

IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2023
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

N. RAM & ORS. ... P R

VERSUS

UNION OF INDIA & ORS. ... R P

WITH

I.A. No. _____ of 2023

(An Application for Directions and Stay)

PAPERBOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR PETITIONERS:

PRATEEK K. CHADHA

AOR No.: 2651

RECORD OF PROCEEDING

S. NO.	PARTICULARS	PAGES
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

INDEX

Sl. No.	Particulars	Page No. of Part to which it belongs		Remarks
		Part I (Contents of Paper Book)	Part II (Contents of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
1.	Court Fee			
2.	Listing Proforma	A1- A2		A1- A2
3.	Cover Page of Paper Book		A3	
4.	Index of Record of Proceedings		A4	
5.	Limitation Report Prepared by Registry		A5	
6.	Defect List			
7.	Note Sheet		NS 1	
8.	Synopsis and List of Dates	B-N		
9.	Writ Petition with Affidavit	1- 37		
10.	Annexure P-1 A true copy of the BBC website describing part one of the documentary series	38-40		

	<i>India: The Modi Question</i> dated NIL.	38-40		
11.	Annexure P-2 A true typed copy of the complete transcription of Episode one of the document titled India: The Modi Question dated NIL.	41-57		
12.	Annexure P-3 A true copy of the screen shots from twitter handle of Senior Advisor in Ministry of Information and Broadcasting, Government of India dated 21.01.2023	58-61		
13.	Annexure P-4 A true copy of the Legal Request showing that Ministry of Information & Broadcasting directed Twitter to remove tweets of 50 people under Rule 16(3) of the IT Rules and Section 69(A) of the IT Act, 2000 dated 20.01.2023	62-63		
14.	Annexure P-5			

	A true copy of the screenshot of the tweet dated 22.01.2023 by Petitioner No. 2 from which the link to the documentary on Modi's election was disabled	64		
15.	Annexure P-6 A true copy of the screenshot of the tweet dated 19.01.2023 by Petitioner No. 3 which has been withheld by twitter in India	65		
16.	Annexure P-7 A true typed copy of the NDTV news report on the JNU screening dated 24.01.2023 titled 'Stones Thrown At JNU Students Watching BBC Series On PM Modi Inside Campus'	66-67		
17.	Annexure P-8 A true copy of the JNU administration order dated 23.01.2023	68		
18.	Annexure P-9 A true copy of the NDTV report dated 25.01.2023, on	69		

	the interruption of screening of the documentary at Jamia Millia Islamia titled Students Detained, Riot Police At Delhi's Jamia Over BBC Film Screening	69		
19.	Annexure P-10 A true copy of the notice F.No. JMI/PO/ON/2023/PB from Jamia Millia Islamia University dated 24.01.2023	70		
20.	Annexure P-11 A true copy of the news story in The Wire titled UK PM Responds to MP's Question on BBC Film, Channel Says o ent r Ri oro s Rese r ed dated 20.01.2023 that carries excerpts from the BBC statement	71-73		
21.	Annexure P-12 A true copy alongwith true typed copy of the Caravan Magazine Report dated 23.01.2023 titled <i>BBC Row: UK reports states VHP planned Gujarat violence in ad a ce, Godhra a "pretext</i>	74-83		

22.	<p>Annexure P-13</p> <p>A true copy of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 issued vide Notification G.S.R. 139(E) dated 25.02.2021 by Ministry of Electronics and Information Technology</p>	84-99		
23.	<p>Annexure P-14</p> <p>A true copy of order dated 14.08.2021 in <i>Agij Promotion of Nineteenonea Media Pvt. Ltd v. Union of India, 2021 SCC OnLine Bom 2938</i> by the Hon'ble Justice of the Bombay</p>	100-112		
24.	<p>Annexure P-15</p> <p>A true copy of order dated 16.09.2021 passed by the Hon'ble Justice of the Madras in W.P. No.s 13055 and 12515 of 2021</p>	113-119		
25.	<p>Annexure P-16</p> <p>A true copy of order dated 10.03.2021 in W.P. (C) No.</p>	120-121		

	6272/2021(H) passed by the on e i o r t o e r	120-121		
26.	Annexure P-17 A true copy of a note filed in SLP (Civil) bearing Diary No. 20135/2021 showing that a number of petitions are pending consideration before this court <i>qua</i> regulation of online platforms dated NIL.	122-128		
27.	Annexure P-18 A true copy of order dated 09.02.2021 in Transfer petitions (Civil) No.s 100- 105/2021 passed by the on e p r e e o r t	129-130		
28.	Annexure P-19 A true copy of order dated 9.05.2022 passed by the on e p r e e o r t in Writ Petition (Civil) No. 799 of 2020	131-140		
29.	I.A. NO. ____ of 2023 An Application for Stay	141-145		
30.	Vakalatnama and Memo of Appearance	146-148		

31.	Filing Index		149	
-----	--------------	--	-----	--

32. CLARIFICATION LETTER 150

PROFORMA FOR FIRST LISTING

SECTION – X

The case pertains to (Please tick/check the correct box):

- Central Act (Title): **Constitution of India 1950**
Section: **Articles 21, 19, 14 & 32**
- Central Rule (Title): NA
- Rule No(s): NA
- State Act : (Title) NA
- NA
- Impugned Interim Order (Date): NA
- Impugned Final Order/Decree: (Date): NA
- High Court (Name): NA
- Name of Judges: NA
- Tribunal/Authority (Name):
-
-
-

1. Nature of matter: **Constitutional / Civil**
2. (a) Petitioner/Appellant No. 1: **N. Ram**
(b) e-mail ID : NA
(c) Mobile phone number: NA
3. (a) Respondent No. 1: **Union of India**
(b) e-mail ID : NA
(c) Mobile phone number: NA
4. (a) Main category classification: **18**
(b) Sub classification: **1807 (Others)**
5. Not to be listed before: NA

6. (a) Similar disposed of matter with citation, if any & case details: **No similar disposed of matter**
- (b) Similar pending matter with case details: **No similar pending matter**
7. **Criminal Matters:**
- (a) Whether accused/convict has surrendered: NA
- (b) FIR No: NA Date: NA
- (c) Police Station: NA
- (d) Sentence Awarded: NA
- (e) Period of sentence undergone including period of Detention/Custody Undergone: NA
8. **Land Acquisition Matters :**
- (a) Date of section 4 notification: NA
- (b) Date of section 6 notification: NA
- (c) Date of section 17 notification: NA
9. **Tax Matters:** State the tax effect: NA
10. **Special Category** (First petitioner/appellant only): Senior citizen > 65 years YES, SC/ST , Woman/Child , Disabled , Legal Aid Case , In Custody - .
11. Vehicle Number (in case of Motor Accident Claim matters):
 NA

Date: 26 .01.2023

New Delhi



PRATEEK K. CHADHA
Advocate for the Petitioner
AOR Code: 2651
D-416, DEFENCE
COLONY, NEW DELHI-24
prateekchadha@gmail.com
Mob:+91- 9871588144

SYNOPSIS

B

The present petition is being filed in under Article 32 of the Constitution of India by the petitioners who are members of the media, elected representatives of the people of India, and advocates respectively, seeking directions restraining the Respondents from censoring the information contained in the British Broadcasting Corporation's content titled *India: The Modi Question* and to call for and quash all orders directly or indirectly censoring the same, including but not limited to order dated 20.01.2023 passed by Respondent No. 1 and all subsequent and consequential proceedings arising therefrom. The order dated 20.01.2023 and subsequent and consequential proceedings arising therefrom are not in the public domain.

The first episode of the documentary was aired on 17.01.2023 while the second episode was aired on 24.01.2023. Petitioner No.3 on 19.01.2023 and Petitioner No. 2 on 22.01.2023 tweeted about the documentary and shared links of the URLs where the documentary could be found.

The contents of the BBC Documentary and the tweets by Petitioner No. 2 &3 are protected under Article 19(1)(a) of the Constitution of India. The contents of the documentary series do not fall under any of the restrictions specified in Article 19(2) or

restrictions imposed under Section 69A of the IT Act, 2000. This

is on the report in *Directorate of Film Festivals v. Gaurav Ashwin Jain*, (2007) 4 SCC 737 observed,

The right of a film-maker to make and exhibit his film, is a part of his fundamental right of freedom of speech and expression under Article 19(1)(a) of the Constitution. A film is a medium for expressing and communicating ideas, thoughts, messages, information, feelings and emotions. It may be intended either for public exhibition (commercial or non-commercial) or purely for private use.

is on the report of the committee which did not touch the Government or its policies or even the judgment of the Supreme Court of India does not tantamount to violating the sovereignty and integrity of India. In fact, the Supreme Court in *Govt. of A.P. v. P. Laxmi Devi*, (2008) 4 SCC 720 has observed,

“ It is that the courts should not take an activist approach in upholding the civil liberties and Rights of the citizens? In our opinion, this is because freedom and liberty is essential for progress, both economic and social. Without freedom to speak, freedom to write, freedom to think, freedom to experiment, freedom to criticise (including criticism of the Government) and freedom to dissent there can be no progress.”

All citizens including the press have the fundamental right to view, form an informed opinion, critique, report on, & lawfully circulate the contents of the documentary as right to freedom of speech and expression incorporates the right to receive and disseminate information seen in the report in *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161 as under:

43. *We may now summarise the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country, as well as abroad, as is possible to reach. (emphasis supplied).*

The Secretary, Information & Broadcasting Ministry, issued the impugned directions under Rule 16 of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 wherein referred to s e R e s to itter ndi to block 50 tweets with link to YouTube videos of the BBC Documentary which also blocked the tweet of Petitioner No.3. Thereafter, link to the URL shared by Petitioner No.2 was also removed.

The Secretary, Information & Broadcasting Ministry issued the impugned directions in his capacity as Authorized Officer under Rule 13(2) of The IT Rules 2021. The directions are prima facie illegal as

they are in direct contravention of the interim order dated 14.08.2021 passed by the Hon'ble Court in *Agij Promotion of Nineteenonea Media Put. Ltd. & Ors. v. Union of India' & Anr., Writ Petition (L.) No.14172 of 2021* which directed stay of Rule 9 (1) & (3) of the IT Rules 2021 which in effect has stayed Rule 13(2) and Rule 16 of the IT Rules, 2021.

Rule 9(1) of the IT Rules 2021 obligates publishers (as defined under the Rules) to send their content to the Code of Ethics set out in the IT Rules. The Bombay High Court found that the prescribed Code of Ethics and the restrictions entered into Article 19(2) of the Constitution, and therefore was not a valid basis for restricting, in any manner, the freedom of speech in India, within which is implicit the freedom of the press.

Rule 9(3) of the IT Rules 2021 sets out a three-tier regulatory mechanism for publishers, involving separate levels of self-regulation and governmental oversight, which is intended to ensure observance and adherence to the Code of Ethics. The three tiers of this mechanism are listed below:

“ *Self-regulation by publishers;*

“ *Self-regulation by the self-regulating bodies of publishers; and*

“ *Governmental oversight mechanism by the Central Government*

“ *Governmental oversight mechanism*

The scope of Level III, i.e. the Government Oversight Mechanism, is detailed in Rule 13 of the IT Rules 2021, which reads as follows:

*13. Oversight mechanism — (1) The Ministry shall co-ordinate and facilitate the adherence to the Code of Ethics by publishers and self regulating bodies, develop an Oversight Mechanism, and perform the following functions, namely:
publish a charter for self regulating bodies, including Codes of Practices for such bodies;
establish an Inter-Departmental Committee for hearing grievances;
refer to the Inter-Departmental Committee grievances arising out of the decision of the self- regulating body under rule 12, or where no decision has been taken by the self-regulating body within the specified time period, or such other complaints or references relating to violation of Code of Ethics as it may consider necessary;
issue appropriate guidance and advisories to publishers;
issue orders and directions to the publishers for maintenance and adherence to the Code of Ethics.*

(2) The Ministry shall appoint an officer of the Ministry not below the rank of a Joint Secretary to the Government of India, as the Authorised Officer, for the purposes of issuing directions under rules 15 or 16, as the case may be. [emphasis supplied]

It is hence clear that the powers of the Central Government, which are enumerated in the Code of Practices and established in the Inter-Departmental Committee for hearing grievances, to appointing an officer of the I&B Ministry for the exercise of the powers under Rule 16, are a part of the Government Oversight Mechanism that has been stayed vide the interim order given in relation to Rule 9(3).

Furthermore, the Government of India has not officially placed any document/ order or any other information in the public domain which explains the reasons for the need to exercise its emergency

powers under Rule 16 rather than any other mechanism provided in the rules. Respondent No.1 has chosen expediency over necessity and proportionality in their response to the documentary.

Censoring the freedom of speech and expression of the petitioners by the Executive through opaque orders and proceedings is manifestly arbitrary as it frustrates the fundamental right of petitioners to effectively seek judicial review of administrative actions under Article 226 and Article 32 of the constitution of India in violation of the Basic Structure of the Constitution of India. In *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 : 2020 SCC OnLine SC 25 this court directed as under:

104. It must be noted that although the Suspension Rules do not provide for publication or notification of the orders, a settled principle of law, and of natural justice, is that an order, particularly one that affects lives, liberty and property of people, must be made available. Any law which demands compliance of the people requires to be notified directly and reliably. This is the case regardless of whether the parent statute or rule prescribes the same or not. We are therefore required to read in the requirement of ensuring that all the orders passed under the Suspension Rules are made freely available, through some suitable mechanism.

The power of the executive under Section 69 A to lay down directions or orders is limited to *sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above*

As there is no Order in the public domain, the reason for restrictions as defined under Section 69A(1) cannot be ascertained. In accordance with Section 69(A), the Order restricting freedom of speech and expression has to be in writing and must record reasons for such an order. In the present case, neither the order nor the reasons are in the public domain. Freedom of speech and expression cannot be curtailed in such manifestly arbitrary manner.

Hence, the present petition.

LIST OF DATES AND EVENTS

I

DATE	PARTICULARS
2000	Information Technology Act, 2000 (hereinafter referred to as the IT Act) is passed by the Parliament and notified by the Government of India in October.
27.10.2009	<p>The Information Technology Amendment Act 2008 (IT Act 2008) was brought into force. Through this amendment Section 69A came into effect which reads as follows:</p> <p>69A. Power to issue directions for blocking for public access of any information through any computer resource.–</p> <p>(1) Where the Central Government or any of its officers specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.</p> <p>(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.</p> <p>(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and also be liable to fine.</p>

	<p>The Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 in accordance Section 69(2) of the Act are notified on the same day. (hereinafter referred to s e e rd R es</p>
25.02.2021	<p>The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 are notified in the Gazette. (hereinafter referred to s e R es</p>
10.03.2021	<p>The Kerala High Court in WP(C) No.6272/2021(H), granted protection from coercive action under Part III of the IT Rules, 2021 to Livelaw Media Private Limited. Pertinently, the <i>vires</i> of the IT Rules, 2021, have been challenged in said petition.</p>
14.08.2021	<p>The Bombay High Court in Agij Promotion of Nineteenonea Media Put. Ltd. & Ors. v. Union of India' & Anr., Writ Petition (L.) No.14172 of 2021 passed Interim order dated 14.08.2021 staying the operation of subrules (1) and (3) of Rule 9 of the IT Rules, 2021 on the grounds that they prima facie</p>

	violated the right to free speech under the Indian Constitution and was ultra vires the scope of its parent statute, the IT Act 2000
16.09.2021	The Madras High Court passes Orders in W.P. No.s 13055 and 12515 of 2021 in <i>TM Krishna and Ors v. Union of India</i> , specifically affirming that the IT Rules 2021 are prima facie violative of the Constitution of India, and also noted that the Bombay High Court's interim order has a pan-India effect, which ought to be followed by the Central Government.
09.05.2022	The Hon e pre e o r t o n d i i e e r i n applications for Transfer filed by Union of India of aforesaid writ petition titled, Agij Promotion of Nineteenonea Media Put. Ltd. & Ors. v. Union of India' & Anr., Writ Petition (L.) No.14172 of 2021 amongst others, stayed proceedings before the Hon e i o r t p e n d i n t e d e i s i o n o t e Hon e p r e e o r t

	<p>order of the court dated 14.08.2021 has not been stayed and therefore is still operative and binding on the Union of India.</p>
17.01.2023	<p>BBC Two released the first in a two-part documentary series titled <i>India: The Modi Question</i> in which it profiles the former Prime Minister Narendra Modi, who was the then Chief Minister of Gujarat in 2002 when riots broke out in which thousands of people lost their lives.</p>
19.01.2023	<p>Spokesperson of the Ministry of External Affairs, Government of India refers to the BBC documentary as propaganda designed to discredit the</p>
20.01.2023	<p>The Ministry of Information and Broadcasting under Rule 16(3) of the IT Rules, 2021, and Section 69(A) of the IT Act, 2000, wrote a Legal Request to Twitter India to block 50 tweets including those of the Petitioner No. 3, that contained links to part one of the BBC documentary. That YouTube links of the video have since been taken down as well.</p>

21.01.2023	Shri Kanchan Gupta, Senior Adviser, Ministry of Information and Broadcasting, Government of India, tweeted that the BBC World documentary on Prime Minister Narendra Modi, has been blocked on YouTube and Twitter pursuant to orders dated 20.01.2023 passed by Secretary, Ministry of Information & Broadcasting (Respondent No. 1) under emergency powers under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021
22.01.2023	The URL link to the BBC documentary from a tweet dated 22.01.2023 of Petitioner No. 1 (Ms. Mahua Moitra) was also removed.
23.01.2023	The JNU administration issued an Advisory asking the students to cancel screening of the BBC documentary on p s s <i>such an unauthorized activity may disturb peace and harmony of the University Campus.</i>
24.01.2023	Screening of the documentary at JNU was interrupted.

25.01.2023	Jamia Milia Islamia refuses permission for screening of the BBC documentary by students. It further issues a notice that no meeting or gathering of students will be allowed in the university without prior permission of the authorities. There is also news about the detention of students and riot police at Jamia Milia Islamia.
26.01.2023	Hence, the present petition.

IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2023
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. N. RAM

S/o Late G. Narasimhan, Aged about 77
43-B, KASTURI RANGA ROAD,
CHENNAI, TAMIL NADU -600018

NRAM@THEHINDU.CO.IN ... P R

2. MAHUA MOITRA

D/o Dwipendra Lal Moitra, aged about 47 yrs.
BRITANNIA COURT
32B NEW ROAD, ALIPORE CALCUTTA,
WEST BENGAL-700027

MAHUA.MOITRA@ME.COM
+919007032246 ... P R

3. PRASHANT BHUSHAN

S/o Shanti Bhushan, aged about 66 years
6/6, JANGPURA B,
DELHI-110014

PRASHANTBHUSH@GMAIL.COM
+919811164068 ...P R

VERSUS

1. UNION OF INDIA

THROUGH ITS SECRETARY

MINISTRY OF INFORMATION & BROADCASTING
 DR. RAJENDRA PRASAD ROAD, SHASTRI BHAVAN,
 NEW DELHI- 110001

...R P

2. TWITTER COMMUNICATIONS INDIA PRIVATE LIMITED

THROUGH ITS DIRECTOR,
 203, DR. DADABHAI NAOROJI RD,
 BORA BAZAR PRECINCT,
 KALA GHODA, FORT,
 MUMBAI, MAHARASHTRA 400001

...R P

3. GOOGLE INDIA PVT. LTD.

THROUGH ITS COUNTRY HEAD & VP
 BLOCK 1, DIVYASREE OMEGA,
 SURVEY NO. 13, KONDAPUR VILLAGE,
 HYDERABAD, ANDHRA PRADESH, INDIA

... R P NO. 3

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FILED DUE TO VIOLATION OF PETITIONERS RIGHTS GUARANTEED UNDER ARTICLES 14, 19(1)(A), & 21 OF THE CONSTITUTION *INTER ALIA* SEEKING A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER, OR DIRECTION TO THE RESPONDENTS TO: RESTRAIN THEM FROM CURBING THE FREEDOM OF SPEECH AND EXPRESSION OF PETITIONERS TO RECEIVE AND DISSEMINATE

INFORMATION CONTAINED IN THE BBC DOCUMENTARY TITLED, 'INDIA: THE MODI QUESTION' AND TO RESTRAIN THEM FROM GIVING EFFECT TO ANY ORDERS CURTAILING THE FREEDOM OF SPEECH AND EXPRESSION OF PETITIONERS WITHOUT FIRST PUTTING THE ORDERS IN THE PUBLIC DOMAIN

TO,

HIS COMPANION JUDGES OF

PR R

HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED.

MOST RESPECTFULLY SHOWETH: -

1. The Petitioners have filed the present petition under Article 32 of the Constitution of India due to violation of their fundamental rights under Articles 14, 19(1)(a), & 21 of the Constitution of India *inter alia* seeking a writ of mandamus or any other appropriate writ, order, or direction to the respondents to:

restrain them from curbing the freedom of speech and expression of petitioners to receive and disseminate information contained in the BBC Documentary titled 'India: The Modi Question'

restrain them from giving effect to any orders curtailing the freedom of speech and expression of petitioners without first putting the orders in the public domain on a consolidated centralized database;

1A. DETAILS OF THE PETITIONERS:

Petitioner No. 1, Mr. N. Ram, is a journalist and former Editor-in-Chief, former Publisher, and former Chairman of The Hindu Group of Newspapers. He is presently a Director of The Hindu Group Publishing Private Limited and of Kasturi & Sons Ltd., the holding company for the Group. He has been the recipient of the Padma Bhushan (1990), the Asian Investigative Journalist of the Year (1990) Award from the Press Foundation of Asia, the JRD Tata Award for Business Ethics from XLRI, the Sri Lanka Rtn ri n s i est civilian honor for non-nationals, and the Raja Ram Mohan Roy Award (2018) from the Press Council of India for outstanding contribution to journalism, among others.

Petitioner No. 2, Ms. Mahua Moitra, is a Member of Parliament from the Krishnanagar constituency in West Bengal. She is an investment banker by profession, having been educated at Mount Holyoke College, USA. She was previously a member of the West Bengal Legislative Assembly having been elected in 2016 from the Karimpur assembly constituency. She currently serves on the parliamentary standing committee on IT, Telecom and Media.

Petitioner No. 3, Mr. Prashant Bhushan, is an advocate practicing e ore t e on e pre e o rt or ore t n e rs e is so a social activist involved in public interest work.

THE CASE IN BRIEF

2. That on 17.01.2023, BBC Two released the first in a two-part do ent r series tit ed *India: The Modi Question* i riti appraises the role of Prime Minister Narendra Modi, who was the then Chief Minister of Gujarat in 2002 when riots broke out in which

thousands of people lost their lives. The second part at that time was to be released on the 24th of March, 2023. The description of part one of the series on the website states

are dra od the eader o the or d ar e t de ocrac , a a ho ha ee e ected t ce a d a pr e ter a d is widely seen as the most powerful politician of his generation. Seen by the west as an important bulwark against Chinese domination of Asia, he has been courted as a key ally by both the US and the UK.

et are dra od pre er h pha ee do ed persistent a e at o a o t the att t de o h o er e t to ard d a Muslim population. This series investigates the truth behind the e a e at o a d exa e od ac tor to explore other e t o a o t h po t c he t co e to d a largest religious minority.

h ep ode trac are dra od r t tep to po t c , including and his association with the right-wing Hindu organisation Rashtriya Swayamsevak Sangh, his rise through the ranks of the Bharatiya Janata Party, and his appointment as chief minister of the state of Gujarat, where his response to a series of riots in 2002 remains a source of controversy.

A true copy of the BBC website describing part one of the documentary series *India: The Modi Question* dated NIL is annexed as **Annexure P-1** At Pages 38 to 40

A true typed copy of the complete transcription of Episode one of the documentary titled *India: The Modi Question* dated is annexed as **Annexure P-2** at Page 41 to 57.

3. That on 21.01.2023, the Senior Advisor, Ministry of Information and Broadcasting, Government of India, informed the public that on 20th of January, 2023, directions were issued by the Secretary, Ministry of

Information and Broadcasting, using emergency powers under the IT Rules to interdict content related to the documentary as under:

Ministry of Information & Broadcasting has issued directions for blocking multiple @YouTube videos of first episode of the documentary "The Road to Nowhere" which propagated hate propaganda against the Government of India over 50 tweets with links to these YT videos.

The directions to block content from @BBCWorld vicious propaganda were issued by Secretary, I&B, on Friday using the emergency powers under the IT Rules, 2021. Both @YouTube and @Twitter have complied with the directions. Governments in India.

A true copy of the screen shots from twitter handle of Senior Advisor in Ministry of Information and Broadcasting, Government of India dated 21.01.2023 are annexed as **Annexure P-3** at Page 58 to 61.

4. That in pursuance of aforementioned order/s, as per documents available in the public domain, a legal request was sent to Twitter on 20.01.2023, by the Ministry of Information and Broadcasting under Rule 16(3) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and Section 69(A) of the Information Technology Act, 2000, to block 50 tweets including tweet dated 19.01.2023 of the Petitioner No. 3, (Mr. Prashant Bhushan) that contained links to part one of the BBC documentary series. The Lumen database, which tracks takedown demands by governments worldwide, released the full list of tweets that the Ministry of Information and Broadcasting ordered blocked in India.

Subsequently, the link to the documentary from a tweet dated 22.01.2023 of Petitioner No. 2 (Ms. Mahua Moitra) was also removed.

A true copy of the Legal Request showing that Ministry of Information & Broadcasting directed Twitter to remove tweets of 50 people under Rule 16(3) of the IT Rules and Section 69(A) of the IT Act, 2000 dated 20.01.2023 is annexed herewith as **Annexure P-4** at Page 62 to 63.

A true copy of the screenshot of the tweet dated 22.01.2023 by Petitioner No. 2 from which the link to the documentary on the Modi election was disabled is annexed as **Annexure P-5** at Page 64.

A true copy of the screenshot of the tweet dated 19.01.2023 by Petitioner No. 3 which has been withheld by twitter in India, is annexed herewith as **Annexure P-6** at Pages 65.

5. On 24.01.2023, the screening of the BBC documentary was interrupted at Jawaharlal Nehru University, where the power supply was disconnected due to the student demonstration. The JNU administration issued an advisory stating that strict disciplinary action will be taken against the students if the screening is not canceled.

A true typed copy of the NDTV news report on the JNU screening dated 24.01.2023 titled 'Tensions rise on student demonstration in Delhi' is annexed as **Annexure P-7** at Page 66-67.

A true copy of the administration's order dated 23.01.2023 is annexed as **Annexure P-8** at Page 68.

6. Similarly, students at the Jamia Millia Islamia University were detained by the police and classes suspended over the plan to screen the BBC documentary at the mass communication department on 25.01.2023. A notice was issued by the University that no meeting or gathering of students will be allowed in the university without prior permission.

A true copy of the NDTV report dated 25.01.2023, on the interruption of screening of the documentary at Jamia Millia Islamia University titled 'Students Detained, Riot Police Takes Over Screening' is annexed as **Annexure P-9** at Page 69.

A true copy of the notice F.No. JMI/PO/ON/2023/PB from Jamia Millia Islamia University dated 24.01.2023 is annexed as **Annexure P-10** at Page 70.

7. That pertinently, in order to censor the contents of the documentary, procedure established under the Cinematograph Act has to be followed which is not the course adopted by the State. Therefore, if the documentary itself has not been censored according to prescribed procedure, any offline screening of the documentary for private viewing by any person including students of universities cannot be curtailed.
8. That detention of students & restraining them from assembling peacefully to watch the documentary violates their freedoms enshrined in Part III of the Constitution.

9. BBC has stood by its documentary, noting that it met the highest editorial standard. In a statement it said:

“The documentary has highlighted the tensions around the world. The documentary series examines the tensions between the majority and Muslim minority and explores the political and social issues that are drawn out of those tensions. This has been the source of considerable reporting and interest both in India and across the world in recent years.”

“The documentary is a rigorously researched according to highest editorial standards. A wide range of voices, witnesses and experts were approached, and we have featured a range of opinions – this includes responses from people in the BJP. We offered the Indian Government a right to reply to the matters raised in the series but declined to respond.”

BBC also noted that the Indian government declined to respond when it was given the opportunity to reply to the issues raised in the documentary.

A true copy of the news story in The Wire titled ‘BJP Responds to Question on Violence in Gujarat’ dated 20.01.2023 that carries excerpts from the BBC statement is annexed as **Annexure P-11** at Page 71-73).

10. The documentary highlights a previously unpublished report, obtained by the BBC from the British Foreign Office, which raises questions about the conditions during the riots in Gujarat where more than 2000 people, mostly Muslims, died in the outbreak of violence. The report claims that Mr. Modi was directly responsible for the violence. The Indian Express Magazine obtained a copy of the contemporaneous inquiry conducted by the government of the United Kingdom into the 2002 Gujarat

violence, which was cited in the documentary. The Caravan Article carries the full text of the report.

A true copy alongwith true typed copy of the Caravan Magazine Report dated 23.01.2023 titled *BBC Row: UK reports states VHP planned Gujarat violence in advance, Godhra a "pretext is needed* s **Annexure P-12** at Pages (74-83).

11. That Rule 16 of the Information Technology (Intermediary Guidelines and Digital Media Regulation) Act, 2021 is reproduced herein for reference purposes.

16. Blocking of information in case of emergency.— (1) Notwithstanding anything contained in rules 14 and 15, the Authorised Officer, in any case of emergency nature, for which no delay is acceptable, shall examine the relevant content and consider whether it is within the grounds referred to in sub-section (1) of section 69A of the Act and it is necessary or expedient and justifiable to block such information or part thereof and submit a specific recommendation in writing to the Secretary, Ministry of Information and Broadcasting.

(2) In case of emergency nature, the Secretary, Ministry of Information and Broadcasting may, if he is satisfied that it is necessary or expedient and justifiable for blocking for public access of any information or part thereof through any computer resource and after recording reasons in writing, as an interim measure issue such directions as he may consider necessary to such identified or identifiable persons, publishers or intermediary in control of such computer resource hosting such information or part thereof without giving him an opportunity of hearing.

(3) The Authorised Officer, at the earliest but not later than forty-eight hours of issue of direction under sub-rule (2), shall bring the request before the Committee for its consideration and Recommendation

(4) On receipt of recommendations of the Committee under sub-rule (3), the Secretary, Ministry of Information and

Broadcasting, shall pass the final order as regard to approval of such request and in case the request for blocking is not approved by the Secretary, Ministry of Information and Broadcasting in his final order, the interim direction issued under sub-rule (2) shall be revoked and the person, publisher or intermediary in control of such information shall be accordingly, directed to unblock the information for public access.

A true copy of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 issued vide Notification G.S.R. 139(E) dated 25.02.2021 by Ministry of Electronics and Information Technology is annexed herewith as **Annexure P-13 at Pages 84-99.**

12. That the impugned order dated 20.01.2023 and all subsequent and consequential proceedings arising therefrom are illegal as the contents of the documentary and the right of petitioners to view, critique, report on, and lawfully circulate the same is protected by Article 19(1)(a) of the Constitution of India as neither the contents of the documentary nor the tweets of the petitioners fall within any of the restrictions under Article 19(2) of the Constitution of India.
13. That within 48 hours of the emergency/interim orders being passed under Rule 16(2) by Secretary, I&B, the order is to be placed before an Interdepartmental Committee under Rule 16(3) on whose recommendation the Secretary, I&B is to pass the final order.
14. That to date, petitioner Nos. 1 & 3 have not been given any opportunity of being heard *qua* censoring of their tweets and freedom of speech and expression under Rule 16 of Rules, 2021 in violation of principles of natural justice.

15. That the order dated 20.01.2023 issued by the Secretary, Ministry of Information & Broadcasting, and subsequent and consequential proceedings under Rule 16 of Rules, 2021 censoring the documentary and tweets of the petitioners are not available in the public domain.
16. That censoring the freedom of speech and expression of the petitioners by the Executive through opaque orders and proceedings is manifestly arbitrary as it frustrates the fundamental right of petitioners to effectively seek judicial review of administrative actions under Article 226 and Article 32 of the constitution of India in violation of the Basic Structure of the Constitution of India.
17. That the *vires* of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have been challenged before various courts in different jurisdictions of Madras and Bombay. The Bombay High Court vide order dated 14.08.2021 in W.P. NO. 14172 OF 2021 AND PIL NO. 14204 OF 2021, reported as *Agij Promotion of Nineteenonea Media Pvt. Ltd v. Union of India, 2021 SCC OnLine Bom 2938*, passed an interim order that stayed the operation of Rules 9(1) and 9(3) of the Rules, 2021, on the grounds that they prima facie violated the right to free speech under the Indian Constitution, and was ultra vires the scope of its parent statute, the IT Act 2000.

Rule 9(1) of the IT Rules 2021 obligates publishers (as defined under the Rules) to send and store the content of this set of information in the form of a report and to preserve the content of this set of information and the restrictions entered in the Constitution, and therefore was not a valid basis for restricting, in any

manner, the freedom of speech in India, within which is implicit the freedom of the press.

Rule 9(3) of the IT Rules 2021 sets out a three-tier regulatory mechanism for publishers, involving separate levels of self-regulation and governmental oversight, which is intended to ensure observance and adherence to the Code of Ethics. The three tiers of this mechanism are listed below:

- “ e e - self-regulation by publishers;
- “ e e - self-regulation by the self-regulating bodies of publishers; and
- “ e e oversight mechanism by the Central Government
- “Go er e t er ht echa

The scope of Level III, i.e. the Government Oversight Mechanism, is detailed in Rule 13 of the IT Rules 2021, which reads as follows:

13. Oversight mechanism — (1) The Ministry shall co-ordinate and facilitate the adherence to the Code of Ethics by publishers and self regulating bodies, develop an Oversight Mechanism, and perform the following functions, namely:

- publish a charter for self regulating bodies, including Codes of Practices for such bodies;*
- establish an Inter-Departmental Committee for hearing grievances;*
- refer to the Inter-Departmental Committee grievances arising out of the decision of the self- regulating body under rule 12, or where no decision has been taken by the self-regulating body within the specified time period, or such other complaints or references relating to violation of Code of Ethics as it may consider necessary;*
- issue appropriate guidance and advisories to publishers;*
- issue orders and directions to the publishers for maintenance and adherence to the Code of Ethics.*

(2) The Ministry shall appoint an officer of the Ministry not below the rank of a Joint Secretary to the Government of India,

as the Authorised Officer, for the purposes of issuing directions under rules 15 or 16, as the case may be. [emphasis supplied]

It is hence clear that the powers of the Central Government, which are exercised in order to provide redress in an inter-Departmental Committee for hearing grievances, to appointing an officer of the I&B Ministry for the exercise of the powers under Rule 16, are a part of the Government Oversight Mechanism that has been stayed vide the interim order given in relation to Rule 9(3).

A true copy of order dated 14.08.2021 in *Agij Promotion of Nineteenonea Media Pvt. Ltd v. Union of India, 2021 SCC OnLine Bom 2938* is annexed herewith as **Annexure P-14 at Pages 100-112.**

18. Further, in an interim order dated September 16, 2021, the Madras High Court, while hearing a batch of writ petitioners in T.M. Krishna v. Union of India, (W.P.Nos.13055 and 12515 of 2021) that also challenged the constitutionality of the IT Rules 2021, specifically found as follows:

Paragraph 3 “ order taken here, the petitioners are wary of the oversight mechanism of the Central Government indicated as the final tier of the process of regulation. Prima facie, there is substance in the petitioners' grievance that an oversight mechanism to control the media by the government may rob the media of its independence and the fourth pillar, so to say, of democracy may not at all be there.

Paragraph 4: Nothing more need be said on such aspect of the matter since the High Court of Judicature at Bombay, by an order dated August 14, 2021, has stayed the operation of sub-rules (1) and (3) of Rule 9 of the said Rules of 2021.

Paragraph 5: *Indeed, there may have been no need to pass an independent order. However, it is submitted on behalf of the petitioners that notwithstanding the order passed by the High Court of Judicature at Bombay, which ought to have a pan-India effect, notices have been issued to the petitioners subsequently requiring the petitioners to adhere to, inter alia, the said Rules and Rule 9 thereof. **emphasis supplied***

A true copy of order dated 1 _____ p ssed t e o n e i
Court of Madras in W.P. No.s 13055 and 12515 of 2021 is annexed
herewith as **Annexure P-15 at Pages 113-119.**

19. The aforesaid Madras High Court order specifically affirms that the IT Rules 2021 are prima facie violative of the Constitution of India, and also noted that the Bombay High Court interim order has a pan-India effect, which ought to be followed by the Central Government. In light of this, the actions of the I&B Ministry, amounting to an exercise of powers under a mechanism that has been stayed across the country is illegal.
20. That on 10.03.2021 in WP(C) No.6272/2021(H), the Kerala High Court granted protection from coercive action under Part III of the IT Rules, 2021 to Livelaw Media Private Limited. Pertinently, the *vires* of the IT Rules, 2021, have been challenged in said petition.

A copy of order dated 10.03.2021 in WP(C) No.6272/2021(H) passed
t e o n e i o r t o e r i s n n e e d e r e i t
s **Annexure P-16 at Pages 120-121.**

21. That pertinently the order dated 14.08.2021 in *Agij Promotion of Nineteenonea Media Pvt. Ltd v. Union of India, 2021 SCC OnLine*

Bom 2938 has been appealed against by Union of India *vide* SLP bearing Diary No. 20135/2021 and no stay has been granted therein.

The Union of India has filed 6 Transfer Petitions, seeking transfer of Writ Petitions in High Courts, challenging the Intermediaries Regulations. Notices were issued on these Transfer Petitions on 9.02.2021. The Union of India has applied for transfer of all the aforementioned matters in Bombay and Kerala High Courts to the Hon'ble Supreme Court. It is submitted that further proceedings pending before the High Courts in the respective cases. Since the Union has questioned the right of High Courts to hear these matters, and obtained notice on all transfer petitions, the petitioners are aggrieved in this Hon'ble Court in the present writ petition seeking a stay on any such order that may have been issued by the Ministry of Information and Broadcasting under the impugned IT Rules, 2021 on which stay order dated 14.08.2021 issued by the Bombay High Court is operative and which are the subject matter of the pending transfer petitions before this Hon'ble Court.

A true copy of a note filed in SLP (Civil) bearing Diary No. 20135/2021 showing that a number of petitions are pending consideration before this court *qua* regulation of online platforms dated NIL is annexed herewith as **Annexure P-17** at **Pages 122-128**.

A true copy of order dated 09.02.2021 in Transfer petitions (Civil) No.s 100- passed by the Hon'ble Supreme Court is annexed herewith as **Annexure P-18** at **Pages 129-130**.

A true copy of the order dated _____ passed by the Hon'ble Judge of the Court in Writ Petition (Civil) No. 799 of 2020 is annexed herewith as **Annexure P-19** at **Pages 131-140**.

22. In such circumstances petitioners belonging to different states have been constrained to approach this Hon'ble Court since no other efficacious remedy available.
23. That no other petition has been filed by petitioner herein before this or any other court seeking the same reliefs.

GROUND

In light of the facts and circumstances aforementioned the petitioners are preferring the present petition on the following grounds without prejudice to each other:

CONTENTS OF THE DOCUMENTARY AND RIGHT TO RECEIVE AND DISSEMINATE INFORMATION THEREFROM IS PROTECTED UNDER ARTICLE 19(1)(a) OF THE CONSTITUTION

- A. **BECAUSE**, the contents of the BBC Documentary series titled, *India: The Modi Question* are protected under Article 19(1)(a) of the Constitution of India. The contents of the documentary series do not fall under any of the restrictions specified in Article 19(2). All citizens including the press have the fundamental right to view, form an informed opinion, critique, report on, & lawfully circulate the contents of the documentary as right to

freedom of speech and expression incorporates the right to receive and disseminate information as has been held by this

one report in *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995)*

2 SCC 161 as under:

at page 213

43. We may now summarise the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country, as well as abroad, as is possible to reach. (emphasis supplied)

B. **BECAUSE**, those who hold important positions must have shoulders which are broad enough to accept with grace a critique of themselves. Critical appraisal is the cornerstone of democracy and the power of the film as a medium of expression lies in its ability to contribute to that appraisal. e t r e i Chand Bhuj

Gaya is depicted as a Hindu boy and a Muslim girl, whose friendship and lives were torn under the Gujarat riots of 2002 formed the subject matter of ***F A Picture International v. CBFC (2004) SCC OnLine Bom 961*** edited by High Court speaking through then **Justice Dr. D.Y. Chandrachud**, reversed the decision of the CBFC and FCAT observing:

This extract is taken from *F.A. Picture International v. Central Board of Film Certification, Mumbai, 2004 SCC OnLine Bom 961 : (2005) 2 Mah LJ 869 : (2005) 1 Bom CR 5 : AIR 2005 Bom 145*

at page 872

6-A. *Article 19(1)(a) of the Constitution guarantees to every citizen the fundamental right to the freedom of speech and expression. Films have always been regarded as constituting a powerful mode of expression. In a democratic society every citizen has a right to speak as indeed, the right to know. Knowledge of the affairs of governance and the invocation of peaceful forms of dissent is a necessary precondition to the existence of a stable society formed of informed citizens. Nothing can be as destructive of the social fabric in a democratic society than the attempt of those who govern to prevent access to information to those whose security depends upon the preservation of order. An environment in which human rights are respected is nurtured by a vibrant flow of information and avenues for a critical assessment of governance.*

7. *Artists, writers, playwrights and film makers are the eyes and the ears of a free society. They are the veritable lungs of a free society because the power of their medium imparts a breath of fresh air into the drudgery of daily*

existence. Their right to communicate ideas in a medium of their choosing is as fundamental as the right of any other citizen to speak. Our constitutional democracy guarantees the right of free speech and that right is not conditional upon the expression of views which may be palatable to mainstream thought. Dissent is the quintessence of democracy. Hence, those who express views which are critical of prevailing social reality have a valued position in the constitutional order. History tells us that dissent in all walks of life contributes to the evolution of society. Those who question unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the State to clamp down on the free expression of opinion must hence be frowned upon.

12. Both the certifying authority as well as the Tribunal have, in our view, misconceived the scope and function of their powers and jurisdiction. Films which deal with controversial issues necessarily have to portray what is controversial. A film which is set in the backdrop of communal violence cannot be expected to eschew a portrayal of violence. The producer of a film on the Second World War cannot be true to his conscience if the horrors of war are not brought home by the film Equally, a writer, producer and director of a film have the discretion to depict the horrors of social reality. In a film based on a theme of communal violence it would be most inappropriate to expect that the film should eschew a reference to what has taken place.

13. Both the certifying authority and the Tribunal were of the view that certain characters and incidents are identifiable with actual personalities and individuals. This again is a most impermissible ground to reject the certification of a film. The protection of the Constitution does not extend only to fictional depictions of artistic themes. Artists, film makers and playwrights are affirmatively entitled to allude to incidents which have taken place and to present a version of those incidents which according to them represents a balanced portrayal

of social reality. To say that the violence which took place in the State of Gujarat is a "pretext" for preventing the exhibition of the film. No democracy can countenance a lid of suppression on events in society. The violence which took place in the State of Gujarat has been the subject matter of extensive debate in the press and the media and it is impermissible to conjecture that a film dealing with the issue would aggravate the situation. On the contrary, stability in society can only be promoted by introspection into social reality, however grim it be. Ours, we believe, is a mature democracy. The view of the Censor does not credit to the maturity of a democratic society by making an assumption that people would be led to disharmony by a free and open display of a cinematographic theme. The certifying authority and the Tribunal were palpably in error in rejecting the film on the ground that it had characters which bear a resemblance to real life personalities. The constitutional protection under Article 19(1)(a) that a film maker enjoys is not conditioned on the premise that he must depict something which is not true to life. The choice is entirely his. Those who hold important positions must have shoulders which are broad enough to accept with grace a critique of themselves. Critical appraisal is the cornerstone of democracy and the power of the film as a medium of expression lies in its ability to contribute to that appraisal.

C. **BECAUSE**, the documentary is a journalistic production by a media house regarding a part of Indian history ranging back over 20 years. It is the product of journalistic endeavor and contains the accounts, interviews, and statements of various citizens of India, in addition to official documents and facts that are already part of the public domain. While the content of the Documentary may be seen as critical of the past conduct of various persons who are currently holding office within the Central Government, the contents thereof are protected under Article 19(1)(a). By

issuing impugned Blocking Orders and seeking to prevent access to and discussion about the Impugned Documentary by the Indian public, the Respondents are violating:

- a. the freedom of the press, represented by the journalists who produced and are featured in the Impugned Documentary;
- b. the exercise of the right to free speech by various citizens of India who have appeared in the Impugned Documentary and wished to disseminate their opinions on the events pertaining to a specific time in Indian history; and
- c. the exercise of the right to free speech, and the right to information, by various Indian residents, including the Petitioners, who wish to view the Impugned Documentary and initiate public debate and discussions across social media platforms in this regard.

Pertinently, in the case of another documentary on 2002 Gujarat riots in **Ramesh Pimple v. CBFC 2004 SCC OnLine Bom 178** the CBFC and FCAT had refused to grant certification for the exhibition of the document *Aakrosh* *edited to tell the portrayed one sided version of particular community and if it shown to masses, not only a selective crowd but anyone and everyone, is bound to provoke communal feeling and desire to revenge* setting aside the order of the CBFC and FCAT, the Division Bench of the Bombay High Court observed as under:

This extract is taken from Ramesh Pimple v. Central Board of Film Certification, 2004 SCC OnLine Bom 178 : (2004) 3 Mah LJ 746 : (2004) 5 Bom CR 214 : (2004) 106 (4) Bom LR 108

21. he pet t o er doc e tar “ a ro h r o t the agony and anguish of victims of communal riots which took place in Gujarat in early part of 2002. Gujarat burned and was convulsed with barbarous violence for over 40 days from February 27, 2002 when the Sabarmati Express, running from Faizabad to Ahmedabad, was attacked and torched at Godhra killing 58 passengers, may of them women and children. Even as the Godhra tragedy was roundly condemned, the anticipated backlash took on the dimensions of a holocaust primarily aimed at the Muslim community. This soon engulfed central, north and northeastern Gujarat, including Ahmedabad, Vadodara and part of the eastern tribal belt. Nearly 800 persons were killed according to the official count, unofficial estimates are far higher. It was a slaughter of the innocents. The brutalities were unprecedented, especially against women. The tragic events in Gujarat, starting with the Godhra incident and continuing with the violence that rocked the State for over two months, have greatly saddened the nation. It is no doubt true that it is essential to heal the wounds and to look to a future of peace and harmony. But we are unable to share the views of the tribunal that the riots are now history, and therefore, be forgotten by public to avoid repetition of such cruel acts. It is when the hour of conflict is over it may be necessary to understand and analyze the reason for strife. We should not forget that the present state of things is the consequence of the past; and it is natural to inquire as to the sources of the good we enjoy or for the evils we suffer.
25. We have viewed the film from point of view of an average man and we feel that the tribunal was not right in observing that the movie would incite people and would lead to further violence. It is not correct to say that average people will not learn their mistakes of the past and perhaps will not commit same mistake again. The documentary creates an impression of the message of peace and co-existence and compassion for the people who suffered in the riots. Therefore in our opinion the decision of the tribunal as well as the decisions of the Examining Committee and Revising Committee cannot be sustained.

D. **BECAUSE**, freedom of speech and expression cannot be curtailed on the basis of remote, conjectural, or far fetched harm which does not have any proximate and direct nexus with the expression considered. It is on the report in *S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574* as under:

45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated by the expression a e t o a “ par a p o d e r e

It was further held that restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency

E. **BECAUSE**, in so far as freedom of speech and expression of students across universities is sought to be curbed on the ground of apprehension of disorder situation it is pertinent that in the case of **Viacom 18 Media Private Ltd. v Union of India, (2018) 1 SCC 716**, the CBFC had granted certificate to the film *P d t o e e r t e s t t e o e r n e n t s o r t* Rajasthan thereafter issued notifications banning the screening of the film on the ground that it is *necessary to do so in the public interest and to maintain law & order* in n interi

dent the one pre-emptive order set aside said notifications on the ground that to protect law & order was the responsibility of the state. Therefore even where the state comes to an opinion that the exhibition of a film is likely to lead to a law & order situation, it is the primary responsibility of the State to ensure that law & order is maintained and that by itself is not an *ipso facto* reason to deny an individual their right to Freedom of Expression. Relevant portions are as under:

This extract is taken from *Viacom 18 Media (P) Ltd. v. Union of India*, (2018) 1 SCC 761 : 2018 SCC OnLine SC 21 at page 769

19. In view of the aforesaid, we direct that there shall be stay of operation of the notifications and orders issued by the respondent States and we also restrain the other States to issue notifications/orders in any manner prohibiting the exhibition and we are sure, the State authorities concerned shall keep para 27 of the judgment in Prakash Jha Productions [Prakash Jha Productions v. Union of India, (2011) 8 SCC 372] in mind which clearly lays down that it is the paramount obligation of the State to maintain law and order. It should always be remembered that if intellectual prowess and natural or cultivated power of creation is interfered with, without the permissible facet of law, the concept of creativity paves the path of extinction; and when creativity dies, values of civilisation corrode.

F. BECAUSE, the one order set aside the effect of the expression must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. Even if the contents of the documentary and its viewership discussion thereupon is not to the powers that be, it is no ground to curtail the freedom of speech and expression of the petitioners. In the case of **Ramesh**

Chhotalal Dalal v. Union of India (1988) 1 SCC 668, challenges the depiction of violence, killing and looting that took place during the partition of the country is on record

at page 677

21. What is necessary sometimes is to penetrate behind the scenes and analyse the causes of such conflicts. The attempt of the author in this film is to draw a lesson from our country's past history, expose the motives of persons who operate behind the scenes to generate and foment conflicts and to emphasise the desire of persons to live in amity and the need for them to rise above religious barriers and treat one another with kindness, sympathy and affection. It is possible only for a motion picture to convey such a message in depth and if it is able to do this, it will be an achievement of great social value. In the present case the finding of the learned Judges of Bombay High Court is that the picture viewed in its entirety, is capable of creating a lasting impression of this message of peace and co-existence and that people are not likely to be obsessed, overwhelmed or carried away by the scenes of violence or fanaticism shown in the film. We see no reason to differ from this conclusion.

at page 675

Vivian Bose, J. as he then was in the Nagpur High Court in the case of Bhagwati Charan Shukla v. Provincial Government [AIR 1947 Nag 1 : 226 1C 590 : 47 Cri LJ 994 : ILR 1946 Nag 865] has indicated the yardstick by which this question has to be judged. There at page 18 of the report the court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. This in our opinion, is the correct approach in judging the effect of exhibition of

a film or of reading a book. It is the standard of ordinary reasonable man or as they say in English law “the a o the top o a apha o

G. **BECAUSE**, it is the fundamental right of the petitioners and media to discuss the contents of the documentary, what it says, and the viewpoints of all those who have been interviewed in it with other citizens of the country. In *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, while holding section 66A of the Information Technology Act, 2000, as unconstitutional, the on e pre e o rt di erenti ted et een dis ssion advocacy, and incitement while holding that only the latter can be a ground to curtail the fundamental right of freedom of speech and expression in the following terms:

13. This leads us to a discussion of what is the content of the expre o “ reedo o pee ch a d expre o There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in t at th ta e that a a a e ade curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc

Further, the actions of Respondent No.1 fail to meet the Principles of proportionality laid down in *Shreya Singhal* (Supra).

CRITICISM OF GOVERNMENT DOES NOT TANTAMOUNT TO VIOLATION OF SECURITY AND INTEGRITY OF INDIA

H. **BECAUSE** this is on the order in *Kedar Nath Singh v. State of Bihar AIR 1962 SC 955*, Shreya Singhal (supra) and others have categorically laid down that criticism of the Government does not tantamount to violating the sovereignty and integrity of India.

In fact, the Supreme Court in *Govt. of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720* has opined that

“ It is to be noted that the court should not take an activist approach in upholding the civil liberties and Rights of the citizens? In our opinion, this is because freedom and liberty is essential for progress, both economic and social. Without freedom to speak, freedom to write, freedom to think, freedom to experiment, freedom to criticise (including criticism of the Government) and freedom to dissent there can be no pro re

POST 14.08.2021 EXERCISE OF POWER UNDER RULE 16 OF IT RULES, 2021 IS ILLEGAL AS THE PROVISION HAS BEEN STAYED BY THE BOMBAY HIGH COURT IN AGIJ PROMOTION OF NINETEENONEA MEDIA PVT. LTD V. UNION OF INDIA, 2021 SCC ONLINE BOM 2938

I. **BECAUSE**, the *vires* of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have been challenged before various High Courts including the Hon'ble High Courts of Madhya Pradesh and Bombay. The Bombay High Court vide order dated 14.08.2021 in *Agij Promotion of*

Nineteenonea Media Pvt. Ltd v. Union of India, 2021 SCC OnLine Bom 2938 passed an interim order that stayed the operation of Rules 9(1) and 9(3) of the Rules, 2021, on the grounds that they prima facie violated the right to free speech under the Indian Constitution, and was ultra vires the scope of its parent statute, the IT Act 2000.

Rule 9(1) of the IT Rules 2021 obligates publishers (as defined under the Rules) to observe and adhere to the code of ethics set out in the IT Rules. The Bombay High Court found that the prescribed code of ethics went beyond the restrictions enumerated in Article 19(2) of the Constitution, and therefore was not a valid basis for restricting, in any manner, the freedom of speech in India, within which is implicit the freedom of the press.

Rule 9(3) of the IT Rules 2021 sets out a three-tier regulatory mechanism for publishers, involving separate levels of self-regulation and governmental oversight, which is intended to ensure compliance and adherence to the code of ethics. The three-tiers of this mechanism are listed below:

- “ *Level I - self-regulation by publishers;*
- “ *Level II - self-regulation by the self-regulating bodies of publishers; and*
- “ *Level III - oversight mechanism by the Central Government* “*Government Oversight Mechanism*

The scope of Level III, i.e. the Government Oversight Mechanism, is detailed in Rule 13 of the IT Rules 2021, which reads as follows:

13. Oversight mechanism — (1) The Ministry shall co-ordinate and facilitate the adherence to the Code of Ethics by publishers and self regulating bodies, develop an Oversight Mechanism, and perform the following functions, namely:

publish a charter for self regulating bodies, including Codes of Practices for such bodies;

establish an Inter-Departmental Committee for hearing grievances;

refer to the Inter-Departmental Committee grievances arising out of the decision of the self-regulating body under rule 12, or where no decision has been taken by the self-regulating body within the specified time period, or such other complaints or references relating to violation of Code of Ethics as it may consider necessary;

issue appropriate guidance and advisories to publishers;

issue orders and directions to the publishers for maintenance and adherence to the Code of Ethics.

(2) The Ministry shall appoint an officer of the Ministry not below the rank of a Joint Secretary to the Government of India, as the Authorised Officer, for the purposes of issuing directions under rules 15 or 16, as the case may be. [emphasis supplied]

It is hence clear that the powers of the Central Government, in relation to publishing codes of Practice and establishing an Inter-Departmental Committee for hearing grievances, to appointing an officer of the I&B Ministry for the exercise of the powers under Rule 16, are a part of the Government Oversight Mechanism that has been stayed vide the interim order given in relation to Rule 9(3).

Further, in an interim order dated September 16, 2021, the Madras High Court, while hearing a batch of writ petitioners in T.M. Krishna v. Union of India, (W.P.Nos.13055 and 12515 of 2021) that also challenged the constitutionality of the IT Rules 2021, specifically found as follows:

Paragraph 3 “ *or der ta da e rea o* , the petitioners are wary of the oversight mechanism of the Central Government indicated as the final tier of the process of regulation. Prima facie, there is substance in the petitioners' grievance that an oversight mechanism to control the media by the government may rob the media of its independence and the fourth pillar, so to say, of democracy may not at all be there.

Paragraph 4: Nothing more need be said on such aspect of the matter since the High Court of Judicature at Bombay, by an order dated August 14, 2021, has stayed the operation of sub-rules (1) and (3) of Rule 9 of the said Rules of 2021.

Paragraph 5: *Indeed, there may have been no need to pass an independent order. However, it is submitted on behalf of the petitioners that notwithstanding the order passed by the High Court of Judicature at Bombay, which ought to have a pan-India effect, notices have been issued to the petitioners subsequently requiring the petitioners to adhere to, inter alia, the said Rules and Rule 9 thereof. **[emphasis supplied]***

The aforesaid Madras High Court order specifically affirms that the IT Rules 2021 are prima facie violative of the Constitution of India, and also noted that the Bombay High Court interim order has a pan-India effect, which ought to be followed by the Central Government. In light of this, the actions of the I&B Ministry, amounting to an exercise of powers under a mechanism that has been stayed across the country is illegal.

VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

J. BECAUSE, within 48 hours of the emergency/interim orders being passed under Rule 16(2) of IT Rules, 2021, by Secretary,

I&B, the order is to be placed before an Interdepartmental Committee under Rule 16(3) on whose recommendation the Secretary, I&B is to pass the final order. That the interim order was passed on 20.01.2023 but to date, petitioner Nos. 1 & 3 have not been given any opportunity of being heard *qua* censoring of their tweets and freedom of speech and expression in violation of settled principles of natural justice.

MANIFEST ARBITRARINESS IN STATE ACTION

K. BECAUSE, the order dated 20.01.2023 issued by the Secretary, Ministry of Information & Broadcasting, and subsequent and consequential proceedings under Rule 16 of Rules, 2021 censoring the documentary and tweets of the petitioners are not available in the public domain. Censoring the freedom of speech and expression of the petitioners by the Executive through opaque orders and proceedings is manifestly arbitrary as it frustrates the fundamental right of petitioners to effectively seek judicial review of administrative actions under Article 226 and Article 32 of the constitution of India in violation of the Basic Structure of the Constitution of India. In *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 : 2020 SCC OnLine SC 25 this court directed as under:

104. It must be noted that although the Suspension Rules do not provide for publication or notification of the orders, a settled principle of law, and of natural justice, is that an order, particularly one that affects lives, liberty and property of people, must be made available. Any law which demands compliance of the people requires to be notified directly and reliably. This is the case regardless of whether the parent statute or rule prescribes the same or not. We are therefore required to read in the requirement of ensuring that all the orders passed under

the Suspension Rules are made freely available, through some suitable mechanism. (See B.K. Srinivasan v. State of Karnataka [B.K. Srinivasan v. State of Karnataka, (1987) 1 SCC 658] .)

105. The above requirement would further the rights of an affected party to challenge the orders, if aggrieved. Judicial review of the orders issued under the Suspension Rules is always available, although no appellate mechanism has been provided, and the same cannot be taken away or made ineffective. An aggrieved person has the constitutional right to challenge the orders made under the Suspension Rules, before the High Court under Article 226 of the Constitution or other appropriate forum.

The power of the executive under Section 69 A to lay down directions or orders is limited to *sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above*

As there is no Order in the public domain, the reason for restrictions as defined under Section 69A(1) cannot be ascertained. In accordance with Section 69(A) the Order restricting freedom of speech and expression has to be in writing and must record reasons for such an order. In the present case, neither the order nor the reasons are in the public domain.

PRAYER

In these circumstances, it is therefore most respectfully prayed that your Lordships may graciously be pleased to:

- I. Issue a writ of Mandamus or any other appropriate writ, order, or direction restraining the Respondents from curbing petitioners right to receive and disseminate information contained in the *document titled India: The Modi Question* and for and quash all orders directly or indirectly censoring the same, including but not limited to order dated 20.01.2023 passed by Respondent No. 1 and all subsequent and consequential proceedings arising therefrom;
- II. Issue a writ of Mandamus or any other appropriate writ, order, or direction to the respondents restraining them from giving effect to orders curtailing freedom of speech and expression without first putting them in the public domain on a centralized database;
- III. Issue a writ of Mandamus or any other appropriate writ, order, or direction to the respondents to restore the tweets dated 19.01.2023 of Petitioner No. 3 and 22.01.2023 of Petitioner No. 2; and
- IV. Pass such other orders or directions as it is deemed fit and proper in the facts and circumstances of the present petition.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS
IS DUTY BOUND SHALL EVER PRAY

NEW DELHI

26.01.2023

DRAWN BY:

RAHUL GUPTA, SUROOR MANDAR,

R

R

(ADVOCATES)

FILED BY:

PRATEEK K. CHADHA
Advocate for the Petitioners
AOR Code: 2651
D-416, LGF, Defence Colony
New Delhi – 24
prateekchadha@gmail.com
Mob: +91-9871588144