

DR. SABU MATHEW GEORGE

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v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 341 of 2008)

DECEMBER 13, 2017

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**[DIPAK MISRA, CJI, A.M. KHANWILKAR AND  
DR. D.Y. CHANDRACHUD, JJ.]**

*Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 – s. 22 – Prohibition of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention – Writ petition u/Art. 32 seeking issuance of necessary directions for effective implementation of the Act, issuance of direction to the Ministries concerned to block all such websites, namely Google India, Yahoo! India and Microsoft Corporation (I) Pvt Ltd. and ban online sex determination advertisements on their websites; and constitute a separate monitoring committee – Pronouncement of several orders by this Court – Submission of the petitioner that in spite of the said orders, Nodal Agency not been effective to stop the offending material being displayed on the internet and Google India, Yahoo! India and Microsoft Corporation (I) Pvt Ltd. responsible for the same – Held: There has to be a constructive and collective approach to arrive at a solution together with the Expert Committee and the search engine owners – Duty of Nodal Agency, the Expert Committee and the search engine owners to see that the mandate of the Act is scrupulously followed – Meeting to be held within the stipulated period – Direction to Google India, Yahoo ! India and Microsoft Corporation (I) Pvt. Ltd. to co-operate and give their point of view for the purpose of a satisfactory solution – Constitution of India – Art. 32.*

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**Disposing of the writ petition the Court**

**HELD: 1.1 The Nodal Agency and the Expert Committee are directed to hold a meeting and have the assistance of the Counsel for the petitioner 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**

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A representatives of Google India, Yahoo ! India and Microsoft Corporation (I) Pvt. 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 Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The effective solution is the warrant of the obtaining situation. The word “solution” is used keeping in view the earlier orders and the suggestions given by the competent authority of the Union of India. The duty of all concerned is to see that the mandate of the 1994 Act is scrupulously followed. Keeping the aforesaid in view, a meeting shall be held within six weeks hence. All the suggestions or possibilities must be stated in writing before the Committee so that appropriate and properly informed measures are taken. [Para 28] [177-G-H; 178-A-B]

D 1.2 This Court is certain that the Union of India and its Committee would 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 noted in *Centre for Enquiry into Health & Allied Themes (CEHAT), Voluntary Health Association of Punjab (the 1<sup>st</sup>)* and *Voluntary Health Association of Punjab (the 2<sup>nd</sup>)*, does not remain a haunting problem. This Court is 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. Google India, Yahoo ! India and Microsoft Corporation (I) Pvt. Ltd. are directed 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. [Para 29, 30] [178-C-E]

G *Centre for Enquiry into Health & Allied Themes (CEHAT) and others v. Union of India and others* (2003) 8 SCC 398: [2003] 3 Suppl. SCR 593 ; *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India* (2001) 5 SCC 577 : [2001] 3 SCR 534 ; *CEHAT v. Union of India* (2003) 8 SCC 409 ; *CEHAT v. Union*

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*of India (2003) 8 SCC 410 ; CEHAT v. Union of India (2003) 8 SCC 412 ; Voluntary Health Association of Punjab v. Union of India and others (2013) 4 SCC 1 : [2013] 5 SCR 111 ; Voluntary Health Association of Punjab v. Union of India and others (2016) 10 SCC 265 : [2016] 8 SCR 192 ; Ajit Savant Majagvai v. State of Karnataka (1997) 7 SCC 110 : [1997] 3 Suppl. SCR 444 ; Vikas Yadav v. State of Uttar Pradesh & others (2016) 9 SCC 541 : [2016] 8 SCR 872 – referred to.*

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Case Law Reference

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[2003] 3 Suppl. SCR 593	referred to	Para 5
[2001] 3 SCR 534	referred to	Para 6
(2003) 8 SCC 409	referred to	Para 6
(2003) 8 SCC 410	referred to	Para 6
(2003) 8 SCC 412	referred to	Para 6
[2013] 5 SCR 111	referred to	Para 8
[2016] 8 SCR 192	referred to	Para 12
[1997] 3 Suppl. SCR 444	referred to	Para 12
[2016] 8 SCR 872	referred to	Para 15

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CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 341 of 2008.

Under Article 32 of the Constitution of India.

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Sanjay Parikh, Ms. Anitha Shenoy, Ms. Manjula Gupta, Ms. Srishti Agnihotri, Advs for the Petitioner.

Ms. Pinky Anand, ASG, Ajit Kumar Sinha, K. V. Vishwanathan, Dr. A. M. Singhvi, Sr. Advs., Ms. Binu Tamta, R. R. Rajesh, Dr. Nishesh Sharma, Ms. Gunwant Dara, G. S. Makker, Anupam Lal Das, Anirudh Singh, Krishanu Barua, Tanuj Bhushan, Aishvary Vikram, S. S. Shroff, Ravinder Nijhawan, Siddhant Buxy, Arvind Kumar Sharma, Mahesh Agarwal, Priyadarshi Banerjee, Vishal Gehrana, Vikrant Pachnanda, Nishant Rao, Arvind Chari, Saransh Jain, Shravan Sahny, Avishkar

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- A Singhvi, E. C. Agrawala, Ms. Ruby Singh Ahuja, Vishal Gehrana, Ms. Tahira Karanjawala, Arvind Chari, Shravan Sahay, Mrs. Manik Karanjawala, Avishkar Singhvi (for M/s. Karanjawala & Co.), Advs for the Respondents.

The Judgment of the Court was delivered by

- B **DIPAK MISRA, CJI.** 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 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  
C the Writ Petition are to command the respondent Nos. 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 the respondent Nos. 3 to 5, namely,  
D Google India, Yahoo ! India and Microsoft Corporation (I) Pvt. 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 of 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  
E 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 the Parliament being  
F 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**

- G 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.

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The Bill, *inter alia*, provides for:- A

(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; B

(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 C

(v) punishment for violation of the provisions of the proposed legislation.”

3. Be it noted, initially the legislation was named as the Pre-natal Techniques (Regulation and Prevention of Misuse) Act, 1994 and by Section 3 of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 the nomenclature of the 1994 Act has been amended which now stands as The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 with effect from 1.1.1996. Preamble to the 1994 Act reads as follows:- D

“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.” E F

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. G

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A 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 uplift of the women raised their heads against  
 such an abuse. It was considered necessary to bring out a  
 B 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  
 C Committee presented its report in December, 1992 and on the  
 basis of the recommendations of the Committee, the Bill was  
 reintroduced in the Parliament.”

5. The Introduction, the Statement of Objects and Reasons and  
 the Preamble unmistakably project the scheme which is meant to prohibit  
 D 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  
 E Writ Petition was filed before this Court by Centre for Enquiry into Health  
 and Allied Themes (CEHAT) and others which has been disposed of on  
 September 10, 2003 in *Centre for Enquiry into Health & Allied Themes  
 (CEHAT) and others v. Union of India and others*<sup>1</sup>. In the said case,  
 the two-Judge Bench expressed its anguish over discrimination against  
 F girl child and how the sex selection/sex determination adds to the said  
 adversity. Expressing concern over the said issue, it has been stated:-

“It is also known that a number of persons condemn discrimination  
 against women in all its forms, and agree to pursue, by appropriate  
 means, a policy of eliminating discrimination against women, still  
 G however, we are not in a position to change the mental set-up  
 which favours a male child against a female. Advanced technology  
 is increasingly used for removal of foetus (may or may not be  
 seen as commission of murder) but it certainly affects the sex

H <sup>1</sup>(2003) 8 SCC 398

ratio. The misuse of modern science and technology by preventing the birth of a girl child by sex determination before birth and thereafter abortion is evident from the 2001 Census figures which reveal greater decline in sex ratio in the 0-6 age group in States like Haryana, Punjab, Maharashtra and Gujarat, which are economically better off.”

6. The Court referred to its earlier order dated 04.05.2001 in *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India*<sup>2</sup> and taking note of various other directions which find place in *CEHAT v. Union of India*<sup>3</sup>, *CEHAT v. Union of India*<sup>4</sup> and *CEHAT v. Union of India*<sup>5</sup>, issued the following directions:-

“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:

<sup>2</sup>(2001) 5 SCC 577

<sup>3</sup>(2003) 8 SC 409

<sup>4</sup>(2003) 8 SCC 410

<sup>5</sup>(2003) 8 SCC 412

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:

B 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.”

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

D 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 Association of Punjab v. Union of India and others*<sup>6</sup> (the 1<sup>st</sup>), the two-Judge Bench reflected on the sharp decline in the female sex ratio and observed thus:-

E “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.”

F 9. The Court, after dwelling upon many an aspect, proceeded to issue certain directions. In the concurring opinion, direction No. 9.8 was elaborated and in that context, the opinion stated:-

G “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

<sup>6</sup>(2013) 4 SCC 1

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. And again:-

“16. It is not out of place to state here that the restricted and constricted thinking with regard to a girl child eventually leads to female foeticide. A foetus in the womb, because she is likely to be born as a girl child, is not allowed to see the mother earth. In *M.C. Mehta v. State of T.N.*<sup>7</sup>, a three-Judge Bench, while dealing with the magnitude of the problem in engagement of the child labour in various hazardous factories or mines, etc., speaking through Hansaria, J., commenced the judgment thus:

“1. I am the child.  
All the world waits for my coming.  
All the earth watches with interest to see what I shall become.  
Civilisation hangs in the balance,  
For what I am, the world of tomorrow will be.  
I am the child.  
You hold in your hand my destiny.  
You determine, largely, whether I shall succeed or fail,  
Give me, I pray you, these things that make for happiness.  
Train me, I beg you, that I may be a blessing to the world.”

The aforesaid lines from Mamie Gene Cole were treated as an appeal by this Court and the Bench reproduced the famous line from William Wordsworth “child is the father of the man”. I have reproduced the same to highlight that this Court has laid special emphasis on the term “child” as a child feels that the entire world waits for his/her coming. A female child, as stated earlier, becomes a woman. Its life-spark cannot be extinguished in the womb, for such an act would certainly bring disaster to the society. On such

<sup>7</sup>(1996) 6 SCC 756

A an act the collective can neither laugh today nor tomorrow. There shall be tears and tears all the way because eventually the spirit of humanity is comatosed.”

11. Elaborating the concept of awareness, it has been noted:-

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

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

F 12. 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 judgment dated 08.11.2016 in *Voluntary Health Association of Punjab v. Union of India and others*<sup>8</sup> (the 2<sup>nd</sup>). The Court reproduced a passage from *Ajit Savant Majagvai v. State of Karnataka*<sup>9</sup> which is as follows:-

G “4. It is unfortunate that in an age where people are described as civilised, crime against “female” is committed even when the child

<sup>8</sup>(2016) 10 SCC 265

<sup>9</sup>(1997) 7 SCC 110

is in the womb as the “female” foetus is often destroyed to prevent the birth of a female child. If that child comes into existence, she starts her life as a daughter, then becomes a wife and in due course, a mother. She rocks the cradle to rear up her infant, bestows all her love on the child and as the child grows in age, she gives to the child all that she has in her own personality. She shapes the destiny and character of the child. To be cruel to such a creature is unthinkable.”

(emphasis supplied)

13. The Court referred to the observations made in *Ajit Savant Majagvai* (supra) though they were made in a different context because it had condignly stated the enormity of the problem which has also reflections on female foeticide that has affected the sex ratio. After recording various directions issued in earlier judgments and scrutinizing the provisions of the 1994 Act the Court held thus:-

“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.”

14. Speaking about the constitutional status of women and the brazed practice of sex identification and female foeticide, the Court stated:-

“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

A 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  
B 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  
C 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.”

D 15. 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. In *Vikas Yadav v. State of Uttar Pradesh & others*<sup>10</sup>,  
while dealing with honour killing, the Court has ruled:-

E “75. ... Freedom, independence, constitutional identity, individual  
choice and thought of a woman, be a wife or sister or daughter or  
mother, cannot be allowed to be curtailed definitely not by  
application of physical force or threat or mental cruelty in the  
name of his self-assumed honour. That apart, neither the family  
members nor the members of the collective has any right to assault  
F the boy chosen by the girl. Her individual choice is her self-respect  
and creating dent in it is destroying her honour. And to impose so-  
called brotherly or fatherly honour or class honour by eliminating  
her choice is a crime of extreme brutality, more so, when it is  
done under a guise. It is a vice, condemnable and deplorable  
G perception of “honour”, comparable to medieval obsessive  
assertions.”

16. That being the legal position with regard to status of woman  
under the Constitution, we are required to analyse the relevant statutory

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<sup>10</sup>(2016) 9 SCC 541

provisions of the 1994 Act. Section 22 of the 1994 Act that occurs in Chapter VII which deals with 'Offences and Penalties' reads thus:- A

**"Section 22. Prohibition of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention.—**

(1) No person, organisation, 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 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, regarding facilities of pre-natal determination of sex or sex selection before conception available at such Centre, Laboratory, Clinic or at any other place. B C

(2) No person or organisation including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or pre-conception selection of sex by any means whatsoever, scientific or otherwise. D

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees. E

*Explanation.*—For the purposes of this section, "advertisement" includes any notice, circular, label, wrapper or any other document including advertisement through 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." F

17. Section 23 deals with offences and penalties. Section 26 deals with offences by companies. It is as follows:- G

**"Section 26. Offences by companies. — (1) Where any offence, punishable under this Act has been committed by a company, every person who, at the time the offence was committed**

A was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

B Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

C (2) Notwithstanding anything contained in sub-section (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

D *Explanation.* —For the purposes of this section, —

(a) “company” means any body corporate and includes a firm or other association of individuals, and

E (b) “director”, in relation to a firm, means a partner in the firm.”

F Referring to the said provisions, it is submitted by Mr. Sanjay Parikh, learned counsel for the petitioner that the respondents cannot engage themselves 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.

G 18. At this juncture, it is relevant to state that the Court on 16.02.2017, after reflecting on the anguish expressed in *Voluntary Health Association of Punjab* (the 2<sup>nd</sup>), adverted to various aspects and observed thus:-

H “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 the respondent Nos.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<sup>th</sup> July, 2016 and 25<sup>th</sup> July, 2016, an affidavit was filed by the competent authority of the Ministry of Electronics and Information Technology (MeitY), Government of India.

Be it noted, when the matter was taken up on 19<sup>th</sup> September, 2016, it was submitted by Mr. Ranjit Kumar, learned Solicitor General that a meeting was held with the three software companies, namely, Google India Private Limited, Yahoo ! India and Microsoft Corporation (I) Pvt. Ltd. and the companies were asked to respond to certain questions. For the sake of completeness, it is necessary to reproduce the said questions:-

“(a) Whether respondents feel obligated to comply with the provisions of PC-PNDT Act, especially section 22 of the Act as directed by this Hon’ble Court *vide* its order dated 28.01.2015?

(b) Whether Respondents are ready to publish a “Warning Message” on top of search result, as and when any user in India submits any “key word searches” in search engines, which relates to pre conception and pre natal determination of sex or sex selection?

(c) Whether Respondents are ready to block “auto-complete” failure for “key word” searches which relates to pre-conception and/or pre-natal determination of sex or sex selection?

(d) Whether the words/phrases relating to pre-conception and pre natal determination of sex or sex selection to be provided and regularly updated by the Government for the ‘key word 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 28.01.2015 on their respective

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A Home Page(s), instead of placing them on Terms of Service (TOS) pages?

(f) What is the suggested timeline to incorporate “Warning Message”, blocking of the “auto-complete” feature for key word search & related terms etc. relating to pre-conception and pre-natal determination of sex or sex selection?

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(g) Any other information as Respondents would like to share?”

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The responses to those questions were given by the respondent Nos.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:-

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“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.

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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. 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.

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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:-

“Proposed List of Words

- Gender selection
- Gender selection Kits
- Gender selection service
- Gender selection clinics
- Gender selection technique
- Prenatal sex selection
- Prenatal sex selection kits
- Prenatal sex selection service
- Prenatal sex selection clinics
- Prenatal sex selection technique
- Prenatal sex determination
- Prenatal sex determination kits
- Prenatal sex determination service
- Prenatal sex determination clinics
- prenatal sex determination technique
- Baby gender selection
- Baby gender selection kits
- Baby gender selection service
- Baby gender selection clinics
- Baby gender selection technique
- Prenatal diagnostic tests for selection of sex before or after conception
- Prenatal conception test
- Prenatal diagnostic
- Prenatal foetoscopy for sex selection
- Prenatal ultrasonography for sex selection
- Sex selection procedure
- Sex selection technique
- Sex selection test
- Sex selection administration

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- A Sex selection prescription  
Sex selection services  
Sex selection management  
Sex selection process  
Sex selection conduct
- B Prenatal image scanning for sex selection  
Prenatal diagnostic procedure for sex selection  
Sex determination using scanner  
Sex determination using machines  
Sex determination using equipment  
Scientific sex determination and sex selection
- C Gender test  
Early Gender Test”

At this juncture, Mr. C.A. Sundaram, Mr. K.V. Vishwanathan, learned senior counsel, Mr. Anupam Lal Das, learned counsel appearing for Google India, Microsoft Corporation (I) Pvt. Ltd. and Yahoo India, respectively, have submitted that apart from the aforesaid words, if anyone, taking recourse to any kind of ingenuity, feed 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 over emphasized that it has to be an in-house procedure/method to be introduced by the Companies, and we 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, the following order was passed:-

“The 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 what so

ever 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 & 08.08.2016. 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 PC & PNDT Act are strictly implemented.”

20. Thereafter the matter was heard at some length and pending the debate, the Court directed as follows:-

“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 concerned search engine or the corridor provider 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 herein-before. The Nodal Agency shall put the ultimate action taken by the search engine on its website.”

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. Paragraphs 3 and 4 of the said affidavit read as follows:-

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

- A (i) Contact e-mail address for nodal agency:  
[pcpndtcomplaints@nihfw.org](mailto:pcpndtcomplaints@nihfw.org)
- (ii) Nodal Officer: Dr. Chetan Chouhan, Senior Medical Officer
- B (iii) E-mail id and Mobile number of Nodal Officer:  
[chetanchouhan@nihfw.org](mailto:chetanchouhan@nihfw.org), 9818305703
- (iv) Alternative Nodal Officer and contact details:  
Dr. Geetanjaly Singh,  
Senior Medical Officer  
E-mail: [geetanjaly@nihfw.org](mailto:geetanjaly@nihfw.org)
- C Mobile No.9968545794

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

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

- E At this juncture, Mr. Sanjay Parikh, learned counsel appearing for the petitioner has drawn our attention to the additional affidavit filed on behalf of the respondent No.3, especially to paragraph 6(b) and (c). They read as follows:-

- F “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.
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- (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.”

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Refuting the paragraph 6(b), 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 paragraph 6(b) is not saved by Article 19(1)(a) of the Constitution of India as asserted in paragraph (c). At this juncture, Ms. Ruby Ahuja, learned counsel appearing for the respondent No.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.

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<sup>th</sup> September, 2016, that the respondent Nos.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. Vishwanathan with immense vehemence that it does not come within the proposed list of words that find mention in the order dated 19<sup>th</sup> September, 2016, and, therefore, it cannot be construed as a violation. Be that as it may.

We reiterate our direction dated 19<sup>th</sup> September, 2016, and further add that the respondent Nos.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.

Presently, we shall advert to the paragraphs 3 and 4 of the affidavit of the Union of India which we have reproduced herein-above. As the Nodal Agency has already been constituted, it will be open to the petitioner or any person that the Nodal Agency

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

C Let the matter be listed on 11<sup>th</sup> April, 2017, for further hearing.”

21. On 13.04.2017 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:-

D “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.

E At this juncture, Mr. Salve, Dr. Singhvi and Mr. Das, learned counsel for the respondents submitted that the key words 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.

F Be it noted, in pursuance of the order 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. 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 co-operative role so that the law made

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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. A

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. B C

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' 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. D E F

As agreed to by learned counsel for the parties, the let the matter be listed on 5.9.2017 so that the outcome of this acceptance will be plain as day." G

22. The matter was called for hearing today, that is, 13.12.2017. It has been submitted by Mr. Parikh, learned counsel for the petitioner, that despite the order passed by this Court, the Nodal Agency has not been effective to stop the offending material being displayed or purveyed on the internet. Learned counsel squarely make Google India, Yahoo ! H

A India and Microsoft Corporation (I) Pvt. Ltd. responsible for the same. According to Mr. Parikh, these search engines have the potentiality to take necessary action to remove the offending material, but they deliberately do not remove it, by artificially constraining the word “content”. He has laid immense stress on the “auto-block principle” and the concept of “key words” and associated possibilities.

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C 23. The said submissions are refuted by Dr. Abhishek Manu Singhvi and Mr. K.V. Vishwanathan, learned senior counsel appearing for Google India and Microsoft Corporation (I) Pvt. 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.

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

E “12. Google also has automated systems that analyze the tens of millions of new ads created by advertisers every day. True and accurate copies of publicly available webpages describing Google’s automated review systems, as they appeared as of December 10, 2014, at <http://googleblog.blogspot.com/2012/04/inside-view-on-ads-review.html> and <http://adwords.blogspot.com/2013/04/a-healthy-advertising-ecosystem.html> are attached hereto as Exhibits 6 and 7, respectively; see also Exhibit 3.

F 13. Google also relies on its users and on other advertisers to report improper advertisements. The process for users and other advertisers to report improper advertisements is accessible through a publicly available webpage. A true and accurate copy of that webpage, as it appeared as of December 10, 2014 at <https://support.google.com/adwordspolicy/answer/608450?rd=1>, is attached hereto as Exhibit 8.

G 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 900,000

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advertiser accounts for violations of Google's AdWords policies. A  
The vast majority of these actions were taken as a result of  
Google's proactive systems rather than as a result of outside  
complaints.

19. In 2014 alone, Google disapproved over seven million rogue B  
pharmacy ads (that is, advertisers lacking appropriate accreditation  
to run pharmacy ads) and it disabled over 30,000 advertiser  
websites for violating Google's health care and medicines policies.  
Most of these ads were removed before they generated any ad  
impressions. In 2013, Google disapproved over 4.5 million rogue  
pharmacy ads for violating Google's healthcare and medicines C  
policies."

25. Ms. Ruby Ahuja, learned counsel assisting Dr. Abhishek Manu D  
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 E  
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 F  
which contents can be removed so that the impact would become evident.

28. Weighing the rivalised submissions at the Bar, we direct the G  
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) Pvt. 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

- A 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 in view the aforesaid in view, a meeting shall be held within six weeks hence. All the suggestions or possibilities must be stated in writing before the Committee so that appropriate and properly informed measures are taken.

29. We are sure that the Union of India and its Committee will be in a position to take appropriate steps so that the mandate of the 1994 Act is not violated and the falling sex ratio in the country, as has been noted in *Centre for Enquiry into Health & Allied Themes (CEHAT), Voluntary Health Association of Punjab* (the 1<sup>st</sup>) and *Voluntary Health Association of Punjab* (the 2<sup>nd</sup>), 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) Pvt. 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. There shall be no order as to costs.

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