpreted in a different way, like section 27 makes the offence cognizable and in every cognizable case, police can investigate, the statutory bar under Section 28 applies only at the stage of cognizance. The Cognizance would be taken only on the complaint that has been filed in accordance with Section 28 of the PCPNDT Act, 1994.

Hon'ble Allahabad High Court in the case of **Dr Varsha Gautam Vs. The state of U.P. And others**[108] has held that "In our view, the said prohibition U/Section 28 of the PCPNDT Act does not apply at the stage of investigation and only relates to the stage when cognizance is sought to be taken by the concerned court. "

In the case of **Hardeep Singh Vs. State of Haryana and Ors.**[109]**,** where three questions which had been referred to it were considered, The Division Bench of Punjab-Haryana High Court answered the questions as under -

(1) FIR for the offence committed under PCPNDT Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.

(2) A report under Section 173 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only on the complaint that has been filed in accordance with Section 28 of the Act.

(3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.

Relying on the Above ***Hardeep Singh case*** (supra) Punjab-Haryana High Court has held in its latest pronouncement in the case of **Aparna Singhal vs the State Of Haryana And Anr**[110] Decided on **20 January 2022,** that, " In respect of an offence under the PCPNDT Act, FIR can be registered and investigation conducted; however, cognizance can only be taken on the complaint of any of the persons as mentioned in Section 28 of the Act."

But In the Case ***Of Dr Amritlal Rohledar, Versus State of Chhattisgarh***[111] ***High Court Of Chhattisgarh, Bilaspur*** did not Agree with the view taken by Punjab-Haryana High Court in the ***Hardeep Singh case (supra).*** *The Court said in para 47*

[108] (Criminal Misc. Writ Petition No. 5086 of 2006 Decided on 26/05/2006)
[109] CRM-M- No. 4211 of 2014,
[110] Criminal Misc. No.M-421 of 2021(O&M) Decided on 20 January 2022
[111] Criminal Misc. Petition No.2378 Decided on June17,2019

"47. However, in the matter of Hardeep Singh and another v. State of Haryana and others, heavily relied upon by the learned State counsel, ……With great respect and all humility at my command, I am unable to agree with the above view taken by the Punjab and Haryana High Court and differ with it respectfully.

48. Reverting finally to the facts of the present case, it is quite vivid that in the present case, offence under Section 23(1) of the PCPNDT Act is a cognizable and non-compoundable offence, but a complaint can be filed in the manner provided under Section 28 of the Act and the entire procedure for scientific investigation and filing of complaint has been prescribed under Sections 29 and 30 of the PCPNDT Act and the Rules of 1996. As such, by virtue of the provisions of Section 4 read with Section 5 of the CrPC, the provisions of the CrPC shall stand excluded to the extent indicated herein-above ***and the offence under the PCPNDT Act has to be investigated only by the appropriate authority appointed under Section 17(2) and therefore offence under the PCPNDT Act cannot be investigated under the provisions of the CrPC by registering FIR by the Station House Officer of Police Station concerned.*** *Therefore, no first information report can be lodged against the medical practitioner including the petitioner herein under Section 23 of the PCPNDT Act for the alleged offence said to have been committed under the PCPNDT Act."*

Here, If we go through the Interpretation of the similar provisions of the Transplantation of Human Organs Act, 1994 (for short "TOHO") by Hon'ble Apex Court in the case of **Jeevan Kumar Raut vs. Central Bureau of Investigation[112],** it has been held by the Apex Court in Para 15 &16 that- "15. TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for an investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences. ***TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code.***

[112] (AIR 2009 SC 2763)

16. ***The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorised officer. Nobody else could do it.*** *For the aforementioned reasons, the officer in charge of the Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority."*

Thus, as per the similarity of the provisions of TOHO, and the PCPNDT Act, we can say that it is only the Appropriate Authority who can investigate the matter and can file a complaint before the court.

The Bombay High Court (Division Bench) in the matter of ***Dr Sai v. The State of Maharashtra and another***[113] has examined the matter and held that the provision in the PCPNDT Act has been engrafted with an object that the provisions of the said Act may not be misused and police have been deliberately kept out of the purview of initiating prosecution, though the offences are made cognizable, non-bailable and non-compoundable by virtue of Section 27 of the said Act. It was further held that the entire process of taking legal action against the person violating the provisions of the PCPNDT Act which includes investigation of complaints has been entrusted to the Appropriate Authority. It was also held that in order to empower the Appropriate Authority, the powers to summon any person who is in possession of any information relating to violation of the provisions of the Act and the Rules made thereunder, production of any document or material object relating to possession of information relating to such violation including the powers of issuance of search warrant etc. are entrusted and conferred upon the Appropriate Authority. In general, the high ranking officers from the field of Medical have been notified as an Appropriate Authority to file such a complaint.

The Orissa High Court in the matter of ***Ramesh Chandra Naik and others v. State of Orissa***[114], while dealing with a similar issue and while quashing the investigation made by the police and the charge sheet filed by the police under Sections 23 and 25 of the PCPNDT Act, held as under:

> "Therefore, the Appropriate Authority has been given enormous power in the matter of investigation and also in taking appropriate legal action against the violators of provisions of the Act. The PCPNDT Act is a special enactment. Section 5 of the Cr.P.C. provides that where a special or local law provides an exclusive procedure for dealing with the offence under that law, the provisions of the Cr.P.C. to that extent so provided in the special law stands excluded. If a provision is clearly expressed in any special law or local law that would be called 'specific provisions'. In other words, if the special Act does not indicate the specific provisions for enquiry into, trial or otherwise dealing

[113] 2016 SCC Online Bom 8812
[114] 2018 (II) ILR – CUT – 134

with such offences then the procedure of the Code of Criminal Procedure would be applicable. Section 4 of Cr.P.C. also makes it clear that if an offence is committed under a special law then the provisions of that law would govern the investigation and trial of such offence and a police officer is not empowered either to submit a charge sheet or otherwise proceed under Chapter-XII of the Crpc. The powers under the Cr.P.C. are thus subject to any special provisions that might be made with regard to the exercise or regulation of those powers by any special Act."

The Orissa High Court further held as under -

"In spite of the right conferred on the police officer in the Code in registering the first information report and also investigating a case which relates to cognizable offence, in view of the special provision in the special Act, lodging of a first information report for the commission of an offence under PCPNDT Act and submission of charge sheet for such offence is not permissible. Cognizance of any offence under the PCPNDT Act can be taken by a Court based only on a complaint petition and that too being filed by the authorities mentioned in clause (a) of sub-section (1) of section 28 or by any person as mentioned in clause (b) of sub-section (1) of section 28. If a complaint petition as envisaged under section 28 of the PCPNDT Act is presented before a Court, the procedure laid down in Chapter-XV of Cr.P.C. is to be followed before issuance of process against the accused."

Here, It is pertinent to mention the views of Hon'ble Allahabad High Court in the case of **Smt. Vimla Shukla V. State Of U.P.**[115]Decided on **13.5.2019**, where the FIR for offences under PCPNDT Act,1994 was directly lodged by a private individual, the charge sheet was submitted and cognizance was taken by the magistrate. The Hon'ble court observed, "it is a settled principle that where the special Act provides for a complaint mechanism as the only mechanism to entertain a prosecution, no FIR could have been lodged. In view of the above, the criminal prosecution is wholly incurably and inherently defective. Accordingly, the present application is allowed and the entire proceeding against the applicants in the aforesaid case is hereby quashed."

Now, it is very much important to mention here that there are many special acts which provide for complaint mechanism as the only mechanism to entertain a prosecution, but on several occasions, Hon'ble Apex Court has opined that there is no bar in lodging FIR and Investigation of the same by police, such bar applies only when the case reaches to the stage of cognizance. In its latest

[115] APPLICATION U/S 482 No. - 13126 of 2017 Order Date: - 13.5.2019

pronouncement Related to the MMDR Act, in the case of **Jayant vs. the State of M.P.**,[116] Hon'ble Apex Court has held,

"13. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis--à--vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

ii. the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii. for the commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of a complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv. that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when SHO of the police station register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate."

But as far as the PCPNDT Act is concerned, a clear verdict of Hon'ble Apex Court regarding lodging of FIR is still awaited. In PCPNDT Act appropriate authority is vested with the powers to investigate the offences under the act. However, if an FIR is registered for the penal provisions of Indian Penal Code and for the violation of the provisions of PCPNDT Act & Rules, the Course may be adopted as suggested by Hon'ble Apex Court in the case of **Jayant vs. the State of M.P.[117].**

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[116] 2021 (2) SCC 670:
[117] 2021 (2) SCC 670

RELEASE OF PROPERTY SEIZED UNDER PCPNDT ACT

PCPNDT Act does not make any specific provision regarding the release of the document, equipment or object which has been seized by appropriate authority U/s. 30**.**

Sec. 30(2) of the PCPNDT Act provide for the applicability of Cr. P.C. It clearly says that the provision of Cr.P.C. relating to search and seizure shall so far as may be applied to every search or seizure made under this Act. Thus the court is competent to exercise all the power under sections 451 to 457 of Cr.P.C. pertaining to the release of article seized under the PCPNDT Act. But principally the documents and property seized should not be released. Moreover, after the charge is being framed against the offenders, their licences are suspended, therefore there is no point in releasing the property seized by the appropriate authorities. And when the trial is concluded into conviction the property seized should be confiscated, while if trial results in acquittal, seized property is either released or confiscated as the case may be.

In the case of **Dr. Vandana Ramchandra Patil Vs. The State of Maharashtra and Anr,**[118] Pending criminal trial, the sonography machine was sealed and licence suspended. Trial Court allowed the opening of the seal so that the sonography machine can be used. Order challenged in the HC. Hon'ble Court has held that "crime is repetitive in nature. The sonography machine is the most important component. If the seal is opened, the accused is facilitated to repeat the offence. Prevention of crime is best achieved by sealing machines. Repetition of such crime has to be prevented. Order of opening of seal and release of machine cannot be made mechanically. The court must consider the effect and impact of such order."

The *Hon'ble Supreme Court in case of* ***Voluntary Health Association of Punjab Vs. Union of India and Others,***[119] has expressed displeasure while examining the data placed by the Union of India and observed at para -7, which reads as under:-

> "7..... 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

[118] Cr. Writ Petition No.4399 of 2012 Decided on January 23, 2013.
[119] (2013) 4 SCC 1,

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 hence, seldom, do those cases end in conviction and sentences, a fact well known to the violators of the 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."

21. The Hon'ble Supreme Court in case of ***Voluntary Health Association of Punjab (supra)*** has further given different direction and in respect of seizure, the Court has observed at para 9.10, which are as under: -

"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 the law."

In the case of **Dr A. A. Usman vs State Of Chhattisgarh**[120] Hon'ble Chhattisgarh high court has held that "Therefore, according to the Act, if the records are not maintained, as per the provisions, the presumption will follow that the offence is committed unless the accused rebut the presumption. The Court also cannot ignore the observations of the Hon'ble Supreme Court since the Supreme Court has expressed its displeasure when the ultrasound machines are released. Since as has been observed that the machine used in contravention of the Act, would be a material object when putting the machine at par with the definition of a weapon used in any offence, the same could not be released while the criminal case is pending."

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[120] (CR.M.P. No. 288 of 2015 decided on 1 October, 2015),

INITIATION OF PROSECUTION BEFORE THE COURT

Who can make a complaint before the Court?

1. The **Appropriate Authority** concerned;[121]
2. **Any officer authorised in this behalf** by the Central Government or State Government or the Appropriate Authority;[122]
3. **A person who has given notice of at least 15 days** to the Appropriate Authority of the alleged offence and of his intention to make a complaint in the court i.e. if the Appropriate Authority fails to take action on the complaint made by a person, on the lapse of 15 days, that person can directly approach the court.[123]

The complete evidence to be submitted before the Magistrate would include:

1. A copy of the complaint duly signed and verified;
2. A statement showing the list of witnesses both witnesses of the search and seizure and decoy witnesses;
3. The report of the search and seizure or commonly called Punchnama;
4. A copy of all the documents collected;
5. Statements of witnesses if any;
6. Most essential would be the complete address of the genetic counselling centre, genetic clinic or genetic laboratory;
7. Authority letter in case of authorised person;
8. Copy of the notice u/s. 28(1)(b) in case the complainant is not AA, or not authorised by the AA.

Note: *All the papers, records, statements, evidence, panchnama and other material objects attached to the case file shall be in original;*[124]Notifications of Government related to the matter shall also be attached with the complaint in original form.[125]

Where a complaint has been made under clause (b) of subsection (1) of Section 28 by a private person giving 15 days' notice, the court may, on-demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person[126].

The necessary averments ought to be in the complaint before a person can be subjected to the criminal process by way of fastening vicarious liability on him in his capacity as director of the company. Those necessary averments are, that the

[121] (Section 28 (1) (a))
[122] (Section 28 (1) (a))
[123] (Section 28 (1) (b))
[124] Rule 18A(5)(iii) of the PCPNDT Rules
[125] Rule 18-A (5) (ii)
[126] Section 28 (3)

Director of the Company was in charge of and responsible for the conduct of the business of the company. This case is therefore important for the prosecution to act as a guideline while drafting the complaint against the company and its directors.[127]

The options available to a Magistrate on a Complaint made under Section 28 of PCPNDT Act: -

1. If the complaint is made by the Appropriate Authority or by any officer authorized by Appropriate Authority as specified in section 28 (1) (a) of the Act, the Court can take cognizance of the offence and proceed to summon the accused (Note: the proviso to section 200 (1) Cr.P.C. will be applicable & examination of complainant is not mandatory);
2. if the complaint is made by a private person or organisation giving 15 days' notice as specified u/s. 28(1)(b), the court will examine the complainant u/s. 200 Cr.P.C. and may proceed to summon the accused as per section 204 Cr.PC, if there are sufficient grounds to proceed further.
3. The court can reject the complaint if it does not disclose the commission of any offence.
4. The Court can postpone the issue of process [and shall, postpone if the accused is residing at a place beyond the area in which the court exercises its jurisdiction,] and proceed for enquiry u/s.202 Cr.p.c.

Hon'ble Allahabad high Court has held in ***Omprakash vs. State of U.P.***[128] ***that,*** *"the law further imposes a mandate to hold enquiry under Section 202 Cr.P.C, if the accused is residing at a place beyond the area of exercise of jurisdiction of the concerned Magistrate."*

During inquiry under section 202 Cr.pc the court may order investigation. It is also clarified at this stage that calling of investigation report under Chapter XV CrPC from the police during enquiry is different with the investigation done under Chapter XII CrPC. Under Chapter XV CrPC investigation report is submitted only to aid the Magistrate concerned and lodging of F.I.R. at this stage is barred as held in ***Nitin Jaiswal vs State Of U.P.*** [129]. In the case of **National Bank of Oman Vs. Barakara Abdul Aziz**[130] Hon'ble Supreme Court has held that, "Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further".

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[127] S.M.S. Pharmaceutical Ltd. -Vs- Neeta Bhalla 2005 (8) SCC 89
[128] APPLICATION U/S 482 No. - 35542 of 2017(decided on 10 Feb 2021)
[129] 5 August, 2019(APPLICATION U/S 482 No. - 25560 of 2019)
[130] 2013 (2) SCC 488

BAIL OF THE ACCUSED

As for as the bail of the accused is concerned, every offence under this Act is made a non-bailable offence by virtue of Section 27 of the Act. It is the discretion of the court to accept or reject the bail application as per the facts and circumstances of each case.

Calling for strict implementation of the Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, the Madhya High Court in the case of ***Rajni Lodhi v. State of Madhya Pradesh***[131] recently denied bail to a woman accused of female foeticide.

The Supreme Court by its order dated 21st January 2021 passed in the case of ***Rekha Sengar vs. State of Madhya Pradesh***[132] denied to accept the plea of parity with co-accused and approved the High Court's order rejecting bail of the petitioner. The Court observed as under:

> "In the present case, contrary to the prevailing practice, the investigative team has seized the sonography machine and made out a strong prima facie case against the petitioner. Therefore, we find it imperative that no leniency should be granted at this stage as the same may reinforce the notion that the PC&PNDT Act is only a paper tiger and that clinics and laboratories can carry out sex-determination and feticide with impunity. A strict approach has to be adopted if we are to eliminate the scourge of female feticide and iniquity towards girl children from our society. Though it certainly remains open to the petitioner to disprove the merits of these allegations at the stage of the trial. The fact that on 13.10.2020, the co-accused in the present case was released on bail by the High Court in MCRC No.39380/2020 does not alter our conclusions. The allegations in the FIR and the charge sheet, as well the disclosure statements made by the petitioner and the co-accused under Section 27 of the Indian Evidence Act, 1872, reveal that prima facie, the petitioner had a more active role in conducting the alleged illegal medical practices of sex determination and sex-selective abortion. Whereas the alleged role of the co-accused was limited to merely picking up and dropping off the petitioner's clients. Hence, we find no grounds for granting parity with the coaccused to the petitioner. Thus, in view of the presence of prima facie evidence against the petitioner and other factors as referred to supra, we find ourselves compelled to uphold the impugned order of the High Court denying bail to the petitioner."

[131] MCRC 14729 of 2021 Gwalior, Dated: 31/03/2021
[132] (Special Leave Petition (Criminal) No. 380 of 2021); LL 2021 SC 51

In the Case of **Dr. Saraswati vs The State Of Maharashtra**[133] the bail of the accused was cancelled and no relief was granted by the Hon'ble Bombay High Court regarding bail. In this famous case, the court held:

"papers of the investigation show that Dr. Mundhe used to cause abortions in his hospital and his employees used to destroy foetus by burning the same in the field of Dr. Shri. Mundhe. The employees of Dr. Shri. Mundhe have given such statements. The statements also show that Mundhe was adopting some procedure in such cases and that procedure was started as his permission to use the diagnostic technique was cancelled. Every day he used to send his 3-4 such cases to the hospital of Dr. Kolhe from Jalgaon in a vehicle. After the determination of sex of the foetus in the hospital of Dr. Kolhe, he used to examine the patients again and then they used to cause abortion of the foetus. As per the record, the centre for abortion was approved in his name in the past, though it was cancelled before the incident in question.The statements of two employees working in the field of Dr. Shri. Mundhe show that almost every day or every alternate day, they were required to destroy by burning the fetuses which were brought from the hospital of Dr. Mundhe. The statements show that on 18th Shri. Mundhe had come to them personally with the foetus and he had given special instructions for burning of foetus. permission of using sonography machine, diagnostic techniques of Dr. Kolhe was already cancelled, but Mundhe was referring the patients to him. The papers of the investigation show that the record as required under MTP Act and PCPNDT Act was not maintained by both these hospitals. The aforesaid record and the submissions show that both the applicants were causing or aiding for the determination of sex. They were also causing abortion illegally in their hospital. ***There is no question of granting discretionary relief in favour of Dr. Shri. Mundhe in view of the aforesaid circumstances.*** Hon'ble Apex Court has refused bail to him in one PCPNDT case. Thus, it is not a fit case to grant bail to Dr. Shri. Mundhe. So, the Criminal Application bearing No. 1055/2013 needs to be rejected."

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[133] CRIMINAL APPLICATION NO. 3350 OF 2013 decided on 11 September, 2013

FRAMING OF CHARGE

Procedure for conducting the trial u/s. 22 and 23 of the Act are that of warrant case registered on a complaint otherwise than on police report. Hence evidence before framing of charge has to be recorded. After Summoning and Appearance of the Accused, pre-charge evidence is to be taken and thereafter order regarding the framing of the charge is to be passed. If the charge is being framed, post-charge evidence is to be produced by the complainant.

It is pertinent to mention here that where the accused is a registered medical practitioner (Doctor), and a charge under PCPNDT Act is being framed, the Court must provide a copy of the charge to the appropriate authorities so that the same could be forwarded with the report of Appropriate authority to the State Medical Council concerned for taking necessary action including suspension of registration of the accused till the case is finally disposed of.[134]

In light of the nature of offences that necessitated the enactment of the Act and the grave consequences that would ensue otherwise, suspension of registration under Section 23(2) of the Act serves as a deterrent. Suspension of registration is a step in aid to further the intendment of the act.[135]

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[134] Sec 23 (2) & Rule 18-A (8) (IV) (a) and as per the views in case of ***(FOGSI) vs Union of India, 2019 SCC Online SC 650.***

[135] FOGSI vs Union of India, 2019 SCC Online SC 650.

APPRECIATION OF EVIDENCE

To have a procedure of trial that is fair and equitable to all the adversarial parties is one of the fundamental principles of criminal jurisprudence. In the interest of justice, equity, and good conscience, there are certain inalienable principles that are laid down; that constitute the basic framework of how the justice system works in this area of law. One among these inalienable features of the criminal justice system is the principle of 'Presumption of Innocence'. In simplistic terms, an accused brought to trial must be given a fair chance to be heard and cannot be presumed to be guilty of a crime till the prosecution can prove their guilt beyond a reasonable doubt. In a single line, an accused is 'innocent until proven guilty. In the famous case of ***Woolmington v. Director of Public Prosecutions,***[136] this principle was referred to as 'golden thread principle of criminal law'. The Presumption of Innocence is a recognized principle of criminal law in our country. Section 101 and 106 of the Indian Evidence Act of 1872 talk about the burden of proof, but not whether such burden is upon the Prosecution or Defense. However, The Indian Judiciary has recognized presumption of Innocence under Article 20 and 21 of the Constitution.

The presumption of innocence is rebutted in two cases – firstly, when there is express statutory provision reversing the burden of proof, and secondly, when the accused appeals against the judgment of a lower court wherein his presumption is that of guilt and not innocence. The most well-known example of a reverse onus clause is Dowry Death. In cases of dowry death, the culpable mental state of the accused is presumed, imposing a presumption of guilt, instead of the usual presumption of innocence.

Hon'ble Apex Court in the case of **P. N. Krishnalal v. Government of Kerala**[137] held that the presumption of innocence is not a constitutional guarantee and can be dispensed with by legislative imperatives and action.

Here in PCPNDT Act, Proviso to Section 4(3) provides reverse burden of Proof which reads as follows:

"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 provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;"

Likewise, section 24 provide for presumption of abatement which reads as follows:

"Notwithstanding anything contained in the Indian Evidence Act, 1872, the court shall presume unless the contrary is proved that the pregnant woman

[136] [1935] UKHL 1
[137] 1995 SCC (Cri) 466.

was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4 and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section."

In the case of **Dr. A. A. Usman vs State Of Chhattisgarh**[138] Hon'ble Chhattisgarh high court has held that "Therefore, according to the Act, if the records are not maintained, as per the provisions, the presumption will follow that the offence is committed unless the accused rebut the presumption."

In the case of **(FOGSI) vs Union of India,**[139] Hon'ble Supreme Court has held that, "there can be a legislative provision for imposing burden of proof in reverse order relating to gender justice. In the light of prevalent violence against women and children, the Legislature has enacted various Acts, and amended existing statutes, reversing the traditional burden of proof. Some examples of reversed burden of proof in statutes include Sections 29 and 30 of the Protection of Children from Sexual Offences (POCSO) Act in which there is presumption regarding commission and abetment of certain offences under the Act, and presumption of mental state of the accused respectively. In Sections 113-A and 113-B of the Indian Evidence Act there is presumption regarding abetment of suicide and dowry death and in Section 114A of the Indian Evidence Act there is presumption of absence of consent of prosecutrix in offence of rape. These provisions are a clear indication of the seriousness with which crimes against women and children have been viewed by the Legislature. It is also evident from these provisions that due to the pervasive nature of these crimes, the Legislature has deemed it fit to employ a reversed burden of proof in these cases. The presumption in the proviso to Section 4(3) of the PCPNDT Act has to be viewed in this light. The Act is a social welfare legislation, which was conceived in light of the skewed sex-ratio of India and to avoid the consequences of the same. The rigorous implementation of the Act is an edifice on which rests the task of saving the girl child."

Hon'ble Gujarat High Court in the case of ***Suo Motu vs State of Gujrat,***[140] has held that,

> "In a case based upon allegation of deficiency or inaccuracy in maintenance of record in the prescribed manner as required under sub-section (3) of Section 4 of the PNDT Act, the burden to prove that there was a contravention of the provisions of Section 5 or 6 does not lie upon the prosecution.
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> Deficiency or inaccuracy in filling Form F prescribed under Rule 9 of the Rules made under the PNDT Act, being a deficiency or

[138] CR.M.P. No. 288 of 2015 decided on 1 October, 2015
[139] 2019 SCC Online SC 650
[140] 2009 Cr. LJ 721(FB)

inaccuracy in keeping record in the prescribed manner, it is not a procedural lapse but an independent offence amounting to the contravention of the provisions of section 5 or 6 of the PNDT Act and has to be treated and tried accordingly. It does not, however, mean that each inaccuracy or deficiency in maintaining the requisite record may be as serious as a violation of the provisions of section 5 or 6 of the Act and the Court would be justified, while imposing punishment upon conviction, in taking a lenient view in cases of only technical, formal or insignificant lapses in filling up the forms. For example, not maintaining the record of conducting ultrasonography on a pregnant woman at all or filling up incorrect particulars may be taken in all seriousness as if the provisions of section 5 or 6 were violated, but incomplete details of the full name and address of the pregnant woman may be treated leniently if her identity and address were otherwise mentioned in a manner sufficient to identify and trace her."

The proviso to sub-sec. (3) of Sec. 4 is crystal clear about the maintenance of the record in a prescribed manner being an independent offence amounting to a violation of Secs. 5 or 6 and, therefore, the complaint need not necessarily also allege the violation of the provisions of Secs. 5 or 6 of the Act. ***A rebuttable presumption of violation of the provisions of Secs. 5 or 6 will arise on proof of deficiency or inaccuracy in maintaining the record in the prescribed manner and equivalence with those provisions would arise for punishment as well as for disproving their violation by the accused person.*** That being the scheme of these provisions, it would be wholly inappropriate to quash the complaint leging inaccuracy or deficiency in the maintenance of the prescribed record only on the ground that violation of Secs. 5 or 6 of the Act was not alleged or made out in the complaint. It would also be improper and premature to expect or allow the person accused of inaccuracy or deficiency in maintenance of the relevant record to show or prove that provisions of Secs. 5 or 6 were not violated by him, before the deficiency or inaccuracy were established in Court by the prosecuting agency or before the authority concerned in other proceedings."[141]

[141] Suo Motu vs State of Gujrat,2009 Cr.LJ 721(FB)

In the case of ***M/s Seema Silk and Sarees v. Directorate of Enforcement***[142]it was observed-

"Reverse burden as also statutory presumptions can be raised in several statutes as, for example, the Negotiable Instruments Act, Prevention of Corruption Act, TADA, etc. ***Presumption is raised only when certain foundational facts are established by the prosecution.*** The accused in such an event would be entitled to show that he has not violated the provisions of the Act."

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[142] SLP (Criminal) No. 6812 of 2007

RELEVANT EXCERPTS FROM CASE LAW

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 phenomenon. 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 theIndian 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 formatters 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 prenatal 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 properlyand 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 sexlinked 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

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 prohibits disclosure of the sex of the foetus and bans 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 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 PreConception 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 Boardmeets 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 the1994 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 uponwhat kind and strata of people are being addressed to. The persons involved in such awarenesscampaign are required to equip themselves with constitutional concepts, culture, philosophy,religion, scriptural commands and injunctions, the mandate of the law as engrafted under the Actand above all the development of modern science. It needs no special emphasis to state that inawareness 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 thepublic at large, for when the mind becomes strong, mountains do melt.

34. The people involved in the awareness campaigns should have boldness and courage. Thereshould 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 relate 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 "autocomplete" 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 theNodal 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 the language of Section 22 of the 1994 Act and, in case there is any doubt, they can enter into 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 SCC514 : (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 the 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."

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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 above-mentioned 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 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…"

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Judicial Training and Research Institute, U.P., Lucknow

The Institute was established by the Government of Uttar Pradesh in pursuance of a decision taken at All India Conference of the Chief Justices of High Courts in August/September, 1985 in New Delhi. This landmark conference which was also attended by the Chief Ministers and the Law Ministers of the States, mooted the idea of providing institutional induction and in-service training to the judges of the subordinate courts in the country. The initiative of the state government after being readily agreed to by the Hon'ble High Court of Judicature at Allahabad, saw the Institute coming into existence and becoming functional on 25th April, 1987 with Hon'ble Mr. Justice K.N. Goyal as its first honorary Director. Sri Vinod Singh Rawat is its present Director.

The institute has been established with the overall vision of ensuring ceaseless upgradation of skills and appropriate attitudinal reorientation through induction level and in-service training in consonance with the imperatives of national and global environment.

In the training programmes, case studies, discussion sessions, exercises and activity-based studies; book review and case law presentation are used extensively. To make the discussion effective, background material is given before discussion. This helps the trainees to develop analytical skills and decision-making power in addition to enable them in writing orders/judgments.

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Judicial reasoning, indeed, is both an art and a science to be cultivated by every judge through study, reflection and hard work. The institute has a beautiful and big library housed into two spacious air-conditioned halls in the 'Training Wing' with one being dedicated to law books, law digest, encyclopedia, commentaries and general books including classics, biographies, fictions (Hindi and English both) memoirs, letters, speeches, words and phrases, books of philosophy, religion, history, politics, computer, management, personality development etc. and the other wing is exclusively meant for storing Journals. This centre of knowledge has more than **25000 books**. The institute has been subscribing **15 Law Journals** of varied nature, **seven newspapers** and **four magazines**. The library has All England Law Reports from 1936 to 2014, Halsbury's Laws of India from 2004 to 2008, Halsbury's Laws of England from 1973 to 1987 and Corpus Juris Secundum from Vol. 1 to 101A. The institute is working on to develop e-knowledge hub and e-library in near future.