

A. CENTRE FOR ENQUIRY INTO HEALTH AND ALLIED THEMES
(CEHAT) AND ORS.

v
UNION OF INDIA AND ORS.

MAY 4, 2001

B [M.B. SHAH AND S.N. VARIAVA, JJ.]

Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 : Sections 3, 7, 9, 16, 17 and 22.

C *Female foeticide—Practice of—Deprecation of—Effect of practice—Object of Act is to prevent misuse of techniques for the purpose of pre-natal sex determination leading to female foeticide—Act came into force from 1st January 1996—But to a large extent it is not implemented by the Central Government or State Government—Hence writ petition in this Court—*
D *Directions issued by Supreme Court.*

Directions to Central Government—Central Government should create awareness against the pre-determination of sex and female foeticide—Act and Rules should be implemented with zeal—Rule 15 shall be strictly adhered to.

E *Directions to Central Supervisory Board—Meeting of Board shall be held atleast once in six months—Members of the Board shall be appointed for implementation of the Act—Supervisory Board shall review and monitor the implementation of the Act—Board shall also examine the necessity to*
F *amend the Act keeping in mind the emerging technologies and difficulties encountered in implementing the Act—Supervisory Board shall lay down a Code of Conduct under Section 16(iv).*

Directions to State Government/U.T. Administrations—Fully empowered
G *Appropriate Authorities at district and sub-district levels and also Advisory Committees to aid and advise the Appropriate Authority in discharge of its function shall be appointed—List of the Appropriate Authorities in the print and electronic media in its respective State/UT shall be published—Public awareness against the practice of pre-natal determination of sex and female foeticide shall be created—Must be ensured that all State/UT Appropriate*
H *Authorities furnish quarterly returns to the Supervisory Board giving a*

report on the implementation and working of the Act.

Directions to Appropriate Authorities—Prompt action should be taken against any person or body who issues or causes to be issued any advertisement in violation of section 22 of the Act—Action should be taken against persons who are operating without a valid certificate of registration under the Act—All State/UT Appropriate Authorities should furnish quarterly returns to the Supervisory Board giving a report on the implementation and working of the Act.

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 301 of 2000.

(Under Article 32 of the Constitution of India)

Soli J. Sorabjee, Attorney General, Ms. Indira Jai Singh, Yogeshwar Prasad, Dinesh Dwivedi, Kailash Vasdev, Sanjay Parikh, R.R. Chandrachud, Sanjay Ghosh, Ms. Jayna Kothari, Manish Singhvi, Ms. Hemantika Wahi, Ms. Sumita Hazarika, Krishan Mahana, C. Radha Krishana, Ajay Sharma, Jayshree Anand, Addl. Advocate General for State of Punjab, M/s. Jain Hansaria & Co., (NP), Radha Shyam Jena, Brijender Chahar for Ashok Mathur, Sushil Kumar Jain (NP), K.M.K. Nair, S.R. Sharma for Mahabir Singh, Bhavanishankar V. Gadnis, for Shiv Sagar Tiwari, Ms. A. Subhashini, Rajiv Sharma, Anil Shrivastav, Sanjay R. Hegde, Sanjay Mitra, Sanjay K. Shandilya for V. D. Khanna, Satish K. Agnihotri, Sakesh Kumar, Anil K. Pandey, Rohit Kumar Singh, Gopal Singh, Ajay K. Agrawal, Alka Agrawal, Kamendra Misra, Ms. Sangeeta Sharma for R.C. Verma, Ajay K. Agrawal, Vibhakar Mishra, Dev Brat Tiwari, A. Mariarputham, Ms. Aruna Mathur, Rajeev Sharma for Tara Chandra Sharma, Ms. Sunita R. Singh, Kh. Nobin Singh, Rajan Mukherjee, Naresh K. Sharma, V.G. Pragasam, S.V. Deshpande and Ms. Sunita Sharma for D.S. Mehra for the appearing parties.

The following Order of the Court was delivered :

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 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.

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C 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 matter connected therewith or incidental thereto. The Act came into force from 1st January, 1996.

D 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 centre of Anusandhan Trust based in Pune and Mumbai. Second petitioner is Mahila Sarvangeen Utkarsh Mandal (MASUM) based in Pune and Maharashtra and third petitioner is Dr. Sabu M. Georges who is having experience and technical knowledge in the field.
E 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
F 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:-

G I. *Direction to the Central Government*

- H 1. 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 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 vigour 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. A
- 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 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. B
 2. The CSB shall review and monitor the implementation of the Act. [Re. Section 16(ii)]. C
 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:- D
 - (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. E
 - (iv) Complaints received by the Appropriate Authorities under the Act and action taken pursuant thereto. F
 - (v) Number and nature of awareness campaigns conducted and results flowing therefrom. G
 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 H

- A 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.
- B 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.
- C *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.
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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.
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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.
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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 :-
- G
- (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 of section 3 of the Act, inclusive of
- H

search and seizure of records.

A

(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.

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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.

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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 :-

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(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.

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(iii) Action taken against non-registered bodies operating in violation of section 3 of the Act, inclusive of search and seizure of records.

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(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.

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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.