CHAPTER-3

PROTECTION OF FEMALE FOETICIDE
UNDER VARIOUS PENAL LAWS AND
THEIR CONSTITUTIONAL VALIDITY

There are occasions where the judiciary takes the charge and directs the executive to implement the laws effectively. Female foeticide being the law relating to human dignity, the courts are conscious enough for implementation of these kinds of laws.

Although sex determination and sex selection (female foeticide) is a topic beginning to gain more public awareness, the laws surrounding sex selective abortions remain unclear due to political and judicial jargon. The Pre-Conception and Prenatal Diagnostic Techniques Act was passed in 1994 banning prenatal sex determination as a means to prevent sex selective abortions. According to the act, a prenatal diagnostic procedure includes any medical procedure such as ultrasonography, foetoscopy, or sampling of amniotic fluid, chorionic villi, blood, any tissue or fluid, which is sent to a genetic laboratory or clinic for pre-natal analysis or diagnostic tests for sex selection. Pre-natal analysis could include any tests conducted on pregnant women to detect genetic disorders, metabolic disorders, chromosomal abnormalities, congenital anomalies, haemoglobinopathies, and sex-linked diseases.

While the effectiveness of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 Act can be questioned, the act has clear objectives that aim to prevent any sort of prenatal sex selection. There are three main objectives to the
Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 Act. The first is to prohibit sex selection before or after conception. The second objective is to regulate pre-natal diagnostic practices so they are only used to detect genetic, metabolic, or chromosomal abnormalities, and the third objective is to prevent the misuse of these techniques for sex determination, which could lead to sex determination and sex selection (female foeticide).

“The Act is talking about two issues: the conception side and the technical procedures,” said SoumyaBhaumik, lawyer at the Centre for Social Research. “The Act is meant to prevent the abortion of female foetuses.”

The Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 Act defines sex selection as any procedure, technique, or test that is conducted for the purpose for ensuring or increasing the probability that an embryo will be of a particular sex. This law applies to any centre that provides genetic counseling to patients. This includes any institute, hospital, nursing home, or clinic, which is used for pre-natal diagnostic techniques. Even a vehicle that has any equipment that could be used for determining the sex of a foetus comes under this law. All genetic centres are required to display prominently a notice in English and in the local language or languages that conduct of sex-determination tests/disclosure of sex of the foetus is prohibited.

An important aspect of the law is that it permits the use of prenatal diagnostic techniques if tests are being conducted to diagnose medical conditions such as genetic diseases, chromosomal abnormalities, or any other disease that can be diagnosed through conducting prenatal tests.
This law only prohibits the use of prenatal tests for sex selection purposes.

While prenatal tests are permitted for detecting specific disorders, there are certain conditions that women must have in order to qualify for prenatal diagnostic practices. Prenatal techniques can be used on pregnant women if they are above 35 years, have undergone two or more spontaneous abortions or foetal loss, have been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals, or if the pregnant women or their spouses have a family history of mental retardation or physical deformities such as spasticity or any other genetic disease.

Any medical personnel conducting a prenatal test must brief the woman on any potential risks or side effects of the test and must gain written consent from the woman before conducting the tests. In addition, anyone conducting the prenatal diagnostic must declare on each report that he/she has neither detected nor disclosed the sex of foetus to any body, and any pregnant woman undergoing ultrasonography/image scanning must declare that she does not want to know the sex of her foetus.

The Act also places prohibitions on people, including relatives and the husband of the pregnant woman. These prohibitions extend to family members or the husband of the pregnant woman encouraging or seeking the use of prenatal techniques for the purpose of sex selection. In addition, no person including the specialist or family member will communicate to the pregnant woman, her relatives, or any other person the sex of the foetus by words, signs or in any other manner.
Any person who acts contrary to this law and seeks the aid of prenatal tests to be conducted on a pregnant woman for the purpose of sex selection will be liable to be punished to up to three years imprisonment and pay a fine up to Rs.50,000. However, in case of a doctor violating this act, his/her name will be reported to the State Medical Council, who will take appropriate actions, including suspension of the doctor’s practicing license.141

In 2000, the Constitutional Chamber of Costa Rica’s Supreme Court of Justice held that human life begins at fertilization, and that zygotes, embryos, and fetuses are thus entitled to all human rights, including a right to life.142 As a result, in vitro fertilization was banned in Costa Rica, even though abortion remained legal when a pregnancy posed a risk to the woman’s life or health.143 In 2012, the Inter-American Court of Human Rights struck down Costa Rica’s prohibition of IVF as a means to protect the right to life prior to birth, finding that where there are prenatal protections, they must be “gradual and incremental, according to [life’s] development.”

3.1 VARIOUS LAWS PROTECTING FEMALE FOETICIDE

3.1.1 THE PRE-NATAL DIAGNOSTIC TECHNIQUES (PRENATAL DIAGNOSTIC TEST ACT) ACT & RULES

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, was enacted and brought into operation from 1st January, 1996, in order to check female foeticide. Rules have also been

141 By Lea Goelnitz, Intern – Centre for Social Research: June 21, 2012
142 SalaConstitucional de la Corte Suprema de Justicia [Constitutional Chamber of the Supreme Court of Justice], Expediente [Record] No. 95-001734-0007-CO, Voto [Vote] No. 2306-00, Mar. 15, 2000 (Costa Rica).
143 Código Penal [CP] (Penal Code) No. 4573, art. 121, May 4, 1970 (Costa Rica)
framed under the Act. The Act prohibits determination and disclosure of the sex of foetus. It also prohibits any advertisements relating to pre-natal determination of sex and prescribes punishment for its contravention. The person who contravenes the provisions of this Act is punishable with imprisonment and fine.

Recently, Pre Nataal Diagnostic Test Act and Rules have been amended keeping in view the emerging technologies for selection of sex before and after conception and problems faced in the working of implementation of the Act and certain directions of Hon’ble Supreme Court after a PIL was filed in May, 2000 by CEHAT and Ors, an NGO on slow implementation of the Act. These amendments have come into operation with effect from 14th February, 2003

3.1.2 THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994

This is an Act to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and, for matters connected there with or incidental thereto. BE it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.(2) It shall extend to the whole of India except the State of Jammu and Kashmir.(3) It shall come into force on such date as the Central Government may, by notification in the
Official Gazette, appoint.

2. Definitions.- In this Act, unless the context otherwise requires,--

(a) "Appropriate Authority" means the Appropriate Authority appointed under section 17;

(b) "Board" means the Central Supervisory Board constituted under section 7;

(c) "Genetic Counseling Centre" means an institute, hospital, nursing home or any place, by whatever name called, which provides for genetic counselling to patients;

(d) "Genetic Clinic" means a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures;

(e) "Genetic Laboratory" means a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic test;

(f) "Gynecologist" means a person who possesses a postgraduate qualification in gynecology and obstetrics;

(g) "Medical geneticist" means a person who possesses a degree or diploma or certificate in medical genetics in the field of pre-natal diagnostic techniques or has experience of not less than two years in such field after obtaining--

(i) any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956);
or (ii) a post-graduate degree in biological sciences;

(h) "Pediatrician" means a person who possesses a post-graduate qualification in pediatrics;

(i) "pre-natal diagnostic procedures" means all gynecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman for being sent to a Genetic Laboratory or Genetic Clinic for conducting pre-natal diagnostic test;

(j) "pre-natal diagnostic techniques" includes all pre-natal diagnostic procedures and pre-natal diagnostic tests;

(k) "pre-natal diagnostic test" means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, (102 of 1956.) and whose name has been entered in a State Medical Register;

(n) "regulations" means regulations framed by the Board under this Act.
3.1.3 REGULATION OF GENETIC COUNSELLING CENTRES, GENETIC LABORATORIES AND GENETIC CLINICS

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, Genetic Laboratory or Genetic Clinic shall employ or cause to be employed any person who does not possess the prescribed qualifications;

(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.

3.1.4 REGULATION OF PRE-NATAL DIAGNOSTIC TECHNIQUES

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 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 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 Central Supervisory Board;

(4) no person, being a relative or the husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purpose specified in clause (2).

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 conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives 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,-

1. (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.

3.1.5 CENTRAL SUPERVISORY BOARD

7. Constitution of Central Supervisory Board.-

(1) The Central Government shall constitute a Board to be known as the Central Supervisory Board to exercise the powers and perform the functions conferred on the Board under this Act.

(2) The Board shall consist of—

(a) the Minister in charge of the Ministry or Department of Family Welfare, who shall be the Chairman, ex officio;

(b) the Secretary to the Government of India in charge of the Department of Family Welfare, who shall be the Vice-Chairman, ex-officio;

(c) two members to be appointed by the Central
Government to represent the Ministries of Central Government in charge of Woman and Child Development and of Law and Justice, ex-officio;

(d) amongst—the Director General of Health Services of the Central Government, ex officio; ten members to be appointed by the Central Government, two each from (i) (ii) (iii) (iv) (v) eminent medical geneticists; eminent gynaecologists and obstetricians; eminent paediatricians; eminent social scientists; and representatives of women welfare organisations;

(f) three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States;

(g) four members to be appointed by the Central Government by rotation to represent the States and the Union territories, two in the alphabetical order and two in the reverse alphabetical order:

Provided that no appointment under this clause shall be made except on the recommendation of the State Government or, as the case may be, the Union territory;

(h) an officer, not below the rank of a Joint Secretary or
equivalent of the Central Government, in charge of Family Welfare, who shall be the Member-Secretary, ex officio.

8. Term of office of members.-

(1) The term of office of a member, other than an ex officio member, shall be,-

(a) in case of appointment under clause (e) or clause (f) of sub-section (2) of section 7, three years; and

(b) in case of appointment under clause (g) of the said subsection, one year.

(2) If a casual vacancy occurs in the office of any other members, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled by the Central Government by making a fresh appointment and the member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

(3) The Vice-Chairman shall perform such functions as may be assigned to him by the Chairman from time to time. (4) The procedure to be followed by the members in the discharge of their functions shall be such as may be prescribed.

9. Meetings of the Board.-

(1) The Board shall meet at such time and place, and shall observe such rules of procedure in regard to the transaction
of business at its meetings (including the quorum at such meetings) as may be provided by regulations:

Provided that the Board shall meet at least once in six months.

(2) The Chairman and in his absence the Vice-Chairman shall preside at the meetings of the Board.

(3) If for any reason the Chairman or the Vice-Chairman is unable to attend any meeting of the Board, any other member chosen by the members present at the meeting shall preside at the meeting.

(4) All questions which come up before any meeting of the Board shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote.

(5) Members other than ex officio members shall receive such allowances, if any, from the Board as may be prescribed.

10. Vacancies, etc., not to invalidate proceedings of the Board.- No act or proceeding of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting
the merits of the case.

11. Temporary association of persons with the Board for particular purposes.

(1) The Board may associate with itself, in such manner and for such purposes as may be determined by regulations, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with it by the Board under sub-section (1) for any purpose shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a member for any other purpose.

12. Appointment or officers and other employees of the Board.

(1) For the purpose of enabling it efficiently to discharge its functions under this Act, the Board may, subject to such regulations as may be made in this behalf, appoint (whether on deputation or otherwise) such number of officers and other employees as it may consider necessary:

Provided that the appointment of such category of officers, as may be specified in such regulations, shall be subject to the approval of the Central Government.

(2) Every officer or other employee appointed by the Board shall be subject to such conditions of service and shall be entitled to such remuneration as may be specified in the regulations.
13. Authentication of orders and other instruments of the Board.- All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other member authorised by the Board in this behalf, and all other instruments issued by the Board shall be authenticated by the signature of the Member-Secretary or any other officer of the Board authorised in like manner in this behalf.

14. Disqualifications for appointment as member.- A person shall be disqualified for being appointed as a member if, he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b)  

(c)  

(d) Corporation owned or controlled by the Government; or

(e) has, in the opinion of the Central Government, such financial or other interest in the Board as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has, in the opinion of the Central Government, been associated with the use or promotion of pre-natal diagnostic technique for determination of sex.

15. Eligibility of member for reappointment.- Subject to the other terms and conditions of service as may be prescribed, any person
ceasing to be a member shall be eligible for reappointment as such member.

16. Functions of the Board. - The Board shall have the following functions, namely:--

(i) to advise the Government on policy matters relating to use of pre-natal diagnostic techniques;

(ii) to review implementation of the Act and the rules made thereunder and recommend changes in the said Act and rules to the Central Government;

(iii) to create public awareness against the practice of pre-natal determination of sex and female foeticide;

(iv) to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics;

(v) any other functions as may be specified under the Act.

3.1.6 APPROPRIATE AUTHORITY AND ADVISORY COMMITTEE

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, of or above the rank of the Joint Director of Health and Family Welfare; and

(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.

is an undischarged insolvent; or

is of unsound mind and stands so declared by a competent court; or

has been removed or dismissed from the service of the Government or a

(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; and

(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.

(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, obstetricians, 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, in the opinion of the Central Government or
the State Government, as the case may be, has been
associated with the use or promotion of pre-natal diagnostic
technique for determination of sex 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.

3.1.7 REGISTRATION OF GENETIC COUNSELLING CENTRES,
GENETIC LABORATORIES AND GENETIC CLINICS

18. Registration of Genetic Counselling Centres, Genetic Laboratories
or Genetic Clinics.

(1) No person shall open any Genetic Counselling Centre,
Genetic Laboratory or Genetic Clinic after the
commencement of this Act unless such Centre, Laboratory
or Clinic is duly registered separately or jointly under this
Act.
(2) Every application for registration under sub-section (1), shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.

(3) Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged, either partly or exclusively, in counselling or conducting pre-natal diagnostic techniques for any of the purposes mentioned in section 4, immediately before the commencement of this Act, shall apply for registration within sixty days from the date of such commencement.

(4) Subject to the provisions of section 6, every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged in counselling or conducting pre-natal diagnostic techniques shall cease to conduct any such counselling or technique on the expiry of six months from the date of commencement of this Act unless such Centre, Laboratory or Clinic has applied for registration and is so registered separately or jointly or till such application is disposed of, whichever is earlier.

(5) No Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be registered under this Act unless the Appropriate Authority is satisfied that such Centre, Laboratory or Clinic is in a position to provide such facilities, maintain such equipment and standards as may be prescribed.
19. Certificate of registration.-

(1) The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration in the prescribed form jointly or separately to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.

(2) If, after the inquiry and after giving an opportunity of being heard to the applicant and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act or the rules, it shall, for reasons to be recorded in writing, reject the application for registration.

(3) Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.

(4) The certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in a conspicuous place at its place of business.

20. Cancellation or suspension of registration.-

(1) The Appropriate Authority may suomoto, 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.

3.1.8 OFFENCES AND PENALTIES

22. Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention.

(1) No person, organisation, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue or cause to be issued any advertisement in any manner regarding facilities of pre-natal determination of sex available at such Centre, Laboratory, Clinic or any other place.

(2) No person or organisation shall publish or distribute or cause to be published or distributed any advertisement in any manner regarding facilities of pre-natal determination of sex available at any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other place.

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

Explanation.--For the purposes of this section, "advertisement" includes any notice, circular, label wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas.
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 who has been convicted by the court under sub-section (1), shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or of a medical geneticist, gynaecologist or registered medical practitioner for conducting pre-natal diagnostic techniques on any pregnant woman (including such woman unless she was compelled to undergo such diagnostic techniques) for
purposes other than those specified in clause (2) of section 4, 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.

24. Presumption in the case of conduct of pre-natal diagnostic techniques.- Notwithstanding anything in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume unless the contrary is proved that the pregnant woman has been compelled by her husband or the relative to undergo pre-natal diagnostic technique 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.

25. Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided.- Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, 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 with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

26. Offences by companies.-

(1) Where any offence, punishable under this Act has been
committed by a company, every person who, at the time the
crifice was committed was in charge of, and was
responsible to the company for the conduct of the business
of the company, as well as the company, shall be deemed to
be guilty of the offence and shall be liable to be proceeded
against and punished accordingly:

Provided that nothing contained in this sub-section shall
render any such person liable to any punishment, if he
proves that the offence was committed without his
knowledge or that he had exercised all due diligence to
prevent the commission of such offence. (2)
Notwithstanding anything contained in sub-section (1),
where any offence punishable under this Act has been
committed by a company and it is proved that the offence
has been committed with the consent or connivance of, or is
attributable to any neglect on the part of, any director,
manager, secretary or other officer of the company, such
director, manager, secretary or other officer shall also be
deemed to be guilty of that offence and shall be liable to be
proceeded against and punished accordingly.

**Explanation.**--For the purposes of this section.--

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

(b) "director", in relation to a firm, means a partner in the firm.

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

28. Cognizance of offences.

(1) No court shall take cognizance of an offence under this Act except on a complaint made by--

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than thirty days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.--For the purpose of this clause, "person" includes a social organisation.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of subsection (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

29. Maintenance of records.

(1) All records, charts, forms, reports, consent letters and all other documents required to be maintained under this Act
and the rules shall be preserved for a period of two years or for such period as may be prescribed:

Provided that, if any criminal or other proceedings are instituted against any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, the records and all other documents of such Centre, Laboratory or Clinic shall be preserved till the final disposal of such proceedings.

(2) All such records shall, at all reasonable times, be made available for inspection to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf.

30. Power to search and seize records, etc. –

(1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, such Authority or any officer authorised thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 (2
of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

31. Protection of action taken in good faith.- No suit, prosecution or other legal proceeding shall lie against the Central or the State Government or the Appropriate Authority or any officer authorised by the Central or State Government or by the Authority for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

32. Power to make rules.-

(1) The Central Government may make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for--

(i) the minimum qualifications for persons employed at a registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under clause (1) of section 3;

(ii) the form in which consent of a pregnant woman has to be obtained under section 5;

(iii) the procedure to be followed by the members of the Central Supervisory Board in the discharge of their functions under sub-section (4) of section 8;

(iv) allowances for members other than ex officio members admissible under sub-section (5) of section 9;
(v) the period intervening between any two meetings of the Advisory Committee under the proviso to sub-section (8) of section 17;

(vi) 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 under sub-section (9) of section 17;

(vii) the form and manner in which an application shall be made for registration and the fee payable thereof under sub-section (2) of section 18;

(viii) the facilities to be provided, equipment and other standards to be maintained by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic under sub-section (5) of section 18;

(ix) the form in which a certificate of registration shall be issued under sub-section (1) of section 19;

(x) the manner in which and the period after which a certificate of registration shall be renewed and the fee payable for such renewal under sub-section (3) of section 19;

(xi) the manner in which an appeal may be preferred under section 21;

(xii) the period up to which records, charts, etc., shall be preserved under sub-section (1) of section 29;
(xiii) the manner in which the seizure of documents, records, objects, etc., shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody such documents, records or objects were seized under sub-section (1) of section 30;

(xiv) any other matter that is required to be, or may be, prescribed.

33. Power to make regulations.- The Board may, with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for--

(a) the time and place of the meetings of the Board and the procedure to be followed for the transaction of business at such meetings and the number of members which shall form the quorum under sub-section (1) of section 9;

(b) the manner in which a person may be temporarily associated with the Board under sub-section (1) of section 11;

(c) the method of appointment, the conditions of service and the scales of pay and allowances of the officer and other employees of the Board appointed under section 12;

(d) generally for the efficient conduct of the affairs of the Board.

34. Rules and regulations to be laid before Parliament. – Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it
is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

3.2 Indian Penal Code:

3.2.1 Section 312. Causing miscarriage

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation: A woman who causes herself to miscarry, is within the meaning of this section.

Para I

Punishment—Imprisonment for 3 years, or fine or both—Non-cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.
Para II

Punishment—Imprisonment for 7 years and fine—Non-cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

3.2.2 Section 313. Causing miscarriage without woman’s consent

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Para I

Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

3.2.3 Section 314. Death caused by act done with intent to cause miscarriage

Whoever, with intent to cause the miscarriage of woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term may extend to ten years, and shall also be liable to fine.

If act done without woman’s consent.—And if the act is done without the consent of the woman, shall be punished either with [imprisonment for life] or with the punishment above mentioned

Explanation :It is not essential to this offence that the offender should
know that the act is likely to cause death.

**Para I**

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

**Para II**

Punishment—Imprisonment for life, or as above—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

**3.2.4 Section 315. Act done with intent to prevent child being born alive or to cause it to die after birth**

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Punishment—Imprisonment for 10 years, or fine, or both—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

**3.2.5 Section 316. Causing death of quick unborn child by act amounting to culpable homicide**

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such
act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die, but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

3.2.6 Section 317. Exposure and abandonment of child under twelve years, by parent or person having care of it.

Whoever being the father or mother of a child under the age of twelve years, having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years; or with fine, or with both.

Explanation: This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

Punishment—Imprisonment for 7 years, or fine, or both—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.
3.2.7 **Section 318. Concealment of birth by secret disposal of dead body.**

Whoever, by secretly burying or otherwise disposing of the death body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

3.2.8 **Constitutional Validity:**

It must be noted that Constitution of India clearly provides under various provisions that there cannot be any discrimination on the ground of sex.

Article 14 provides, “The state shall not deny any person equality before law or the equal protection of laws.”

Article 15 provides, “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
Nothing in this article shall prevent the State from making any special provision for women and children.

Article 16 (2) provides, “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

Article 21 provides, “No person shall be deprived of his life and personal liberty except procedure established by law.

“India's highest court issues notices to central and state authorities for stricter implementation of the law that ban sex-determination tests and sex-selective abortions. A public interest litigation has said that recognition of pre-birth sex-selection should be considered medical malpractice as it involves the misuse of medical technology.

The Supreme Court of India has issued notices to the Indian government and the states and union territories on a petition seeking stricter implementation of laws that ban pre-natal sex-selection tests and sex-selective abortions in India. A concerned Supreme Court observed that the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994 that is meant to prevent female foeticide in India, has failed.

On August 18, a two-judge bench of Justices K G Balakrishnan and D K Jain issued notices on a petition by a civil society organisation, Voluntary Health Association of Punjab. Notices were also issued to the Ministry of Health and Family Welfare, Ministry of Law and the Ministry of Women and Child Development on the petitioner's claim that though the act was amended in 2003, pursuant to a direction by the apex court,
there was need for guidelines for proper and full implementation of the act.

The petition brought to the court's attention the rampant practice of sex-selective abortions in many parts of the country, with doctors indiscriminately conducting sex-determination tests and carrying out abortions because of lax implementation of the preconception and prenatal diagnostic techniques (prohibition of sex selection) act, 1994 Act. The petitioner observed that many clinics and doctors who were performing sex-selective abortions were not even licensed to perform medical terminations of pregnancy.

Senior advocate Colin Gonsalves, appearing for the petitioner, said recognition of pre-birth sex-selection should be declared a medical malpractice and offence as it involves the misuse of medical technology by doctors who are greedy for money.

The consequence is a sharp decline in the under-six sex ratio, the petitioner said, presenting state-wise figures to support his argument. The VHAP pointed out that though legislation preventing sex-determination had been passed 12 years ago, it had virtually failed to prevent the crime. In the past 10 years, several states have registered a nearly 50% decline in child sex ratio, with states like Punjab witnessing 850 females per 1,000 males.

The discovery of a large number of female foetuses in a well at the house of a doctor in Punjab was a pointer to the impunity with which provisions of the Preconception And Prenatal Diagnostic Techniques (Prohibition Of Sex Selection) Act, 1994 Act are being violated. The country need not wait for the census to assess the impact of sex-determination tests and female foeticide being carried out by certain
ruthless doctors for their greed, throwing the country into an abyss of imbalanced ratio between males and females.

This imbalance would have serious repercussions for Indian society in future, especially on the status of women, the petitioner said, leading to increased sexual violence, trafficking and the reduced mobility of women.

The PIL asked the court to direct the reconstitution of advisory committees throughout the country by removing private doctors and replacing them with reputed CSOs and individuals committed to the implementation of the act.

It also sought a direction to the Medical Council of India to make it mandatory for all private doctors to bring to the notice of the authorities any incident or person connected with sex-determination.

The petitioner urged the court to direct the states to constitute special investigation teams to look into cases of sex-selective abortions, set up a special court and appoint special prosecutors to conduct trials in such cases.

It also sought that the authorities should not be allowed to permit the sale of ultrasound machines without proper verification of the antecedents of the buyers and be particularly vigilant about private gynaecologists, to ensure that they did not misuse this equipment.\textsuperscript{144}

In \textit{Centre For Enquiry Into Health v. Union Of India \& Others},\textsuperscript{145} It is an admitted fact that in Indian Society, discrimination

\textsuperscript{144} Source: The Hindu, August 19, 2006
The Tribune, August 19, 2006
IANS, August 18, 2006
Zee News, August 18, 2006
\textsuperscript{145} AIR2003SC3309
against girl child still prevails, may be because of prevailing uncontrolled dowry system despite the Dowry Prohibition Act, as there is no change in the mind-set or also because of insufficient education and/or tradition of women being confined to household activities. Sex selection/sex determination further adds to this adversity. It is also known that number of persons condemn discrimination against women in all its forms, and agree to pursue, by appropriate means, a policy of eliminating discrimination against women, still however, we are not in a position to change mental set-up which favours a male child against a female. Advance technology is increasingly used for removal of foetus (may or may not be seen as commission of murder) but it certainly affects the sex ratio. The misuse of modern science and technology by preventing the birth of girl child by sex determination before birth and thereafter abortion is evident from the 2001 Census figures which reveal greater decline in sex ratio in the 0-6 age group in States like Haryana, Punjab, Maharashtra and Gujarat, which are economically better off.

Despite this, it is unfortunate that law which aims at preventing such practice is not implemented and, therefore, Non-Governmental Organisations are required to approach this Court for implementation of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 renamed after amendment as "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act" (hereinafter referred to as 'the Pre Natal Diagnostic Test Act') which is the normal function of the Executive.

In this petition, it was inter alia prayed that as the Pre-natal Diagnostic Techniques contravene the provisions of the Pre Natal Diagnostic Test Act, the Central Government and the State Governments be directed to implement the provisions of the Pre Natal Diagnostic Test
Act (a) by appointing appropriate authorities at State and District levels and the Advisory Committees; (b) the Central Government be directed to ensure that Central Supervisory Board meets every 6 months as provided under the Pre Natal Diagnostic Test Act; and (c) for banning of all advertisements of pre-natal sex selection including all other sex determination techniques which can be abused to selectively produce only boys either before or during pregnancy.

After filing of this petition, notices were issued and thereafter various orders from time to time were passed to see that the Act is effectively implemented.

On 4th May 2001, following order was passed. "It is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that gentle touch of a daughter and her voice has soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of female infanticide whereby female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advance medical techniques. Unfortunately, developed medical science is misused to get rid of a girl child before birth. Knowing full well that it is immoral and unethical as well as it may amount to an offence, foetus of a girl child is aborted by qualified and unqualified doctors or compounders. This has affected overall sex ratio in various States where female infanticide is prevailing without any hindrance.

For controlling the situation, the Parliament in its wisdom enacted the Pre-natal Diagnostic Techniques (Regulation and Prevention of
Misuse) Act, 1994. The Preamble, inter alia, provides that the object of the Act is to prevent the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide and for matters connected therewith or incidental thereto. The Act came into force from 1st January, 1996.

It is apparent that to a large extent, the Pre Natal Diagnostic Test 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. One of the petitioners is the Centre for Enquiry Into Health and Allied Themes which is a research center of Anusandhan Trust based in Pune and Mumbai. Second petitioner is Mahila Sarvangeen Utkarsh Mandal based in Pune and Maharashtra and the third petitioner is Dr. Sabu M. Georges who is having experience and technical knowledge in the field. After filing of this petition, this Court issued notices to the concerned parties on 9.5.2000. It took nearly one year for the various States to file their affidavits in reply/written submissions. Prima facie it appears that despite the Pre Natal Diagnostic Test Act being enacted by the Parliament five years back, neither the State Governments nor the Central Government has taken appropriate actions 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 following directions are issued on the basis of various provisions for the proper implementation of the Pre Natal Diagnostic Test Act:

(A) Directions to the Central Government

1. The Central Government is directed to create public
awareness against the practice of pre-natal determination of sex and female foeticide through appropriate releases / programmes in the electronic media. This shall also be done by Central Supervisory Board as provided under Section 16(iii) of the Pre Natal Diagnostic Test Act.

2. The Central Government is directed to implement with all vigor and zeal the Pre Natal Diagnostic Test Act and the Rules framed in 1996. Rule 15 provides that the intervening period between two meetings of the Advisory Committees constituted under sub-section (5) of Section 17 of the Pre Natal Diagnostic Test Act to advise the appropriate authority shall not exceed 60 days. It would be seen that this Rule is strictly adhered to.

(B) Directions to the Central Supervisory Board

1. Meetings of the Central Supervisory Board will be held at least once in six months. [Re. Proviso to Section 9(1)] The constitution of the Central Supervisory Board is provided under Section 7. It empowers the Central Government to appoint ten members under Section 7(2)(e) which includes eminent medical practitioners including eminent social scientists and representatives of women welfare organizations. We hope that this power will be exercised so as to include those persons who can genuinely spare some time for implementation of the Act.

2. The CSB shall review and monitor the implementation of the Act. [Re. Section 16(ii)].
3. The Central Supervisory Board shall issue directions to all State/Union Territory. Appropriate Authorities to furnish quarterly returns to the Central Supervisory Board 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.

4. The Central Supervisory Board shall examine the necessity to amend the Act keeping in mind emerging technologies and difficulties encountered in implementation of the Act and to make recommendations to the Central Government. [Re. Section 16]

5. The Central Supervisory Board shall lay down a code of conduct under section 16(iv) of the Act to be observed by persons working in bodies specified therein and to ensure its publication so that public at large can know about it.
6. The Central Supervisory Board will require medical professional bodies/associations to create awareness against the practice of pre-natal determination of sex and female foeticide and to ensure implementation of the Act.

(C) Directions to State Governments/UT Administrations

1. All State Governments/UT Administrations are directed to appoint by notification, fully empowered Appropriate Authorities at district and sub-district levels and also Advisory Committees to aid and advise the Appropriate Authority in discharge of its functions [Re. Section 17(5)]. For the Advisory Committee also, it is hoped that members of the said Committee as provided under section 17(6)(d) should be such persons who can devote some time for the work assigned to them.

2. All State Governments/Union Territory Administrations are directed to publish a list of the Appropriate Authorities in the print and electronic media in its respective State/Union Territory.

3. All State Governments/UT Administrations are directed to create public awareness against the practice of pre-natal determination of sex and female foeticide through advertisement in the print and electronic media by hoarding and other appropriate means.

4. All State Governments/UT Administrations are directed to ensure that all State/UT appropriate Authorities furnish quarterly returns to the Central Supervisory Board 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.

(D) Directions to Appropriate Authorities

1. Appropriate Authorities are directed to take prompt action against any person or body who issues or causes to be issued any advertisement in violation of section 22 of the Act.

2. Appropriate Authorities are directed to take prompt action against all bodies specified in section 3 of the Act as also against persons who are operating without a valid certificate of registration under the Act.

3. All State/Union Territory Appropriate Authorities are directed to furnish quarterly returns to the Central Supervisory Board 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 including bodies using ultrasound machines.

(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.

The Central Supervisory Board and the State Governments/Union Territories are directed to report to this Court on or before 30th July 2001. List the matter on 6.8.2001 for further directions at the bottom of the list."

Inspite of the above order, certain States/Union Territory did not file their affidavits. Matter was adjourned from time to time and on 19th September, 2001, following order was passed"Heard the learned counsel for the parties and considered the affidavits filed on behalf of various States. From the said affidavits, it appears that the directions issued by this Court are not complied with.

1. At the outset, we may state that there is total slackness by the Administration in implementing the Act. Some learned counsel pointed out that even though the Genetic Counselling Centre, Genetic Laboratories or Genetic Clinics
are not registered, no action is taken as provided under Section 23 of the Act, but only a warning is issued. In our view, those Centres which are not registered are required to be prosecuted by the Authorities under the provisions of the Act and there is no question of issue of warning and to permit them to continue their illegal activities.

It is to be stated that the Appropriate Authorities or any officer of the Central or the State Government authorised in this behalf is required to file complaint under Section 28 of the Act for prosecuting the offenders.

Further wherever at District Level, appropriate authorities are appointed, they must carry out the necessary survey of Clinics and take appropriate action in case of non-registration or non-compliance of the statutory provisions including the Rules. Appropriate authorities are not only empowered to take criminal action, but to search and seize documents, records, objects etc. of unregistered bodies under Section 30 of the Act.

2. It has been pointed out that the States/Union Territories have not submitted quarterly returns to the Central Supervisory Board on implementation of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as "the Act"). Hence it is directed that the quarterly returns to Central Supervisory Board should be submitted giving the following information:-
(a) Survey of Centres, Laboratories/Clinics,

(b) Registration of these bodies,

(c) Action taken against unregistered bodies,

(d) Search and Seizure,

(e) Number of awareness campaigns, and

(f) Results of campaigns"

On 7th November, 2001, learned counsel for the Union of India stated that the Central Government has decided to take concrete steps for the implementation of the Act and suggested to set up National Inspection and Monitoring Committee for the implementation of the Act. It was ordered accordingly.

On 11th December, 2001, it was pointed out that certain State Governments have not disclosed the names of the members of the Advisory Committee. Consequently, the State Governments were directed to publish the names of advisory committee in various districts so that if there is any complaint, any citizen can approach them. The Court further observed thus:"For implementation of the Act and the rules, it appears that it would be desirable if the Central Government frames appropriate rules with regard to sale of ultrasound machines to various clinics and issue directions not to sell machines to unregistered clinics. Learned counsel Mr. Mahajan appearing for Union of India submitted that appropriate action would be taken in this direction as early as possible.'"

On March 31, 2003, it was pointed out that in conformity with the
various directions issued by this Court, the Act has been amended and titled as "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act". It was submitted that people are not aware of the new amendment and, therefore, following reliefs were sought:

a) direct the Union of India, State Governments / UTs and the authorities constituted under the PRE NATAL DIAGNOSTIC TEST ACT Act to prohibit sex selection techniques and its advertisement throughout the country;

b) direct that the appropriate authorities shall also include "vehicles" with ultra sound machines etc., in their quarterly reports hereinafter as defined under Section 2(d);

c) any person or institution selling Ultra Sound machine should provide information to the appropriate State Authority in furtherance of Section 3-B of the Amended Act;

d) direct that State Supervisory Boards be constituted in accordance with the amended Section 16A in order to carry out the functions enumerated therein;

e) direct appropriate authorities to initiate suomoto legal action under the amended Section 17(iv)(e);

f) direct that the Central Supervisory Board shall publish half yearly consolidated reports based on the quarterly reports obtained from the State bodies. These reports should specifically contain information on:

1) Survey of bodies and the number of bodies registered.
2) Functioning of the regulatory bodies providing the number and dates of meetings held.

3) Action taken against non-registered bodies inclusive of search and seizure of records.

4) Complaints received and action taken pursuant thereto.

5) Nature and number of awareness programmes.

6) Direct that the Central Supervisory Board shall carry out all the additional functions as given under the amended Section 16 of the Act, in particular, to oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation.

As against this, Mr. Mahjan learned counsel appearing for the Union of India submits that on the basis of the aforesaid amendment, appropriate action has already been taken by Union of India for implementation and almost all State Governments/UTs are informed to implement the said Act and the Rules and the State Governments/UTs are directed to submit their quarterly report to the Central Supervisory Board.

Considering the amendment in the Act, in our view, it is the duty of the Union Government as well as the State Governments/UTs to implement the same as early as possible."

At the time of hearing, learned counsel for the petitioners submitted that appropriate directions including the steps which are required to be taken on the basis of PRE NATAL DIAGNOSTIC TEST
ACT

Act and the suggestion as given in the written submission be issued.

On this aspect, learned counsel for the parties were heard.

In view of the various directions issued by this Court, as quoted above, no further directions are required except that the directions issued by this Court on 4th May, 2001, 7th November, 2001, 11th December, 2001 and 31st March, 2003 should be complied with. The Central Government / State Governments / UTs are further directed that:

a) For effective implementation of the Act, information should be published by way of advertisements as well as on electronic media. This process should be continued till there is awareness in public that there should not be any discrimination between male and female child.

b) Quarterly reports by the appropriate authority, which are submitted to the Supervisory Board should be consolidated and published annually for information of the public at large.

c) Appropriate authorities shall maintain the records of all the meetings of the Advisory Committees.

d) The National Monitoring and Inspection Committee constituted by the Central Government for conducting periodic inspection shall continue to function till the Act is effectively implemented. The reports of this Committee be placed before the Central Supervisory Board and State Supervisory Board for any further action.

e) As provided under Rule 17(3), public would have access to the records maintained by different bodies constituted under
the Act.

f) Central Supervisory Board would ensure that the following States appoint the State Supervisory Board as per the requirement of Section 16A.

1. Delhi 2. Himachal Pradesh 3. Tamil Nadu

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

4. Tamil Nadu 5. Uttar Pradesh It will be open to the parties to approach this Court in case of any difficulty in implementing the aforesaid directions.

The Writ Petition is disposed of accordingly.

In view of the aforesaid order, pending IAs have become infructuous and are disposed of accordingly.

In Vinod Soni and Anr. Vs. Union of India, V.G. Palshikar, J. held, “By this petition, the petitioners who are married couple, seek to challenge the constitutional validity of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 (hereinafter referred to Sex Selection Act of 1994). The petition contains basically two challenges to the enactment. First, it violates Article 14 of

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146 2005 CriLJ 3408
the Constitution and second, that it violates Article 21 of the Constitution of India. At the time of argument, the learned counsel appearing for the petitioners submitted that he does not press his petition in so far as the challenge via Article 14 of the Constitution of India is concerned.

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

"Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law."

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

4. Reliance was placed, as already stated, on several judgments of the Supreme Court of India on the enlargement of the right embodied under article 21. The right basically deals with protection of life and protection of personal liberty. Personal Liberties have been or personal life has been expanded during the passage of 55 years of the Constitution. It now includes right to pollution free water and air as held in AIR 1991 S.C. page 420 It includes right to a reasonable residence for which reliance is placed on a judgment in Shantistar Builders v. Narayan KhmalalTotame reported in AIR 1990 S.C. page 630 This right to a reasonable residence always postulates right to a reasonable residence on reasonable restrictions and for reasonable price. This right cannot be and the Supreme Court's judgment in 1990 S.C. page 630 does not create a right to a reasonable residence in any citizen, free of any cost.

5. Then reliance is placed on a Supreme Court Judgment in AIR 1989 S.C. page 677 and two earlier decisions whereby the Supreme Court has explained Article 21 and the rights bestowed thereby include right to Food, clothing, decent environment, and even protection of cultural heritage. These rights even if further expanded to the extremes of the possible elasticity of the provisions of Article 21 cannot include right to selection of sex whether preconception or post conception.

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

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

Then para 4 reads thus:

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

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

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