(2014) 04 AHC CK 0051

In the Allahabad High Court

Case No : Misc. Bench No. 3517 of 2014

Saksham Foundation Charitable Society — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19(1)(a), 21
Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 16A, 2(i), 3, 3A, 4

Citation : (2014) 5 ALJ 496 : (2015) 1 AWC 574 : (2015) 1 RCR(Criminal) 404

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J;Devendra Kumar Upadhyaya, J

Bench : Division Bench

Advocate : Ram Kishan and Arjun Krishna, Advocate for the Appellant

Judgement

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1. These proceedings have been instituted by a Society registered under the Societies Registration Act, 1860, seeking to challenge the constitutional validity of Section 5(2) and Clauses (a) and (b) of Section 6 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Apart from challenging me constitutional validity of the provisions, the following reliefs have been sought: "B. issue a writ, order or direction in the nature of mandamus, directing the Opposite Parties to legalize the sex determination and make it compulsory for the person conducting the sex determination test (specifically ultrasonography) to clearly and in detail disclose the sex of the foetus in the ultrasound report along with the print of the image of the foetus (which will be conclusive proof of the sex of the foetus) till the time it comes up with a better and more effective alternative provision for dealing with the evil practice of sex selection."

The first ground of challenge is that the prohibition of sex determination violates the rights of the unborn child and is, therefore, contrary to Article 21 of the

Constitution of India. In the alternate, the second submission is that, it is only when a compulsory disclosure is made by the medical professional conducting an ultrasonography test of the sex of the unborn foetus, can a record be maintained of the sex of the foetus. In the absence of disclosure, it has been submitted, there is only a moral duty of the doctor not to disclose and in consequence, the female foetus is ultimately aborted.

2. The PC & PNDT Act, 1994 was specifically enacted to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons accompanying the Bill, which was introduced in Parliament, is to the following effect:

"It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. A legislation is required to regulate the use of such techniques and to provide deterrent punishment to stop such inhuman act.

2. The Bill, inter alia, provides for:--

(i) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;

(ii) prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex;

(iii) permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;

(iv) permitting the use of such techniques only under certain conditions by the registered institutions; and

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

3. The Bill seeks to achieve the aforesaid objectives."

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

"Amendment Act 14 of 2003 - Statement of Object and Reasons.-- The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. During recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.

2. The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.

3. The proliferation of the technologies mentioned above may, in future, precipitate a catastrophe, in the form of severe imbalance in male-female ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children. It is, therefore, necessary to enact and implement in letter and spirit a legislation to ban the pre-conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex-selective abortions and to provide for the regulation of such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the larger interests of the society.

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

Sub-section (1) of Section 5 of the Act makes the following provisions:

"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."

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

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

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

"6. Determination of sex prohibited.--On and from the commencement of this

Act,--

(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultra-sonography, for the purpose of determining the sex of a foetus;

(b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultra-sonography for the purpose of determining the sex of a foetus;

(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception."

The expression ''pre-natal diagnostic procedures'' is defined under Section 2(i) thus:

"2. (i) "pre-natal diagnostic procedures" means all gynaecological or obstetrical or medical procedures such as ultra-sonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo, blood or any other tissue or fluid of a man, or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or prenatal diagnostic tests for selection of sex before or after conception."

Section 3-A of the Act contains a prohibition of sex selection to the effect that no person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.

Section 4 of the Act, which forms part of Chapter III, deals with the regulation of prenatal diagnostic techniques and is to the following effect:

"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 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 the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of Section 5 or Section 6 unless contrary is proved by the person conducting such ultrasonography;

(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."

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

caused selection of sex before or after conception.

4. Child Sex Ratio (CSR), calculated as the number of girls per thousand boys in the 0-6 years age group, has rapidly declined from 976 girls per 1000 boys in 1961 to 919 in the 2011 census. In States, such as Punjab, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra and Delhi, less than 850 girls are shown in the CSR for every 1000 boys. Since CSR reflects both pre-birth and post-birth discrimination against girls, the Sex Ratio at Birth (SRB) is considered to be a more accurate reflection of sex selection. SRB shows the number of girls born for every 1000 boys and, hence, is not subject to post-birth changes due to factors, such as mortality and neglect. The SRB for 2007-2009 is estimated at 906 girls for 1000 boys.

5. Sex selection practices in India are estimated to have resulted in a loss of nearly 5.7 lakh girls annually during 2001-2008. According to the estimates of the United Nations Population Fund, India1 the rapid decrease in SRB is a consequence of the convergence of three factors: (i) social preference for the male child and discrimination against women and girls; (ii) a decrease in the family size; and (iii) the rapid spread and misuse of technology. The widespread prevalence of sex selection is a clear indicator of discrimination against women and of the low status which a male dominated society attributes to women. The dominant patriarchal system is one of the fundamental causes for the social preference for sons in various communities and segments of the population.

6. ''Sex'' refers to the biological and physiological characteristics that define men and women. Gender is a social construct and comprehends roles, behaviours, activities and attributes that a society considers appropriate for men and women2. Dominant patriarchal notions have denied access to women to productive resources, decision making and social mobility. Opportunities within the family and at the workplace which are available to males are denied to females. These differences are not biological but reflect a deeply ingrained social attitude of a patriarchal society which denies equal status to women. In a patriarchal system, the dominance of men sanctified by social customs and conventions has resulted in an unequal access for women to social and economic opportunities that are available to men. Men control the productive and labour power of women, reproductive rights, sexuality, mobility and access to economic resources. A declining CSR is documented to have resulted in increasing violence against women and the denial of rights. Sex determination is known to lead to forced abortions. Women, both in the urban and rural areas, are subjected to psychological stress over the perceived pressure to produce a male child. Women are deserted, subjected to cruelty and deprived of their fundamental human rights in the process. Sex selection has resulted in increasing crimes related to sex, such as rape, abduction and trafficking.

7. Jean Dreze & Amartya Sen in "An Uncertain Glory - India and its Contradictions3" dwell on the high tech face of gender disparity presented by sex selection. The relationship between traditional patriarchal values, the deprivation

of the freedom of choice for women and the serious dimensions of sex selective abortions in India are analyzed in the following observations:

"In India too, the tendency to use new technology to abort female foetuses has grown in many parts of the country (particularly in the northern and western States), and women''s education alone has not been able to serve as a strong barrier to this regressive movement. Indeed, there is some evidence that decisions of sex-selective abortions are often taken by the mothers themselves. What is crucially important in this context is to overcome what Justice Leila Seth has aptly called the ''patriarchical mindset''... What is particularly critical in remedying the terrible biases involved in natality discrimination and sex-specific abortions is the role of women''s informed and enlightened agency, including the power of women to overcome unquestioningly inherited values and attitudes. What may make a real difference in dealing with this new - and ''high tech'' - face of gender disparity is the willingness, ability and courage to challenge the dominance of received and entrenched norms. When anti-female bias in action reflects the hold of traditional patriarchal values from which mothers themselves may not be immune, what is crucial is not just freedom of action but also freedom of thought and its practice. Informed critical agency is important in combating inequality of every kind, and gender inequality is no exception.

Regional patterns of sex-selective abortion in India are consistent with this understanding of the influence of patriarchal values (and of women''s freedom - or the lack of it - to resist them). Looking first at the all-India picture, the situation looks most alarming. As is well known, the female-male ratio in the age group of 0-6 years has been going down over time, and in the last decade it has fallen further, from 927 girls per 1,000 boys in 2001 to 914 girls per 1,000 boys in 2011. Further, there is evidence that this decline is largely driven by the spread of sex-selective abortion. The latest demographic analysis of census as well as National Family Health Survey data from 1990 onwards suggests that the number of selective abortions of girls between 1980 and 2010 was somewhere between 4 and 12 million, and that the annual number of sex-selective abortions is now around 0.3 to 0.6 million (or roughly 2 to 4 percent of all pregnancies)."

The Annual Report to the People on Health, published in December 2011, by the Union Government in the Ministry of Health and Family Welfare, states that:

"The sex ratio among children less than 6 years of age has worsened in the last decade to 914 per 1000 males. Haryana with 830 girls per 1000 boys, Punjab with 846 girls per 1000 boys and Jammu & Kashmir with 859 girls per 1000 boys are the States with most adverse child sex ratios in the country."

The Annual Health Survey (AHS), Second Updation Bulletin 2012-13, brought out on 4 March, 2014 by the Registrar General & Census Commissioner of India, also indicates the progressive decline in the Sex Ratio at Birth in the States of Uttarakhand, Rajasthan, Madhya Pradesh, Odisha, Uttar Pradesh, Bihar, Jharkhand, Assam and Chhattisgarh. A report brought out by the Public Health

Foundation of India supported, inter alia, by the National Human Rights Commission and UNFPA on the implementation of the PC & PNDT Act in India, has this to say about the implementation of the Act:

"Even after 15 years of its existence, only 606 cases have been filed under the Act. Out of these, 196 cases have been filed under nonregistration, 153 under non-maintenance of records, 126 for communication of sex, 37 for advertisement and 94 for other violations under the Act (as on June 2009). Based on the dismal rate of convictions and continuing decline of child sex ratios, this study was undertaken to understand the reasons behind low conviction rates, loopholes in cases reaching courts and overall implementation of the Act."

The decline in the sex ratio has similarly been documented in several scholarly articles4 Ravinder Kaur, in an article titled ''Mapping the Adverse Consequences of Sex Selection and Gender Imbalance in India and China''5 has documented the emerging literature on the social consequences of the gender imbalance. The first consequence of the effect of the imbalance in the sex ratio, according to the author, is the mismatch in the marriage situation, which is referred to as the ''marriage squeeze''6.

"China has gone through a drastic fertility reduction and India is undergoing rapid fertility decline, and both countries have been sex selecting. Thus, a marriage squeeze against males is inevitable. It is important to note that the effects of the marriage squeeze are felt more than 20 years after the appearance of skewed sex ratios, as marriageable cohorts come of age. Both India and China are now experiencing a marriage squeeze, which will possibly become worse as the forecasts discussed later in this section reveal.

It is important, however, to remember that the marriage squeeze, as Eklund writes in her paper, is not merely a numeric imbalance - it is affected by how marriage is socially, economically and politically constructed.

... "Such serious gender disproportion poses a major threat to the healthy, harmonious and sustainable growth of the nation''s population and would trigger such crimes and social problems as abduction of women and prostitution" (The Guardian 2004)."

The second serious consequence is, according to the author, what is described in the phrase ''bare branches'' in China for men who will not marry and have their own family resulting in an outbreak of crime and violence against women:

"In India, there has been early discussion of the possible links between violence and adverse sex ratios. In a much noted paper, Oldenburg (1992) argues that sex ratios tend to be more masculine in areas that are more violence-prone and where muscle power is needed to protect and acquire property, i.e. more sons are needed in such places. Murder rates are high in high sex ratio districts of Uttar Pradesh. Taking up his argument and further examining the relationship between crime, gender and society, Dreze and Khera (2002) find that murder

rates are indeed higher in districts with low female-male ratios, and conclude that patriarchal, male-dominated societies are likely to be more violent.

It is pertinent to state that it is difficult to establish direct causality between sex ratios and their effects on other social dimensions. Yet, ignoring the available statistical and anecdotal evidence that points in the direction of a relationship between sex ratios and the marriage squeeze, and sex ratios and social order would be tantamount to not seeing the forest for the trees. Sexual crimes against women seem to be on the rise in the north and northwestern areas of India that have high sex ratios. Evidence related to surplus bachelors is provided by many respondents from the high sex ratio states of Haryana and Punjab, who report that many young unmarried men roam around in groups with little to do...

Kaur (2008) points out a connection between skewed sex ratios and another kind of violence that has been on the rise - the so-called "honour killings" in Haryana and Western Uttar Pradesh..."

An increasing concern, especially in China, has been that the phenomenon of surplus males may lead to increasingly risky sexual behaviour, thereby resulting in a higher incidence of HIV. These are only some of the serious consequences, the impact of which would be in the form of increased gender disparity and gender discrimination.

8. The Supreme Court in center for Enquiry into Health and Allied Themes (CEHAT) and Others Vs. Union of India and Others, . issued detailed guidelines for the implementation of the Act. The latest guidelines, which have been formulated by the Supreme Court in its judgment Voluntary Health Association of Punjab Vs. Union of India (UOI) and Others, are to the following effect:

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

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

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

4. The authorities should ensure also that all Genetic Counselling Centers, Genetic Laboratories and Genetic Clinics, Infertility Clinics, Scan Centers etc. using pre-conception and prenatal diagnostic techniques and procedures should maintain all records and all forms, required to be maintained under the Act and the Rules and the duplicate copies of the same be sent to the concerned District

Authorities, in accordance with Rule 9(8) of the Rules.

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

6. There will be a direction to all Genetic Counselling Centers, 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.

7. Steps should also be taken by the State Government and the authorities under the Act for mapping of all registered and unregistered ultra-sonography clinics, in three months time.

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

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

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

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

All the State Governments are directed to file a status report within a period of three months from today."

While issuing these guidelines, the Supreme Court has adverted to the ground realities, as they exist, in the following observations:

"2011 Census of India, published by the Office of the Registrar General and Census Commissioner of India, would show a decline in female child sex ratio in many States of India from 2001-2011. The Annual Report on Registration of Births and Deaths - 2009, published by the Chief Registrar of NCT of Delhi would also indicate a sharp decline in the female sex ratio in almost all the Districts. Above statistics is an indication that the provisions of the Act are not properly and effectively being implemented. There has been no effective supervision or follow up action so as to achieve the object and purpose of the Act. Mushrooming

of various Sonography Centres, Genetic Clinics, Genetic Counselling Centres, Genetic Laboratories, Ultrasonic Clinics, Imaging Centres in almost all parts of the country calls for more vigil and attention by the authorities under the Act. But, unfortunately, their functioning is not being properly monitored or supervised by the authorities under the Act or to find out whether they are misusing the prenatal diagnostic techniques for determination of sex of foetus leading to foeticide."

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

10. Articles 15 and 16 of the Constitution, prohibit discrimination on the basis of sex. In a recent judgment of the Supreme Court in National Legal Services Authority Vs. Union of India (UOI) and Others, the Supreme Court has held that the prohibition of discrimination on the ground of sex encompasses discrimination on the ground of gender identity:

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

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

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

12. The constitutional validity of the PC & PNDT Act was upheld in a judgment of a Division Bench of the Bombay High Court in Mr. Vijay Sharma and Mrs. Kirti Sharma Vs. Union of India (UOI), While rejecting the challenge, the Supreme

Court observed that the hard realities of Indian social life were in the contemplation of the legislature when the law was enacted. The Bombay High Court held as follows:

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

13. We are in respectful agreement with the decision. A similar view has been taken by the Bombay High Court in another judgment in Vinod Soni and Another Vs. Union of India (UOI), . The Delhi High Court has similarly upheld the constitutional validity of the provisions in Amy Antoinette Mcgregor and Another Vs. Directorate of Family Welfare Govt. of NCT of Delhi and Another, .

14. Having regard to the social evil, which Parliament sought to remedy by enactment of the provisions of the Act, we see no ground to hold that the provisions, which are under challenge, are unconstitutional. Parliament had the legislative competence to enact the law, in any event, under Entry 97 of List-I of the Seventh Schedule. The provisions are not either arbitrary or violative of Article 14 of the Constitution or for that matter, violative of Article 21 of the Constitution. On the contrary, the Act is designed to ensure that the fundamental

human right of the mother and of the unborn foetus is not violated by the misuse of sex selection diagnostic procedures, resulting in female foeticide.

15. The alternate submission is a point, which does not relate to constitutional validity, but to legislative policy. The Court would not be justified in interfering with the wisdom of Parliament in implementing a legislative policy in a particular manner. Whether any alternate means would better implement the legislative policy, is for Parliament to determine. The constitutional validity of the Act cannot be struck down on that ground. For these reasons, we find no ground to interfere in these proceedings. The petition is, accordingly, dismissed. There shall be no order as to costs.

1. Trends in sex ratio at birth and estimates of girls missing at birth in India (2001-2008), United Nations Population Fund, India.

2. See in this context the Training Module and Handbook for Judicial Officers on Sex Selection and PC & PNDT Act --2014, published by the United Nations Population Fund--India.

3. Allen Lane 2013 pp. 232, 233.

4. (See in this connection, Kanchan Mathur & Shobhita Rajgopal ''No Right To Be Bom in Rajasthan '' Economic & Political Weekly, June 18, 2011; Sharada Srinivasan, Arjun S. Bedi ''Tackling Female Infacticide and Sex Selection in Tamil Nadu'', Economic & Political Weekly , November 10, 2012.

5. Economic & Political Weekly, August 31, 2013, Vol XLVIII No 35 (page 37).

6. Economic & Political Weekly, August 31, 2013, Vol XLVIII No 35 (page 38).

