



JHALSA

(Legal Services for Eradication of Female Foeticide Menace and Saving the Girl Child) Scheme, 2016

Prepared by

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“Civilization of a country is known by how it respects its women.”

Justice Dipak Misra

Background

“Let it be stated with certitude and without allowing any room for any kind of equivocation or ambiguity, the perception of any individual or group or organization or system treating a woman with inequity, indignity, inequality or any kind of discrimination is constitutionally impermissible. The historical perception has to be given a prompt burial. Female foeticide is conceived by the society that definitely includes the parents because of unethical perception of life and nonchalant attitude towards law. The society that treats man and woman with equal dignity shows the reflections of a progressive and civilized society. To think that a woman should think what a man or a society wants her to think is tantamounts to slaughtering her choice, and definitely a humiliating act. When freedom of free choice is allowed within constitutional and statutory parameters, others cannot determine the norms as that would amount to acting in derogation of law. Decrease in the sex ratio is a sign of colossal calamity and it cannot be allowed to happen. Concrete steps have to be taken to increase the same so that invited social disasters do not befall on the society. The present generation is expected to be responsible to the posterity and not to take such steps to sterilize the birth rate in violation of law. The societal perception has to be metamorphosed having respect to legal postulates.”

— Justice Dipak Misra

(Excerpts from order dt. 8.11.2016

passed in Writ Petition (Civil) No. 349 of 2006)

Hon'ble Supreme Court of India has passed several directions in Writ Petition (Civil) 349/2006 (Voluntary Health Association of Punjab Vs. Union of India & Ors. (Author-Hon'ble Mr. Justice Dipak Misra) for completely eradicating the menace of female foeticide and it is the Call of the Hour to root out this menace and everybody must know their duty and obligation in achieving the objective. The duty of legal fraternity in general and legal services fraternity in particular is to leave no stone unturned in ensuring compliance of Hon'ble Supreme Court's order. This scheme aims to completely involve all the legal services work-force to ensure compliance of the Hon'ble Apex Court's order in aforesaid case and discharge the duties expected from them in the orders.

Case No. - 349 of 2006

Order Dated 8-11-2016 (Author - Hon'ble Mr. Justice Dipak Misra)

Voluntary Health Association of Punjab Vs. Union of India

- (a) All the States and the Union Territories in India shall maintain a centralized database of civil registration records from all registration units so that information can be made available from the website regarding the number of boys and girls being born.
- (b) The information that shall be displayed on the website shall contain the birth information for each District, Municipality, Corporation or Gram Panchayat so that a visual comparison of boys and girls born can be immediately seen.
- (c) The statutory authorities if not constituted as envisaged under the Act shall be constituted forthwith and the competent authorities shall take steps for the reconstitution of the statutory bodies so that they can become immediately functional after expiry of the term. That apart, they shall meet regularly so that the provisions of the Act can be implemented in reality and the effectiveness of the legislation is felt and realized in the society.
- (d) The provisions contained in Sections 22 and 23 shall be strictly adhered to. Section 23(2) shall be duly complied with and it shall be reported by the authorities so that the State Medical Council takes necessary action after the intimation is given under the said provision. The Appropriate Authorities who have been appointed under Sections 17(1) and 17(2) shall be imparted periodical training to carry out the functions as required under various provisions of the Act.

JHALSA (Legal Services for Eradication of Female Foeticide Menace and Saving the Girl Child) Scheme, 2016

- (e) If there has been violation of any of the provisions of the Act or the Rules, proper action has to be taken by the authorities under the Act so that the legally inapposite acts are immediately curbed.
- (f) The Courts which deal with the complaints under the Act shall be fast tracked and the concerned High Courts shall issue appropriate directions in that regard.
- (g) The judicial officers who are to deal with these cases under the Act shall be periodically imparted training in the Judicial Academies or Training Institutes, as the case may be, so that they can be sensitive and develop the requisite sensitivity as projected in the objects and reasons of the Act and its various provisions and in view of the need of the society.
- (h) The Director of Prosecution or, if the said post is not there, the Legal Remembrancer or the Law Secretary shall take stock of things with regard to the lodging of prosecution so that the purpose of the Act is subserved.
- (i) The Courts that deal with the complaints under the Act shall deal with the matters in promptitude and submit the quarterly report to the High Courts through the concerned Sessions and District Judge.
- (j) The learned Chief Justices of each of the High Courts in the country are requested to constitute a Committee of three Judges that can periodically oversee the progress of the cases.
- (k) The awareness campaigns with regard to the provisions of the Act as well as the social awareness shall be undertaken as per the direction No 9.8 in the order dated March 4, 2013 passed in Voluntary Health Association of Punjab (supra).
- (l) The State Legal Services Authorities of the States shall give emphasis on this campaign during the spread of legal aid and involve the para-legal volunteers.
- (m) The Union of India and the States shall see to it that appropriate directions are issued to the authorities of All India Radio and Doordarshan functioning in various States to give wide publicity pertaining to the saving of the girl child and the grave dangers the society shall face because of female foeticide.
- (n) All the appropriate authorities including the States and districts notified under the Act shall submit quarterly progress report to the Government of

JHALSA (Legal Services for Eradication of Female Foeticide Menace and Saving the Girl Child) Scheme, 2016

India through the State Government and maintain Form H for keeping the information of all registrations readily available as per sub-rule 6 of Rule 18A of the Rules.

- (o) The States and Union Territories shall implement the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 forthwith considering that the training provided therein is imperative for realising the objects and purpose of this Act.
- (p) As the Union of India and some States framed incentive schemes for the girl child, the States that have not framed such schemes, may introduce such schemes.

Order Dated 20.01.2015 (Author - Hon'ble Mr. Justice Dipak Misra)

Voluntary Health Association of Punjab Vs. Union of India

- (i) The appropriate authorities under the Act who have been authorised to launch/initiate the prosecution shall be imparted training by the Judicial Academy of the High Court of Punjab and Haryana. During the training, the Director of Prosecution of the State shall remain personally present in the academy so that all the officers avail the training with all sincerity, concern and seriousness.
- (ii) The trials that are pending before various courts of the State, unless there is an interdiction by the High Court or by this Court, shall proceed with quite promptitude and be finalised within a period of four months commencing 1-2-2015.
- (iii) The State may think of appointing a panel of competent lawyers who can render proper assistance to the appropriate authorities for taking appropriate steps for every action under the Act so that eventually the action taken under the Act does not collapse due to technical flaws. This direction is given to have separate lawyers for prosecuting these causes as it requires a lot of technical knowledge and it is the obligation of the State to see that these kinds of maladies are eradicated. Unless eradicated in time, it has the potentiality to lead to a disorderly state of affairs. The State shall respond to the same by the next date.
- (iv) The Districts where the sex ratio is less, the Director of Prosecution and the Director of the Judicial Academy shall give adequate stress on their training

JHALSA (Legal Services for Eradication of Female Foeticide Menace and Saving the Girl Child) Scheme, 2016

so that authorities who are in charge of the said districts shall also rise to the occasion.

- (v) As has been stated in our earlier judgment i.e. Voluntary Health Assn. of Punjab v. Union of India, there has to be proper awareness camps which are to be organised by the State Legal Services Authority. It is required to be done. It shall issue directions to the District Legal Services Authorities throughout the State to hold awareness camps with a proper perspective so that the persons attending camps not only become aware of the legal consequences but also the societal and the collective concern for sustenance of child sex ratio. And above all, the value of a life of woman, for she is the basic pillar of the human race in any society. If advised, the Patron-in-Chief of the State Legal Services Authority may constitute a separate cell for imparting such legal aid camps.
- (vi) We would request the learned Chief Justice of the High Court of Punjab and Haryana to fix a date for imparting training to the appropriate authorities and thereafter the Registrar (Judicial) shall communicate to the Chief Secretary of the State who shall see to it that all the appropriate authorities attend the training, failing which they will be liable for disciplinary proceedings.
- (vii) Mr Yadav, learned counsel for the State shall file a list of the cases which are pending in trial courts for trial before the Registry of this Court within 10 days hence. The Registry shall forward the same forthwith to the Registrar General of the High Court who, in turn, shall place the matter before the learned Chief Justice who is requested to issue a circular with a command that the cases shall be disposed of within four months.

Order Dated 04-03-2013 (Author - Hon'ble Mr. Justice Dipak Misra)

Voluntary Health Association of Punjab Vs. Union of India

- (i) 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.
- (ii) A cosmetic awareness campaign would never subserve the purpose. The authorities of the Government, the Non- Governmental Organisations

and other volunteers 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.

- (iii) 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 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.
- (iv) 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.

- (v) It should be clearly spelt out that female foeticide is the worst type of dehumanisation of the human race.

OBJECTIVES OF THE SCHEME

The main objects of the Scheme are:

- (i) To comply with the direction of Hon'ble Supreme Court of India passed in Writ Petition No. 349 of 2006 (Voluntary Health Association of Punjab Vs. Union of India and Others) and ensure that the Legal Services Institution in the State of Jharkhand implements the directions of Hon'ble Supreme Court in letter and spirit.
- (ii) To effectively coordinate with other departments of the Government of Jharkhand for the compliance of the directions of the Hon'ble Supreme Court in aforesaid case in letter and spirit.
- (iii) To outline the basic rights of girl child to live, grow & prosper
- (iv) To create awareness in the local people about the provisions of PC&PNDT Act, 1994 in general and direction of Hon'ble Apex Court in Voluntary Health Association case referred to above in particular.
- (v) To create awareness about saving the girl child so that humanity and civilisation may be saved.
- (vi) To promote Gender Justice and Equality
- (vii) To ensure the benefit of Anganbadi, Mid day meal and right to free and compulsory education to the children in general and girl child in particular.
- (viii) To liaison with the Civil Surgeon office, District Administration and Police for strict vigilance on the functioning of Ultrasound Clinics/Facilities where sex foetus can be determined.
- (ix) To organise awareness programme at Community level i.e. to say Women, Sr. Citizen, Community etc. for eradication of Female Foeticide Menace
- (x) To undertake and organise training, Orientation and Sensitisation Programme for Civil Surgeon and his team members, District Administration and Police Administration for eradication of Female Foeticide.
- (xi) To undertake Research and Documentation to study sex ratio and girl child education ratio.

JHALSA (Legal Services for Eradication of Female Foeticide Menace and Saving the Girl Child) Scheme, 2016

- (xii) The Legal Services Institution shall prepare a panel of competent lawyers who can render proper assistance to the appropriate authorities for taking appropriate steps for every action under the Act so that eventually the action taken under the Act does not collapse due to technical flaws. This direction is given to have separate lawyers for prosecuting these causes as it requires a lot of technical knowledge and it is the obligation of the State to see that these kinds of maladies are eradicated. Unless eradicated in time, it has the potentiality to lead to a disorderly state of affairs. The State shall respond to the same by the next date.

DATABASE

- a) JHALSA shall have database of the existing Central or State Schemes, policies, regulations, policy directives concerning Saving the Girl-Child and combating Female-Foeticide menace.
- b) JHALSA shall have database of the Registered Facilities where ultrasound machines are permitted for other purposes.
- c) The lists prepared shall be circulated annually to all the District Legal Services Authorities which shall further circulate the same to the Taluka Legal Services Committees, village panchayats, legal services clinics and PLVs.
- d) JHALSA shall also upload the list on its website.
- e) The pending cases shall also be uploaded on the Database.

Mechanism for Complaint/receiving Information

All complaints/Information may be given to JHALSA on its email-jhalsaranchi@gmail.com or at any legal services clinic run by JHALSA.

Legal Representation

- a) A competent panel of Lawyers and PLVs shall be prepared by each legal services institution.
- b) JHALSA and DLSAs shall ensure that the effective legal representation is available to the person initiating prosecution under the Act.
- c) Every District Legal Services Authority and Taluka Legal Services Committee shall designate at least one panel lawyer as Legal Services Officer for the purpose of this Scheme.

JHALSA (Legal Services for Eradication of Female Foeticide Menace and Saving the Girl Child) Scheme, 2016

- d) The District Legal Services Authorities shall also depute sufficient number of PLVs for the implementation of this Scheme.
- e) The PLVs shall act as the interface between the legal aid seeker and the Legal Services Institutions.

Legal Services Clinic

- a) JHALSA shall open Legal Services Clinics in those districts/Areas where sex ratio is alarmingly low.
- b) The Legal Services Panel lawyers and Para Legal Volunteers deputed in those clinics shall be provided special training and they shall work on all seven days of a week in rotation to conduct awareness programme, Nukkad Natak and Road Shows.
- c) The Legal Services Clinics shall ensure that action is taken against hospitals/clinics, where sex determination test is done or provisions of PC PNDT Act is violated.

Plan of Action

- a) JHALA shall prepare the Pamphlets/leaflets containing important directions of the Hon'ble Supreme Court in Writ Petition (Civil) 349/2006 in Hindi/English/Local Language for disseminating information regarding the directions and ensuring compliance thereof.
- b) Legal Services to be provided would include informing the Governmental Bodies or Functionaries, Non-governmental organizations and other organizations to ensure that each and every direction of the Hon'ble Apex Court is complied and the objective of PC PNDT Act is achieved.
- c) JHALSA shall develop effective co-ordination and interface with all the stake-holders such as Civil Society, Government Departments, NGOs and Community Levels for promoting gender-justice, discouraging discrimination between girl and boy and ultimately ensuring that no incident of female foeticide takes place and no breach of law go unpenished.
- d) JHALSA shall effectively co-ordinate with the State Government to ensure that adequate manpower is always available for enquiry, search and prosecution.

Training and Orientation Programmes

- a) JHALSA shall conduct training and orientation programmes for panel lawyers and PLVs to sensitize them on how to deal with cases under this Act and to build their capacity, knowledge and skill. Sensitization programmes should also be organized for other stakeholders such as the government functionaries, police personnel, medical officers and NGOs.
- b) JHALSA shall, in coordination with the Jharkhand State Judicial Academy, plan and conduct training/ sensitization programmes for Judicial Officers with a view to ensuring timely Justice.





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