

IN THE SUPREME COURT OF INDIA

TRANSFER PETITION(S) (CIVIL) No.(s) 1943-1946 of 2019

Facebook Inc.

Petitioner

VERSUS

Union of India & Ors

Respondents

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**IN THE SUPREME COURT OF India
CIVIL ORIGINAL JURISDICTION**

TRANSFER PETITION(S) (CIVIL) No(s). 1943-1946 of 2019

IN THE MATTER OF

Facebook Inc.

Versus

... Petitioner

Union of India & Ors.

... Respondents

**AFFIDAVIT ON BEHALF OF SECRETARY,
MINISTRY OF ELECTRONICS & INFORMATION TECHNOLOGY,
GOVERNMENT OF INDIA**

That I, **AJAY PRAKASH SAWHNEY**, son of Late **Shri LAKSHMI PRAKASH SAWHNEY**, aged about **57 years**, working as **SECRETARY**, in the Ministry of Electronics and Information Technology (MeitY), Government of India, Electronic Niketan, Lodhi Road, New Delhi do hereby solemnly affirm and declare as under:

1. That I am **AJAY PRAKASH SAWHNEY, SECRETARY** of the Respondent above named and in my official capacity I am well aware of facts and circumstances of the present case. I have duly acquainted myself with the facts of the present case and the official record. Furthermore, I have been duly authorized by the Respondent abovenamed as such I am competent to swear this affidavit.
2. At the outset I state and submit that this Hon'ble court vide order dated 24.09.2019 was pleased to direct as under:-

"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."

A copy of the order dated 24.09.2019 is annexed hereto and marked as

Annexure A.

3. Briefly stated that vide the aforesaid order dated 24.09.2019, the deponent was directed to appraise this Hon'ble Court (i) the stage at which the process of framing/notifying the rules is at; and timelines in respect of completing the process of notifying the rules.

4. That in view of aforesaid directions, the answering deponent submits as under:

(a) That the present rules related to the intermediaries, i.e., *The Information Technology (Intermediaries Guidelines) Rules, 2011* [hereinafter the extant Rules] were notified on 13.04.2011.

(b) That the extant Rules provides for due diligence framework as per the form provided under Rule 3 [Due diligence to be observed by intermediary] which is to be observed by the intermediaries.

(c) It is submitted that within Rule 3 there are *eleven sub-rules*, which provides for due diligence framework to be adopted by the intermediary.

(d) The extant Rules also provides for a framework in Rules 3(1), 3(2), 3(4) and 3(11), whereby an individual has a right to seek redressal for protection of his reputation and dignity.

(e) The vires of the extant Rules have also been tested by this Hon'ble court in the judgment rendered in *ShreyaSinghal v Union of India* reported in (2015) 5 SCC 1, wherein, this Hon'ble Court was pleased to hold as under:

“117. Section 79(3)(b) has to be read down to mean that the intermediary upon receiving actual knowledge that a court order has been passed asking it to expeditiously remove or disable access to certain material must then fail to expeditiously remove or disable access to that material. This is for the reason that otherwise it would be very difficult for intermediaries like Google, Facebook, etc. to act when millions of requests are made and the intermediary is then to judge as to which of such requests are legitimate and which are not. We have been informed that in other countries worldwide this view has gained acceptance, Argentina being in the forefront. Also, the Court order and/or the notification by the appropriate Government or its agency must strictly conform to the subject-matters laid down in Article 19(2). Unlawful acts beyond what is laid down in Article 19(2) obviously cannot form any part of Section 79. With these two caveats, we refrain from striking down Section 79(3)(b).”

118. *The learned Additional Solicitor General informed us that it is a common practice worldwide for intermediaries to have user agreements containing what is stated in Rule 3(2). However, Rule 3(4) needs to be read down in the same manner as Section 79(3)(b). The knowledge spoken of in the said sub-rule must only be through the medium of a court order. Subject to this, the Information Technology (Intermediaries Guidelines) Rules, 2011 are valid.”*

5. In this context I respectfully state and submit that in the last few years there has been an enormous increase in the use of social media and with lower Internet tariffs, availability of smart devices and last-mile connectivity, more and more people in India are becoming part of the Internet/social media platforms. If on one hand technology has led to economic growth and societal development, on the other hand there has been an exponential rise in hate speech, fake news, public order, anti-national activities, defamatory postings, and other unlawful activities using Internet/Social media platforms.

6. I respectfully state and submit that as Internet has emerged as a potent tool to cause unimaginable disruption to the democratic polity, it was felt that the extant rules to be revised for effective regulation of intermediaries keeping in view the ever growing threats to individual rights and nation's integrity, sovereignty, and security.

7. In this regard, I respectfully state and submit that the Hon'ble Minister of Electronics & Information Technology, on 26.07.2018, while replying to a Calling Attention Motion on "Misuse of social media platform and propagation of fake news" made an statement on the floor of Rajya Sabha that Government will initiate a number of measures including amendment in existing Intermediaries Guidelines Rules, 2011 to make intermediaries more liable towards the content that is published, transmitted, etc. on their platform.

8. I state and submit that in view of the aforesaid statement the present ministry initiated the process of revising and amending the extant rules.

9. It is stated that for the said purpose and in order to have participation and involvement of all stakeholders, the deponent published the entire draft Information Technology Intermediaries Guidelines (Amendment) Rules, 2018 for public comments on its website www.meitv.gov.in on 24.12.2018 requesting submission of comments by 31.01.2019. A copy of the said draft Information Technology Intermediaries Guidelines (Amendment) Rules, 2018, published by the deponent inviting suggestions and objections from concerned stakeholders and public is annexed hereto and marked as

Annexure B.

10. I state and submit that in response to the afore-mentioned draft revised rules, Hundred & Seventy One (171) comments were received by the present ministry. Furthermore, to maintain the transparency, the Answering Respondent published all the comment so received from the respective stakeholders against the draft revised rules for counter comments on its website on 04.02.2019 seeking comments on these by 14.02.2019.

11. I state and submit that pursuant thereto various rounds of industry consultations/discussions involving various chambers of commerce, associations and social media companies have already taken place.

12. Furthermore, inter-ministerial consultations were also initiated and undertaken to seek views of other Ministries including Ministry of Home Affairs, Ministry of Information and Broadcasting, Ministry of Health and Family Welfare, Ministry of Women and Child development, Ministry of Commerce etc., on the draft revised rules.

13. I state and submit that in view of the complexity involved in the matter and the significant impact it entails on the functioning of all stakeholders including netizens, various Government Departments/ Ministries, social media platforms, messaging platforms, websites and Mobile apps etc., a conscious and bonafide decision was taken by the respondent ministry to call for further inter-ministerial consultation so that effective, robust and comprehensive rules, covering all aspects of matter can be framed.

14. I respectfully state and submit that after collating and analysing all the details as it has emerged from stakeholders participation and inter-

ministerial consultation, the deponent has bonafide belief that a further period of three months would be required for finalising and notifying the final revised rules in accordance with law.

For convenience of this Hon'ble court, the details of the steps taken by the answering Respondent for the purpose of finalising and notifying the draft Information Technology Intermediaries Guidelines (Amendment) Rules, 2018 are being stated as under:-

<u>STEPS TAKEN BY MINISTRY OF ELECTRONICS & INFORMATION TECHNOLOGY UPTILL NOW</u>	
DATE	PARTICULARS
24 th Dec., 2018	Draft Information Technology Intermediaries Guidelines (Amendment) Rules, 2018 published on MeitY website with last date of submission of comments/ Feedback as 15 th Jan., 2019.
9 th Jan., 2019	Last date of submission of comments extended to 31 st Jan., 2019 based on numerous requests received from stakeholders.
31 st Jan., 2019	Last date of receiving comments. Comments received from more than 170 individuals/ organisations (650+ pages) and later on published on MeitY website for Counter Comments.
14 th Feb., 2019	Last date for receiving Counter Comments. Counter Comments received from 80 individuals/ Organisations. Later on Published on MeitY website.
31 st Jul., 2019	Inter-Ministerial Consultations held.
Aug., 2019	Comments received from Stakeholder Ministries.
Present Status	The Updated Draft of Intermediary rules is under discussion within Ministry.

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STEPS WHICH ARE REQUIRED TO BE TAKEN BY THE MINISTRY OF ELECTRONICS & INFORMATION TECHNOLOGY FOR THE PURPOSE OF FINALISING AND NOTIFYING THE SUBJECT RULES

DATE	PARTICULARS
	Approval of Draft Intermediary Rules by Minister, Electronics and Information Technology. (MEIT)
	Draft to be vetted by Ministry of Law and Justice.
	Approval of Updated Draft by MEIT
	Notification of New Intermediary Rules by MeitY*

* Note: The above process is likely to be completed by 15th January 2020.

DEPONENT

अजय साहनी/AJAY SAWHNEY
सचिव/Secretary
इलेक्ट्रॉनिक्स और सूचना प्रौद्योगिकी विभाग
Ministry of Electronics & Information Technology
6, सीओसी कॉम्प्लेक्स/6, CGO Complex
नई दिल्ली-110 003 /New Delhi-110 003

VERIFICATION

Signed and verified at New Delhi on this day of October 2019,
that the contents of my above Affidavit are true and correct to the best of
my knowledge and on the basis of information received and believed to
be correct, and nothing material has been concealed therefrom.

DEPONENT

अजय साहनी/AJAY SAWHNEY
सचिव/Secretary
इलेक्ट्रॉनिक्स और सूचना प्रौद्योगिकी विभाग
Ministry of Electronics & Information Technology
6, सीओसी कॉम्प्लेक्स/6, CGO Complex
नई दिल्ली-110 003 /New Delhi-110 003

ANNEXURE-A

ITEM NO.24

COURT NO.13

SECTION XVI-A

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 & 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 Warrier, 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

Mr. Tushar Mehta, Sg
Mr. V. Balaji, Adv.
Mr. Rajat Nair, Adv.
Mr. Gurmeet Singh Makker, AOR
Mr. B.V., Balaramdas, AOR

Mr. K.K. Venugopal, AG
Mr. Balaji Srinivasan, AAG.
Mr. Akash Chatterjee, Adv.
Mr. Siddhant Kohli, Adv.
Ms. Garima Jain, Adv.
Mr. T. R. B. Sivakumar, AOR

Mr. Balaji Srinivasan, AAG
Mr. M. Yogesh Kanna, AOR

Mr. Neeraj K. Kaul, Sr. Adv.
Mr. Sudhir Sharma, Adv.
Mr. Akhil Anand, AOR
Mr. Sanjay 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. Zohab Hossain, Adv.

Mr. Sajjan 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

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Petition No. 20214 of 2018 and Writ Petition No.20774 of 2018.

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

ANNEXURE-B

**The Information Technology
[Intermediaries Guidelines (Amendment) Rules]
2018**

1. **Short title and commencement** — (1) These rules may be called the Information Technology [Intermediaries Guidelines (Amendment) Rules, 2018. (2) They shall come into force on the date of their publication in the Official Gazette.
2. **Definitions** — (1) In these rules, unless the context otherwise requires,--
 - (a) "Act" means the Information Technology Act, 2000 (21 of 2000);
 - (b) "Appropriate Government" means appropriate Government as defined in clause (e) of sub-section (1) of section 2 of the Act;
 - (c) "Communication link" means a connection between a hypertext or graphical element (button, drawing, image) and one or more such items in the same or different electronic document wherein upon clicking on a hyperlinked item; the user is automatically transferred to the other end of the hyperlink which could be another document or another website or graphical element;
 - (d) "Computer resource" means computer resource as defined in clause (k) of sub-section (1) of section 2 of the Act;
 - (e) "Critical Information Infrastructure" means critical information infrastructure as defined in Explanation of sub-section (1) of section 70 of the Act;
 - (f) "Cyber security incident" means any real or suspected adverse event in relation to cyber security that violates an explicitly or implicitly applicable security policy resulting in unauthorised access, denial of service or disruption, unauthorised use of a computer resource for processing or storage of information or changes to data, information without authorisation;
 - (g) "Data" means data as defined in clause (o) of sub-section (1) of section 2 of the Act;
 - (h) "Electronic Signature" means electronic signature as defined in clause (ta) of sub-section (1) of section 2 of the Act;
 - (i) "Indian Computer Emergency Response Team" means the Indian Computer Emergency Response Team appointed under sub-section (1) of section 70B of the Act;
 - (j) "Information" means information as defined in clause (v) of sub-section (1) of section 2 of the Act;
 - (k) "Intermediary" means an intermediary as defined in clause (w) of sub-section (1) of section 2 of the Act;
 - (l) "User" means any person who accesses or avails any computer resource of intermediary for the purpose of hosting, publishing, sharing, transacting, displaying or uploading information or views and includes other persons jointly participating in using the computer resource of an intermediary;
 - (2) All other words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.
3. **Due diligence to be observed by intermediary** — The intermediary shall observe following due diligence while discharging his duties, namely: —

- (1) The intermediary shall publish the rules and regulations, privacy policy and user agreement for access or usage of the intermediary's computer resource by any person
- (2) Such rules and regulations, privacy policy ~~terms and conditions~~ or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that —

- (a) belongs to another person and to which the user does not have any right ~~to~~;
- (b) is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever;
- (c) harm minors in any way;
- (d) infringes any patent, trademark, copyright or other proprietary rights;
- (e) violates any law for the time being in force;
- (f) deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature;
- (g) impersonates another person;
- (h) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource;
- (i) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order, or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation.
- (j) threatens public health or safety; promotion of cigarettes or any other tobacco products or consumption of intoxicant including alcohol and Electronic Nicotine Delivery System (ENDS) & like products that enable nicotine delivery except for the purpose & in the manner and to the extent, as may be approved under the Drugs and Cosmetics Act, 1940 and Rules made thereunder;
- (k) threatens critical information infrastructure.

- (3) The intermediary shall not knowingly host or publish any information or shall not initiate the transmission, select the receiver of transmission, and select or modify the information contained in the transmission as specified in sub-rule (2):

Provided that the following actions by an intermediary shall not amount to hosting, publishing, editing or storing of any such information as specified in sub-rule(2):

- (a) temporary or transient or intermediate storage of information automatically within the computer resource as an intrinsic feature of such computer resource, involving no exercise of any human editorial control, for onward transmission or communication to another computer resource;

24.12.2018 V1.0

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(b) removal of access to any information, data or communication link by an intermediary after such information, data or communication link comes to the actual knowledge of a person authorised by the intermediary pursuant to any order or direction as per the provisions of the Act;

~~(4) The intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes;¹~~

(4) The intermediary shall inform its users at least once every month, that in case of non-compliance with rules and regulations, user agreement and privacy policy for access or usage of intermediary computer resource, the intermediary has the right to immediately terminate the access or usage rights of the users to the computer resource of Intermediary and remove noncompliant information.

(5) When required by lawful order, the intermediary shall, within 72 hours of communication, provide such information or assistance as asked for by any government agency or assistance concerning security of the State or cyber security; or investigation or detection or prosecution or prevention of offence(s); protective or cyber security and matters connected with or incidental thereto. Any such request can be made in writing or through electronic means stating clearly the purpose of seeking such information or any such assistance. The intermediary shall enable tracing out of such originator of information on its platform as may be required by government agencies who are legally authorised.

(6) The intermediary shall take all reasonable measures to secure its computer resource and information contained therein following the reasonable security practices and procedures as prescribed in the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011.

(7) The intermediary who has more than fifty lakh users in India or is in the list of intermediaries specifically notified by the government of India shall:

- (i) be a company incorporated under the Companies Act, 1956 or the Companies Act, 2013;
- (ii) have a permanent registered office in India with physical address; and
- (iii) Appoint in India, a nodal person of contact and alternate senior designated functionary, for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders/requisitions made in accordance with provisions of law or rules.

(8) The intermediary upon receiving actual knowledge in the form of a court order, or on being notified by the appropriate Government or its agency under section 79(3)(b) of Act shall remove or disable access to that unlawful acts relating to Article 19(2) of the

¹ This sub-rule has been modified as per Supreme Court Judgment in the matter of Shreya Singhal Vs UOI dated 24.03.2015.

24.12.2018 V1.0

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Constitution of India such as in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, on its computer resource without vitiating the evidence in any manner, as far as possible immediately, but in no case later than twenty-four hours in accordance with sub-rule (6) of Rule 3. Further the intermediary shall preserve such information and associated records for at least ~~thirty~~ one hundred and eighty days for investigation purposes, or for such longer period as may be required by the court or by government agencies who are lawfully authorised.

(9) The intermediary shall deploy technology based automated tools or appropriate mechanisms, with appropriate controls, for proactively identifying and removing or disabling public access to unlawful information or content

(10) The intermediary shall report cyber security incidents and also share cyber security incidents related information with the Indian Computer Emergency Response Team.

(11) The intermediary shall not knowingly deploy or install or modify the technical configuration of computer resource or become party to any such act which may change or has the potential to change the normal course of operation of the computer resource than what it is supposed to perform thereby circumventing any law for the time being in force:

Provided that the intermediary may develop, produce, distribute or employ technological means for the sole purpose of performing the acts of securing the computer resource and information contained therein.

(12) The intermediary shall publish on its website the name of the Grievance Officer and his contact details as well as mechanism by which users or any victim who suffers as a result of access or usage of computer resource by any person in violation of rule (3) can notify their complaints against such access or usage of computer resource of the intermediary or other matters pertaining to the computer resources made available by it. The Grievance Officer shall redress the complaints within one month from the date of receipt of complaint;

(13) The intermediary shall strictly follow the provisions of the Act or any other laws for the time being in force.