

Time to curb online violation of PC and PNDT Act, 1994

by Yatin Chadha on December 14, 2014

Time and again the search engines, social networking sites and other foreign based websites operating in India are found carrying their business operations, in violation of the law of the land. Sabu Mathew George petitioned the Apex Court of India over the flagrant violation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, in virtual world.

If the truth be told, the strong male preference and the consequential elimination of female child have continued to increase, rather than decline, with the spread of education and scientific developments. UNICEF, in a recent report, has stated that India has lost over one crore girls since 2007. With the help of scientific techniques, female infanticide has been replaced by female foeticide and in fact, sadly, female foeticide has made inroads into areas where traditionally there were no instances of female infanticide.

The moral guilt attached to elimination of the girl child after she is born is not felt equally if the child is eliminated while still in the womb. It was felt that, if the decline in the female sex ratio is not checked the very delicate equilibrium of nature can be permanently destroyed.

In the wake of these apprehensions, the 1994 Act was promulgated with purpose to curb the sex selection and misuse of pre-natal techniques for sex determination leading to female foeticide. Therefore, the Act prohibits determination and disclosure of the sex of the foetus, sex

selective abortion and bans any advertisement relating to sex selection and/or pre-natal determination of sex.

Section 22 of the Act within its wide sweep disallows everyone to issue, publish, distribute, communicate or cause to be issued, published, distribute or communicate any advertisement, in any form, including internet, regarding facilities of sex selection before conception or pre-natal determination of sex. Any contravention of Section 22 is punishable imprisonment of maximum three years and fine which may extend to thousand rupees.

In the recent hearing before the Hon'ble Supreme Court of India, it was submitted by the counsel for the petitioner that the respondents, namely, Google India, Yahoo India and Microsoft Corporation (I) Pvt. Ltd. are still getting things advertised in violation of the legal provisions of the Act.

The Department of Information Technology, Ministry of Communication and Information and competent authority of the Department of Health and Family Welfare are required work harmoniously to see that the provisions of the act are not violated.

The Group Coordinator, Cyber Laws Formulation and Enforcement Division, Government of India, Department of Information Technology, had filed a counter affidavit, wherein para (s) reads as “the pre-natal sex determination is an offence in India under PC & PNDT Act. However, it may not be an offence in other countries.

The information published on the websites is generally aimed at for wider, worldwide dissemination and caters to the needs to the many countries and may not be for the Indian citizens. Also, most of these websites are hosted outside the country. Blocking of such sites advertising pre-natal sex determination may not be feasible due their hosting outside the country. Moreover, some of the websites provide good content for medical education and therefore, blocking of such websites may not be desirable.”

The bench comprising of Hon'ble Mr. Justice Dipak Mishra and Hon'ble Mr. Justice U. U. Lalit observed that “as we understand from the affidavit, it reflects a kind of helplessness by the Department of Information Technology. That apart, we do not appreciate the manner in which the stand has been expressed in paragraph (s) of the counter affidavit.”

The counsel for the petitioner, in rebuttal to the stand of the Department of Information Technology, orally submitted that other countries have been able to control such advertisements, which violate laws of their countries by way of entering into such kind of agreement, developing technical tools and issuing appropriate directions.

The bench opined that nothing contrary to the laws of this country is allowed to be advertised or shown on these websites and a legal solution has to be arrived at. As it involved technical issues, therefore, the bench sought for the assistance of the competent authority from the Department of Information and Technology.