Reportable

IN THE SUPREME COURT OF INDIA

EXTRAORDINARY CIVIL WRIT JURISDICTION

WRIT PETITION (CIVIL) NO. 349 OF 2006

Voluntary Health Association of Punjab ..Petitioner

Versus

Union of India & Others .. Respondents

O R D E R

Indian society's discrimination towards female child still exists due to various reasons which has its roots in the social behaviour and prejudices against the female child and, due to the evils of the dowry system, still prevailing in the society, in spite of its prohibition under the Dowry Prohibition Act. The decline in the female child ratio all over the country leads to an irresistible conclusion that the practice of eliminating female foetus by the use of pre-natal diagnostic techniques is widely prevalent in this country. Complaints are many, where at least few of the medical professionals do perform Sex Selective

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Abortion having full knowledge that the sole reason for abortion is because it is a female foetus. The provisions of the Medical Termination of Pregnancy Act, 1971 are also being consciously violated and misused.

The Parliament wanted to prevent the same and enacted the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act, 1994 (for short 'the Act') which has its roots in Article 15(2) of the Constitution of India. The Act is a welfare legislation. The Parliament was fully conscious of the fact that the increasing imbalance between men and women leads to increased crime against women, trafficking, sexual assault, polygamy etc. Unfortunately, facts reveal that perpetrators of the crime also belong to the educated middle class and often they do not perceive the gravity of the crime.

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This Court, as early as, in 2001 in ***Centre for Enquiry into Health and Allied Themes v. Union of India*** (2001) 5 SCC 577 had noticed the misuse of the Act and gave various

directions for its proper implementation. Non-compliance of various directions was noticed by this Court again in ***Centre for Enquiry into Health and Allied Themes v. Union of India*** (2003) 8 SCC 398 and this Court gave various other directions.

Having noticed that those directions as well as the provisions of the Act are not being properly implemented by the various States and Union Territories, we passed an order on 8.1.2013 directing personal appearance of the Health Secretaries of the States of Punjab, Haryana, NCT Delhi, Rajasthan, Uttar Pradesh, Bihar and Maharashtra, to examine what steps they have taken for the proper and effective implementation of the provisions of the Act as well as the various directions issued by this Court.

We notice that, even though, the Union of India has constituted the Central Supervisory Board and most of the States and Union Territories have constituted State Supervisory Boards, Appropriate Authorities, Advisory Committees etc. under the Act, but their functioning are far from satisfactory.

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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 pre-natal diagnostic techniques for determination of sex of foetus leading to foeticide.

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The Union of India has filed an affidavit in September 2011 giving the details of the prosecutions launched under the Act and the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Rules, 1996 (for short 'the Rules'), up to June 2011. We have gone through the chart as well as the data made available by various States, which depicts a sorry and an alarming state of affairs. Lack of proper supervision and effective implementation of the Act by various States, are clearly demonstrated by the details made available to this Court. However, State of Maharashtra has comparatively a better track record. Seldom, the ultrasound machines used for such sex determination in violation of the provisions of the Act are seized and, even if seized, they are being released to the violators of the law only to repeat the crime. Hardly few cases end in conviction. Cases booked under the Act are pending disposal for several years in many Courts in the country and nobody takes any interest in their disposal and hence, seldom, those cases end in conviction and sentences, a fact well known to the violators of law. Many of the ultra-sonography clinics

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seldom maintain any record as per rules and, in respect of the pregnant women, no records are kept for their treatment and the provisions of the Act and the Rules are being violated with impunity.

The Central Government vide GSR 80(E) dated 7.2.2002 issued a notification amending the Act and regulating usage of mobile machines capable of detecting the sex of the foetus, including portable ultrasonic machines, except in cases to provide birth services to patients when used within its registered premises as part of the Mobile Medical Unit offering a bouquet or other medical and health services. The Central Government also vide GSR 418(E) dated 4.6.2012 has notified an amendment by inserting a new Rule 3.3(3) with an object to regulate illegal registrations of medical practitioners in genetic clinics, and also amended Rule 5(1) by increasing the application fee for registration of every genetic clinic, genetic counselling centre, genetic laboratory, ultrasound clinic or imaging centre and amended Rule 13 by providing that an advance notice by any centre for intimation of every change in

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place, intimation of employees and address. Many of the clinics are totally unaware of those amendments and are carrying on the same practises. In such circumstances, the following directions are given:

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

2. The State Advisory Committees and District Advisory Committees should gather information relating to the breach of the provisions of the PN&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 PN&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 licence to practice.

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4. The authorities should ensure also that all Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics, Infertility Clinics, Scan Centres etc. using pre-conception and pre-natal 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 Centres, 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.

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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

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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.

Ordered accordingly.

.....J.
(K. S. RADHAKRISHNAN)

New Delhi,
March 04, 2013.

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O R D E R

Dipak Misra, J.

I respectfully concur with the delineation and the directions enumerated in seriatim by my respected learned Brother. However, regard being had to the signification of the issue, the magnitude of the problem in praesenti, and the colossal cataclysm that can visit this country in future unless apposite awareness is spread, I intend to add something pertaining to the direction No. (8).

2. To have a comprehensive view I think it seemly to reproduce the said direction: -

> "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."

3. It is common knowledge that the State Governments and Union Territories some times hold workshops as well as awareness camps at the State and District levels which have the characteristic of a routine performance, sans sincerity, bereft of seriousness and shorn of meaning. It is embedded on data-orientation. It does not require Solomon's wisdom to realize that there has not yet been effective implementation of the provisions of the Act, for there has not only been total lethargy and laxity but also failure on the part of the authorities to give accent on social, cultural, psychological and legal awareness that a female foetus is not to be destroyed for many a reason apart from command of the law. Needless to emphasise, there has to be awareness of the legal provisions and the consequences that have been provided for violation of the Pre-Conception and Pre-

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Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act, 1994 (for brevity "the Act") but, a significant one, the awareness in other spheres are absolutely necessitous for concretizing the purposes of the Act.

4. Be it noted, this is not for the first time that this Court is showing its concern. It has also been done before. In ***Centre for Enquiry into Health and Allied Themes (CEHAT) and others*** **v.** ***Union of India and others***[1], the two-Judge Bench commenced the judgment stating that the practice of female infanticide still prevails despite the fact that the gentle touch of a daughter and her voice has a soothing effect on the parents. The Court also commented on the immoral and unethical part of it as well as on the involvement of the qualified and unqualified doctors or compounders to abort the foetus of a girl child. It is apposite to state here that certain directions were given in the said decision.

1 (2001) 5 SCC 577

5. Female foeticide has its roots in the social thinking which is fundamentally based on certain erroneous notions, ego-centric traditions, pervert perception of societal norms, and obsession with ideas which are totally individualistic sans the collective good. All involved in female foeticide deliberately forget to realize that when the foetus of a girl child is destroyed, a woman of future is crucified. To put it differently, the present generation invites the sufferings on its own and also sows the seeds of suffering for the future generation, as in the ultimate eventuate, the sex ratio gets affected and leads to manifold social problems. I may hasten to add that no awareness campaign can ever be complete unless there is real focus on the prowess of women and the need for women empowerment.

6. On many an occasion this Court has expressed its anguish over this problem in many a realm. Dealing with the unfortunate tradition of demand of dowry from the girl's parents at the time of marriage

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despite the same being a criminal offence, a two-Judge Bench in ***State of H.P.*** **v.** ***Nikku Ram and others***[2] has expressed its agony thus: -

> "Dowry, dowry and dowry. This is the painful repetition which confronts, and at times haunts, many parents of a girl child in this holy land of ours where, in good old days the belief was : "यतर् नार्यस्तु पूज्यन्ते रमन्ते तत्र दे वताः" ["*Yatra naryastu pujyante ramante tatra dewatah*"] (where woman is worshipped, there is abode of God). We have mentioned about dowry thrice, because this demand is made on three occasions: (*i*) before marriage; (*ii*) at the time of marriage; and (*iii*) after the marriage. Greed being limitless, the demands become insatiable in many cases, followed by torture on the girl, leading to either suicide in some cases or murder in some."

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The aforesaid passage clearly reflects the degree of anguish of this Court in regard to the treatment meted out to the women in this country.

7. It is not out of place to state here that the restricted and constricted thinking with regard to a girl child

2 (1995) 6 SCC 219

eventually leads to female foeticide. A foetus in the womb, because she is likely to be born as a girl child, is not allowed to see the mother earth. In ***M.C. Mehta* v. *State of Tamil Nadu and others***[3], a three-Judge Bench, while dealing with the magnitude of the problem in engagement of the child labour in various hazardous factories or mines, etc., speaking through Hansaria, J., commenced the judgment thus: -

> "I am the child.
>
> All the word waits for my coming.
>
> All the earth watches with interest to see what I shall become.
>
> Civilization hangs in the balance.
>
> For what I am, the world of tomorrow will be.
>
> I am the child.
>
> You hold in your hand my destiny.
>
> You determine, largely, whether I shall succeed or fail,
>
> Give me, I pray you, these things that make for happiness.

3 AIR 1997 SC 699

> Train me, I beg you, that I may be a blessing to the world."

8. The aforesaid lines from Mamie Gene Cole were treated as an appeal by this Court and the Bench reproduced the famous line from William Wordsworth "child is the father of the man". I have reproduced the same to highlight that this Court has laid special emphasis on the term "child" as a child feels that the entire world waits for his/her coming. A female child, as stated earlier, becomes a woman. Its life-spark cannot be extinguished in the womb, for such an act would certainly bring disaster to the society. On such an act the collective can neither laugh today nor tomorrow. There shall be tears and tears all the way because eventually the spirit of humanity is comatosed.

9. Vishwakavi Rabindranath Tagore, while speaking about a child, had said thus: -

> "Every child comes with the message that God is not yet discouraged of man."

10. Long back, speaking about human baby, Charles Dickens had said thus : -

> "Every baby born into the world is a finer one than the last."

11. A woman has to be regarded as an equal partner in the life of a man. It has to be borne in mind that she has also the equal role in the society, i.e., thinking, participating and leadership. The legislature has brought the present piece of legislation with an intention to provide for 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. The purpose of the enactment can only be actualised and its object fruitfully realized when the authorities under the Act carry out their functions with devotion,

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dedication and commitment and further there is awakened awareness with regard to the role of women in a society.

12. It would not be an exaggeration to say that a society that does not respect its women cannot be treated to be civilized. In the first part of the last century Swami Vivekanand had said: -

> "Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind."

13. When a female foeticide takes place, every woman who mothers the child must remember that she is killing her own child despite being a mother. That is what abortion would mean in social terms. Abortion of a female child in its conceptual eventuality leads to killing of a woman. Law prohibits it; scriptures forbid it; philosophy condemns it; ethics deprecate it, morality decries it and social science abhors it. Henrik Ibsen emphasized on the individualism of woman. John Milton treated her to be the best of all

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God's work. In this context, it will be appropriate to quote a few lines from *Democracy in America* by Alexis De Tocqueville: -

> "If I were asked ... to what the singular prosperity and growing strength of that people [Americans] ought mainly to be attributed, I should reply: to the superiority of their women."

14. At this stage, I may with profit reproduce two paragraphs from ***Ajit Savant Majagvai* v. *State of Karnataka***[4]: -

> "**3.** Social thinkers, philosophers, dramatists, poets and writers have eulogised the female species of the human race and have always used beautiful epithets to describe her temperament and personality and have not deviated from that path even while speaking of her odd behaviour, at times. Even in sarcasm, they have not crossed the literary limit and have adhered to a particular standard of nobility of language. Even when a member of her own species, Madame De Stael, remarked "I am glad that I am not a man; for then I should have to marry a woman", there was

4 (1997) 7 SCC 110

wit in it. When Shakespeare wrote, “Age cannot wither her; nor custom stale, her infinite variety”, there again was wit. Notwithstanding that these writers have cried hoarse for respect for “woman”, notwithstanding that Schiller said “Honour women! They entwine and weave heavenly roses in our earthly life” and notwithstanding that the Mahabharata mentioned her as the source of salvation, crime against “woman” continues to rise and has, today undoubtedly, risen to alarming proportions.

4. It is unfortunate that in an age where people are described as civilised, crime against “female” is committed even when the child is in the womb as the “female” foetus is often destroyed to prevent the birth of a female child. If that child comes into existence, she starts her life as a daughter, then becomes a wife and in due course, a mother. She rocks the cradle to rear up her infant, bestows all her love on the child and as the child grows in age, she gives to the child all that she has in her own personality. She shapes the destiny and character of the child. To be cruel to such a creature is unthinkable. To torment a wife can only be described as the most hated and derisive act of a human being.”

[Emphasis supplied]

15. In ***Madhu Kishwar* v. *State of Bihar***[5] this Court had stated that Indian women have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.

16. The way women had suffered has been aptly reflected by an author who has spoken with quite a speck of sensibility: -

> "Dowry is an intractable disease for women,
> a bed of arrows for annihilating self-respect,
> but without the boon of wishful death."

17. Long back, Charles Fourier had stated "The extension of women's rights is the basic principle of all social progress".

18. Recapitulating from the past, I may refer to certain sayings in the Smritis which put women in an elevated position. This Court in ***Nikku Ram's case*** (supra) had already reproduced the first line of the

5 AIR 1996 SC 1864

"Shloka". The second line of the same which is also significant is as follows: -

"यत्र तास्तु न पूज्यन्ते सर्वास्तत्राफलाः क्रियाः"

[*Yatra tāstu na pūjyante sarvāstatraphalāh kriyāh]*

A free translation of the aforesaid is reproduced below:-

> "All the actions become unproductive in a place, where they are not treated with proper respect and dignity."

19 Another wise man of the past had his own way of putting it:

"भ्रातृभातृपितृज्ञ ातिश्वश्रू श्वशुरदेवरैः :|

बन्धुबिश्च स्त्रियः पूज्याः भूषणाच्छादनाशनैः ||"

[Bhārtr bhratr pitrijnāti śwaśrūswaśuradevaraih|
Bandhubhiśca striyah pūjyāh bhusnachhādanāśnaih||].

A free translation of the aforesaid is as follows:-

> "The women are to be respected equally on par with husbands, brothers, fathers, relatives, in-laws and other kith and kin and while respecting, the women gifts like ornaments, garments, etc. should be given as token of honour."

20. Yet again, the sagacity got reflected in following lines: -

> "अतुलं यत्र तत्तेजः सर्वदेवशरीरजम् |
> एकस्थं तदभून्नारी व्याप्तलोकत्रयं त्विषा ||"
>
> [Atulam yatra tattejah śarvadevasarirajam| Ekastham tadabhūnnāri vyāptalokatrayam tvisā||]

A free translation of the aforesaid is reproduced below:-

> "The incomparable valour (effulgence) born from the physical frames of all the gods, spreading the three worlds by its radiance and combining together took the form of a woman."

21. From the past, I travel to the present and respectfully notice what Lord Denning had to say about the equality of women and their role in the society: -

> "A woman feels as keenly, thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom – to develop her personality to the full as a man. When she marries, she does not become the husband's servant but his equal partner. If his work is more

> important in life of the community, her's is more important of the family. Neither can do without the other. Neither is above the other or under the other. They are equals."

22. I have referred to certain pronouncements of this Court, the sayings of the sagacious ones, thinkers, poets, philosophers and jurists about the child and women only to emphasise that they play a seminal role in the society. The innocence of a child and the creative intelligence of a woman can never ever be brushed aside or marginalized. Civilization of a country is known how it respects its women. It is the requisite of the present day that people are made aware that it is obligatory to treat the women with respect and dignity so that humanism in its conceptual essentiality remains alive. Each member of the society is required to develop a scientific temper in the modern context because that is the social need of the present. A cosmetic awareness campaign would never subserve the purpose. The authorities of the Government, the Non-Governmental Organisations and other volunteers

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are required to remember that there has to be awareness camps which are really effective. The people involved with the same must take it up as a service, a crusade. They must understand and accept that it is an art as well as a science and not simple arithmetic. It cannot take the colour of a routine speech. The awareness camps should not be founded on the theory of Euclidian geometry. It must engulf the concept of social vigilance with an analytical mind and radiate into the marrows of the society. If awareness campaigns are not appositely conducted, the needed guidance for the people would be without meaning and things shall fall apart and everyone would try to take shelter in cynical escapism. It is difficult to precisely state how an awareness camp is to be conducted. It will depend upon what kind and strata of people are being addressed to. The persons involved in such awareness campaign are required to equip themselves with constitutional concepts, culture, philosophy, religion, scriptural commands and injunctions, the mandate of the law as engrafted under the Act and

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above all the development of modern science. It needs no special emphasis to state that in awareness camps while the deterrent facets of law are required to be accentuated upon, simultaneously the desirability of law to be followed with spiritual obeisance, regard being had to the purpose of the Act, has to be stressed upon. The seemly synchronization shall bring the required effect. That apart, documentary films can be shown to highlight the need; and instill the idea in the mind of the public at large, for when mind becomes strong, mountains do melt. The people involved in the awareness campaigns should have boldness and courage. There should not be any iota of confusion or perplexity in their thought or action. They should treat it as a problem and think that a problem has to be understood in a proper manner to afford a solution. They should bear in mind that they are required to change the mindset of the people, the grammar of the society and unacceptable beliefs inherent in the populace. It should be clearly spelt out that female

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foeticide is the worst type of dehumanisation of the human race.

23. I have highlighted the aforesaid aspects so that when awareness campaigns are held, they are kept in view, for that is the object and purpose to have real awareness.

24. The matter be listed as directed.

.....J.
[Dipak Misra]

New Delhi;
March 04, 2013.

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