

IN THE SUPREME COURT OF INDIA

WRIT PETITION (CIVIL) NO. 349 OF 2006

Voluntary Health Association of Punjab (VHAP) ... Petitioner
Versus
Union of India and others ... Respondents

DIRECTIONS SOUGHT BY THE PETITIONER

I, Manmohan Sharma, S/o Late Shri Surjit Chend aged about 60 years R/o 3177/2, Sector 44D, Chandigarh, Punjab, do hereby state on solemnly affirm as under:

1. That I am the Executive Director of the Petitioner Organisation in the above application and I am well conversant with the facts and circumstances of this case and hence competent to swear this affidavit.
2. This affidavit is being filed pursuant to the hearing before this Hon'ble Court on 12.2.13 in order to update the directions sought by the petitioner as summarised in IA No. 4 of 2010. These directions sought in 2010 have become somewhat outdated in view of the affidavits filed by the respondents subsequently and therefore it has become necessary to update the directions sought by the petitioner.

**The Pre-conception and Prenatal Diagnostic Techniques
(Prohibition of Sex Selection) Act, 1994**

3. This statute was enacted to prohibit the preconception and prenatal diagnostic techniques for determination of the sex of the foetus leading to female foeticide. Such techniques discriminate against the female sex and affects the dignity of women. Section 3 provides for the regulation of genetic counselling centres, genetic laboratories and genetic clinics by their registration under the Act and by their operation by qualified persons. Section 3(A) imposes a prohibition of sex selection. Section 3(B) prohibits the sale of ultrasound machines etc. to persons, laboratories, clinics etc. not registered under the Act. Section 4 regulates prenatal diagnostic techniques. Section 5 requires the written consent

of the pregnant woman and prohibits the communicating of the sex of the foetus. Section 6 prohibits the determination of the sex. Chapter IV (Section 7 to 16 (A)) deals with the constitution of the Central Supervisory Board to, inter alia, review and monitor the implementation of the Act and Rules. Under section 16(A) State and Union Territory Supervisory Boards are to be established for the same purpose. Chapter V (section 17, 17(A)) covers the Appropriate Authorities and the Advisory Committees. The Appropriate Authorities have extensive powers under section 17 inter alia to grant, suspend or cancel registration of centres etc., to investigate complaints and to take legal action. The Appropriate Authorities have, inter alia, the power to summon persons, order the production of documents and issue search warrants. Sections 18 and 19 deal with the registration of centres etc. Section 20 deals with the cancellation or suspension of registration. Section 22 makes it an offence punishable with imprisonment and fine for advertising relating to determination of sex. Sections 23 and 25 make it an offence punishable with imprisonment and fine for contravening any of the provisions of the Act and Rules. Section 24 creates a presumption in favour of the pregnant woman to the effect that she was compelled by her husband or relatives to undergo a diagnostic technique amounting to an offence. Section 26 deals with offences by companies. Section 27 makes every offence cognizable, non-bailable and non compoundable. Section 28 lays down the procedure for taking cognizance. Section 29 lays down the requirement for maintenance of records by clinics etc. Section 30 gives the powers to the Appropriate Authorities to do search and seizure of records. Section 32 is the rule making power.

4. The Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 have been framed. Form D & E are for the maintenance of records by a genetic counselling centre and genetic laboratory respectively. Form F is particularly important. This is for the maintenance of records in respect of pregnant women by clinics etc. If these forms are filled properly and honestly it would be possible to detect contravention of the provisions of the Act by scrutiny of these forms alone. However, in order to hide sex selection and determination this form is either not filled up at all or improperly prepared.

CEHAT V. Union of India

5. In order to stop prenatal sex determination leading to female foeticide, Parliament enacted the Prenatal Diagnostic Techniques (Regulation and

Prevention of Misuse) Act, 1994 (hereinafter PNMT.) This Act came into force on 1.1.96.

6. This Act was not completely implemented. In particular, thousands of clinics were operating without registration. There was virtually no case of prosecution. Hence CEHAT and others approached the Supreme Court in Writ Petition (Civil) 301 of 2000. On 4.5.01, in Centre for Enquiry into Health & Allied Themes (CEHAT) V. Union of India (2001 5 SCC 577) this Hon'ble Court made, inter alia, the following order:

“It is unfortunate that for one reason or the other, the practice of female infanticide still prevails. [...] the traditional system of female infanticide where the 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 fully 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.”

7. Thereafter on 19.9.01, the Supreme Court made, inter alia, the following order:

“At the outset, we may state that there is total slackness by the administration in implementing the Act. Some learned counsels pointed out that even though the genetic counselling centres, genetic laboratories or genetic clinics are not registered, no action is taken as provided under Section 23 of the Act, but only a warning is issued. In our view, those centres which are not registered are required to be prosecuted by the authorities under the provision of the Act and there is no question of issue of warning and to permit them to continue their illegal activities.”

8. On account of the orders of the Supreme Court over 500 machines of unregistered clinics were shut down in the initial years of the litigation. Under the pressure of the Court the clinics came to be subsequently registered. From

600 in February 2000 the number of registered clinics rose to over 20000+ by September 2003 due to the intervention of the Supreme Court. Therefore, as far as the registration of clinics are concerned progress was made at that time but regulation of clinics lags far behind because information was not being supplied by the clinics to the authorities and action by the authorities was not being taken.

9. On 17.11.01, the Union of India informed the Supreme Court that government “has decided to take concrete steps for the implementation of the Act and suggested to set up a National Inspection and Monitoring Committee (NIMC) for the implementation of the Act”. The Supreme Court ordered accordingly.
10. Unfortunately when the NIMC inspected clinics and ordered the shutting down of the clinics, almost always the clinics were permitted to reopen by the state authorities without filing any cases on the violations.
11. On 31.3.03 while the matter was pending in the Supreme Court “it was pointed out that in conformity with the various directions issued by this Court, the Act has been amended and titled as “the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act.”
12. For the sake of convenience the amended Act is referred to as the PC & PNDT Act.
13. In the final decision of the Supreme Court on 10.9.03 the Supreme Court gave, inter alia, the following directions:
 - (a) That the intervening period between two meetings of the Advisory Committees constituted under sub section (5) of section 17, shall not exceed 60 days as prescribed by Rule 15.
 - (b) That the Central Supervisory Board (CSB) constituted under section 7 should meet at least once in six months as specified in section 9 (1) and that eminent medical practitioners, eminent social scientists and representatives of women welfare organizations “who can genuinely

spare some time for the implementation of the Act” be appointed on the CSB.

- (c) The CSB was directed to require all state/UTs to submit detailed quarterly returns and in particular details regarding registration of bodies under the Act, action taken against non registered bodies and actions taken on complaints received by Appropriate Authorities (AA).
- (d) The state and UTs were directed to notify the appropriate Authorities at the district and sub-district levels. Directions were also given for the notification of the Advisory Committees with members “who can devote some time to the work assigned to them”.
- (e) Directions were issued to the AAs to take “prompt action” against persons violating the Act by conducting searches and seizures of the documents under section 30 of the Act and by filing a compliant under section 28 for the prosecution of offenders.

Order dated 8.1.13

“We are of the considered view that the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994) is not being properly implemented by the various states and Union Territories in its true letter and spirit to achieve objects ad reasons for which the Act has been enacted...We notice, though some of the states have taken some steps against the violators, not a single case of prosecution has been reported from any state which shows that the authorities are very callous in implementing the provisions of the Act...”

The present situation

Central Supervisory Board

14. Ten years have passed since Writ Petition 301 of 2001 was filed in the Supreme Court and directions were issued. Regrettably the orders of the Supreme Court and the provisions of the Act have been ignored, particularly in the recent years. The **Central Supervisory Board** (CSB) [to be constituted under section 7 of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994] **was defunct during the period 2008 and June 2011 even though the Court directed the CSB to meet “at least once in six months”. It was reconstituted on 28.4.11 by notification of the Central Government according to the affidavit of the Union of India filed in this Court in September 2011. Thereafter, it has apparently met four times but it is unclear as to how effective this apex supervisory body has been in view of the fact that it is now clear that the implementation of the Act in most states has come almost to a standstill.**

National and State Inspection and Monitoring Committees

15. The National Inspection and Monitoring Committee (NIMC) was dormant between 2007 and 2010. The Union of India affidavit dated September 2011 states that it was reconstituted in May 2011 and held its first meeting in June 2011. It is further stated that in most states the “State Level Monitoring And Inspection Committees” have been notified in accordance with the CEHAT judgment abovementioned, but apart from existing on paper no information has been provided to this Court as to their functioning and effectiveness.
16. The minutes of the meetings of the Central Supervisory Board (CSB) make interesting reading:

20th meeting of the CSB (16.1.13)

“States including Punjab, Rajasthan, Uttarakhand and Jharkhand have not taken any follow up action on the recommendations of NIMC...State inspection and Monitoring Committees are not yet functional, indicating lack of proper implementation of the law...”

PC and PNDDT Cell

17. The Ministry of Health and Family Welfare had established a PC and PNDDT Cell to strengthen the implementation of the Act in 2009. The previous director

was also holding charge of AIIMS which by itself was an onerous responsibility. It became defunct. The September 2011 affidavit of the central government indicates that it has now begun functioning.

18. The last published report of the Union of India was in 2006. This itself is an indication of the lack of priority given to the issue by the Union of India in the recent years.

Decline in the child sex ratio

19. The 2011 Census of India published by the Office of the Registrar General and Census Commissioner of India (http://www.censusindia.gov.in/2011-prov-results/data_files/india/s13_sex_ratio.pdf) shows a decline in the child sex ratio in many of the states of India between 2001 and 2011:

Sex Ratio of child population in the age group 0-6 and 7+ years : 2001 and 2011

State/ UT Code	India/States/Union Territory	Sex ratio (females per 1,000 males) Child population in the age group 0-6	
		2001	2011
1	2	3	4
	INDIA	927	914
01	Jammu & Kashmir	941	859
02	Himachal Pradesh	896	906
03	Punjab	798	846
04	Chandigarh	846	846
05	Uttarakhand	908	886
06	Haryana	819	830
07	NCT of Delhi	868	866
08	Rajasthan	909	883

09	Uttar Pradesh	916	899
10	Bihar	942	933
11	Sikkim	963	944
12	Arunachal Pradesh	964	960
13	Nagaland	964	944
14	Manipur	957	934
15	Mizoram	964	971
16	Tripura	966	953
17	Meghalaya	973	970
18	Assam	965	957
19	West Bengal	960	950
20	Jharkhand	965	943
21	Orissa	953	934
22	Chhattisgarh	975	964
23	Madhya Pradesh	932	912
24	Gujarat	883	886
25	Daman & Diu	926	909
26	Dadra & Nagar Haveli	979	924
27	Maharashtra	913	883
28	Andhra Pradesh	961	943
29	Karnataka	946	943
30	Goa	938	920
31	Lakshadweep	959	908
32	Kerala	960	959
33	Tamil Nadu	942	946
34	Puducherry	967	965
35	Andaman & Nicobar Islands	957	966

20. The above chart therefore shows that though the situation is critical throughout the country it is particularly acute in Jammu & Kashmir, Punjab, Chandigarh,

Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Gujarat, Maharashtra and other states.

21. It is important to mention here that the “Annual Report on Registration of Births and Deaths in Delhi- 2009”, published by Chief Registrar of NCT of Delhi has also reported that the sex ratio of Delhi has declined since 1991 to 2001. The report, inter alia, states:

“Sex Ratio as per Population Census:

The Universal sex ratio of Delhi as per population census for all age groups taken together was 827 females per 1000 males in 1991 came down to 821 females by the time of 2001 census. Child sex ration (0-6 years) of Delhi also went down from 915 in 1991 to 868 during 2001. As can be seen from statement 1.3, at both points of time, the figure of Delhi were below All India average. [All India average was 927 in 1991 and 933 in 2001. Even the district-wise scenario of the children of 0-6 years, was very grim during 1991-2001 census as the ratio declined across all districts without exception.”

22. This data is taken from the “status of implementation of PC-PNDT Act in Uttar Pradesh (Study Period October 2008 to March 2009)” which report is filed in this Court along with IA 4 of 2010.

Status of prosecutions and implementations

23. In the September 2011 affidavit of the Union of India details have been given of prosecutions done under the Act and Rules upto June 2011 as under:

Details of cases filed against violators of the PC & PNDT Act/Rules (upto June 2011)

S. No.	State/UT	Ultrasound machines seized	Ultrasound registration	Non-maintenance of records	Communication of sex of foetus	Advt. about pre-natal / conception	Other violators of Act/ Rules	Total ongoing cases	No. Of convictions
1.	Andhra Pradesh	16	5	-	-	-		19	0
2.	Arunachal Pradesh	0	-	-	-	-		0	0
3.	Assam	0	-	-	-	-		0	0
4.	Bihar	1	6	-	3	-	1	10	0
5.	Chhattisgarh	0	5	-	-	-	1	5	0
6.	Goa	0	-	-	-	-	-	0	0
7.	Gujarat	193	7	67	0	5	0	79	4
8.	Haryana	140	11	18	22	6	0	57	29

9.	Himachal Pradesh	10	-	0	-	0	7	7	0
10.	Jammu & Kashmir	64	-	-	-	-	-	0	0
11.	Jharkhand	6		-	-	0	-	0	0
12.	Karnataka	45	8		1	-	4	13	0
13.	Kerala	0	-	-	-	-	-	0	0
14.	Madhya Pradesh	81	3	5	1	2	-	18	0
15.	Maharashtra	313	44	67	28	9	0	148	17
16.	Manipur	0	-	-	-	-	-	0	0
17.	Meghalaya	0	-	-	-	-	-	0	0
18.	Mizoram	0	-	-	-	-	-	0	0
19.	Nagaland	0	-	-	-	-	-	0	0
20.	Orissa	19	-	-	-	-	-	17	0

21.	Punjab	0	15	36	30	6	26	113	23
22.	Rajasthan	244	-	-	-	-	-	177	4
23.	Sikkim	0	-	-	-	-	-	0	0
24.	Tamil Nadu	0	67	3	1	1	5	77	0
25.	Tripura	0	-	-	-	-	-	0	0
26.	Uttarakhand	4	1	5	2	1	-	9	0
27.	Uttar Pradesh	0	14	1	2	4	34	55	0
28.	West Bengal	162	7	-	-	-	-	7	0
29.	A & N Island	0	-	-	-	-	-	0	0
30/	Chandigarh	7	-	-	-	-	2	2	1
31.	D & N Haveli	0	-	-	-	-	-	0	0
32.	Daman & Diu	0	-	-	-	-	-	0	0

33.	Delhi	48	40	5	2	9	5	61	4
34.	Puducherry	0	-	-	-	-	-	0	0
	Total	1353	239	212	92	43	84	874	82

24. The above chart shows an alarming state of affairs. In many states there have been no convictions at all even though the Act has been in force since 1994 and this Court has had occasion to comment on the poor implementation on several occasions. It is no surprise therefore that violators of the law are hardly bothered about law enforcement and flout the law with impunity.
25. The same affidavit of the Union of India gives details of machines seized from 1994 till date as under:

“Details of prosecutions and machines seized under PC & PNDT Act, 1994 till date:

S.No.	State/UT	Prosecutions	Ultrasound Machines Seized
1.	Andhra Pradesh	16	16
2.	Arunachal Pradesh	Nil	Nil
3.	Assam	Nil	Nil
4.	Bihar	10	1
5.	Chhattisgarh	5	Nil
6.	Goa	Nil	Nil
7.	Gujarat	107	193
8.	Haryana	83	140
9.	Himachal Pradesh	2	10
10.	Jammu & Kashmir	0	64
11.	Jharkhand	6	6
12.	Karnataka	45	45
13.	Kerala	Nil	Nil
14.	Madhya Pradesh	20	81

15.	Maharashtra	211	313
16.	Manipur	Nil	Nil
17.	Meghalaya	Nil	Nil
18.	Mizoram	Nil	Nil
19.	Nagaland	Nil	Nil
20.	Orissa	19	19
21.	Punjab	114	Nil
22.	Rajasthan	177	244
23.	Sikkim	Nil	Nil
24.	Tamil Nadu	72	Nil
25.	Tripura	Nil	Nil
26.	Uttarakhand	4	4
27.	Uttar Pradesh	39	Nil
28.	West Bengal	12	162
29.	A & N Island	Nil	Nil
30.	Chandigarh	2	7
31.	D & N Haveli	Nil	
32.	Daman & Diu	Nil	Nil
33.	Delhi	62	48
34.	Lakshadweep	Nil	Nil
35.	Puducherry	Nil	Nil
	Total	1006	1353

26. This also reveals an alarming situation where in many states ultrasound machines are not being seized at all.
27. Pursuant to the order dated 8.1.13, the Health Secretaries of the states of Bihar, Delhi, Rajasthan, U.P., Haryana, Punjab and Maharashtra appeared before this Court and filed affidavits regarding the status of implementation. The Principal Secretary, Health, Government of Bihar in its affidavit dated 12.2.13 submitted a chart on the status of the implementation of the Act. The relevant parts of which are reproduced herein:

District	Action taken inclusive of search and seizure of machines, records etc., against bodies/person operating without a valid certificate of registration under the Act	Details of cases filed against violators of the Act /Rules							
		Non registration	Non maintenance of records	Communication of sex of foetus	Advertisement about facilities for pre-conception / prenatal sex selection	Number of cases decided/closed	Number of ultrasound machines sealed/seized for		Details of seal/seizures/ cases to be attached with the report
							Non registration of clinic/ centre	Other violations of the Act / Rules	
Araria	Nil	Nil	Nil	Nil	9	Nil	-	-	-

Arwal	-	No	No	No	Yes	No	No	No	NA
Aurangabad	-	Nil	6	Nil	Nil	Nil	Nil	Nil	Nil
Banka	Nil	0	0	0	0	0	0	0	NA
Begusarai	-	-	-	-	Yes	-	-	-	-
Bhagalpur	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Bhopur	-	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Champaran East	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Champaran West	Show cause	-	15	-	-	-	-	-	-
Darbhanga	Not any	-	-	-	-	-	-	-	-
Gaya	-	-	-	-	-	-	-	-	-
Gopalganj	Nil	No	-	-	-	-	Nil	-	-

Vaishali	1	1	-	-	-	-	1	-	-
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28. Similarly, the government of NCT of Delhi filed an affidavit dated February 2013 in which they gave the data indicating that since the inception of the Act only 47 prosecutions have been instituted, some of the cases are pending since 2002 and there has been not a single conviction.
29. The situation regarding lack of implementation of the statute in Delhi is all the more alarming since according to the affidavit the sex ratio at birth in Delhi declined from 1004 in 2008 to 915 in 2009 to 901 in 2010 and 893 in 2011. It may be mentioned that the census data shows the child sex ratio as 866 in 2011.
30. The state of Rajasthan filed an affidavit dated 5.2.13 through the Principal Secretary, Medical and Health Services, giving a chart showing the action taken by the appropriate authorities in the state:

Registrations	2059
Inspections	4701
Suspension & Cancellation	430
Seal and seizures	359
Complaints have been filed in the Court	493
Convictions (2-Jodhpur, 1 Sriganganagar, 2 Dholpur, 1 (Jhalawar & 3 Kota)	9

31. The convictions in the state of Rajasthan seem very low as compared to the number of complaints. Moreover it is not states as to what the sentence in these 9 cases was and particularly whether any person underwent a prison term or whether they were let off with a payment of a fine.
32. The state of U.P. filed an affidavit dated 6.2.13 through the Principal Secretary giving the following status report:

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Sl.No	Year	No. Of court cases	No.	Of	No.	Of
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		filed by District Appropriate Authorities due to the violation of the Act	Disposed off cases	Cases in which conviction awarded
1.	2002	17	05	
2.	2004	03		
3.	2005	01	01	
4.	2006	01		
5.	2007	03	01	
6.	2008	11	01	
7.	2009	01	01	
8.	2010	03		
9.	2011	02		
10.	2012	09		
11.	2013	06		
		57	08	

33. The Principal Secretary, Medical, Health and Family Welfare also admitted that the child sex ratio in the state had fallen from 927 in 1991 to 916 in 2001 and 899 in 2011. He further stated that 10 districts were highly sensitive and he gave the following table:

Name of the District	Child Sex Ratio
Agra	835
Bagpat	837
Bulandshahar	844

Gautam Budha Nagar	845
Ghaziabad	850
Meerut	850
Muzaffar Nagar	858
Jhansi	859
Hatharash	862
Hardoi	863

34. In the affidavit, the Principal Secretary has also filed a chart of the 57 cases filed by the district appropriate authorities. This chart makes a depressing reading. Cases from 2002 are still pending and it is hard to find even a single conviction.
35. In this regard the attention of the Court was drawn to a report titled “Status of Implementation of PC-PNDT Act in Uttar Pradesh” published by NGOs who based themselves on the records of the district health offices in the state. That most of the ultrasound clinics are centred in smaller districts making it unlikely that they will be covered during any monitoring process. The study also found that more than half of the professionals registered with the ultrasound centres possess no record concerning their qualifications. Untrained and uncertified persons were operating the ultrasound machines. The report also found that doctors were registered at multiple centres. A doctor in Ghaziabad registered at 12 centres while another in Meerut was registered in 8 centres. The report concludes that such cases should be treated as suspects as there are wider chances of an alternate person operating the ultrasound machine rather than the registered doctor. The study found that only 76% of the centres had valid registrations. Clinics that were said to be closed or cancelled were actually operating. Even though the law provided for the registration certificate mentioning the number of ultrasound machines at the centre, this data was not available. Portable ultrasound machines were being used making monitoring difficult. Over 1482 centres were not sending regular reports as required under the Act to the district appropriate authorities. Out of the 1346 reports sent to the authorities, 727 reports were not sent in the appropriate format. Statutory

records required to be maintained in accordance with the Act were so maintained only in 44 districts of the state. The appropriate authorities were not meeting regularly. Many of the district magistrates who head the appropriate authorities were not making the requisite effort. Data regarding inspection of centres was very often not available. In a "majority" of cases the defaulters were left with a warning and advised or a show cause notice and sometimes even no action. Records required to be maintained by the centres were often not maintained. Medical professionals who were not registered under various statutes were operating the machines. Machines in respect of which registrations that have expired and were not renewed were still operating. Centres were reopened with no action or with a meagre fine.

36. The state of Haryana filed an affidavit dated 6.2.13 through the Director General, Health Services-cum-State Appropriate Authority, indicating that only 86 prosecutions were instituted since the Act came into force and 30 persons were convicted. Details regarding the sentences were not given. The district-wise sex ratio during 2012 was set out in the affidavit showing that in district after district the child sex ratio have fallen to critical levels. 21 districts were shown with a child sex ratio in the eight hundreds and Kurukshetra (793) & Rewari (788) had fallen below 800 mark.
37. State of Punjab, through the Chairperson, State Appropriate Authority showing very few FIRs lodged and criminal complaints filed. Though there were 21 complaint filed in 2005-2006 this number had fallen to 7 in 2011-12.
38. The affidavit dated 10.2.13 filed by the Additional Chief Secretary, Public Health Department, Maharashtra, though not ideal shows that where there is a will the Act can be implemented. The affidavit points out that out of 38 decoy cases, 32 were successful and 16 cases filed. Details of the 400 court cases are set out in the affidavit as under:

Type of violation	Total	Pending	Finalised
Non Registration	58	28	30
Decoy cases	32	16	16
Non-maintenance of record	300	252	48

Advertisement	9	5	4
Other reason	1	1	0
Total	400	302	98

39. It is pointed out in the affidavit that 33 doctors have been sentenced to imprisonment. This is the only affidavit filed where there is an indication that prison sentences have been awarded. The affidavit also states that the registration of 20 doctors were suspended by the Maharashtra Medical Council.
40. State of Gujarat filed an affidavit dated 12.2.13 through the Deputy Secretary, Health and Family Welfare stating therein that out of the 143 cases filed in the various district courts, 126 were pending and in 5 cases convictions were obtained. However, details regarding these cases is given very cryptically and unsatisfactorily. In the affidavit it is disclosed that 10 districts Unjha, Visnagar, Mansa, Mahesana, Vijapur, Gandhinagar, Chanasma, Gondal, Umralla and Kalol have an alarming child sex ratio of less than 900.
41. State of Uttarakhand filed an affidavit dated 6.2.13 through the Joint Director, National Programme, disclosing that the state of Uttarakhand had filed only 5 cases under the Act till date and that these cases were pending in court, some of them since 2004-2005.
42. The affidavits filed in this court disclose a situation of virtually total non compliance with the provisions of the Act and wilful disregard of the orders made by this Court in CEHAT Vs. Union of India abovementioned. If things continue in this way India will be in a serious social crisis regarding the child sex ratio.

Decisions of the Delhi High Court

43. Delhi High Court judgment in Dr. K.L. Sehgal Vs. Office of District Appropriate Authority W.P. (C) 6654/2007, on the questions of law concerning interpretation of Section 2(p) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 which defines “sonologist or imaging specialist”, held as under:

“37. These two petitions reflect a disconcerting state of affairs. As a result of the weak definition of the term ‘sonologist’ under the PNDT Act, the mushrooming growth of diagnostic clinics is unable to be effectively regulated. The absence of clear rules and guidelines spelling out unambiguously the qualification, training and experience required for operating a diagnostic clinic offering ultrasound tests has resulted in unethical practices being adopted in many such clinics in violation of the PNDT Act going unchecked. These cases underscore the need to amend the PNDT Act to plug the loopholes and reflect the view of the MCI [...] where it suggested that person seeking to run a diagnostic clinic should either possess a post-graduate degree in Radio Diagnosis or should be a specialist who has undergone orientation training in ultrasonography in a recognized medical institution for a minimum period of six months. To avoid any confusion, the requirements in terms of qualification, training and experience to recognized and registered as a ‘sonologist’ should be incorporated in the PNDT Act and further explicated under the PNDT Rules... Secondly, the names of the institutions state-wise which are recognized for that purpose will have to be notified. Thirdly, the changed criteria must be made not only prospective but sufficient time given to enable those seeking registration or renewal to fulfil the changed criteria. Fresh registrations can be postponed to enable the arrangements envisaged by the new criteria to be put in place... The resultant amendment to definition of ‘sonologist’ under section 2(p) of the PNDT Act and the corresponding amendment to the PNDT Rules must be given wide publicity so that there is increased public awareness about the minimum standards one should expect in diagnostic clinics.”

Directions Sought

Central, State and Union Territory Supervisory Boards (sections 7, 16A)

- a) For and/order directing the immediate reconstitution of the Central Supervisory Board and the State and Union Territory Supervisory Boards in accordance with

sections 7 and 16-A, including therein those who are knowledgeable, concerned, experienced and in a position to spend a substantial amount of time to fully implement the provisions of this Act.

- b) For a direction to the Boards to meet regularly at least once in every six/ four months, as the case may be, in accordance with the provisions of this Act.
- c) *for a direction is sought for setting up of Zonal Monitoring And Inspection Committees in the state of Punjab ,Chandigarh,H.P.on the pattern of National Monitoring and Inspection Committee as already setup.***
- d) *For a direction to the Zonal and Inspection Committee a fixed target of monthly inspections.***

Advisory Committees (Section 17(5))

- e) For an order directing the authorities to ensure that the Advisory Committees are constituted and are functioning under section 17 of the Act in all districts within three months from today and for a direction to the District Advisory Committees to conduct their meetings at least once in every two months in accordance with the provisions of the Act.

Appropriate Authorities

- f) For an order directing the Respondents to constitute of the Sub District Appropriate Authorities (AA) within six months from today.
- g) *for an order appointing one or more legal experts or experienced persons for launching and follow up of court cases to get better conviction rate.***
- h) *for quarterly review of implementation of the Act and the Rules at the National level by Govt. of India and the Chief Secretaries of non/poor performing States and also to advise accordingly.***
- i) *to hold the non/poor performing Appropriate Authorities accountable for not performing function Under Section 17 of the Act and accordingly to initiate legal and/or administrative action.***
- j) *to undertake orientation/sensitisation workshops for all the functionaries under the Act at six months interval including discussion on court cases and the reasons of failure, if any?***

- k) *to shortlist the defaulting ultrasound centres as per prevailing reputation and by collecting information from Govt. Health Functionaries/local people since the list so prepared will be handy for the law implementing authorities*
- l) *to constitute monitoring and inspection committee within three months with members drawn from social activists, lawyers conversant with the law and the NGOs.*
- m) *to organise judicial colloquium in collaboration with Hon'ble High Court and Home Department at divisional level.*
- n) *to orient/ sensitize at reasonable intervals SDMs, Public Prosecutors, Advisory Committee members and Inspection Team Members.*
- o) *to prepare checklist of do's and don'ts inter-alia at the time of inspection and share it with the registered ultrasound centres/Appropriate Authorities.*
- p) *to design comprehensive inspection format to capture even minute details pertaining to violations.*
- q) *to set up a PC & PNDT cell which is to meet quarterly with the help of NRHM for follow up, advise in the matter of the PC & PNDT Court cases.*
- r) *to constitute task force at district level.*
- s) *to communicate the names of the medical practitioners to the State medical council as contemplated under section 23 of the Act and to take time bound action in case of non action by the State Medical Council.*
- t) *to launch a website for filing online complaints with status report of the complaints already filed and to forward the complaint to the concerned Appropriate Authority within 48 hours.*
- u) *to set up a toll free helpline providing inter-alia the whole information pertaining to the Act and adverse effects of the sex selective elimination.*
- v) *to monitor the birth details of major hospitals every month and to use the information to monitor ultrasound catchment areas showing significant lower sex ratio at birth.*
- w) *to impart training of Appropriate Authorities to use this format.*
- x) *to do auditing of Form-F as a randomly picked samples.*
- y) *for online submission of Form- F and installation of silent observer for all the sonography machines(please refer the writ petition no. 797/2011 decided on 26.08.2011 by the high court of Bombay para 25 to 27 and 43).*
- z) For an order directing the AAs throughout the country to act immediately on information received relating to breach of the provisions of the Act and Rules by, inter alia, forthwith seizing records, sealing machines and instituting legal proceedings in accordance with law.

- aa) For an order directing all AAs throughout the country to monitor on a monthly basis the progress of prosecutions under this Act and to make a report of the progress of cases with special emphasis on delay and the acquittal of accused persons including the reasons for the same.
- bb) For an order directing the AAs to make a report to the State Medical Councils in respect of charges framed and the conviction of doctors under the Act, for necessary action including suspension of the registration of the doctor and for removal of the name of the doctor from the register of the Council in accordance with section 23 (2) of the Act.
- cc) For an order directing the AAs to forthwith investigate whether the operators of the clinics are qualified and if not to cancel the registration of such clinics.
- dd) For an order directing all AAs throughout the country to forthwith investigate and seize all machines where the registration of the centres have expired or where the centres have not been validly registered and take legal action in accordance to law.
- ee) For an order directing all AAs to complete the renewal of registration process in time and on default by the AAs for an order directing the state to prosecute the AAs under section 25 of the Act.
- t) For an order directing the AAs to cancel the registration of all centres not sending reports completed in all respects to the AAs by the fifth day of the month.
- u) For an order directing the AAs to cancel the registration of all centres not properly maintaining the registers and records as required under the Act, particularly form 'H' and Form 'F' and particularly when registers and records are not fully filled up and not duly signed.
- v) For an order directing all AAs to ensure that all Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics, Infertility Clinics and Scan Centres using pre conception and pre natal diagnostic techniques and procedures maintain duplicate copies of all records and all forms required to be maintained under the Act and send the duplicate copies to the concerned district AAs on a monthly basis along with the monthly report, in accordance with the provisions of the Rule 9(8).

- w) For an order directing the AAs to ensure that all manufacturers and sellers of ultrasound machines etc, not sell any machines to unregistered centres as provided under rule 3-A and disclose on a quarterly basis to the concerned state/UT and the Central Government the lists of persons to whom the machines have been sold in accordance with Rule 3-A (2) of the Act.
- x) For an order directing the AAs to ensure the registration and monitoring of all Infertility Centres and to deregister all such centres and prosecute if it is found that the records are not being maintained fully and accurately and the reports are not being sent on time in accordance with the provisions of this act. In particular to monitor the information receive in forms D, E and G.

Directions to the Centre, States and UTs

- y) For an order directing the Union of India to ensure that the PC & PNDT cell function with a full time director, if not so functioning.
- z) For an order directing the Union of India/ States/ UTs, as the case may be, to forthwith reconstitute the NIMB and the SIMBs if not so constituted and for a further direction to the Boards to function actively in accordance with the provisions of this Act.
- aa) For an order directing the Respondents to take disciplinary proceedings against the members of the AAs, CSB, SSBs and NIMC for failing to do their duty under the Act and to prosecute such officers under section 25 of the Act.
- bb) For an order directing the Respondents to frame a witness/ victim protection protocol forthwith which will provide, inter alia, for police protection and compensation.
- cc) For an order directing the Union of India to lay down the norms for the qualification for the trainers, the place of training and the training content and the period of training for the trainers who provide experience certificates to qualified doctors who operate the machines.
- dd) For an order directing the Respondents to lay down the norms relating to how many centres/ qualified doctors/ radiologist etc. may be registered.

- ee) For an order directing Union of India to prepare and submit to the Honourable Court a comprehensive status report state wise of the total number of cases instituted from the inception of this Act and the outcome of such cases. Such report shall be prepared annually and put on the website.
- ff) For an order directing the Respondents to make the process of appointment of all persons to the authorities under the Act open and transparent.
- gg) For an order directing the Respondents to set up an extensive website displaying thereon complete data regarding the functioning of the authorities including the activities of the AAs district wise, the State Appropriate Authorities, State Supervisory Boards, Central Supervisory Board and National Inspection and Monitoring Committee and the State Inspection and Monitoring Committees.
- hh) For an order to the states/UT's to put in place forthwith a mechanism for filing anonymous e-complaints that will be acted upon by the AA's forthwith.
- ii) For an order directing the Respondents to disclose the budgets available for the implementation of the provisions of this Act and also disclose on website the amounts spent under various heads during the last three years.
- jj) For a direction to the Respondents to ensure that uniform Forms as prescribed by the Union of India under the Act are followed.
- kk) For an order directing the Respondents to constitute the National Inspection and Monitoring Committee and the State Inspection and Monitoring Committees, if not so constituted.

Judicial Academies

- ll) For an order requesting the National Judicial Academy and the State Judicial Academies to conduct judicial colloquium with respect to this Act involving prosecution agencies and public prosecutors.

Medical Council of India

- mm) For an order directing MCI/Union of India to develop a curriculum for medical courses regarding this Act including gender concerns and ethics.

Courts

- nn) For an order directing all courts where proceedings under this Act are instituted to fast track the proceedings to be completed within 6 months from today.
44. That the annexures to the affidavit are true and correct copies of the respective originals.
45. I have read and understood the contents of this affidavit and state that the same are true and correct to the best of my knowledge and belief.

DEPONENT

VERIFICATION:

Verified at Delhi on this the day of February, 2013 that the contents of the above affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed therefrom.

DEPONENT