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## Case Comment: State of Haryana and Ors vs Santra

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### INTRODUCTION

The Supreme Court Judgment *State of Haryana and Others versus Santra (Smt)*<sup>1</sup> has a special significance, as it provides the answers to many questions dealing with medical negligence. It answered the question of whether the birth of a child despite sterilisation amounts to a tort or not. And if it is so, then how the one who suffered should be compensated? What makes the government compensate the victim? These questions were of great relevance from the case point of view and also to set a precedent.

### FACTS

The respondent in the case was Smt. Santra. Initially, she was the petitioner in the trial court, but after getting the decision of the trial court in her favor, she became the respondent as the state appealed in the High Court of Chandigarh, challenging the decision of the trial court. The learned High Court of Chandigarh confirmed the decision of the trial court and to challenge that decision, the State of Haryana was present in the Supreme Court of India.

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<sup>1</sup> *State of Haryana v Santra* (2000) 5 SCC 182

- Smt. Santra was a poor labourer and mother of 7 children under a considerable financial burden.
- She voluntarily underwent a sterilisation operation by Dr. Sushil Kumar Goyal at the General Hospital, Gurgaon in 1988. This was under the sterilisation scheme launched by the state government as a program for family planning and to counter population growth.
- After the sterilisation operation, Smt. Santra was told that the operation was successful and was issued a certificate of the same on 4-2-1988.
- Smt. Santra was assured that she would not have children in the future.
- Regardless of the operation, she became pregnant and ultimately she gave birth to a girl child.<sup>2</sup>
- When Smt. Santra initially contacted the doctors at the General Hospital in Gurgaon, she was told by the doctors that she was not pregnant.
- However, when the pregnancy became apparent then she was told by the doctors that the sterilization operation had not been successful. The reasoning given by the doctors was that “the operation of the only right fallopian tube had been done, while the left fallopian tube remained untouched”.
- Then she requested an abortion but was told that this would be dangerous for her life.
- As a result of which she gave birth to a female child. Then Smt. Santra filed a suit against the state and its officer for the recovery of Rs 2 lakhs as damages, citing medical negligence from the doctor’s end.

## DECISION

According to the trial court, "The medical officer who conducted the operation threw caution to the winds and focused attention on performing as many operations as possible to build the record and earn publicity." The trial court rejected the explanations given by the defendant

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<sup>2</sup> *Ibid*

state and awarded the compensation of Rs 54,000 with a 12% interest rate from the date of the institution of the civil suit till the compensation is not received. The decision was confirmed by the Chandigarh High Court. As a result, the State of Haryana and Others filed an appeal before the Supreme Court<sup>3</sup>, stating

- i. Negligence of the medical officer in a government while discharging his/her duty would not bind the state government and the state would not be vicariously liable for any damages to the respondent.
- ii. The expenses awarded for bringing up the child have no legal basis, as there was no tort that happened and one more contention was that the respondent had not suffered a loss (the birth of a child) that could be compensated with money.

The Apex court found no merit in the appeal and dismissed the appeal, but without any order on the costs. The court held that “Every doctor who enters into the medical profession has a duty to act with a reasonable degree of care and skill. This is what is known as an implied undertaking by a member of the medical profession that he would use a fair, reasonable, and competent degree of skill”. The court also noted that in a country like India where the population is increasing at a great pace, the government has started family planning programmes to encounter this population increase rate. The implementation of this has resulted in widespread awareness of the use of various devices, including sterilisation procedures. On the question of responsibility court said, “The doctor, as well as the state, must be held responsible for damages if the sterilisation operation performed by him is a failure on account of negligence, which is directly responsible for another birth in the family, creating an additional economic burden on the person who had chosen to be operated upon for sterilisation”. According to the law settled by this court, the state's vicarious liability for the negligence of its doctor in performing the operation cannot be accepted. Cases namely, *N. Nagendra Rao & co. v State of Andhra Pradesh*<sup>4</sup>, and *Achutrao Haribhau Khodwa v State of Maharashtra*<sup>5</sup>. In these cases the theory of sovereign immunity was rejected by the court.

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<sup>3</sup> *Ibid*

<sup>4</sup> *N. Nagendra Rao & Co v State of A.P* (1994), AIR 2663

<sup>5</sup> *Achutrao Haribhau Khodwa v State of Maharashtra* (1996) 2 SCC 634

## OBSERVATION OF SUPREME COURT

At the time of discussion of the case in the apex court, the court discussed the case in various aspects. This includes looking back in time to different jurisdictions most commonly to English common law and also having a deep look into the statute governing the laws involved in cases like this. There they find that there are several cases in which compensation was awarded and there were also cases where compensation was refused. But as far as the principal/reasoning on which compensation was not allowed is concerned, it cannot be strictly applied to the Indian context because of the various conditions and cultural differences among the jurisdictions. Poor economic conditions of the families and the population size of the country are some of those differences. As one sees about the statutory provision discussed, it will come out that the court observes that parents are without any doubt under the obligation to maintain their children.

Apart from a moral obligation, it is statutory liability also in view of 'section 125<sup>6</sup> of the CrPC. It is also under Section 20 of Hindu Adoption and Maintenance Act, 1956.'<sup>7</sup> Similarly, under Muslim Personal Laws, a father is obligated to support his child until he reaches puberty in the case of a son and marriage in the case of a daughter. Two lines of reasoning emerge here. The first is that 'if a person begets a child, he is obligated to support that child and another one is based on the principle of tort'<sup>8</sup>.

As the court looks around the world and finds:

- In *Halsbury's Laws of England*<sup>9</sup>,

Under this Failed Sterilisation is defined as follows:-

"Where the defendant's negligent performance of a sterilisation operation results in the birth of a healthy child, public policy does not prevent the parents from recovering damages for the unwanted birth, even though the child may in fact be wanted by the time of its birth. Damages are recoverable for personal injuries during the period leading up to the delivery of the child

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<sup>6</sup> Code of Criminal Procedure, 1973, s 125

<sup>7</sup> Hindu Adoption and Maintenance Act, 1956, s 20

<sup>8</sup> State of Haryana (n 1)

<sup>9</sup> Halsbury's Laws of England (4<sup>th</sup> edn, Vol. 12, Lexis Nexis)

and for the economic loss involved in the expense of losing paid occupation and the obligation of having to pay for the upkeep and care of an unwanted child. Damages may include loss of earnings for the mother, maintaining the child (taking into account child benefit), and pain and suffering to the mother.”<sup>10</sup>

- *Udale v Bloomshury Area Health Authority*<sup>11</sup>

A woman who had undergone sterilisation operation was awarded damages when due to failed operation she gave birth to a child. She was awarded damages by the court with the reasoning of ‘pain and suffering on being pregnant’ and ‘disturbance in family finance caused by the birth’. “But the Court did not allow damages for future costs of the child's upbringing, on a consideration of public policy. The Court held that it is required that the child should not learn that the Court had declared its life a mistake. The Court further held that the joy of having a child and the pleasure derived in rearing up that child is priceless.”<sup>12</sup>

This principle of public policy was not followed in *Emeh v Kensington and Chelsea and Westminster Area Health Authority*<sup>13</sup> It was held that there was no norm of public policy which barred the recovery of damages.<sup>14</sup>

- *Thake v Maurice*<sup>15</sup>,

In this case, the husband has undergone a vasectomy and after the operation, he was told that from now precautions were not necessary as the operation was successful. But a child was born to him. The Court in this case awarded damages for the child's upbringing till the age of 17. The Court of in its judgement also held that the joy of having a child could be priceless, but not the prenatal pain and distress, for which damages had to be awarded.

- *Benarr v Kettering Health Authority*<sup>16</sup>,

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<sup>10</sup> *Ibid*

<sup>11</sup> *Udale v Bloomshury Area Health Authority* [1983] 2 All E.R. 522

<sup>12</sup> *Ibid*

<sup>13</sup> *Emeh v Kensington and Chelsea and Westminster Area Health Authority* [1985] QB 1012

<sup>14</sup> *Ibid*

<sup>15</sup> *Thake v Maurice* [1984] 2 All E.R. 513

<sup>16</sup> *Benarr v Kettering Health Authority* [1988] 138 NLJ 179

For the negligently performed vasectomy operation, damages were awarded for the future private education of the child.<sup>17</sup> Here is a small portion of the cases discussed in the Supreme Court. There were many other cases, which were also discussed, from different jurisdictions across the world, which one can find on the original copy of the judgment.

The Supreme Court observes, "Ours is a developing country where the majority of the people are below the poverty line." With this pace of increase in population, the resources are reaching the saturation point. The principle/reasoning, on which damages have not been allowed in other countries due to failed sterilisation operations, cannot be strictly applied to Indian conditions. "The public policy in India, launched by the government, is to control the population. Damages for the birth of an unwanted child may not be of any value for those who are already living in better conditions, but for those who live below the poverty line, who belong to the labour class, the family who struggle in managing their daily expenses, who earn their livelihood on a daily basis it would be a great relaxation. This cannot be denied as they have suffered due to medical negligence."<sup>18</sup>

### **ANALYSIS: CONCLUDING REMARKS**

#### *Birth of an unwanted child- subject matter of court litigation!*

The Apex Court has made it clear from this judgement that those who are poor and already have many children are no doubt under a considerable financial burden. The birth of an unwanted child creates an extra financial burden for them. In light of the present case, the birth of an unwanted child was caused by the negligent act of the doctor who did the sterilisation operation. As a result, they are entitled to claim damages from the government concerned, which makes the plaintiff able to rear the child until puberty. On the issue of the 'principle of public policy, the Supreme Court made it clear that in India, the purpose of this public policy is to control the growing population. The Apex Court held that there is a state's vicarious liability on the account of the negligence of a doctor working in a government hospital.

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<sup>17</sup> *Ibid*

<sup>18</sup> State of Haryana (n 1)

One cannot deny that many other issues arise from such cases. In monetary terms, it increases the financial burden, but as seen from a relationship perspective, an unsuccessful vasectomy operation can have a disastrous effect on marital relations as it creates suspicion in the mind of the husband about the wife's fidelity. As one talks about the Indian context, where the gender of the child is significant too, where there is a bias against girl children, the birth of an unwanted girl child can have an extra psychological effect on one who is gender biased. These negligence cases and compensation could have a grave effect on parent-child relationships. They affect the natural rearing of the child and also the mentality of the parents towards the child. It can have a very negative effect on the psyche of the child when he/she gets older and learns about all this. Thus, each case has to be viewed in balance with the facts, difficulties faced by parents, national interest, and the effect of the case on the child's psychology along with parent-child relations.