
SABU MATHEW GEORGE V. UNION OF INDIA

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ABSTRACT

This case analysis examines ‘Sabu Mathew George v. Union of India’, which is a landmark Public Interest Litigation, addressing the intersection of digital platforms and social welfare laws in India. The case revolves around the misuse of search engines to facilitate illegal pre-natal sex determination, in violation of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The Supreme Court expanded the scope of intermediary liability under the Information Technology Act, 2000 by imposing proactive obligations on search engines, including the implementation of an “auto-block” mechanism to filter prohibited content.

The judgment reflects a purposive interpretation of statutory provisions, particularly Section 22 of the PCPNDT Act, extending its application beyond commercial advertisements to all forms of online content. It further reconciles the tension between freedom of speech under Article 19(1)(a) of the Constitution of India and the state’s duty to protect the dignity and life of the girl child under Articles 15 and 21. While the ruling strengthens regulatory enforcement in the digital domain and advances feminist constitutional values, it has been criticized for potential judicial overreach, technological impracticality, and dilution of intermediary safe harbour protections. Overall, the case marks a significant evolution in India’s digital jurisprudence, emphasizing the need to balance technological freedom with social justice imperatives.

Keywords: PCPNDT Act, Intermediary Liability, Freedom of Speech, Auto-Block Doctrine, Sex Selection Prohibition, Judicial Activism.

INTRODUCTION

*Sabu Mathew George v. Union of India*¹, is a Public Interest Litigation (PIL) filed in the Supreme Court which addresses the misuse of commonly and widely used search engines, to violate the Pre-Conception and Pre- Natal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994² (hereinafter referred to as the PCPNDT Act).

The petitioner in this case is Sabu Mathew George, who is a public health activist. He filed this PIL against the major search engines such as Google, Yahoo and Microsoft and alleged that they were facilitating and promoting advertisements relayed to pre-natal sex determination and sex selection, which is illegal in India and explicitly barred and prohibited by the virtue of S.22 of the PCPNDT Act. The case revolves around the conflict between social welfare norms and digital autonomy.

- The case was decided by a three-judge bench, consisting of Dipak Mishra C.J and A.M. Khanwilkar. And Dr. D.Y. Chandrachud, JJ.

FACTS

- Dr. Sabu Mathew George, a public health activist, filed a Public Interest Litigation before the Supreme Court of India in 2008, under Art. 32³ of the Constitution of India regarding the efficient implementation of the PCPNDT Act, 1994⁴.
- The core contention in this case was that the major and famous internet search engines like Google, Yahoo! India and Microsoft Corporation (I) Pvt. Ltd. were allegedly enabling the practice of sex determination and sex selection which is statutorily barred. They did it by Showing sponsored advertisements for kits, clinics and services related to pre-natal sex determination. And by showing search results gave information and suggestions which directly violated Section 22⁵ of the PCPNDT Act, which explicitly prohibits advertisements in all forms, for sex selection.

¹ Sabu Mathew George v. Union of India, AIR 2018 SC 578.

² Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, No. 57 of 1994, Acts of Parliament (1994).

³ India Const. art. 32.

⁴ Id. 2

⁵ Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act § 22, No. 57 of 1994, Acts of Parliament (1994).

- The petitioner also contended that despite the law explicitly barring any such type of advertisement and despite the former court orders since 2014 directing the search engines to remove any such kind of advertisements and content, they were negligent and non-compliant to the orders and still showed such content on the internet.
- This case created a conflict between the mandate to prevent female foeticide along with the effective enforcement of PCPNDT Act and aforementioned search engines' contention of intermediary liability under the IT Act because they were only required to remove such content from their platforms upon a proper legal notification. They also contended that this kind of censorship is highly proactive and this in direct violation of citizens' Art. 19(1)(a)⁶ of the Constitution which is Freedom of Speech and Public's Right to Information.

ISSUES

The Core Issues in this case are –

1. What are the challenges in enforcing the PCPNDT Act, 1994, with particular reference to S.22⁷ of the Act, against the worldwide technological platforms and how can the Indian authorities ensure such compliance where the digital domain is borderless?
2. What would be the scope of intermediary liability under the IT Act with reference to international search engines like Google, Yahoo and Microsoft?
3. Should the given intermediaries adopt some proactive solutions like “Auto-Block” doctrine and also discuss the constitutional conflict between Art. 19(1)(a)⁸ (freedom of speech) and the state's duty to protect girl child under Art.15⁹ and 21¹⁰?

ARGUMENTS ADVANCED

PETITIONER'S ARGUMENTS-

1. The petitioner submitted that S.22¹¹ of the PCPNDT Act has a very broad interpretation.

⁶ India Const. art. 19(1)(a).

⁷ Id. 5

⁸ Id. 6

⁹ INDIA CONST. art. 15.

¹⁰ INDIA CONST. art.21.

¹¹ Id. 5

It must be interpreted broadly to include all types of online communication, whether it be commercial or non-commercial that promote sex selection and sex determination. The primary purpose and objective of the Act is to prevent female foeticide effectively and more efficiently for which it would need interpretation which is purposive and not only literal interpretation.

2. The petitioner contended that search engines cannot be passive as they too have a constitutional and statutory duty to actively prevent illegal content on their platforms. It is their affirmative duty. Just waiting for the governmental or judicial orders for such action simply delays the enforcement which end up in undermining the law's effectiveness.
3. The petitioner also submitted that there's a need of "Auto-Block" mechanism in these search engines. The search engines should have a filter to automatically block such illegal content, prohibited search terms and autocomplete suggestions about sex selection and sex determination. Such types of in-house filters are already used in copyrights and pornography contexts.
4. The petitioner contended that the Freedom of Speech which is a fundamental right provided to us by the Constitution itself is not absolute. The content which openly promotes sex selection and sex determination is illegal and it does not come under the ambit of Article 19(1)(a)¹². Reasonable restrictions can be put on such rights as mentioned in Article 19(2)¹³ as they safeguard and protect morality and public health, and essentially Right to life and dignity of a girl child.
5. The petitioner further submitted that as tech companies already have and deploy such advanced technology to put filters in other jurisdictions, they can put such filters in India too. The plea of technical impossibility by the respondents is undefendable as they possess both the technology, and resources to comply with it.

RESPONDENT'S ARGUMENTS-

1. The respondents submitted that they are not creators of the content but are only passive

¹² Id. 6

¹³ INDIA CONST. art. 19(2).

conduits of it. S.79 of the IT Act¹⁴ provides them safe harbour. The actual liability only rises when they have the actual knowledge such as receiving a proper valid governmental or judicial order as held in the case of *Shreya Singhal v. Union of India*¹⁵.

2. The respondents contended that an auto-blocking machinery to block general terms is impossible and unfeasible. It risks over-censorship. They argued that algorithms fail to distinguish illegal content and legal use of content such as for academic research purposes, public awareness, etc.
3. The respondents submitted that S.22¹⁶ of the PCPNDT Act has been interpreted very narrowly and the ban only applies to advertisements which are commercial in nature and are sponsored. Organic search results which are indexed by algorithms do not come under the ambit of the meaning of “advertisements” in PCPNDT Act.
4. The respondents contended that this would violate the fundamental right of Right to freedom of speech enshrined under art. 19(1)(a)¹⁷ of the Constitution as proactive blocking of such information would compel the violation of art. 19(1)(a)¹⁸. It would hinder legitimate discourse.
5. The respondents also submitted that many indexed websites are hosted outside the territory of India so they are beyond the territorial jurisdiction of the courts of India. An obligation which is blanket to all is highly unenforceable in the system of international internet.

JUDGEMENT

RATIO DECIDENDI-

- The court recalibrated the ‘intermediary liability’ contention of the respondents, that they could only take action upon receiving a specific governmental or judicial order, instead, they emphasized on proactive due diligence obligations.

¹⁴ Information Technology Act § 79, No. 21 of 2000, Acts of Parliament (2000).

¹⁵ *Shreya Singhal v. Union of India*, (2013) 12 SCC 73.

¹⁶ Id. 5

¹⁷ Id. 6

¹⁸ Id. 6

- This duty would be operated through a keyword based filtering system, where the Union of India would provide a list which would be regularly updated, of search items which are explicitly prohibited.
- The apex court also adopted an expanded interpretation of the word “advertisement” under S.22 of PCPNDT Act¹⁹. The court did not limit it to paid, commercial advertisements, instead it expanded it to all forms of communication, including organic results, links, etc.
- The apex court emphasized that these restrictions are covered under the ambit of ‘reasonable restrictions’ mentioned in Art. 19(2)²⁰ of the Constitution. This content was facilitating an illegal activity which is socially harmful.
- The judgement ultimately placed a positive obligation on internet intermediaries to actively police their own respective platforms with the Indian law made for social welfare.

OBITER DICTA-

- In the judgement of this case, the apex court strongly emphasized on the fact that there’s a need to strictly enforce the PCPNDT Act so that it can properly address the colossal calamity of the sex ratio which is constantly declining. The court upheld the principle of active technological enforcement by applying the “Auto-Block” doctrine.
- It gave directions to the search engines like Google, Yahoo and Microsoft to mandatorily develop and also implement the aforementioned in-house technical mechanisms which would auto-block and filter access to the content which violate S.22²¹ of the PCPNDT Act.
- To keep in check and ensure institutional enforcement, the apex court directed the respondents to also establish a nodal agency which would be a single point of contact for such complaints. This agency would be tasked with receiving various

¹⁹ Id.5

²⁰ Id. 13

²¹ Id. 5

inputs from the civil and public society which then would be forwarded to the search engines and then such content would be required to be removed within 36 hours.

- Its prohibition did not hinder citizens' freedom of speech, research or debate.

CRITICAL ANALYSIS

1. POSITIVE ASPECTS

- The apex court recognized the significant declination in the sex ratio as colossal calamity and gave more emphasis on the state's obligation of protecting the girl child rather than giving primacy to the technical and commercial concerns of search engines. This shows court's interpretation of the law to uphold the spirit of feminist constitutionalism.
- The Apex court, by expanding the scope of S.22 of PCPNDT Act²², to include organic search and not only sponsored ads, successfully ensured that the law upgrades with the ever-growing digital realty and preventing loopholes in the enforcement.
- The Auto-Block doctrine and the active filtering mechanism requirement reflects judicial innovation which ensures that the enforcement is not delayed until specific governmental and judicial orders are passed. This filled the gap that was left by the case of Shreya Singhal (safe harbour regime).
- The apex court justified its reasonable restrictions under art.19(2)²³ which ensures freedom of speech is not absolute, where the content is promoting any type of illegal and harmful activities.
- The apex court directed the formation of a special nodal agency for mandatorily removing such offending content within 36 hours of complaining which strengthened regulatory enforcement.

²² Id. 5

²³ Id. 13

2. CRITICISMS-

- Critics contended that the apex court went beyond the PCPNDT Act²⁴ and created brand new obligations, such as auto-block and was effectively legislating from the bench itself. This action was considered ultra-vires as it raised concerns over separation of powers and judiciary stepping in the shoes of legislature which is judicial overreach. This should have been done in the form of amendment by the Parliament only.
- The apex court also just assumed that the intermediaries could just simply block all the content but failed to understand the fact that algorithms cannot differentiate between illegal content and legitimate knowledge. It also raised the risk of over-censorship and suppression of necessary legitimate information.
- The judgement of the apex court in this particular case deviated from the case of *Shreya Singhal v. Union of India*²⁵ which held that intermediaries were only obligated to act upon special governmental and judicial orders. The intermediaries are not supposed to be perceived as ‘arbiters of truth’. This action would undermine the protection provided to intermediaries under S.79 of the IT Act²⁶. Also, many sites were indexed outside of the territory of India which raised concerns regarding the Apex court’s territorial jurisdiction to impose such restrictions.
- The imposition of such a continuous filtering duty on search engines is expensive and resource-intensive which could be potentially discouraging for smaller platforms operating within India. This would make India perceived as an over-regulated digital space.

3. OVERALL IMPACT-

- The case of *Sabu Mathew Geore v. Union of India*²⁷ represents a landmark step in digital regulation for the purpose of social welfare, emphasizing our country’s need

²⁴ Id. 2

²⁵ Id. 15

²⁶ Id. 14

²⁷ Id. 1

and willingness to give primacy to our constitutional values over commercial freedoms.

- It stands as a precedent for mandatory judicial proactive monitoring which expands to various areas like hate speech or dissent and potentially chilling free expression.
- It throws light on the tension existing between the technological freedom and social justice and at the same time it shows the immediate need for Parliament to enact clear statutory guidelines which would balance intermediary liability and balancing welfare laws.

CONCLUSION

It can be concluded that in the case of *Sabu Mathew George*²⁸ the Apex court had a progressive stance by giving primacy to the protection of the girl child and mandating the rigid enforcement of the PCPNDT Act²⁹. The doctrine of auto-block was affirmed by the apex court and it also imposed a proactive statutory and constitutional duty on the internet intermediaries to completely prevent the display of the advertisements which actively promoted illegal activities like sex determination and sex selection. The judgement also emphasized on the expansion of the scope of the word “advertisements” mentioned in S.22 of PCPNDT Act³⁰ and established special institutional mechanism like nodal agencies and in-house expert mechanism for effective compliance of the laws.

To the contrary, the judgement also raises concerns about judicial overreach as it was criticised that the judiciary, while establishing nodal agencies, stepped into the shoes of the legislature and went against the doctrine of separation of powers, a crucial part of the basic structure of the constitution. That work should have been done by the legislature by the way of amendments. It also raises concerns regarding technical feasibility and harbour protections provided under the IT Act. However, this case excellently set a precedent by showing judiciary’s role in upholding the legal principles to the evolving digital world and highlighting the need for a framework which harmonizes social responsibility and freedom in digital platforms in India.

²⁸ Id. 1

²⁹ Id. 2

³⁰ Id. 5