

SUPREME COURT OF INDIA

Center for Enquiry into Health and Allied Themes (CEHAT)

Vs.

Union of India

(M. B. Shah and S. N. Variava JJ.)

04.05.2001

ORDER

1. 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 advanced 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, fetus of a girl child is aborted overall sex ratio in various States where female infanticide is prevailing without any hindrance.

2. 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 feticide and for matter connected therewith or incidental thereto. The Act came into force from 1st January, 1996.

3. It is apparent that to a large extent, the PNDT Act is not implemented by the Central Government or by the State Governments. Hence, the petitioners are required to approach this Court under Article 32 of the Constitution of India. One of the petitioners is the Central for Enquiry into Health and Allied Themes (CEHAT) which is a research center of Anusandhan Trust based in Pune and Mumbai. Second petitioner is Mahila Sarvangeen Utkarsh Mandal (MASUM) 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 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. Soll

J.Sorbajee following directions are issued on the basis of various provisions for the proper implementation of PNDT Act:-

I. 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 feticide through appropriate releases/programmers in the electronic media. This shall also be done by Central Supervisory Board ("CSB" for short) as provided under Section 16(iii) of the PNDT Act.

2. The Central Government is directed to implement with all vigor and zeal the PNDT 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 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. Meetings 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 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 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:-

“(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 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(ic) 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 feticide and to ensure implementation of the Act.

III. 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/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 Government/UT Administrations are directed to create public awareness against the practice of pre-natal determination of sex and female feticide 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:-

“(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.

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 well as 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:-

“(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.”

7. The CSB 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