REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.129 OF 2017

Federation of Obstetrics and
Gynecological Societies of India (FOGSI) ..Petitioner

Versus

Union of India and others ..Respondents

J U D G M E N T

Arun Mishra, J.

1. The instant writ petition has been filed by the Federation of Obstetrics and Gynaecological Societies of India (FOGSI) (hereinafter referred to as 'the Society') highlighting the issues and problems affecting the practice of obstetricians and gynaecologists across the country under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'the Act') and challenging the constitutional validity of Sections 23(1) and 23(2) of the Act and seeking direction in the nature of certiorari/mandamus for decriminalising anomalies in paperwork/record keeping/clerical errors in regard of the provisions of the Act for being violative of

Articles 14, 19(1)(g) and 21 of the Constitution of India. The Society is the apex body of obstetricians and gynaecologists of the country and is concerned for the welfare of its members.

2. The case set up on behalf of the petitioner-Society is that the Act was enacted with the objective to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. But unfortunately, its implementation is more in letter and less in spirit. The problem of sex determination and gender selection is a serious issue and is one of the biggest social problems faced by our society. Despite enactment of the Act and subsequent amendments, the Child Sex Ratio has not shown significant improvement, hence, putting sufficient concern and questions on the proper implementation of the Act. It is contended that equating clerical errors on the same footing with the actual offence of sex determination shows the inherent weakness in the language of the Act.

3. It is further contended that the Appropriate Authority appointed under the Act conducts inspections and raids in various districts and cities and even if there are mere anomalies

in the paperwork, it seals the sonography machine and files a criminal case under the Act. As a result, doctors who do not conduct sex determination and gender selection are being targeted on the basis of aforesaid anomalies. The inherent infirmity in the Act as it stands currently in its present form amounting to treating unequals as equals. The Act has failed to distinguish between criminal offences and the anomalies in paperwork like incomplete 'F'-Forms, clerical mistakes such as writing NA or incomplete address, no mentioning of the date, objectionable pictures of Radha Krishna in sonography room, incomplete filling of Form 'F', indication for sonography not written, faded notice board and not legible, striking out details in the Form 'F' etc., thereby charging the members of the petitioner-Society for heinous crime of female foeticide and sex determination and that too merely for unintentional mistakes in record keeping. The Act provides same punishment for the contravention of any provision of the Act, thus equating the anomalies in paperwork and the offence of sex determination and gender selection on the same pedestal. The sealing of machines directly deprives a woman in that vicinity of a critical medical aid and thereby putting the lives of the women in danger. The

unreasonable sealing of the sonography machine not only impacts the welfare of the women as such, but it also amounts to undue harassment and mental torture of the members of the petitioner-Society.

4. It is further contended that the ambiguous wording of Section 23(1) of the Act has resulted in grave miscarriage of justice and the members of the petitioner-Society have faced grave hardships and have undergone criminal prosecution for act, which cannot be equated with the acts of sex determination.

5. It is averred that even the smallest anomaly in paperwork which is in fact an inadvertent and unintentional error has made the obstetricians and gynaecologists vulnerable to the prosecution by the Authorities all over the country.

6. Section 23(2) of the Act empowers the State Medical Council to suspend the registration of any doctor indefinitely, who is reported by the Appropriate Authority for necessary action, during the pendency of trial. The petitioner-Society submitted that Section 23(2) of the Act is ultra vires the Constitution as it assumes the guilt of the alleged accused even before his/her conviction by a competent court and hence violates the

fundamental right guaranteed under Article 21 of the Constitution.

7. It is contended that presumption of innocence is a cardinal principle of rule of law for which petitioner-Society has placed reliance on Article 14(2) of the International Covenant on Civil and Political Rights, 1966, which states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 reads thus:

> "Article 14
>
> 1. ***
>
> 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

8. It is contended that the Act fails to distinguish between the cases of presence and absence of *mens rea* during the commission of minor clerical mistakes. *Mens rea* is not be presumed at the time of taking cognizance and must be established as held by this Court in *Arun Bhandari v. State of U.P.*, (2013) 2 SCC 801.

9. The petitioner-Society has further placed reliance on the decisions rendered by this Court in cases of penal statues to give proper effect to the scheme of the Act concerned and to balance various interests involved by striking down/reading down/ diluting the concerned penal provisions.

10. It is further contended that suspension of the medical licence at the stage of framing of charges is highly improper and harsh, which results in loss of livelihood of not only the members of the Society, but also his family as well as the dependents, who are deprived of financial security and well-being. The vague and ambiguous wordings of Section 23(1) renders Section 25 totally redundant.

11. It is further submitted that Form-F as it stands today does not serve the purpose for which it was made and there is no substantive evidence which proves that errors in Form-F have any direct nexus with the offence of sex selection and determination.

12. Respondent Nos.1 to 4 has refuted the claims of the petitioner-Society altogether. It is contended that the Act is a social welfare legislation with a social objective to prevent

elimination of girls before birth and it is not a general law providing any general right to practice medicine. The specific choice of legislature cannot be called arbitrary and is in no way *ultra vires* or violative of the Constitution. The Act is a Central legislation; however, its implementation lies primarily with the States, who are required to enforce the law through the statutory bodies in the State, constituted under the Act. The Act empowers the Central Government to regulate the use of pre-natal diagnostic techniques. The proliferation of the technology is resulting in a catastrophe in the form of female foeticide leading to severe imbalance in child sex ratio and sex ratio at birth. The Centre is duty bound to intervene in such a case to uphold the welfare of the society, especially of the women and the children. The Act was enacted with a purpose to ban the use of sex selection techniques before or after conception; prevent the misuse of pre-natal diagnostic techniques for sex selection abortions and to regulate such techniques. It is mandatory to maintain proper record in respect of use of ultrasound machines under the Act. For effective implementation of the Act, a hierarchy of Appropriate Authority at State, District and Sub-District level is created.

13. It is contended that ultrasonography test on a pregnant woman is considered to be an important part of a pre-natal diagnostic test and the person conducting such test has to maintain a complete record thereof in the manner prescribed in the rules and a deficiency or inaccuracy in maintaining such records would amount to an offence. Chapter VII of the Act prescribes offences and penalties and there is no gradation of offences under the Act as it does not classify offences. Equating the clerical errors on same footing with the actual offence of sex determination is in compliance with the provisions of the Act and rules thereunder. The Act does not differentiate among the violations committed by doctors and provides for punishment for all violations under the Act. The Act prescribes punishment in furtherance of its object and purposes which is to prevent detection of female foetus which is in the larger public interest, hence Section 23 of the Act does not violate Articles 14 and 21. It is further averred that right to practice a profession under Article 19(1)(g) of the Constitution is not an absolute right.

14. It is contended that petitioner-Society in the garb of social cause is trying to mislead this Court and a criminal act cannot be

protected under the umbrella of the Article 19. The offences under the Act are *per se* criminal and no exemption can be sought for criminal violations in the guise of public interest or right to freedom.

15. It is contended that the Appropriate Authority conducts inspection pursuant to the directions issued by this Court in *Centre for Enquiry into Health & Allied Themes (CEHAT) v. Union of India,* (2003) 8 SCC 398, wherein it was directed to constitute National Inspection and Monitoring Committee for conducting inspections. As the sex determination is hatched in secrecy and committed in privacy and as both the parties are hand in glove with each other, therefore it becomes difficult to detect the commission of the offence, hence traps are usually laid or raids are conducted by the inspecting authorities and sometimes non-maintenance of records or incomplete records may provide substantial evidence towards the commission of offence. It is further submitted that the Act specifically provides for the record keeping under Rule 9 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as 'the Rules') and any deficiency or

inaccuracy in record keeping amounts to violation of Sections 5 and 6 of the Act.

16. The respondents contend that record keeping is important for proper implementation of the Act and the stringent provisions with regard to maintenance of records and punishment for non-compliance cannot be equated or considered as infirmity of the Act. If it is exempted from the mandatory requirement, the probably involvement in sex determination and sex selection in the guise of use of diagnostic techniques would continue unabated.

17. It is also contended that the purpose of Form 'F' is to maintain personal and medical record of the patient visiting the Pre-Natal Diagnostic Clinic to avail the services and confirmation regarding the consent of the patient/pregnant woman with regard to the prohibition of communication of the sex of foetus so as to avoid abuse of the technology. Section 4(3) of the Act requires every Genetic Counselling Centre/Genetic Clinic to fill Form 'F'. The filling of Form 'F' is commensurate with the objects of the Act which is to regulate the technology and to avoid the abuse of the technology for the purpose of sex determination. It

gives the insight into the reasons for conducting ultrasonography and incomplete Form 'F' raises presumption of doubt against the medical practitioner and in the absence of Form 'F', the Appropriate Authority will have no means to supervise the usage of the ultrasonography machine and shall not be able to regulate the use of the technique. The non-maintenance of records is not merely a technical or procedural lapse in the context of sex determination, it is the most significant piece of evidence for identifying the accused. It is further contended that clerical errors in Form 'F' fall under Section 4 of the Act and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of Section 5 or 6 of the Act unless contrary is proved by the person conducting such ultrasonography.

18. It is contended that every aggrieved person, who suffered from any procedural irregularity, can avail legal remedy as provided under Section 21 of the Act and Rule 19 of the Rules.

19. The respondents have placed reliance on decision rendered by High Court of Gujarat in *Suo Motu v. State of Gujarat, (2009) 1 GLR 64*, which dealt with the issue of proper maintenance of

records and to the decision rendered by High Court of Rajasthan in *S.K. Gupta v. Union of India,* wherein it was observed that female infants have also right to live. There is right of still born child to be looked after properly during pregnancy. Once a child is conceived, it has to be treated with dignity. Such right cannot be denied and practice of female foeticide/infanticide is prevailing at large which is illegal and unconstitutional.

20. The respondents have also drawn our attention to the provisions of Regulation 1.3 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002; Regulation 6.2 of Pharmacy Practice Regulation, 2015; and Transplantation of Human Organs and Tissues Act, 1994, which contains the provisions with respect to maintenance of proper records.

21. It is submitted that Section 23 and Section 25 are complimentary to each other, not contradictory as contended by the petitioner-Society. It is lastly contended that no case for striking down the proviso to Section 4(3) is made out.

22. Shri Soli J. Sorabjee and Shri Shyam Divan, learned senior counsel urged that present is the classic example of unequals

being treated as equals. Due to inherent infirmity in the Act, whereunder members of the petitioner-Society are treated unequally as mere clerical errors has resulted in breach of personal liberties. The Act fails to classify offence of actual sex determination *vis-à-vis* clerical error in maintenance of record. There is no gradation of offence.

23. The presumption of innocence ought not to be disposed away with under the Act. The same is part of human rights. Presumption of innocence continues until conviction. The provisions of suspension under Section 23(2) is draconian. Any deficiency or inaccuracy in maintenance of records ought not to amount to contravention under Section 5 or Section 6 and the proviso to Section 4(3) accordingly be diluted. It may be clarified that contravention of proviso to Section 4(3), Section 29 and Rule 9 or technical lapses attracting minor penalty should not attract Section 27 of the Act. The provision of Section 23(2) be read down so that suspension should not fall under Section 23(2) in the case of clerical mistakes or inadvertent technical errors/lapses. Issuance of notice be made mandatory under Section 20. No action be taken on technical grounds such as writing short forms, writing 'NA' instead of "not applicable",

writing initials of the doctors etc. while filing up Form 'F'. The competent authority should consider each case on merits with the aid of legal advisor. Denial of renewal of registration of Centre of a running unit on the ground of pendency of criminal trial is illegal and harsh. There should not be seizure of any equipment etc. as ultrasound machine are necessary for human use. It is not appropriate to keep such utilitarian instruments sealed.

24. Ms. Pinki Anand, Additional Solicitor General appearing on behalf of respondents countering the submission raised on behalf of petitioner-Society contended that there is alarming decline in the child sex ratio in India and in several districts it is worse as the ratio per thousand is below 800. She has also relied upon the purpose and legislative history of enactment of the Act including amendments made thereunder and the Rules. It has been made mandatory to maintain proper records in respect of use of ultrasound machines. The Act provides for prohibition of sex selection/determination as well as regulation of pre-natal diagnostic techniques. The rate of conviction is extremely poor, despite 24 years of the existence of the Act, it is only 586 out of 4202 cases registered, resulting into action against 138 medical

licenses. Emphasis has been laid by this Court in several decisions on proper maintenance of records. Section 23 is the central provision in the scheme of the Act. Form 'F' is very important as it gives the details and the reasons for conducting ultrasonography and incomplete Form 'F' raises the presumption of doubt against the medical practitioner. Section 23 and Form 'F' are inter-linked, thus, the provisions cannot be diluted. She further contended that the non-maintenance of records is not merely procedural lapse, it is key evidence given the collusive nature of the crime. There exist effective and efficacious remedies to the instances cited by the petitioner-Society. She also relied upon a case study on record keeping as an implementation tool of Prabhakar Hospital in Panipat. The Act enjoys a presumption of constitutionality and no case of violation of fundamental rights has been made out by the petitioner-Society. The Act is regulatory and is for the wholesome purpose same advances the intendment of other provisions applicable to medical fraternity, which requires rigorous maintenance of records. Considering the wide prevalence of violence against women and children in different forms, the Legislature has enacted several Acts in order to ensure gender justice and to take

care of cry of female foetus. No case for striking down, dilution or issuance of any guidelines is made out by the petitioner-Society.

25. It was urged on behalf of intervenor that Section 28 of the Act makes it clear that no court shall take cognizance of an offence unless on a complaint made by Appropriate Authority. The composition of Appropriate Authority is provided under Section 17(3)(a), which is a High-Powered Body. The Supervisory Board shall review the activities of the Appropriate Authorities as provided under Section 16A(1)(ii). The Supervisory Committee consists of large body. Thus, there are adequate safeguards to maintain check and balance provided within the Act.

26. Before we dilate upon various aspects, we take note of provisions of the Act. The Act was introduced by Parliament with the following Statement of Objects and Reasons:

> "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.
>
> 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.
>
> 2. The Bills seeks to achieve the above objectives."

The concern of the Legislature was that the female child is not welcomed with open arms in most of Indian families and the diagnostic technique is being used to commit female foeticide.

27. The female foeticide is not only the concern of India, but of various countries. The United Nations General Assembly had adopted Resolution No.52/106 on 11.2.1998 expressing concern about pre-natal sex selection, female infanticide and female genital mutilation. The said Resolution also urged all States to enact and enforce legislation protecting girls from all forms of violence, including female infanticide and prenatal sex selection. The United Nations Fourth World Conference on Women in September, 1995 adopted the Beijing Declaration and Platform for Action. Beijing Declaration and Platform for Action identified "violence against women" to "include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and pre-natal sex selection". It further urged Governments to "enact and enforce legislation against the

perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide, prenatal sex selection and dowry-related violence". Further urged Governments to "Eliminate all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices such as pre-natal sex selection and female infanticide; this is often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses".

28. Beijing Declaration and Platform for Action was adopted at the 16th Plenary Meeting of the Fourth World Conference on Women held on 15.9.1995 at Beijing. The relevant extract relating to violence against women and actions to be taken is reproduced hereunder:

> "115. Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.
>
> Strategic objective L.2. Eliminate negative cultural attitudes and practices against girls
>
> <u>Actions to be taken</u>
>
> 276. By Governments:
> (a) Encourage and support, as appropriate, non-governmental organizations and community-based organizations in their efforts to promote changes in negative attitudes and practices towards girls;
> (b)**
> (c)**

> (d) Take steps so that tradition and religion and their expressions are not a basis for discrimination against girls.
>
> 277. By Governments and, as appropriate, international and non-governmental organizations:
> (a)**
> (b)**
> (c) Eliminate all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices such as prenatal sex selection and female infanticide; this is often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses"

29. The 1994 Programme of Action of the International Conference on Population and Development (ICPD) resolved to eliminate all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices regarding female infanticide and prenatal sex selection, and also to increase public awareness of the value of the girl child. Further urged Governments to take necessary measures to prevent infanticide, prenatal sex selection, trafficking of girl children and forcing of girls in prostitution and pornography. The International Conference on Population and Development adopted the Programme of Action of the International Conference on Population and Development and passed the resolution at the 14th Plenary meeting held on 13.9.1994. The relevant portion of the aforesaid resolution is extracted hereunder:

> "4.15. Since in all societies discrimination on the basis of sex often starts at the earliest stages of life, greater equality for the girl child is a necessary first step in ensuring that women realize their full potential and become equal partners in development. In a number of countries, the practice of prenatal sex selection, higher rates of mortality among very young girls, and lower rates of school enrolment for girls as compared with boys, suggest that "son preference" is curtailing the access of girl children to food, education and health care. This is often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses. Investments made in the girl child's health, nutrition and education, from infancy through adolescence, are critical.
>
> Objectives
> 4.16. The objectives are:
> (a) To eliminate all forms of discrimination against the girl child and the root causes of son preference, which results in harmful and unethical practices regarding female infanticide and prenatal sex selection;
> (b) To increase public awareness of the value of the girl child, and concurrently, to strengthen the girl child's self-image, self-esteem and status;
> (c) To improve the welfare of the girl child, especially in regard to health, nutrition and education.
>
> 4.23. Governments are urged to take the necessary measures to prevent infanticide, prenatal sex selection, trafficking in girl children and use of girls in prostitution and pornography."

30. The Resolution 56/139 adopted by the U.N. General Assembly, on 26.2.2002 expressed deep concern about discrimination against the girl child, including practices such as female infanticide, incest, early marriage, prenatal sex selection etc. The Resolution also urged States to enact and enforce legislation to protect girls from all forms of violence, including female infanticide and prenatal sex selection, female genital mutilation, rape, domestic violence, incest, sexual abuse, sexual exploitation, child prostitution and child pornography, and to

develop age-appropriate safe and confidential programmes and medical, social and psychological support services to assist girls who are subjected to violence. The General Assembly of United Nations adopted the following resolution no.56/139 on 26.2.2002:

> "Deeply concerned about discrimination against the girl child and the violation of the rights of the girl child, which often result in less access for girls to education, nutrition and physical and mental health care and in girls enjoying fewer of the rights, opportunities and benefits of childhood and adolescence than boys and often being subjected to various forms of cultural, social, sexual and economic exploitation and to violence and harmful practices, such as female infanticide, incest, early marriage, prenatal sex selection and female genital mutilation.
>
> 10. Also urges all States to enact and enforce legislation to protect girls from all forms of violence, including female infanticide and prenatal sex selection, female genital mutilation, rape, domestic violence, incest, sexual abuse, sexual exploitation, child prostitution and child pornography, and to develop age-appropriate safe and confidential programmes and medical, social and psychological support services to assist girls who are subjected to violence."

31. Resolution 70/138, adopted by the U.N. General Assembly on 17.12.2015, also expressed its concern at discrimination against girl child including pre-natal sex selection, and urged states "to enact and enforce legislation to protect girls from all forms of violence, discrimination, exploitation and harmful practices in all settings, including female infanticide and prenatal sex selection".

32. The General Assembly of United Nations in the 80th Plenary Meeting adopted resolution no.70/138 dated 17.12.2015 concerning the girl child, the relevant portion of the said resolution reads thus:

> "...Deeply concerned also about discrimination against the girl child and the violation of the rights of the girl child, including girls with disabilities, which often result in less access for girls to education, and to quality education, nutrition, including food allocation, and physical and mental health-care services, in girls enjoying fewer of the rights, opportunities and benefits of childhood and adolescence than boys, and in leaving them more vulnerable than boys to the consequences of unprotected and premature sexual relations and often being subjected to various forms of cultural, social, sexual and economic exploitation and violence, abuse, rape, incest, honour-related crimes and harmful practices, such as female infanticide, child, early and forced marriage, prenatal sex selection and female genital mutilation.
>
> 20.Urges all States to enact and enforce legislation to protect girls from all forms of violence, discrimination, exploitation and harmful practices in all settings, including female infanticide and prenatal sex selection, female genital mutilation, rape, domestic violence, incest, sexual abuse, sexual exploitation, child prostitution and child pornography, trafficking and forced migration, forced labour and child, early and forced marriage, and to develop age-appropriate, safe, confidential and disability-accessible programmes and medical, social and psychological support services to assist girls who are subjected to violence and discrimination.
>
> 29.Calls upon Governments, civil society, including the media, and non-governmental organizations to promote human rights education and full respect for and the enjoyment of the human rights of the girl child, inter alia, through the translation, production and dissemination of age-appropriate and gender-sensitive information material on those rights to all sectors of society, in particular to children.
>
> 30.Requests the Secretary-General, as Chair of the United Nations System Chief Executives Board for Coordination, to ensure that all organizations and bodies of the United Nations system, individually and collectively, in particular the United Nations Children's Fund, the United Nations Educational, Scientific and Cultural Organization, the World Food Programme, the United Nations Population Fund, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the World Health Organization, the Joint United Nations Programme on HIV/AIDS, the United Nations Development

> Programme, the Office of the United Nations High Commissioner for Refugees and the International Labour Organization, take into account the rights and the particular needs of the girl child in country programmes of cooperation in accordance with national priorities, including through the United Nations Development Assistance Framework."

33. The General Assembly of United Nations adopted the following resolution no.52/106 on 12.12.1997 keeping in view the discrimination against the girl child and violation of her rights:

> "Deeply concerned about discrimination against the girl child and the violation of the rights of the girl child, which often result in less access for girls to education, nutrition, physical and mental health care and in girls enjoying fewer of the rights, opportunities and benefits of childhood and adolescence than boys and often being subjected to various forms of cultural, social, sexual and economic exploitation and to violence and harmful practices such as incest, early marriage, female infanticide, prenatal sex selection and female genital mutilation.
>
> 3. Also urges all States to enact and enforce legislation protecting girls from all forms of violence, including female infanticide and prenatal sex selection, female genital mutilation, incest, sexual abuse, sexual exploitation, child prostitution and child pornography, and to develop age-appropriate safe and confidential programmes and medical, social and psychological support services to assist girls who are subjected to violence."

34. The concern world over as to female foeticide and infanticide is writ large from aforesaid resolution. It is worthwhile to quote the statistics of World Factbook, 2016 of the Central Intelligence Agency of the United States of America on female foeticide/infanticide across the world, which is to the following effect:

Rank	Name of the country	Sex ratio at birth

1.	Liechtenstein	126 males/100 females
2.	China	115 males/100 female
3.	Armenia	113 males/100 females
4.	India	112 males/100 females
5.	Azerbaijan	111 males/100 females
5.	Viet Nam	111 males/100 females
6.	Albania	110 males/100 females
7.	Georgia	108 males/100 females
8.	South Korea	107 males/100 females
8.	Tunisia	107 males/100 females
9.	Nigeria	106 males/100 females
10.	Pakistan	105 males/100 females
11.	Nepal	104 males/100 females

35. There is sharp decline in the sex ratio in India. In the year 1901 where 972 females as against 1000 males were recorded. In 1961, it was recorded as 941; in 1971 it was 930; in 1981 it was reported 934; in 1991 it was 927; in 2001 it was 933 and in 2011 it was 943. On behalf of respondent-Union of India following State wise data has been furnished:

"Sex Ratio (Female per 1000 Male) at Birth by residence, India and bigger States, SRS 2012-14 to 2014-16

S.N.	India and	2012-	2013-	Change	2013-	2014-	Change
	India	906	900	-6	900	898	-2
1.	Andhra Pradesh	919	918	-1	918	913	-5
2.	Assam	918	900	-18	900	896	-4
3.	Bihar	907	916	9	916	908	-8
4.	Chhattisgarh	973	961	-12	961	963	2
5.	Delhi	876	869	-7	869	857	-12
6.	Gujarat	907	854	-53	854	848	-6
7.	Haryana	866	831	-35	831	832	1
8.	Himachal	938	924	-14	924	917	-7
9.	Jammu & Kashmir	899	899	0	899	906	7
10.	Jharkhand	910	902	-8	902	918	16

11.	Karnataka	950	939	-11	939	935	-4
12.	Kerala	974	967	-7	967	959	-8
13.	Madhya Pradesh	927	919	-8	919	922	3
14.	Maharashtra	896	878	-18	878	876	-2
15.	Orissa	953	950	-3	950	948	-2
16.	Punjab	870	889	19	889	893	4
17.	Rajasthan	893	861	-32	861	857	-4
18.	Tamil Nadu	921	911	-10	911	915	4
19.	Telangana	N.A.	N.A.	N.A.	N.A.	901	N.A.
20.	Uttar Pradesh	869	879	10	879	882	3
21.	Uttarakhand	871	844	-27	844	850	6
22.	West Bengal	952	951	-1	951	937	-14

The aforesaid table indicates decline in 18 States and maximum decline of 53 points was recorded in Gujarat followed by Haryana by 35 points and Rajasthan by 32 points. Sex ratio of the States in 2014-2016 indicates decline in 13 States. The maximum decline of 14 points was recorded in West Bengal followed by Delhi recorded at 12 points. In a publication of United Nations (UNFPA), it was published that 0.46 million girls were missing at birth on an average annually during the period 2001-2012 as a result of sex-selective abortions. The fall in sex ratios does not only have an impact on the demography of the nation, but it also gives rise to violent practices such as trafficking of women and bride buying. The Act was conceived out of the urgency for the prohibition of sex selection practices and prohibition of the advertisement of the pre-natal diagnostic techniques for detection/determination of sex. It came into force

in the year 1996. It was amended in 2003 following a PIL which was filed in 2000 to improve regulation of technology capable of sex selection. By way of amendment in the Act, the name of the Act has been changed to Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The main purpose of the Act is to ban the use of sex selection and misuse of pre-natal diagnostic technique for sex selective abortions and to regulate such techniques. The amendments have brought techniques of pre-conception sex selection within the ambit of the Act and have also brought use of ultrasound machines under its umbrella. It has further provided for constitution of Central and State Level Supervisory Board. More stringent punishments have been provided. The Appropriate Authorities have been given powers of civil court for search, seizure and sealing. The maintenance of record has been made mandatory in respect of use of ultrasound machines. It has also regulated the sale of ultrasound machines only to the registered bodies. The Act provides for prohibition of sex selection/determination and regulate pre-natal diagnostic technology. Several important amendments were notified in the Rules. Rule 11(2) was amended in 2011 to provide for

confiscation of the unregistered machines and Section 23(1) prescribes imprisonment upto three years and with fine upto ten thousand rupees against the unregistered clinic/facilities and on any subsequent conviction, the imprisonment may extend to five years and with fine which may extend to fifty thousand rupees and Section 23(3) prescribes imprisonment upto three years of imprisonment and with fine upto fifty thousand rupees against the unregistered clinic/facilities for the first offence and for any subsequent offence, the imprisonment may extend to five years and with fine which may extend to one lakh rupees. Rule 3A(3) has been inserted in 2012 to restrict the registration of medical practitioners qualified under the Act to conduct ultrasonography in maximum of two ultrasound facilities within a district only. Number of hours during which the Registered Medical Practitioner would be present in each clinic would be specified clearly to the Appropriate Authority. The amendment made to Rule 13 in 2012 requires every Genetic Counselling Centres, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre to intimate every change of employee, place, address and equipment installed to the Appropriate Authority 30 days in advance of the expected date of such change and seeks

issuance of a new certificate with the changes duly incorporated. Rules for six months' training in ultrasound for the MBBS doctors have been notified vide GSR 14(E) dated 10.1.2014. The Rules include the training curriculum, criteria for accreditation of institutions which will impart training and procedure for Competency Based Evaluation Test for such trained medical practitioners. Revised Form 'F' has been notified vide GSR 77 (E) date 4.2.2014. The revised format is more simplified as the details of invasive and non-invasive diagnostic procedures have been separated and made more simplified.

36. There are only 586 convictions out of 4202 cases registered even after 24 years of existence. It reflects the challenges being faced by the Appropriate Authority in implementing this social legislation. Below is the chart showing State wise status of implementation of the Act as on September 2018 submitted on behalf of respondents:

State wise status of implementation of the PC&PNDT Act as on SEPTEMBER, 2018							
S.No.	States/UTs	No. of registered bodies	No. of ongoing Court/ Police cases	No. of Machines seized/ sealed	Convictions*	Medical licenses cancelled/ suspended	Number of cases decided/ closed
1.	Andhra Pradesh	3119	20	18	0	0	8
2.	Arunachal Pradesh	97	0	-	0	0	-
3.	Assam	930	11	4	1	0	4
4.	Bihar	2761	132	38	6	0	32

5.	Chhattisgarh	700	14	0	0	0	7
6.	Goa	174	1	1	0	0	
7.	Gujarat	5994	235	2	18	7	99
8.	Haryana	2144	313	562	85	21	157
9.	Himachal Pradesh	464	0	4	1	0	3
10.	Jammu & Kashmir	493	3	13	1	0	-
11.	Jharkhand	761	32	0	2	0	-
12.	Karnataka	4711	49	58	38	0	41
13.	Kerala	1737	0	-	0	0	-
14.	Madhya Pradesh	1723	50	17	4	3	9
15.	Maharashtra	8672	587	462	99	79	358
16.	Manipur	130	0	-	0	0	-
17.	Meghalaya	50	0	-	0	0	-
18.	Mizoram	61	0	-	0	0	-
19.	Nagaland	49	0	0	0	0	-
20.	Odisha	1001	66	-	5	0	4
21.	Punjab	1603	147	38	31	1	93
22.	Rajasthan	3039	701	506	149	21	368
23.	Sikkim	27	0	0	0	0	-
24.	Tamil Nadu	6717	123	-	109	2	83
25.	Telangana	3547	24	108	3	0	25
26.	Tripura	48	1	-	0	0	-
27.	Uttarakhand	647	47	12	4	0	16
28.	Uttar Pradesh	6031	139	39	20	1	10
29.	West Bengal	3238	24	29	0	0	1
30.	A & N Island	17	0	-	0	0	-
31.	Chandigarh	183	1	-	0	0	2
32.	D & N Haveli	16	0	0	0	0	-
33.	Daman & Diu	10	0	0	0	0	-
34.	Delhi	1584	104	170	10	3	57
35.	Lakshadeep	9	0	-	0	0	-
36.	Puducherry	109	1	-	0	0	-
	TOTAL	62596	2825	2081	586	138	1377
Note: *Convictions and Medical licenses data up to June 2018							

37. In the light of aforesaid, we examine the submission raised on behalf of petitioner based upon clerical errors. It was urged that the license of members of noble charitable profession are being suspended on account of clerical errors/mistakes in paper work under the Act and the Rules made thereunder. On account

of clerical errors in filling up of the forms, it would not be appropriate to inflict the punishment. In case of actual offence of sex determination, the provisions of the Act may govern the field. As submission appears to be attractive and it requires deep scrutiny whether it is a clerical error in filling up of the forms or is foundation of substantial breach of the provisions of the Act and Rules framed thereunder. It was urged that Section 23 of the Act treats unequals as equals and there is infirmity in the Act as the clerical error in filling up of the Form 'F' cannot be treated at par with actual offence of sex determination. There is no gradation of the offence under the Act. Learned senior counsel has placed reliance on *Uttar Pradesh Power Corporation Ltd. vs. Ayodhya Prasad Mishra,* (2008) 10 SCC 139, wherein this Court held that unequals cannot be treated equally. Treating of unequals as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the Constitution. The same is extracted hereunder:

> "40. It is well settled that equals cannot be treated unequally. But it is equally well settled that unequals cannot be treated equally. Treating of unequals as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the Constitution. The High Court was, therefore, right in holding that Executive Engineers placed in Category I must get priority and preference for promotion to the post of Superintendent Engineer over Executive Engineers found in Category II."

38. It is contended that merely clerical error cannot be equated with offences as mentioned in Sections 5 and 6 of the Act. The main purpose and the object of the Act is being misused and more than 60 per cent cases registered under the Act, are pertaining to non-maintenance of record.

39. In order to appreciate whether it is clerical omission or otherwise, we have to delve on the provisions of the Act what is mandated thereunder. Section 3 provides for regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics, Section 3A deals with prohibition of sex-selection and Section 3B deals with prohibition on sale of ultrasound machine, etc. to persons, laboratories, clinics, etc. not registered under the Act. The same are extracted hereunder:

> "**3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.**— On and from the commencement of this Act, —
>
> (1) no Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques;
>
> (2) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person whether on honorary basis or on payment who does not possess the qualifications as may be prescribed;
>
> (3) no medical geneticist, gynaecologist, paediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.

3A. 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.

3B. Prohibition on sale of ultrasound machine, etc., to persons, laboratories, clinics, etc., not registered under the Act.— No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act." (emphasis supplied)

40. Section 4 deals with regulation of pre-natal diagnostic techniques, which is extracted hereunder:

"**4. Regulation of pre-natal diagnostic techniques.** — On and from the commencement of this Act,—

(1) no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

(2) no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely: —

(i) chromosomal abnormalities;
(ii) genetic metabolic diseases;
(iii) haemoglobinopathies;
(iv) sex-linked genetic diseases;
(v) congenital anomalies;
(vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board;

(3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:—

(i) age of the pregnant woman is above thirty-five years;
(ii) the pregnant woman has undergone of two or more spontaneous abortions or foetal loss;
(iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;

> (iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
> (v) any other condition as may be specified by the Board;
>
> Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in 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;
>
> (4) 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).
>
> (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."
>
> (emphasis supplied)

There is prohibition created under Section 4(1) to use any registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic for conducting pre-natal diagnostic techniques except for the purposes specified in sub-section (2) of Section 4. Wrong expression has been used as clause (2) in the Act, where it should be sub-section (2). Be that as it may. Section 4(2) provides for conducting of pre-natal diagnostic techniques for the purpose of detection of abnormalities.

Section 4(3) provides that no pre-natal diagnostic techniques shall be used unless the person qualified to do so is satisfied for the reasons to be recorded in writing that prescribed conditions are fulfilled such as age of the pregnant women is above thirty-five years; the pregnant woman has undergone two

or more spontaneous abortions or foetal loss; she had 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 as prescribed therein; or any other condition as may be specified by the Board.

In the absence of aforesaid fulfilment of the aforesaid conditions provided in Section 4(3) and in the absence of abnormality as provided in Section 4(2), no such test can be performed. Proviso to Section 4(3) makes it mandatory that person conducting ultrasonography on a pregnant woman shall keep complete record 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. Section 5 provides for written consent of pregnant woman and prohibition of communicating the sex of foetus, whereas Section 6 provides that determination of sex is prohibited. Sections 5 and 6 are extracted below:

> "**5. Written consent of pregnant woman and prohibition of communicating the sex of foetus**.—
>
> (1) No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless—

(a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;

(b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and

(c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

(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.

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 ultrasonography, 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 ultrasonography 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."

(emphasis supplied)

41. Independently, specific provisions have been made barring use of technology i.e., pre-natal diagnostic techniques for determination of sex of foetus under Section 6 of the Act. The use of technology can only be for the purposes as provided in Section 4(2) and with the pre-conditions as provided in Section 4(3).

42. As a safeguard to arbitrary use of powers by concerned authorities the constitution of State Supervisory Board and

Union Territory Supervisory Board is provided in Section 16A, which is a large body consisting of various representatives. It has to create public awareness, review the activities of the Appropriate Authorities and to monitor the implementation of the provisions of the Act and to send the periodical report. Relevant portion of Section 16A of the Act reads thus:

> "**16A. Constitution of State Supervisory Board and Union territory Supervisory Board**.—
>
> (1) Each State and Union territory having Legislature shall constitute a Board to be known as the State Supervisory Board or the Union territory Supervisory Board, as the case may be, which shall have the following functions:—
>
> (i) to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide in the State;
> (ii) to review the activities of the Appropriate Authorities functioning in the State and recommend appropriate action against them;
> (iii) to monitor the implementation of provisions of the Act and the rules and make suitable recommendations relating thereto, to the Board;
> (iv) to send such consolidated reports as may be prescribed in respect of the various activities undertaken in the State under the Act to the Board and the Central Government; and
> (v) any other functions as may be prescribed under the Act.
>
> (2) The State Board shall consist of,—
>
> (a) the Minister in charge of Health and Family Welfare in the State, who shall be the Chairperson, *ex-officio*;
> (b) Secretary in charge of the Department of Health and Family Welfare who shall be the Vice-Chairperson, *ex-officio*;
> (c) Secretaries or Commissioners in charge of Departments of Women and Child Development, Social Welfare, Law and Indian System of Medicines and Homoeopathy, *ex-officio*, or their representatives;
> (d) Director of Health and Family Welfare or Indian System of Medicines and Homoeopathy of the State Government, *ex-officio*;
> (e) three women members of Legislative Assembly or Legislative Council;

(f) ten members to be appointed by the State Government out of which two each shall be from the following categories:—

(i) eminent social scientists and legal experts;
(ii) eminent women activists from non-governmental organizations or otherwise;
(iii) eminent gynaecologists and obstetricians or experts of *stri-roga* or *prasuti-tantra*;
(iv) eminent paediatricians or medical geneticists;
(v) eminent radiologists or sonologists;

(g) an officer not below the rank of Joint Director in charge of Family Welfare, who shall be the Member Secretary, *ex-officio*.

(3) The State Board shall meet at least once in four months."

43. The constitution of Appropriate Authority and Advisory Committee is provided in Section 17. It consists of an officer of or above the rank of the Joint Director of Health and Family Welfare as Chairperson, an eminent woman representing women's organization and an officer of Law Department of the State or the Union Territory as members as the case may be. The functions of the Appropriate Authority are prescribed in Section 17(4). It empowers the Appropriate Authority to grant, suspend or cancel the registration, enforce standards, investigate complaints and to do other acts as provided therein. Constitution of Advisory Committee is also provided under Section 17(6), to aid and advise the Appropriate Authority, consisting of three medical experts from amongst gynaecologists, obstetricians, paediatricians and medical geneticists, one legal expert, an officer as provided thereunder, and three eminent

social workers. No person who has been associated with the use or promotion of pre-natal diagnostic techniques for determination of sex or sex selection can be member of the Advisory Committee. Section 17 is extracted hereunder:

> "**17. Appropriate Authority and Advisory Committee**.—
> (1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.
>
> (2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.
>
> (3) The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be,—
>
> (a) when appointed for the whole of the State or the Union territory, consisting of the following three members:—
>
> (i) an officer of or above the rank of the Joint Director of Health and Family Welfare—Chairperson;
> (ii) an eminent woman representing women's organization; and
> (iii) an officer of Law Department of the State or the Union territory concerned:
>
> Provided that it shall be the duty of the State or the Union territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:
>
> Provided further that any vacancy occurring therein shall be filled within three months of the occurrence.
>
> (b) when appointed for any part of the State or the Union territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.
>
> (4) The Appropriate Authority shall have the following functions, namely:—
>
> (a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic;
> (b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;

(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action;
(d) to seek and consider the advice of the Advisory Committee, constituted under sub-section (5), on application for registration and on complaints for suspension or cancellation of registration;
(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;
(f) to create public awareness against the practice of sex selection or pre-natal determination of sex;
(g) to supervise the implementation of the provisions of the Act and rules;
(h) to recommend to the Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions;
(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

(5) The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman.

(6) The Advisory Committee shall consist of—
(a) three medical experts from amongst gynaecologists, obstericians, paediatricians and medical geneticists;
(b) one legal expert;
(c) one officer to represent the department dealing with information and publicity of the State Government or the Union territory, as the case may be;
(d) three eminent social workers of whom not less than one shall be from amongst representatives of women's organisations.

(7) No person who has been associated with the use or promotion of pre-natal diagnostic techniques for determination of sex or sex selection shall be appointed as a member of the Advisory Committee.

(8) The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advice thereon:

Provided that the period intervening between any two meetings shall not exceed the prescribed period.

(9) The terms and conditions subject to which a person may be appointed to the Advisory Committee and the procedure to be

> followed by such Committee in the discharge of its functions shall be such as may be prescribed."

44. Section 17A empowers Appropriate Authority to summon any person who is in possession of any information relating to violation of the provisions of the Act and production of documents, issue search warrant etc. It is mandatory that such Genetic Counselling Centres, Laboratories or Clinics should be registered under Section 18 of the Act.

45. Section 20 deals with cancellation or suspension of registration. An action can be taken as provided under Section 20(2) after giving reasonable opportunity of being heard. In case there is breach of provisions of the Act or the Rules, and the same is without prejudice to any criminal action that it may take against such Centres, Laboratory or Clinic, the Appropriate Authority in public interest for reasons to be recorded in writing, can suspend the registration of any Genetic Counselling Centres, Laboratories or Clinics under Section 20(3) of the Act without issuing any notice referred to in sub-section (1) of Section 20. The provisions of appeal against the order of suspension or cancellation of registration passed by Appropriate Authority has

been provided in Section 21. Sections 20 and 21 are extracted hereunder:

> "**20. Cancellation or suspension of registration.**— (1). The Appropriate Authority may *suo moto*, or on complaint, issue a notice to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.
>
> (2) If, after giving a reasonable opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.
>
> (3) Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).
>
> **21. Appeal**.— The Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the Appropriate Authority under section 20, prefer an appeal against such order to—
>
> (i) the Central Government, where the appeal is against the order of the Central Appropriate Authority; and
>
> (ii) the State Government, where the appeal is against the order of the State Appropriate Authority,
>
> in the prescribed manner."
>
> (emphasis supplied)

46. Section 22 deals with prohibition of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention.

47. Section 23 deals with offences and penalties. Section 23(1) provides for contravention of any provisions of the Act or Rules made thereunder, punishment with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees. Section 23(2) contains provision with respect to reporting of name of the registered medical practitioner by the Appropriate Authority to the State Medical Council concerned for passing appropriate order including suspension of the registration, if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence. Any person who seek aid of any Genetic Counselling Centre, Laboratory, Clinic or ultrasound clinic or imaging clinic etc. for sex selection, shall be punishable with imprisonment which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees. If a woman is compelled by her husband or any other relative to undergo pre-natal diagnostic technique for the purpose of Section 4(2), such

person shall be liable for abetment of offence under Section 23(3).

Sections 23 and 24 are extracted hereunder:

> "**23. Offences and penalties**.— (1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.
>
> (2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.
>
> (3) Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant women for the purposes other than those specified in sub-section (2) of section 4, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.
>
> (4) For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.
>
> **24. Presumption in the case of conduct of pre-natal diagnostic techniques**.—Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume unless the contrary is proved that the pregnant woman 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."
>
> (emphasis supplied)

48. Section 25 of the Act deals with the penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided. Any contravention under this Section shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or both and in case of continuing contravention with an additional fine which may extend to five hundred rupees for every day.

49. Section 27 makes offence to be cognizable, non-bailable and non-compoundable. Section 27 is extracted hereunder:

> "**27. Offence to be cognizable, non-bailable and non-compoundable**.-Every offence under this Act shall be cognizable, non-bailable and non-compoundable."

50. The mode of taking cognizance of offence is provided in Section 28 on a complaint made by the Appropriate Authority or any officer authorised in this behalf; or by a person who has given notice of not less than fifteen days to the Appropriate Authority of the alleged offence and of his intention to make a complaint to the court. The Metropolitan Magistrate or a Judicial Magistrate is competent to try any offence punishable under this

Act. Maintenance of records is provided in Section 29 and that has to be preserved for two years. In case any criminal or other proceedings are instituted against any Genetic Counselling Centre, Laboratory or Clinic, the records shall be preserved till the final disposal of such proceedings. Section 30 empowers Appropriate Authority to search and seize records etc. Section 31 provides for protection of action taken in good faith.

51. Section 32 empowers the Central Government to make rules for carrying out the provisions of the Act. Section 33 gives power to the Board to make regulations with the previous sanction of the Central Government. Rules and regulations are required to be laid before the Parliament as provided in Section 34.

52. Rule 9 of the Rules provides for maintenance and preservation of records. The same is extracted hereunder:

> **9. Maintenance and preservation of records**.—
>
> (1) Every Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic including a mobile Genetic Clinic, Ultrasound Clinic and Imaging Centre shall maintain a register showing, in serial order, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counselling, procedure or test.
>
> (2) The record to be maintained by every Genetic Counselling Centre, in respect of each woman counselled shall be as specified in Form D.

(3) The record to be maintained by every Genetic Laboratory, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form E.

(4) The record to be maintained by every Genetic Clinic including a mobile Genetic Clinic, in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F.

(5) The Appropriate Authority shall maintain a permanent record of applications for grant or renewal of certificate of registration as specified in Form H. Letters of intimation of every change of employee, place, address and equipment installed shall also be preserved as permanent records.

(6) All case related-records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters shall be preserved by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, Ultrasound Clinic or Imaging Centre for a period of two years from the date of completion of counselling, pre-natal diagnostic procedure or pre-natal diagnostic test, as the case may be. In the event of any legal proceedings, the records shall be preserved till the final disposal of legal proceedings, or till the expiry of the said period of two years, whichever is later.

(7) In case the Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic or Ultrasound Clinic or Imaging Centre maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.

(8) 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.”

Rule 9 makes it mandatory to maintain a register showing in serial order the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the name of their spouse or father and the date on which they first reported for

such counselling. Rule 9(2) states that record to be maintained uniformly. Rule 9(4) provides that record to be maintained by every Genetic Clinic in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be specified in Form 'F'. Rule 10 deals with conditions for conducting pre-natal diagnostic procedures. Rule 10(1A) provides that it is mandatory for every person conducting ultrasonography to declare that he/she has neither detected nor disclosed the sex of foetus of the pregnant woman to anybody. The pregnant woman shall declare before undergoing the test that she does not want to know the sex of her foetus. Rule 19 provides for an appeal against the decision of Appropriate Authority. Form 'F', which is the bone of contention of the learned counsel for the parties, is extracted hereunder:

"FORM F
FORM FOR MAINTENANCE OF RECORD IN RESPECT OF PREGNANT WOMAN BY GENETIC CLINIC/ULTRASOUND CLINIC/IMAGING CENTRE

1. Name and address of the Genetic Clinic/Ultrasound Clinic/Imaging Centre.
2. Registration No.
3. Patient's name and her age
4. Number of children with sex of each child
5. Husband's/Father's name
6. Full address with Tel. No., if any
7. Referred by (full name and address of Doctor(s) / Genetic Counselling Centre (referral note to be preserved carefully with case papers)/self referral
8. Last menstrual period/weeks of pregnancy
9. History of genetic/medical disease in the family (specify)

Basis of diagnosis:
(a) Clinical
(b) Bio-chemical
(c) Cytogenetic
(d) Other (e.g. radiological, ultrasonography etc. specify)

10. Indication for pre-natal diagnosis
A. Previous child/children with:
(i) Chromosomal disorders
(ii) Metabolic disorders
(iii) Congenital anomaly
(iv) Mental retardation
(v) Haemoglobinopathy
(vi) Sex linked disorders
(vii) Single gene disorder
(viii) Any other (specify)
B. Advanced maternal age (35 years)
C. Mother/father/sibling has genetic disease (specify)
D. Other (specify)

11. Procedures carried out (with name and registration No. of Gynaecologist/ Radiologist/ Registered Medical Practitioner) who performed it.
Non-Invasive
(i) Ultrasound (specify purpose for which ultrasound is to done during pregnancy)
[List of indications for ultrasonography of pregnant women are given in the note below]

Invasive
(ii) Amniocentesis
(iii) Chorionic Villi aspiration
(iv) Foetal biopsy
(v) Cordocentesis
(vi) Any other (specify)

12. Any complication of procedure – please specify

13. Laboratory tests recommended
(i) Chromosomal studies
(ii) Biochemical studies
(iii) Molecular studies
(iv) Preimplantation genetic diagnosis

14. Result of
(a) pre-natal diagnostic procedure (give details)
(b) Ultrasonography Normal/Abnormal (specify abnormality detected, if any).

15. Date(s) on which procedures carried out.

16. Date on which consent obtained. (In case of invasive)

17. The result of pre-natal diagnostic procedure were conveyed to ……….on ……………

18. 18. Was MTP advised/conducted?

19. Date on which MTP carried out

Date ……………… Name, Signature and Registration number
Place……………. of the Gynaecologist/Radiologist/Director of the Clinic

DECLARATION OF PREGNANT WOMAN

I, Ms……………………(name of the pregnant woman) declare that by undergoing ultrasonography /image scanning etc. I do not want to know the sex of my foetus.

Signature/Thump impression of pregnant woman

DECLARATON OF DOCTOR/PERSON CONDUCTING ULTRASONOGRAPHY/IMAGE SCANNING

I,……………………(name of the person conducting ultrasonography/image scanning) declare that while conducting ultrasonography/image scanning on Ms……………………(name of the pregnant woman), I have neither detected nor disclosed the sex of her foetus to any body in any manner.

Name and signature of the person conducting ultrasonography/image scanning/Director or owner of genetic clinic/ultrasound clinic/imaging centre.

Important Notes:—

(i) Ultrasound is not indicated/advised/performed to determine the sex of foetus except for diagnosis of sex-linked diseases such as Duchenne Muscular Dystrophy, Haemophilia A & B, etc.

(ii) During pregnancy Ultrasonography should only be performed when indicated. The following is the representative list of indications for ultrasound during pregnancy.

(1) To diagnose intra-uterine and/or ectopic pregnancy and confirm viability.
(2) Estimation of gestational age (dating).
(3) Detection of number of foetuses and their chorionicity.
(4) Suspected pregnancy with IUCD in-situ or suspected pregnancy following contraceptive failure/MTP failure.
(5) Vaginal bleeding / leaking.
(6) Follow-up of cases of abortion.
(7) Assessment of cervical canal and diameter of internal os.
(8) Discrepancy between uterine size and period of amenorrhoea.
(9) Any suspected adenexal or uterine pathology / abnormality.
(10) Detection of chromosomal abnormalities, foetal structural defects and other abnormalities and their follow-up.
(11) To evaluate foetal presentation and position.
(12) Assessment of liquor amnii.
(13) Preterm labour / preterm premature rupture of membranes.
(14) Evaluation of placental position, thickness, grading and abnormalities (placenta praevia, retroplacental haemorrhage, abnormal adherence etc.).
(15) Evaluation of umbilical cord – presentation, insertion, nuchal encirclement, number of vessels and presence of true knot.

(16) Evaluation of previous Caesarean Section scars.
(17) Evaluation of foetal growth parameters, foetal weight and foetal well being.
(18) Colour flow mapping and duplex Doppler studies.
(19) Ultrasound guided procedures such as medical termination of pregnancy, external cephalic version etc. and their follow-up.
(20) Adjunct to diagnostic and therapeutic invasive interventions such as chorionic villus sampling (CVS), amniocenteses, foetal blood sampling, foetal skin biopsy, amnioinfusion, intrauterine infusion, placement of shunts etc.
(21) Observation of intra-partum events.
(22) Medical/surgical conditions complicating pregnancy.
(23) Research/scientific studies in recognised institutions.

Person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic/centre in Form F and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 of the Act, unless contrary is proved by the person conducting such ultrasonography."

53. The Act and Rules are not the only regulatory framework which requires the medical fraternity to keep proper record. The medical profession has highly specialised nature and considering the nature of services rendered by medical professional, proper maintenance of records is an integral part of the medical services. It is contended on behalf of Medical Council of India that the Medical Council of India (MCI) under Section 33 of the Indian Medical Council Act, 1956 has framed the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which also placed a burden on physicians to observe the law of the country. By the said Regulations, it is mandatory for every doctor to maintain the records of the patients treated by him/her

and non-maintaining of records is a misconduct. MCI Regulation 1.3 deals with maintenance of medical records, which reads thus:

> "**1.3 Maintenance of medical records**:
>
> 1.3.1 Every physician shall maintain the medical records pertaining to his / her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.
>
> 1.3.2. If any request is made for medical records either by the patients / authorised attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours.
>
> 1.3.3 A Registered medical practitioner shall maintain a Register of Medical Certificates giving full details of certificates issued. When issuing a medical certificate he / she shall always enter the identification marks of the patient and keep a copy of the certificate. He / She shall not omit to record the signature and/or thumb mark, address and at least one identification mark of the patient on the medical certificates or report. The medical certificate shall be prepared as in Appendix 2.
>
> 1.3.4 Efforts shall be made to computerize medical records for quick retrieval."
>
> (emphasis supplied)

54. Regulation 7.1 under Chapter 7 deals with misconduct committed by a doctor by violating any provisions of the Regulations, whereas Regulation 7.2 provides that the failure to maintain the medical records of indoor patient for a period of three years and refusal to provide the medical record to a patient on request within 72 hours is a misconduct. Regulation 7.6 deals with misconduct relating to sex determination and

termination of pregnancy. The relevant portion of Regulation 7 is reproduced hereunder:

"**7. MISCONDUCT**

The following acts of commission or omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action.

7.1 Violation of the Regulations: If he/she commits any violation of these Regulations.

7.2 If he/she does not maintain the medical records of his/her indoor patients for a period of three years as per regulation 1.3 and refuses to provide the same within 72 hours when the patient or his/her authorised representative makes a request for it as per the regulation 1.3.2.

*** *** ***

7.6 Sex Determination Tests: On no account sex determination test shall be undertaken with the intent to terminate the life of a female foetus developing in her mother's womb, unless there are other absolute indications for termination of pregnancy as specified in the Medical Termination of Pregnancy Act, 1971. Any act of termination of pregnancy of normal female foetus amounting to female foeticide shall be regarded as professional misconduct on the part of the physician leading to penal erasure besides rendering him liable to criminal proceedings as per the provisions of this Act."

55. Regulation 8 of the MCI Regulation deals with punishment and disciplinary action for misconduct committed by a doctor. The relevant portion of Regulation 8 reads thus:

"**8. PUNISHMENT AND DISCIPLINARY ACTION**

8.1 It must be clearly understood that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the

> Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils.
>
> 8.2 It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/ Societies/Bodies."

56. It is further pointed out that Pharmacy Practice Regulations, 2015 also require pharmacists to maintain records. The relevant portion of the Regulations is extracted hereunder:

> "**6.2 Maintenance of patient records**.—
> (a) Every registered pharmacist shall maintain the medical/ prescription records pertaining to his / her patients for a period of 5 years from the date of commencement of the treatment as laid down by the Pharmacy Council of India in Appendix II.
> (b) If any request is made for medical records either by the patients/authorised attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours.
> (c) Efforts shall be made to computerize medical/prescription records for quick retrieval."

57. Reference has also been made to the provisions of the Transplantation of Human Organs and Tissues Act, 1994 and Rules, which contain provisions that are similar to the Act. Section 20 of the Transplantation of Human Organs and Tissues Act, 1994, reads thus:

> "**20. Punishment for contravention of any other provision of this Act.—** Whoever contravenes any provision of this Act or any rule made, or any condition of the registration granted, thereunder for which no punishment is separately provided in this Act, shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees."

58. Reference has also been made to the Medical Termination of Pregnancy Act, 1971, which also places an obligation on medical professional to maintain proper records.

59. When we scrutinise the Form 'F' with the provisions of the Act/Rules and there cannot be any dispute with respect to serial Nos.1 and 2 wherein name and address of Genetic Laboratory and its registration number is required to be mentioned in the Form as it is necessary to have a registration under Section 18 of the Act. It cannot be said to be a clerical requirement. Patient name and her age at serial No.3 is also absolutely necessary so as to identify a person who is undergoing the test and before the age of 35 years, it cannot be conducted as provided under Section 4(3)(i). The same is as per the mandatory requirement of Section 4. Husband's/father's name is also necessary as per the statutory mandate for the purpose of identification of patient. Full address is also mandatory so as to ascertain the identity who is undergoing such test. In case these information are kept

vague, the violation of the Act would be blatant and unchecked and offence can never be detected. Information at serial No.8 of the Form 'F' requires last menstrual period/weeks of pregnancy to be mentioned, same is also necessary to be mentioned as it has co-relation with the investigations and provisions of the Act and the rules framed thereunder. The column in Form at serial No.9 requires history of genetic/medical disease in the family to be specified which is as per the mandate of Section 4(3)(iv) of the Act. Form 'F' at serial No.10 requires indication for pre-natal diagnosis which is mandatory as per the provisions contained in Section 4(2) as except for the purposes as mentioned in Sections 4(2) and 4(3) no such tests/procedures can be performed. Thus, what is mandated by the Sections and in Rule 9 has been mentioned in the Form 'F'. Procedure carried whether invasive or non-invasive has to be obviously mentioned and in case any laboratory tests have been recommended that is to be mentioned along with the result. The note attached to Form 'F' also contains the representative list of indications when ultrasound during pregnancy can be performed. Thus, though the submission that Form 'F' is clerical requirement urged by learned counsel appearing for the petitioner-Society appears at the first blush to

be worthy examination, but on close scrutiny it is found that in case any information in the Form is avoided, it will result in the blatant violation of the provisions of Section 4 and may lead to result which is prohibited under Section 6. It cannot be said to be a case of clerical error as doctor has to fulfil pre-requisites for undertaking the procedure in case the conditions precedent for undertaking pre-natal diagnostic test is not specifically mentioned, it would be violative of provisions contained in Section 4. The Form 'F' has to be prepared and signed by either Gynaecologist/Medical Geneticist / Radiologist / Paediatrician / Director of the Clinic/Centre/Laboratory. In case the indications and the information are not furnished as provided in the Form 'F' it would amount that condition precedent to undertake the test/procedure is absent. There is no other barometer except Form 'F' to find out why the diagnostic test/procedure was performed. In case such an important information beside others is kept vague or missing from the Form, it would defeat the very purpose of the Act and the safeguards provided thereunder and it would become impossible to check violation of provisions of the Act. It is not the clerical job to fill the form, it is condition precedent for undertaking

test/procedure. With all due regards to the submission advanced on behalf of petitioner-Society that it is a clerical job, is wholly without substance but it is a responsible job of the person who is undertaking such a test i.e., the Gynaecologist/ Medical Geneticist/ Radiologist / Paediatrician / Director of the Clinic/Centre/Laboratory to fill the requisite information. In case he keeps it vague, he knows fully well that he is violating the provisions of the Act and undertaking the test without existence of the conditions precedent which are mandatory to exist he cannot undertake test/procedure without filling such information in the form. There is no other way to ensure that test is undertaken on fulfilment of the prescribed conditions. There is nothing else but the record which required to be maintained and on the basis of which counter-check can be made. There is no other barometer or criteria to find out the violation of the provisions of the Act. Rule 9(4) also requires that every Genetic Clinic to fill Form 'F' wherein information with regard to details of the patient, referral notes with indication and case papers of the patient are required to be filled and preserved. Form 'F' lays down the indicative list for conducting ultrasonography during pregnancy. Form 'F' being technical in nature gives the insight

into the reasons for conducting ultrasonography and incomplete Form 'F' raises the presumption of doubt against the medical practitioner. In the absence of Form 'F', Appropriate Authorities will have no tool to supervise the usage of ultrasound machine and shall not be able to regulate the use of the technique which is the object of the Act.

60. It is rightly contended on behalf of respondents that there are different forms for record keeping prescribed under the Act and the Rules they are important and interlinked, operate in tandem with one another. These records have to be maintained only when the procedure or tests are conducted on pregnant woman or when patient may have been advised to use pre-conception diagnostic tools to conceive a child. It is required for Genetic Counselling Centre advising the procedure/test with a potential of detecting or determining the sex of the foetus and referring a person to a Genetic Clinic/Imaging Centre/Ultrasound Clinic to record the details of Genetic Clinic to which patient is referred at point 15 of the Form 'D' along with the details of the diagnosis and relevant medical details of the person. Accordingly, Genetic Clinic/Imaging Centre/Ultrasound Clinic conducting the aforesaid referred procedure has to record

the name and address of Genetic Counselling Centre with the referral slip along with the relevant medical record of the person on whom procedure/test/technique is conducted. The aforesaid record keeping procedure shall be followed by Genetic Laboratories also. The scheme of the Act makes it evident that record keeping is meant to track/monitor and regulate the use of technology that has potential of sex selection and sex determination. Section 23 is not stand-alone Section. It is rather used in the enforcement of other provisions of the Act and violations of Section 23 are often accompanied by violations of provisions of Sections 4, 5, 6 and 18 of the Act. It is submitted that non-maintenance of record in the context of sex determination is not merely a technical or procedural lapse. It is most significant piece of evidence for identifying offence and the accused. The inspection of records is crucial to identify wrong-doers as the crime of sex determination being a collusive crime given the nexus between the patients and the doctors. Accordingly, punishment is provided in Section 23 for not maintaining the records.

61. Ms. Pinki Anand, learned Additional Solicitor General has relied upon a case study on record keeping as an implementation

tool of Prabhakar Hospital in Panipat. In this case Hospital had not sent the report of IVF done at its Centre to the Appropriate Authority despite meeting held on 10.10.2013 and subsequent reminders. After thirteenth reminder dated 27.11.2014, a show cause notice was issued to the Hospital on 2.2.2015. The aforesaid case study reads thus:

> "In the case of this Hospital the report of IVF done at the centre was not sent to the Appropriate Authority despite meetings held on 10.10.2013 and reminders sent on 6.3.2014, 14.3.2014, 20.3.2014, 21.3.2014, 25.3.2014, 28.3.2014, 31.3.2014 and finally with a thirteenth reminder on 27.11.2014.
>
> During inspection following discrepancies were found-
>
> a. In form no.9338, In-vitro Fertilization (IVF) was done on patient with 2 female children with repeated history of 4 abortions.
> b. In form no.9700, woman with 8 female children received IVF.
> c. In form no.10385, patient Santosh with 7 female children received IVF but did not fill the section C in F-Form. Section C in form F pertains to the records of the invasive procedures which requires records of all diagnostic procedures done on men and women which has potential of sex determination/selection to be recorded.
> d. Form no.10389, woman with 3 female children received IVF, form F Section C not filled in.
> e. Form no.9338, woman had 2 female children and 6 abortions, and received IVF.
> f. Form no.9700, a woman with 8 female children received IVF.
>
> The hospital was asked why patients who had female children underwent IVF as evident from the records. In several of the cases it is inexplicable why the samples were sent to Delhi and Bombay. In many F forms many female patients with wrong phone numbers were mentioned. Similarly in other Form F, patients with wrong identity proofs, address proof and no identity proofs were found. In another set of form F wrong Obstetric and Abortion history was mentioned as confirmed from the patients. Difference history on referral slip and Form F was observed. Signature of patient was found to be missing in the consent form in many forms. The Signature of the witness Doctor/Counsellor was missing in all consent forms of IVF patients. Accordingly a complaint has been filed in the court."

(emphasis supplied)

62. It is submitted that the record keeping provide information on individual patients who could have potentially undergone sex selection/determination techniques, which is an offence under this Act. If record keeping is diluted or exempted from the mandatory requirement of the Act, the probable involvement in sex determination and sex selection in the guise of use of diagnostic techniques would continue unbated.

63. The way in which the non-maintenance of record can be used for violating the provisions of the Act, is apparent from the aforesaid example. The aforesaid facts have been mentioned in the show cause notice that had been issued. In many Form 'F' female patients with wrong phone numbers were mentioned. In other Form 'F' patients with wrong identity, proof of address and no identity proof were found. In another set of Form 'F' wrong obstetric and abortion history was mentioned. Signature of patient was also found missing in the consent forms. Thus, the non-filling of information cannot be termed to be clerical error, but in case it is kept vague that itself facilitates an offence. It would definitely a blatant and intentional violation of the provisions of the Act in order to prevent the mischief which is

intended to by maintenance of record, filling up details of the forms is mandated by Sections 4 and 5. The wholesome social legislation would be defeated in case Form is not filled which is *sine qua non toto* undertake tests/procedures if such condition does not exist, no such procedure can be performed and diluting the provisions would be against the gender justice. It is in order to create the equality that the provisions have been enacted not that unequals are being treated equally. The non-maintenance of form/not reflecting correct medical condition is offence, not mentioning it would also be an offence or keeping it vague.

64. It was pointed on behalf of petitioner-Society by filing certain affidavits of the medical practitioners raising grievances with regard to the criminal cases filed against them by the Appropriate Authority on certain grounds. Acquittals have also been recorded, but they are not attributable to the deficiency in the Act. The provision of the law cannot be struck down on the ground of allegation of such exercise of power in arbitrary manner, especially when 0.46 million girls were stated to be missing at birth as a result of sex selective abortions.

65. In *Voluntary Health Association of Punjab v. Union of India*, (2016) 10 SCC 265, this Court observed as under:

> "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 & Form "F" (including foot-note), 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 N.A. (Not Applicable) or leaving of any column in the 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."
>
> (emphasis supplied)

66. The emphasis of this Court is on the proper maintenance of records. In *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India,* (2001) 5 SCC 577, this Court observed thus:

> "3. It is apparent that to a large extent, the PNDT Act is not implemented by the Central Government or by the State Governments. Hence, the petitioners are required to approach this Court under Article 32 of the Constitution of India……Prima facie it appears that despite the PNDT Act being enacted by Parliament five years back, neither the State Governments nor the Central Government has taken appropriate action for its implementation. Hence, after considering the respective submissions made at the time of hearing of this matter, as suggested by the learned Attorney-General for India, Mr Soli J. Sorabjee, the following directions are issued on the basis of various provisions for the proper implementation of the PNDT Act:
>
> II. Directions to the Central Supervisory Board (CSB)
>
> 1. ***
>
> 2. ***
>
> 3. CSB shall issue directions to all State/UT appropriate authorities to furnish quarterly returns to CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about:
>
> (i) survey of bodies specified in Section 3 of the Act;
>
> (ii) registration of bodies specified in Section 3 of the Act;
>
> (iii) action taken against non-registered bodies operating in violation of Section 3 of the Act, inclusive of search and seizure of records;

> (iv) complaints received by the appropriate authorities under the Act and action taken pursuant thereto;
>
> (v) number and nature of awareness campaigns conducted and results flowing therefrom.....”

67. In *Voluntary Health Association of Punjab v. Union of India,* (2013) 4 SCC 1, the Court dealt with the issue of maintenance of record and issued the following directions:

> “9.4. The authorities should ensure also that all genetic counselling centres, genetic laboratories and genetic clinics, infertility clinics, scan centres etc. using preconception 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.
>
> 9.6. 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.”

68. The High Court of Gujarat in *Suo Motu v. State of Gujarat,* (2009) 1 Gujarat Law Reporter 64, dealt at length with the issue of proper maintenance of record and observed as under:

> “5. A conjoint reading of the above provisions would clearly indicate a well-knit legislative scheme for ensuring a strict and vigilant enforcement of the provisions of the Act directed against female foeticide and misuse of pre-natal diagnostic techniques....
>
> *** *** ***
>
> 7. As seen earlier, the Act and the Rules made thereunder provide for an elaborate scheme to ensure proper implementation of the relevant legal provisions and the possible loopholes in strict and full compliance are sought to be plugged by detailed provisions for maintenance and preservation of records. In order to fully operationalise the restrictions and injunctions contained in the Act in general and in Secs. 4, 5 and 6 in particular, to regulate the use of pre-natal diagnostic technique, to make the pregnant woman and the person conducting the pre-natal diagnostic tests and procedures aware of the legal and other

consequences and to prohibit determination of sex, the Rules prescribe the detailed forms in which records have to be maintained. Thus, the Rules are made and forms are prescribed in aid of the Act and they are so important for implementation of the Act and for prosecution of the offenders, that any improper maintenance of such record is itself made equivalent to violation of the provisions of Secs. 5 and 6, by virtue of the proviso to sub-sec. (3) of Sec. 4 of the Act. It must, however, be noted that the proviso would apply only in cases of ultra-sonography conducted on a pregnant woman. And any deficiency or inaccuracy in the prescribed record would amount to contravention of the provisions of Secs. 5 and 6 unless and until contrary is proved by the person conducting such ultra-sonography. The deeming provision is restricted to the cases of ultra-sonography on pregnant women and the person conducting ultra-sonography is, during the course of trial or other proceeding, entitled to prove that the provisions of Secs. 5 and 6 were, in fact, not violated.

8. It needs to be noted that improper maintenance of the record has also consequences other than prosecution for deemed violation of Secs. 5 or 6. Section 20 of the Act provides for cancellation or suspension of registration of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in case of breach of the provisions of the Act or the Rules. Therefore, inaccuracy or deficiency in maintaining the prescribed record shall also amount to violation of the prohibition imposed by Sec. 6 against the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and expose such clinic to proceedings under Sec. 20 of the Act. Where, by virtue of the deeming provisions of the proviso to sub-sec. (3) of Sec. 4, contravention of the provisions of Secs. 5 or 6 is legally presumed and actions are proposed to be taken under Sec. 20, the person conducting ultra-sonography on a pregnant woman shall also have to be given an opportunity to prove that the provisions of Secs. 5 or 6 were not violated by him in conducting the procedure. Thus, the burden shifts on to the person accused of not maintaining the prescribed record, after any inaccuracy or deficiency is established, and he gets the opportunity to prove that the provisions of Secs. 5 and 6 were not contravened in any respect. Although it is apparently a heavy burden, it is legal, proper and justified in view of the importance of the Rules regarding maintenance of record in the prescribed forms and the likely failure of the Act and its purpose if procedural requirements were flouted. The proviso to sub-sec. (3) of Sec. 4 is crystal clear about the maintenance of the record in prescribed manner being an independent offence amounting to violation of Secs. 5 or 6 and, therefore, the complaint need not necessarily also allege 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

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."

69. The Act enjoys a presumption of constitutionality. We find no violation of the constitutional principles. The problem of female foeticide is worldwide and the matters of common knowledge, reports and history are the basis of the legislation, provisions of which cannot be termed to be illegal or arbitrary in any manner. In *Namit Sharma v. Union of India,* (2013) 1 SCC 745, this Court has laid down as under:

"18. The principles for adjudicating the constitutionality of a provision have been stated by this Court in its various judgments. Referring to these judgments and more particularly to Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 538 and Budhan Choudhry v. State of Bihar, AIR 1955 SC 191, the author Jagdish Swarup in his book Constitution of India (2nd Edn., 2006) stated the principles to be borne in mind by the courts and detailed them as follows: (Ram Krishna Dalmia case, AIR pp. 547-48, para 11)

"(*a*)**

(*b*) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(*c*) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(*d*)**

(*e*) 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 facts which can be conceived existing at the time of legislation; and

(*f*)**"

70. The petitioner has not shown which of the entry is not mandatory in the form. As the entries are mandatory and *sine qua non* for undertaking a test/procedure, the assertion that their fundamental rights are being violated by not providing requisite information is not germane and is without substance.

71. The Act intends to prevent mischief of female foeticide and the declining sex ratio in India. When such is the objective of the Act and the Rules and mischief which it seeks to prevent, violation of the rights under Part III of the Constitution is not found. This Court in *Hamdard Dawakhana v. The Union of India,* AIR 1960 SC 554, has laid down the following principles:

> "8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i.e. its subject matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy; Bengal Immunity co. Ltd. v. State of Bihar, 1955-2 SCR 603 at pp. 632, 633 ((S) AIR 1955 SC 661 at p.674); R.M.D. Chamarbaughwala v. Union of India, 1957 SCR 930 at p. 936: ((S) AIR 1957 SC 628 at p.631); Mahant Moti Das v. S.P. Sahi, AIR 1959 SC 942 at p. 948.
>
> 9. Another principle which has to borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made

> manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. Charanjit Lal v. Union of India, 1950 SCR 869: (AIR 1951 SC 41); State of Bombay v. F.N. Bulsara, 1951 SCR 682 at p. 708: (AIR 1951 SC 318 at p. 326); AIR 1959 SC 942."

72. The mischief sought to be remedied is grave and the effort is being made to meet the challenge to prevent the birth of the girl child. Whether Society should give preference to male child is a matter of grave concern. The same is violative of Article 39A and ignores the mandate of Article 51A(e) which casts a duty on citizens to renounce practices derogatory to the dignity of women. When sex selection is prohibited by virtue of provisions of Section 6, the other interwoven provisions in the Acts to prevent the mischief obviously their constitutionality is to be upheld.

73. The provisions of MTP Act came up for consideration before the High Court of Delhi in *Raj Bokaria v. Medical Council of India* (W.P. (C) No.795 of 2010), it observed:

> "11. On a reading of Section 5 of the MTP Act, it appears to this Court that the opinion formed by the medical practitioner to go for either MTP or pre-term inducement of labour when the pregnancy is beyond 20 weeks, has necessarily to be in writing and in the prescribed format. There was no question of there not being any record whatsoever of the forming of such opinion of the medical practitioner. The argument advanced by Ms. Acharya that in a case of emergency there may be no time for recording such opinion cannot explain the failure to record an opinion in the present case. The facts narrated by the Petitioner herself show that a very conscious decision was taken of going for a pre-term inducement of labour sometime around 6th October 2003 when the deceased was admitted to Respondent No. 3 hospital.

> Even at that time the opinion of the Petitioner should have been recorded. The pre-term induced delivery took place on 8th October 2003. There was sufficient time, therefore, for the Petitioner to record her opinion, mandatorily required by Section 5(1). In terms of Rule 3(1) of the Medical Termination of Pregnancy Regulations, 2003 the medical practitioner has to record her opinion in Form I. The non-maintenance of records to show the basis on which an opinion was formed to going in for a pre-term inducement in a case where the pregnancy is beyond the 20th week is indeed a very serious lapse. There can be no excuse whatsoever for a medical practitioner seeking to defend herself with reference to Section 5 of the MTP Act not maintaining any record of the formation of the opinion in terms of Section 5(1) read with the Regulations of 2003. In the considered view of this Court, the above factor alone is enough to demonstrate the gross negligence on the part of the Petitioner."
>
> (emphasis supplied)

74. On behalf of petitioner-Society, reliance has been placed regarding *mens rea* on *Arun Bhandari v. State of Uttar Pradesh,* (2013) 2 SCC 801, wherein the Court observed as under:

> "22. In G.V. Rao v. L.H.V. Prasad,(2000) 3 SCC 693, this Court has held thus: (SCC pp. 696-97, para 7)
>
>> "7. As mentioned above, Section 415 has two parts. While in the first part, the person must 'dishonestly' or 'fraudulently' induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575, a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, 'mens rea' on the part of that person, must be established. It was also observed in Mahadeo Prasad v. State of W.B., AIR 1954 SC 724, that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

No sustenance can be drawn from the aforesaid decision as keeping the information blank is definitely a violation of the Act

and very basic fundamental requisite for undertaking the test. Thus, when form has not been filled up, obviously the act is dishonest, fraudulent and can be termed intentional also. Such case cannot be classified into clerical error.

75. Reliance has also been placed on the decision of this Court in *Dr. Subhash Kashinath Mahajan v. State of Maharashtra*, (2018) 6 SCC 454, in which this Court observed that the Court has to balance the right of liberty of the accused guaranteed under Article 21, which could be taken away only by just, fair and reasonable procedure and to check abuse of power by police and injustice to a citizen. Thus, some filters were required to be incorporated to meet the mandate of Articles 14 and 21. The substantive as well as procedural laws must conform to Articles 14 and 21. The expression procedure established by law under Article 21 implies just, fair and reasonable procedure. The court to make purposive interpretation and consider the doctrine of proportionality. This Court has observed thus:

> "12. The learned Amicus submitted that under the scheme of the Atrocities Act, several offences may solely depend upon the version of the complainant which may not be found to be true. There may not be any other tangible material. One sided version, before trial, cannot displace the presumption of innocence. Such version may at times be self-serving and for extraneous reason. Jeopardising liberty of a person on an untried unilateral version, without any verification or tangible material, is against the fundamental rights guaranteed under the Constitution. Before

liberty of a person is taken away, there has to be fair, reasonable and just procedure. Referring to Section 41(1)(*b*) CrPC it was submitted that arrest could be effected only if there was "credible" information and only if the police officer had "reason to believe" that the offence had been committed and that such arrest was necessary. Thus, the power of arrest should be exercised only after complying with the safeguards intended under Sections 41 and 41-A CrPC. It was submitted that the expression "reason to believe" in Section 41 CrPC had to be read in the light of Section 26 IPC and judgments interpreting the said expression. The said expression was not on a par with suspicion. Reference has been made in this regard to Joti Parshad v. State of Haryana, 1993 Supp (2) SCC 497, Badan Singh v. State of U.P., 2001 SCC OnLine All 973, Adri Dharan Das v. State of W.B., (2005) 4 SCC 303, Tata Chemicals Ltd. v. Commr. of Customs, (2015) 11 SCC 628 and Ganga Saran & Sons (P) Ltd. v. CIT, (1981) 3 SCC 143. In the present context, to balance the right of liberty of the accused guaranteed under Article 21, which could be taken away only by just, fair and reasonable procedure and to check abuse of power by police and injustice to a citizen, exercise of right of arrest was required to be suitably regulated by way of guidelines by this Court under Article 32 read with Article 141 of the Constitution. Some filters were required to be incorporated to meet the mandate of Articles 14 and 21 to strengthen the rule of law.

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31. We may, at the outset, observe that jurisdiction of this Court to issue appropriate orders or directions for enforcement of fundamental rights is a basic feature of the Constitution. This Court, as the ultimate interpreter of the Constitution, has to uphold the constitutional rights and values. Articles 14, 19 and 21 represent the foundational values which form the basis of the rule of law. Contents of the said rights have to be interpreted in a manner which enables the citizens to enjoy the said rights. Right to equality and life and liberty have to be protected against any unreasonable procedure, even if it is enacted by the legislature. The substantive as well as procedural laws must conform to Articles 14 and 21. Any abrogation of the said rights has to be nullified by this Court by appropriate orders or directions. Power of the legislature has to be exercised consistent with the fundamental rights. Enforcement of a legislation has also to be consistent with the fundamental rights. Undoubtedly, this Court has jurisdiction to enforce the fundamental rights of life and liberty against any executive or legislative action. The expression "procedure established by law" under Article 21 implies just, fair and reasonable procedure.

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53. It is well settled that a statute is to be read in the context of the background and its object. Instead of literal interpretation, the court may, in the present context, prefer purposive interpretation to achieve the object of law. Doctrine of proportionality is well known for advancing the object of Articles 14 and 21. A procedural penal provision affecting liberty of

> citizen must be read consistent with the concept of fairness and reasonableness."
>
> (emphasis supplied)

No sustenance can be drawn from aforesaid decision as the procedure under the Act is due procedure of law with the safeguards of not only of appeals under Section 21 and Rule 19, but there is a State Supervisory Board in Section 16A. The constitution of multi-member Appropriate Authority is provided in Section 17(3)(a) and the Advisory Committee as provided in Section 17(6) which is again also a multi-member Committee. The Advisory Committee has to aid and advise the Appropriate Authority in discharge of its functions. Thus, internal safeguards are provided in the Act and the Rules which conform to Articles 14 and 21.

76. Reliance has also been placed on *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648, wherein this Court dealt with the provisions of right to die within the ambit of Article 21. While discussing the aforesaid, this Court has observed thus:

> "43. This caution even in cases of physician-assisted suicide is sufficient to indicate that assisted suicides outside that category have no rational basis to claim exclusion of the fundamental principles of sanctity of life. The reasons assigned for attacking a provision which penalises attempted suicide are not available to the abettor of suicide or attempted suicide. Abetment of suicide or attempted suicide is a distinct offence which is found enacted even in the law of the countries where attempted suicide is not made punishable. Section 306 IPC enacts a distinct offence

> which can survive independent of Section 309 in the IPC. The learned Attorney General as well as both the learned amicus curiae rightly supported the constitutional validity of Section 306 IPC."
>
> (emphasis supplied)

77. In *Subramanian Swamy v. Union of India,* (2016) 7 SCC 221, it was observed that restriction that goes beyond the requirement of public interest cannot be considered as a reasonable restriction and would be arbitrary. The same reasonableness is not a static concept. Articles 14 and 19 are part of Article 21. Misuse of a provision or its possibility of abuse is no ground to declare Section 499 IPC as unconstitutional. If a provision of law is misused or abused, it is for the Legislature to amend, modify or repeal it.

This Court has observed thus:

> "9.3. Section 499 IPC *ex facie* infringes free speech and it is a serious inhibition on the fundamental right conferred by Article 19(1)(*a*) and hence, cannot be regarded as a reasonable restriction in a democratic republic. A restriction that goes beyond the requirement of public interest cannot be considered as a reasonable restriction and would be arbitrary. Additionally, when the provision even goes to the extent of speaking of truth as an offence punishable with imprisonment, it deserves to be declared unconstitutional, for it defeats the cherished value as enshrined under Article 51-A(*b*) which is associated with the national struggle for freedom. The added requirement of the accused having to prove that the statement made by him was for the public good is unwarranted and travels beyond the limits of reasonableness because the words "public good" are quite vague as they do not provide any objective standard or norm or guidance as a consequence the provisions do not meet the test of reasonable restriction and eventually they have the chilling effect on the freedom of speech.

9.4. "Reasonableness" is not a static concept, and it may vary from time to time. What is considered reasonable at one point of time may become arbitrary and unreasonable at a subsequent point of time. The colonial law has become unreasonable and arbitrary in independent India which is a sovereign, democratic republic and it is a well-known concept that provisions once held to be reasonable, become unreasonable with the passage of time.

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10.3. Reasonable restriction is founded on the principle of reasonableness which is an essential facet of constitutional law and one of the structural principles of the Constitution is that if the restriction invades and infringes the fundamental right in an excessive manner, such a restriction cannot be treated to have passed the test of reasonableness. The language employed in Sections 499 and 500 IPC is clearly demonstrative of infringement in excess and hence, the provisions cannot be granted the protection of Article 19(2) of the Constitution. Freedom of expression is quintessential to the sustenance of democracy which requires debate, transparency and criticism and dissemination of information and the prosecution in criminal law pertaining to defamation strikes at the very root of democracy, for it disallows the people to have their intelligent judgment. The intent of the criminal law relating to defamation cannot be the lone test to adjudge the constitutionality of the provisions and it is absolutely imperative to apply the "effect doctrine" for the purpose of understanding its impact on the right of freedom of speech and expression, and if it, in the ultimate eventuality, affects the sacrosanct right of freedom, it is *ultra vires*. The basic concept of "effect doctrine" would not come in the category of exercise of power, that is, use or abuse of power but in the compartment of direct effect and inevitable result of law that abridges the fundamental right.

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17.2. Articles 14 and 19 have now been read to be a part of Article 21 and, therefore, any interpretation of freedom of speech under Article 19(1)(*a*) which defeats the right to reputation under Article 21 is untenable. The freedom of speech and expression under Article 19(1)(*a*) is not absolute but is subject to constrictions under Article 19(2). Restrictions under Article 19(2) have been imposed in the larger interests of the community to strike a proper balance between the liberty guaranteed and the social interests specified under Article 19(2). One's right must be exercised so as not to come in direct conflict with the right of another citizen. The argument of the petitioners that the criminal law of defamation cannot be justified by the right to reputation under Article 21 because one fundamental right cannot be abrogated to advance another, is not sustainable. It is because (*i*) the right to reputation is not just embodied in Article 21 but also built in as a restriction placed in Article 19(2) on the freedom of speech in Article 19(1)(*a*); and (*ii*) the right to reputation is no less important a right than the right to freedom of speech.

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18.2. Misuse of a provision or its possibility of abuse is no ground to declare Section 499 IPC as unconstitutional. If a provision of law is misused or abused, it is for the legislature to amend, modify or repeal it, if deemed necessary. Mere possibility of abuse of a provision cannot be a ground for declaring a provision procedurally or substantively unreasonable.

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76. The submission is that Sections 499 and 500 IPC are not confined to defamation of the State or its components but include defamation of any private person by another private person totally unconnected with the State. In essence, the proponement is that the defamation of an individual by another individual can be a civil wrong but it cannot be made a crime in the name of fundamental right as protection of private rights qua private individuals cannot be conferred the status of fundamental rights. If, argued the learned counsel, such a pedestal is given, it would be outside the purview of Part III of the Constitution and run counter to Articles 14, 19 and 21 of the Constitution. It is urged that defamation of a private person by another person is unconnected with the fundamental right conferred in public interest by Article 19(1)(*a*); and a fundamental right is enforceable against the State but cannot be invoked to serve a private interest of an individual. Elucidating the same, it has been propounded that defamation of a private person by another person cannot be regarded as a "crime" under the constitutional framework and hence, what is permissible is the civil wrong and the remedy under the civil law. Section 499 IPC, which stipulates defamation of a private person by another individual, has no nexus with the fundamental right conferred under Article 19(1)(*a*) of the Constitution, for Article 19(2) is meant to include the public interest and not that of an individual and, therefore, the said constitutional provision cannot be the source of criminal defamation. This argument is built up on two grounds: (*i*) the common thread that runs through the various grounds engrafted under Article 19(2) is relatable to the protection of the interest of the State and the public in general and the word "defamation" has to be understood in the said context, and (*ii*) the principle of *noscitur a sociis*, when applied, "defamation" remotely cannot assume the character of public interest or interest of the crime inasmuch a crime remotely has nothing to do with the same.

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90. In *R. Sai Bharathi* v. *J. Jayalalitha*, (2004) 2 SCC 9, while opining about crime, it has been observed as under: (SCC pp. 54-55, para 56)

> "*56.* Crime is applied to those acts, which are against social order and are worthy of serious condemnation. Garafalo, an eminent criminologist, defined "*crime*" in terms of immoral and anti-social acts. He says that:
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> 'crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an injury to so much of the moral sense as is possessed by a community

> — a measure which is indispensable for the adaptation of the individual to society'.

The authors of the Indian Penal Code stated that:

> '... We cannot admit that a Penal Code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in passion, or breaks a window in a frolic; yet we have punishment for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness.'"

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96. We have referred to this facet only to show that the submission so astutely canvassed by the learned counsel for the petitioners that treating defamation as a criminal offence can have no public interest and thereby it does not serve any social interest or collective value is sans substratum. We may hasten to clarify that creation of an offence may be for some different reason declared unconstitutional but it cannot be stated that the legislature cannot have a law to constitute an act or omission done by a person against the other as a crime. It depends on the legislative wisdom. Needless to say, such wisdom has to be in accord with constitutional wisdom and pass the test of constitutional challenge. If the law enacted is inconsistent with the constitutional provisions, it is the duty of the Court to test the law on the touchstone of the Constitution.

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122. In *State of Madras* v. *V.G. Row*, AIR 1952 SC 196, the Court has ruled that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.

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127. In *Sahara India Real Estate Corpn. Ltd. v. SEBI*, (2012) 10 SCC 603, this Court reiterated the principle of social interest in the context of Article 19(2) as a facet of reasonable restriction. In *Dwarka Prasad Laxmi Narain* v. *State of U.P.*, AIR 1954 SC 224, while deliberating upon "reasonable restriction" observed that it

> connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. It was also observed that to achieve quality of reasonableness a proper balance between the freedom guaranteed under Article 19(1)(*g*) and the social control permitted by clause (6) of Article 19 has to be struck."
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> (emphasis supplied)

When we consider the aforesaid dictum and apply to the Act, nothing can be more sinister, immoral and anti-social act allowing female foeticide. In *R. Sai Bharathi v. J. Jayalalitha* (supra) it has been observed that crime is against social order, immoral and harmful act. It has also been observed by this Court that legislature can have a law to constitute an act or omission done by a person against the other as a crime. Considering the evils sought to be remedied it cannot be said that the imposition in the Act in question is disproportionate. The restrictions and the provisions of punishment have close nexus with the object sought to be achieved. It is not possible to term action as merely clerical one as that is pre-requisite for the test/procedure and that is what is intended by the Act, if it is given a go-bye under the guise of clerical error, the Act would be rendered otiose. Restriction cannot be said to be excessive and beyond what is required in the public interest, they cater to the

felt need of the society and the complex issues facing people which the legislature intends to solve.

78. In *Shreya Singhal v. Union of India,* (2015) 5 SCC 1, the Court dealt with provisions of Section 66-A of Information Technology Act, 2000. This Court has observed thus:

> 55. The US Supreme Court has repeatedly held in a series of judgments that where no reasonable standards are laid down to define guilt in a section which creates an offence, and where no clear guidance is given to either law abiding citizens or to authorities and courts, a section which creates an offence and which is vague must be struck down as being arbitrary and unreasonable. Thus, in Musser v. Utah, 92 L Ed 562 a Utah statute which outlawed conspiracy to commit acts injurious to public morals was struck down.
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> 59. It was further held that a penal law is void for vagueness if it fails to define the criminal offence with sufficient definiteness. Ordinary people should be able to understand what conduct is prohibited and what is permitted. Also, those who administer the law must know what offence has been committed so that arbitrary and discriminatory enforcement of the law does not take place.
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> 66. In Federal Communications Commission v. Fox Television Stations Inc., 132 S Ct 2307 it was held: (S Ct p. 2317)
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> > "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. See *Connally* v. *General Construction Co.*, 269 US 385, US 391 ("[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law"); *Papachristou* v. *Jacksonville*, 405 US 156, US 162 {"Living under a rule of law entails various suppositions, one of which is that '[all persons] are entitled to be informed as to what the State commands or forbids'" [quoting *Lanzetta* v. *New Jersey*, 306 US 451, US 453 (alteration in original)]}. This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment. See *United States* v. *Williams*, 553 US 285, US 304. It requires the invalidation of laws that are impermissibly vague. A conviction or punishment fails to comply with due

process if the statute or regulation under which it is obtained "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Ibid.* As this Court has explained, a regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved. See *id.*, at 306.

Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. See *Grayned* v. *Rockford*, 33 L Ed 2d 222, US 108-109. When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.""

(emphasis supplied)

It is apparent from the aforesaid discussion in *Shreya Singhal* (supra) in a case where no reasonable standards are laid down to define guilt in a section which creates an offence, it would be arbitrary and unconstitutional. It is absolutely clear that the provisions in the Act in question cannot be termed as arbitrary or illegal or unreasonable. The provisions are not vague. A responsible doctor is supposed to know before undertaking such pre-natal diagnostic test etc. what is he undertaking and what his responsibilities are. If he cannot understand the form he is required to fill and the impact of medical findings and its consequences which is virtually the pre-requisite for undertaking a test, he is not fit to be a member of a

noble medical profession. Such culpable negligence is not warranted from a doctor. It is crystal clear from the provisions of the Act which can be gathered by a person of ordinary intelligence and they can have fair notice of what is prohibited and what omission they should not make. The principles deliberated upon in *Shreya Singhal* (supra) rather supports the constitutionality of the Act and the Rules framed thereunder.

79. The reliance has also been placed by the petitioner in *Nikesh Tarachand Shah v. Union of India,* (2018) 11 SCC 1, in which Court observed thus:

> "10. On the other hand, the learned Attorney General Shri K.K. Venugopal impressed upon us the fact that the Parliamentary legislation qua money laundering is an attempt by Parliament to get back money which has been siphoned off from the economy. According to the learned Attorney General, scheduled offences and offences under Sections 3 and 4 of the 2002 Act have to be read together and the said Act, therefore, forms a complete code which must be looked at by itself. According to the learned Attorney General, it is well settled that classification which is punishment centric has been upheld by a catena of judgments and so have the twin conditions been upheld by various decisions which were referred to by him. According to him, the expression "any offence" in Section 45(1)(*ii*) would mean offence of a like nature and not any offence, which would include a traffic offence as well. According to the learned Attorney General, Section 45 can easily be read down to make it constitutional in two ways. First, the expression "<u>there are reasonable grounds for believing that he is not guilty of such offence" must be read as the making of a prima facie assessment by the court of reasonable guilt.</u> Secondly, according to the learned Attorney General, in any case the conditions contained in Section 45(1)(ii) are there in a different form when bail is granted ordinarily insofar as offences generally are concerned and he referred to State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 for this purpose. According to the learned Attorney General, if harmoniously construed with the rest of the Act, Section 45 is unassailable. He relied upon Section 24 of the Act, which inverts the burden of proof,

and strongly relied upon Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1 and Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46. In answer to Shri Rohatgi's argument on the object of the 2012 Amendment Act, according to the learned Attorney General, it is well settled that where the language of the Act is plain, no recourse can be taken to the object of the Act and he cited a number of judgments for this proposition. He referred us to Section 106 of the Evidence Act, 1872 and argued that when read with Section 24 of the 2002 Act, it would be clear that the twin conditions contained in Section 45 are only in furtherance of the object of unearthing black money and that we should, therefore, be very slow to set at liberty persons who are alleged offenders of the cancer of money laundering. Ultimately, according to the learned Attorney General, Section 45 being part of a complete code must be upheld in order that the 2002 Act work, so that money that is laundered comes back into the economy and persons responsible for the same are brought to book.

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46. We must not forget that Section 45 is a drastic provision which turns on its head the presumption of innocence which is fundamental to a person accused of any offence. Before application of a section which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article 21 of the Constitution of India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime. Absent any such compelling State interest, the indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution. Provisions akin to Section 45 have only been upheld on the ground that there is a compelling State interest in tackling crimes of an extremely heinous nature.

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49. The learned Attorney General relied heavily on Section 24 of the 2002 Act to show that the burden of proof in any proceeding relating to proceeds of crime is upon the person charged with the offence of money laundering, and in the case of any other person i.e. a person not charged with such offence, the court may presume that such proceeds are involved in money laundering. Section 45 of the Act only speaks of the scheduled offence in Part A of the Schedule, whereas Section 24 speaks of the offence of money laundering, and raises a presumption against the person prosecuted for the crime of money laundering. This presumption has no application to the scheduled offence mentioned in Section 45, and cannot, therefore, advance the case of the Union of India."

(emphasis supplied)

Considering the compelling general public interest and gender justice and declining sex ratio, we have no hesitation in

upholding the validity of the provisions of Section 23(1) of the Act.

80. Reliance has also been placed in *P. Rathinam v. Union of India,* (1994) 3 SCC 394, this Court observed thus:

> 48. The aforesaid show that law has many promises to keep including granting of so much of liberty as would not jeopardise the interest of another or would affect him adversely, i.e., allowing of stretching of arm up to that point where the other fellow's nose does not begin. For this purpose, law may have "miles to go". Then, law cannot be cruel, which it would be because of what is being stated later, if persons attempting suicide are treated as criminals and are prosecuted to get them punished, whereas what they need is psychiatric treatment, because suicide basically is a "call for help", as stated by Dr (Mrs) Dastoor, a Bombay Psychiatrist, who heads an organisation called "Suicide Prevent". May it be reminded that a law which is cruel violates Article 21 of the Constitution, *a la,* Deena v. Union of India, (1983) 4 SCC 645.
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> 51. A crime presents these characteristics: (1) it is a harm, brought about by human conduct which the sovereign power in the State desires to prevent; (2) among the measures of prevention selected is the threat of punishment; and (3) legal proceedings of a special kind are employed to decide whether the person accused did in fact cause the harm, and is, according to law, to be held legally punishable for doing so. (See pp. 1 to 5 of Kenny's Outlines of Criminal Law, 19th Edn., for the above propositions.)
>
> (emphasis supplied)

81. We find that Act intends not to jeopardise the female foetus. As such curtailment of the liberty in cause of such a violation cannot be said to be disproportionate.

82. Reliance has also been placed on *State of Uttar Pradesh v. Wasif Haider,* (2019) 2 SCC 303, in which it has been laid down

that an offence has to be proved beyond reasonable doubt. The relevant portion of the decision is extracted hereunder:

> "22. In the instant appeals before us, the prosecution has failed to link the chain of circumstances so as to dispel the cloud of doubt about the culpability of the respondent-accused. It is a well-settled principle that a suspicion, however grave it may be cannot take place of proof i.e. there is a long distance between "may be" and "must be", which must be traversed by the prosecution to prove its case beyond reasonable doubt [See Narendra Singh v. State of M.P., (2004) 10 SCC 699]."

There is no dispute with the aforesaid proposition, but that is not the question before us. When trial takes place obviously the commission of the offence has to be proved as required under the relevant applicable law.

83. 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 114-A of the Indian Evidence Act there is presumption of absence of consent of prosecutrix in offence of rape.

84. 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 Act has to be viewed in this light.

85. 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. A skewed sex-ratio is likely to lead to greater incidences of violence against women and increase in practices of trafficking, 'bride-buying' etc. The rigorous implementation of the Act is an edifice on which rests the task of saving the girl child.

86. In view of the aforesaid discussion and in our opinion, no case is made out to hold that deficiency in maintaining the record mandated by Sections 5, 6 and the proviso to Section 4(3)

cannot be diluted as the aforesaid provisions have been incorporated in various columns of the Form 'F' and as already held that it would not be a case clerical mistake but absence of *sine qua non* for undertaking a diagnostic test/procedure. It cannot be said to be a case of clerical or technical lapse. Section 23(1) need not have provided for gradation of offence once offence is of non-maintenance of the record, maintenance of which itself intend to prevent female foeticide. It need not have graded offence any further difference is so blur it would not be possible to prevent crime. There need not have been any gradation of offence on the basis of actual determination of sex and non-maintenance of record as undertaking the test without the pre-requisites is totally prohibited under the Act. The non-maintenance of record is very foundation of offence. For first and second offences, gradation has been made which is quite reasonable.

87. Provisions of Section 23(2) has also been attacked on the ground that suspension on framing the charges should not be on the basis of clerical mistake, inadvertent clerical lapses. As we found it is not what is suggested to be clerical or technical lapse nor it can be said to be inadvertent mistakes as existence

of the particular medical condition is mandated by Sections 4 and 5 including the age etc. Thus, suspension on framing of charges cannot be said to be unwarranted. The same intends to prevent mischief. We are not going into the minutes what can be treated as a simple clerical mistake that has to be seen case wise and no categorization can be made of such mistakes, if any, but with respect to what is mandatory to be provided in the Form as per provisions of various sections has to be clearly mentioned, it cannot be kept vague, obscure or blank as it is necessary for undertaking requisite tests, investigations and procedures. There are internal safeguards in the Act under the provisions relating to appeal, the Supervisory Board as well as the Appropriate Authority, its Advisory Committee and we find that the provisions cannot be said to be suffering from any vice as framing of the charges would mean *prima facie* case has been found by the Court and in that case, suspension cannot be said to be unwarranted.

88. It was also prayed that action should be taken under Section 20 after show cause notice and reasonable opportunity of being heard. There is already a provision in Section 20(1) to issue a show cause and in Section 20(2) contains the provision

as to reasonable opportunity of being heard. Thus, we find no infirmity in the aforesaid provision.

89. There also the Appropriate Authority to consider each case on merits with the help of Advisory Body which has legal expert. The Advisory Committee consists of one legal expert which has to aid and advise the Appropriate Authority as provided in Sections 16 and 17(5)(6). Thus, the submission that legal advice should be taken before prosecution, in view of the provisions, has no legs to stand.

90. It was also contended that action of seizure of ultrasonography machine and sealing the premises cannot be said to be appropriate. The submission is too tenuous and liable to be rejected. Section 30 of the Act enumerates the power of search and seizure and Rules 11 and 12 of the Rules provide for the power of the Appropriate Authority to seal equipment, inspect premises and conduct search and seizure. It was pointed out by the respondents that a “Standard Operational Procedure”, detailing the procedure for search and seizure has been developed by the Ministry of Health and Family Welfare. Further, regular training of Appropriate Authorities is being carried out at both the National and State level. All the States

have also been directed to develop online MIS for monitoring the implementation of the Act. It is settled proposition that when offence is found to be committed, there can be seizure and sealing of the premises and equipment during trial as no license can be given to go on committing the offence. Such provisions of seizure/sealing, pending trial are to be found invariably in various penal legislations. The impugned provisions contained in the Act constitute reasonable restrictions to carry on any profession which cannot be said to be violative of Right to Equality enshrined under Article 14 or right to practise any profession under Article 19(1)(g). Considering the Fundamental Duties under Article 51A(e) and considering that female foeticide is most inhumane act and results in reduction in sex ratio, such provisions cannot be said to be illegal and arbitrary in any manner besides there are various safeguards provided in the Act to prevent arbitrary actions as discussed above.

91. In light of the nature of offences which 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. The individual cases cited by the petitioner-Society cannot be a ground for passing blanket

directions, and the individuals have remedies under the law which they can avail. Moreover, the concept of double jeopardy would have no application here, as it provides that a person shall not be convicted of the same offence twice, which is demonstrably not the case here. Suspension is a step-in-aid to further the intendment of act. It cannot be said to be double punishment. In case an employee is convicted for an offence, he cannot continue in service which can be termed to be double jeopardy.

92. Non maintenance of record is spring board for commission of offence of foeticide, not just a clerical error. In order to effectively implement the various provisions of the Act, the detailed forms in which records have to be maintained have been provided for by the Rules. These Rules are necessary for the implementation of the Act and improper maintenance of such record amounts to violation of provisions of Sections 5 and 6 of the Act, by virtue of proviso to Section 4(3) of the Act. In addition, any breach of the provisions of the Act or its Rules would attract cancellation or suspension of registration of Genetic Counselling Centre, Genetic Laboratory or Genetic

Clinic, by the Appropriate Authority as provided under Section 20 of the Act.

93. There is no substance in the submission that provision of Section 4(3) be read down. By virtue of the proviso to Section 4(3), a person conducting ultrasonography on a pregnant woman, is required to keep complete record of the same in the prescribed manner and any deficiency or inaccuracy in the same amounts to contravention of Section 5 or Section 6 of the Act, unless the contrary is proved by the person conducting the said ultrasonography. The aforementioned proviso to Section 4(3) reflects the importance of records in such cases, as they are often the only source to ensure that an establishment is not engaged in sex-determination.

94. Section 23 of the Act, which provides for penalties of offences, acts in aid of the other Sections of the Act is quite reasonable. It provides for punishment for any medical geneticist, gynecologist, registered medical practitioner or a person who owns a Genetic Counselling Centre, a Genetic Clinic or a Genetic Laboratory, and renders his professional or technical services to or at said place, whether on honorarium

basis or otherwise and contravenes any provisions of the Act, or the Rules under it.

95. Therefore, dilution of the provisions of the Act or the Rules would only defeat the purpose of the Act to prevent female foeticide, and relegate the right to life of the girl child under Article 21 of the Constitution, to a mere formality.

96. In view of the above, no case is made out for striking down the proviso to Section 4(3), provisions of Sections 23(1), 23(2) or to read down Section 20 or 30 of the Act. Complete contents of Form 'F' are held to be mandatory. Thus, the writ petition is dismissed. No costs.

..............................J.
(Arun Mishra)

..............................J.
(Vineet Saran)

New Delhi;
May 03, 2019