

The Supreme Court Judgment dated May 4, 2001 in the PNDT Act, 1994

In the Supreme Court of India, Civil Original Jurisdiction, Writ Petition (Civil) No. 301 of 2000

CEHAT, MASUM & Sabu George (Petitioners) v/s Union of India & Others (Respondents)

Order

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 problem 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 (hereinafter referred to as "the PNDT Act"). 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 PNDT Act is not implemented by the Central Government or by the State Governments. Hence, the petitioners are required to approach this Court under Article 32 of the Constitution of India. One of the petitioners is the Centre for Enquiry Into Health and Allied Themes (CEHAT), which is a research centre of Anusandhan Trust based in Pune and Mumbai. Second petitioner is Mahila Sarvangeen Utkarsh Mandal (MASUM) based in Pune, Maharashtra and the third petitioner is Dr. Sabu M. George 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 PNDT 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 PNDT Act.

I. Directions to the Central Government

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 Supervisor/Board ('CSB' for short) as provided under Section 16 (iii) of the PNDT Act.

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

II. Directions to the Central Supervisory Board (CSB)

1. Meeting of the CSB will be held at least once in six months. [Re. Proviso to Section 9(1)]. The constitution of the CSB is provided under Section 7. It empowers the Central Government to appoint ten member 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 time for implementation of the Act.

2. The CSB shall review and monitor the implementation of the Act. [Re. Section 16(ii)].

3. The CSB shall issue directions to all State/UT Appropriate Authorities to furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about:

- Survey of bodies specified in section 3 of the Act.
- Registration of bodies specified in section 3 of the Act.
- Action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records.
- Complaints received by the appropriate Authorities under the Act and action taken pursuant thereto.
- Number and nature of awareness campaigns conducted and results flowing therefrom

4. The CSB 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 CSB 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 CSB 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.

III. Directions to State Government/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/UT Administrations are directed to publish a list of the Appropriate Authorities in the print and electronic media in its respective State/UT.

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 hoardings 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 CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about:

- Survey of bodies specified in section 3 of the Act.
- Registration of bodies specified in section of the Act.
- Action taken against non-registered bodies operating in violation of section 3 of the Act inclusive of search and seizure of records.
- Complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.
- Number and nature of awareness campaigns conducted and results flowing therefrom.

IV. 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/UT Appropriate Authorities are directed to furnish quarterly returns to the CSB giving a report on the implementation and working of the Act. These returns should inter alia contain specific information about:

- Survey of bodies specified in section 3 of the Act.
- Registration of bodies specified in section 3 of the Act including bodies using ultrasound machines.
- Action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records.
- Complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto.
- Number and nature of awareness campaigns conducted and results flowing therefrom.

The CSB and the State Government / 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.

(M.B.Shah), (S.N. Variava), New Delhi: May 4, 2001

A Fact Sheet on the "Population Bomb" for Honourable Members of Parliament

There is no "population bomb". The birth rate is declining naturally in large parts of the country. It is thus not necessary to introduce incentives and disincentives into a family welfare package.

State policies and Bills proposing incentives and disincentives are in complete disjunction with the National Population Policy and indeed with commitments made by the Government of India at Cairo.

There is a large and unmet need for health and family planning services in the country as the NPP itself acknowledges. To propose punitive measures in this context is clearly irrational.

States where a rapid decline of the birth rate has taken place are precisely those states where infant and child mortality rates have earlier shown a decline. This decline of infant and child death rates is not uniform in the country. Indeed a worrying increase has taken place in many states. If population stabilisation is the goal, this is what needs priority attention.

The disincentives proposed are anti-poor, anti-dalit and anti-advantaged with these sections having to bear the brunt of the withdrawal of a range of government schemes and benefits precisely meant to ameliorate their conditions of living. For instance the TFR is 3.15 among dalits, 3.06 among STs and 2.66 among OBCs. Barring persons with more than two children from contesting in elections effectively bars representation for large sections of these communities.

Similarly making a two-child norm conditional for welfare measures deprives these sections disproportionately.

The disincentives are also anti-women since women in our country do not enjoy the freedom to decide how many children they will bear. Debarring such women from contesting elections makes a mockery of policies to empower women. Further, they will provide an impetus for sex-selective abortions and female feticide, worsening the already deplorable sex ratio in the country.

The proposals are also anti-minorities since many minority groups in the country, suffering deprivation, are lagging behind demographically from their more fortunately placed countrymen.

By linking performance in family planning to assessment of health functionaries, the health system will suffer a further damage in its credibility.

The proposals violate the Directive Principles of the Constitution of India. They are thus deeply anti-democratic and violate several provisions of the Constitution including the right to livelihood, the right to life, the right to privacy among others. They are also violative of several international Covenants that India is signatory to, including the Rights of the Child.

Any Member of Parliament wishing to support such measures would be well advised to hold prior consultation with her or his constituency.

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