

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Transfer Petition(s)(Civil) No(s).1943-1946/2019

FACEBOOK INC

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(FOR ADMISSION and IA No.115963/2019-EX-PARTE STAY [ALONGWITH THE PAPER BOOK OF W.P.(C)NO.679/2019]

I.A. No.123520 OF 2019 - Application for Impleadment is filed by Mr. Sachin Mittal, Advocate.

IA No. 123520/2019 - INTERVENTION/IMPLEADMENT)

WITH

Diary No(s).32478/2019 (XII)

(FOR ADMISSION and I.R. and IA No.139375/2019-CONDONATION OF DELAY IN FILING and IA No.139376/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s).32487/2019 (XII)

(FOR ADMISSION and I.R. and IA No.138528/2019-CONDONATION OF DELAY IN FILING and IA No.138529/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 24-09-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

Counsel for the parties:

Mr. Mukul Rohatgi, Sr. Adv.

Mr. Tejas Karia, Adv.

Mr. Vivek Reddy, Adv.

Mr. Ajit Warriar, Adv.

Ms. Richa Srivastava, Adv.

Mr. Muthu Tangathuraj, Adv.

Ms. Devanshi, Adv.

Mr. Shashank Mishra, Adv.

Mr. Nanda Gopal, Adv.

Ms. Nayantara Narayan, Adv.

Mr. Saket, Adv.

Mr. Ujval Mohan, Adv.

Mr. S. S. Shroff, AOR

Mr. Virag Gupta, Adv.  
Ms. Vanya Gupta, Adv.  
Mr. Sachin Mittal, AOR

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Mr. Rajat Nair, Adv.  
Mr. Gurmeet Singh Makker, AOR  
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Mr. Balaji Srinivasan, AAG  
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Mr. Neeraj K. Kaul, Sr. Adv.  
Mr. Sudhir Sharma, Adv.  
Mr. Akhil Anand, AOR  
Mr. Sanyat Lodha, Adv.  
Mr. Maneesh Subramaniam, Adv.

Mr. Kapil Sibal, Sr. Adv.  
Mr. Pavit Singh Katoch, Adv.  
Mr. Ravjyot Ghuman, Adv.  
Ms. Ananya Das, Adv.  
Mr. Koshy John, Adv.  
Mr. Raghav Tankha, Adv.  
Ms. Manisha T. Karia, AOR  
Mr. Shashank S. Mangal, Adv.  
Mr. Amaninani, Adv.  
Ms. Swati Mittal, Adv.  
Ms. Sukhda Kalra, Adv.  
Ms. Spoorthi, Adv.

Mr. Udayaditya Banerjee, AOR  
Mr. Prasanna S., Adv.  
Ms. Ria Singh Sawhney, Adv.  
Ms. Kritika Bhardwaj, Adv.

Mr. Rishi Jain, AOR

Mr. Zoheb Hossain, Adv.

Mr. Sajan Poovayya, Sr. Adv.  
Mr. Priyadarshi Banerjee, Adv.  
Mr. Mahesh Agarwal, Adv.

Mr. E.C. Agrawala, Adv.

Mr. Sanjay Kapur, Adv.

Ms. Harshita Raghuvanshi, Adv.

Ms. Megha Karnwal, Adv.

Mr. Samrat Shinde, Adv.

Mr. Rishi Jain, AOR

Ms. Aparna Bhat, AOR

Ms. Karishma Maria, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Various writ petitions have been filed in different High Courts in the country wherein the petitioners have raised various grievances with regard to the intermediaries (social media platforms etc.) as defined in the Information Technology Act, 2000 (for short 'the IT Act'). In some of the petitions, it was claimed that Aadhar should be linked to the identity/account of each user of the services provided by the intermediaries. In some of the cases, the grievance is that the intermediaries are not providing information in respect of the originator of the communication/content which has been circulated/transmitted/shared on the platforms provided by the intermediaries.

There are two sets of petitions before us. In the first set of petitions, there is a prayer that all the matters should be transferred to this Court. It is urged that some similar matters are pending in this Court and even though some of them may not be directly connected, they should be heard with the present matters. The other set of petitions is where challenge has been made to various interim orders passed by the Madras High Court in Writ

At the outset, we may point out that in the Madras High Court the prayer for linkage to Aadhar has been withdrawn. Be that as it may, we are making it clear that we are not expressing any views on the merits of the submissions either with regard to the transfer or on the merits of the orders challenged before us. However, in view of the serious issues involved, we deem it appropriate to highlight certain aspects.

The main issue arising in these petitions is how and in what manner the intermediaries should provide information including the names of the originators of any message/content/information shared on the platforms run by these intermediaries. There are various messages and content spread/shared on the social media, some of which are harmful. Some messages can incite violence. There may be messages which are against the sovereignty and integrity of the country. Social media has today become the source of large amount of pornography. Paedophiles use social media in a big way. Drugs, weapons and other contrabands can be sold through the use of platforms run by the intermediaries. In such circumstances, it is imperative that there is a properly framed regime to find out the persons/institutions/bodies who are the originators of such content/messages. It may be necessary to get such information from the intermediaries.

Under the IT Act and the rules framed thereunder, the

intermediaries are also required to furnish some information. Section 87 of the IT Act gives power to the Central Government to frame rules and in terms thereof, the Information Technology (Intermediaries Guidelines) Rules, 2011 have been notified. Sub-rule 4 and sub-rule 7 of Rule 3 of these Rules require the intermediaries to store certain information and that information has to be provided in accordance with the Rules.

Some of the intermediaries submit that they cannot provide information either with regard to the content or with regard to the originators because they have end to end encryption and therefore, even the intermediaries are not in a position to find out who is the originator or what is the content.

Before the Madras High Court one Professor of an IIT filed an affidavit that he is in a position to provide the technology which would enable the intermediary to de-encrypt the encrypted message as and when the need arises. According to him, both the content and the identity of the originator of the content can be easily found. On the other hand, another Professor has filed an affidavit to the contrary. It is not for this Court to enter into the scientific field as to how and in what manner de-encryption can be done. Reference may be made to the Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009.

We must also highlight that de-encryption, if available

easily, could defeat the fundamental right of privacy and de-encryption of messages may be done under special circumstances but it must be ensured that the privacy of an individual is not invaded. However, at the same time, the sovereignty of the State and the dignity and reputation of an individual are required to be protected. For purposes of detection, prevention and investigation of certain criminal activities it may be necessary to obtain such information. De-encryption and revelation of the identity of the originator may also be necessary in certain other cases, some of which have been highlighted hereinabove.

We find that the law in this regard is still at a nascent stage and technology keeps changing every day, if not every hour. There are various creases which need to be ironed out. Though, the guidelines provided that the intermediaries should furnish the information, it is not clear how the intermediaries who are based abroad and do not even have grievance officer posted in the country, would be compelled to reveal this information.

Before the Madras High Court, a statement was made on behalf of the Union of India that this matter is under active consideration of the Government of India. Ms. Aparna Bhat, learned counsel submitted that the draft rules in this regard have already been framed and are only required to be notified. Learned Solicitor General submitted that as per his information the matter is under active consideration of the Union of India.

We request the learned Solicitor General to take complete instructions in the matter. We further direct the Secretary, Ministry of Electronics & Information Technology to file an affidavit in this Court within three weeks from today placing on record the stage at which the process of framing/notifying the rules is at. We also direct the Secretary to give definite timelines in respect of completing the process of notifying the rules.

There may be instances where even an individual may have the right to ask for such information to protect his reputation and dignity. We are not sure whether any guidelines in this regard have been framed till date. This aspect may also be addressed.

List on 22.10.2019.

(ARJUN BISHT)  
COURT MASTER (SH)

(RENU KAPOOR)  
BRANCH OFFICER