

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(SPECIAL ORIGINAL JURISDICTION)

W.P.No. 20774 of 2018

Mr. Antony Clement Rubin,

...Petitioner
-Versus-

1. **The Union of India,**

Rep. by Home Secretary,
Ministry of Home affairs,
North Block,
New Delhi- 110001.

2. **Ministry of Communications,**

Rep. by its Secretary,
Department of Telecommunications,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi – 110001.

3. **Ministry of Electronics and Information Technology,**

Rep. by its Secretary,
Electronics Niketan, 6, CGO Complex, Lodhi Road,
New Delhi – 110003.

4. **Ministry of Law and Justice,**

Rep. by its Secretary,
4th Floor, A-Wing, ShastriBhawan,
New Delhi – 110 001.

5. **The Chairman,**

Telecom Regulatory Authority of India (TRAI),
MahanagarDoorsancharBhawan,
Jawaharlal Nehru Marg,
New Delhi – 110 002.

6. **State of Tamil Nadu,**

Rep. by its Chief Secretary,
Fort St. George,
Chennai – 600 009.

7. **State of Tamil Nadu,**

Rep. by its Secretary,
Department of Information Technology,
Fort St. George,
Chennai – 600 009.

8. **The Commissioner of Police,**

No. 132, EVK Sampath Road,
Vepery, Periyamet,
Chennai – 600007.

...Respondents

AFFIDAVIT OF ANTONY CLEMENT RUBIN

I, Antony Clement Rubin, S/o. Mr.R.B.Rubin, aged about ____ years, residing at Chennai – 600012, do hereby solemnly affirm and sincerely state as follows:

1. I submit that I am the petitioner herein and as such I am well acquainted with the facts of the case.
2. I submit that I am filing this present Writ Petition in public interest under Article 226 of the Indian Constitution seeking, inter alia, the immediate intervention of this Hon'ble Court to address the undue hardship endured by the general public, particularly the younger generation girls and boys, owing to the rising instances of humiliation, disgrace and defamation caused to them through cyber-bullying and other intolerable activities on social media. I am filing this Writ Petition praying this Hon'ble Court to issue a Writ of Mandamus or any other appropriate Writ or direction to the Respondents to mandate linking of Aadhaar for the purpose of authentication while obtaining any e-mail or user account (Social Media Accounts - Facebook, Instagram, YouTube and Twitter or Utility Accounts - Paytm, Uber, Ola, Gmail, Yahoo and Hotmail).
3. I submit that I am a social activist and an Animal Welfare Officer. I am also an Ex-member of the Performing animals Sub-committee in the Animal Welfare Board of India. I am not an exception to the menace of cyber-bullying caused by unknown users in the social media platform.
4. I submit that the Respondents herein are the Union of India, along with the nodal Ministries of Communications (Department of Telecommunications), Electronics & Information Technology, Law & Justice and Telecom Regulatory Authority of India (TRAI), together with the State Government of Tamil Nadu through the State Department of Information Technology and the Commissioner of Police, who are commonly tasked with the operation and implementation of steps for the guarantee of public wellbeing.
5. I submit that the present petition is being filed concerning the alarming rate of mishaps due to the menace caused in social media, inter alia, on the younger generation. Making defamatory and character assassinating posts including posting rumors, threats and sexual remarks, comments, memes and caricatures in social media platform greatly contributed to the increasing rate of suicides among the younger generation. The instances of chronic hardship endured by various persons owing to such indignity, disparagement and denigration caused have multiplied by leaps and bounds over the years. The balance between right to life and

freedom of speech and expression is completely lacking in social media environment as the originators of the abusive and defamatory posts are always hidden and mostly unknown in almost all the issues that come up from any social media platform.

6. I submit that the recent unforgettable misery which took the lives of so many young children was a game circulated through social media namely the 'blue whale' challenge. It was a time when the administrators of the game as well as the targets/victims of the game were very difficult to find and locate, for the only reason that there is no record of the true identity of the users of social media accounts. It is notable that an end number of fake accounts could be created and its actual impact on the society is always unnoticed.
7. I submit that it is hugely noteworthy that the handling of social media is far more difficult than actually handling traditional media. While the first and foremost difficulty is applicability of jurisdiction on one hand, the second major predicament is the identification as to who is the contemnor behind any post over social media as there is no authentication as to such identity and the companies possessing the same barely bother to disclose them when sought for by our Cyber Department officials.
8. I submit that as far as the culpability is concerned, social media is more vulnerable as the contents are not regularized and unchecked before being published online. This increases the risk of incorrect reporting and in turn resulting in erroneous opinions based upon misleading facts. While the contents of newspapers and electronic media are reasonably controllable, this is not the case when the turn of social media comes. No regulations are in force to censure, pre-censure the contents. Social media has such far-fetched boundaries that even the authenticity of an original individual who publishes such contents online is not known in most cases, as instances of impersonation equivalently rank high. The ability to publish is therefore readily available to people who do not have a professional background in respect of the matters about which they are communicating and whose thoughts and opinions are not fact-checked by anyone. It is most humbly submitted, that this situation, is nothing short of a ticking time bomb.
9. I submit that according to a report in the Next Web, India claims the first position with 241 million Facebook users, ahead of United States with 240 million Facebook users as on July 2017. Facebook is the most prominent social network universally, with a global usage dispersion of

22.9 percent. In 2018, the Twitter's micro blogging site is anticipated to reach 30.4 million monthly active users in India, up from 26.7 million in 2017. Meanwhile, YouTube is seeing a colossal surge in India with 180 million monthly active users on mobile devices alone as on March 2017. The video sharing website also has 14 Indian autonomous content creators on its platform with one million subscribers each. Also, Paytm which initially started by offering mobile recharge and utility bill payments, currently operates as a full marketplace for consumers via its mobile apps, having nearly 230 million users as on August 2017.

10. I submit that on 07.01.2018, a Facebook page 'Redefining Animal Welfare -RAW' has posted derogatory remarks on those Animal Welfare officers who were appointed on 05.01.2018 by the Animal Welfare Board of India (AWBI) to observe Jallikattu event across Tamil Nadu. The post also maligned the name of Ms. Maneka Gandhi, Hon'ble Central Minister for Women and Children, Government of India. One Facebook user has commented on the post to share photos of the Animal Welfare Officers and added that he would make special arrangements that the deputed officers would never forget. Subsequently, I lodged a Complaint with the Commissioner of Police, Chennai on 08.01.2018 to probe into the matter and take action on those people who posted the same on the page. The same Facebook page, again on 18.01.2018 posted derogatory and seriously defaming remark on Ms. Maneka Gandhi, Hon'ble Central Minister and the Animal Welfare Officers. A Complaint was again filed on 18.01.2018 to the Commissioner of Police, Chennai following the Complaint filed on 08.01.2018 to take action on those people behind the Facebook page.
11. As there was enormous delay on the part of the CCB to file an FIR in the above complaint, I filed a case in Crl.O.P. bearing No. 2322 of 2018 before the Hon'ble High Court of Madras praying for a direction to the CCB to probe into the issue without any further delay and to register the FIR on the defamers based on the Complaints lodged by me dated 08.01.2018 and 18.01.2018. I humbly submit that the Hon'ble High Court vide an Order dated 05.02.2018 allowed the same by directing the CCB to probe into the matter and register the FIR. Thereupon, the CCB issued a closure report on 19.03.2018 by stating that no cognizable offence was made out.
12. I submit that more than 10,000 requests are made by the cyber crime wing of the Chennai police to social media firms such as Twitter and Facebook in the past two years, asking them to delete objectionable

posts or seeking details of those behind such posts. However, there seemed to be no response from the social media firms. On an average, atleast 20 requests are made to the social media firms every day based on complaints made at the Chennai city commissioner's office seeking action over objectionable posts. I submit that such social media organizations reply only to 3 to 5 requests, ignoring the others as irrelevant. Later, all these complaints are treated as local petitions and closed subsequently, which shows the inefficiency of our cyber officials in getting the information and the non-cooperation of the social media firms in replying to the requests.

13. I submit that one of the social media firms namely Facebook, very recently tested its 'name on your Aadhar card' prompt to check fake accounts. It was clarified by Facebook that it is only an attempt to encourage new users to use their real name as mentioned in their Aadhar card to make it familiar to their friends and family and that it is a step ahead to check the spread of fake accounts in social media. However, Facebook has stated that this prompt test is now finished and that they don't have any plan to roll this test further.
14. I submit that the virulent and large scale deterioration of morality and dignity that the cyber-bullying and other abusive posts, comments and memes bring with them is profoundly recognized by everyone. Further, many women are reluctant to join social media to avoid being defamed by anonymous users. In such a case, I pray to raise a substantial question as to who would incur responsibility with regard to the same. While the law has provided the victims, the remedy to claim for damages caused by defamers, it has always been very difficult to identify the true persons behind the curtain of social media, which questions the enforceability and the extensive usage of the remedy.
15. I submit that I have not filed this petition with personal interest, or private/oblique motive. I do not have beneficial interest in any manner from the relief sought in the present petition save as a member of general public. I am filing this present petition with the public interest to not only save the lives of victims but also to capture such impersonated users, which ultimately would result in a menace-free social media environment.
16. I submit that representations were made to the Respondents herein to take due action in this regard. However, no action has been taken so far nor did I receive any reply, therefore this Petitioner has no other alternative remedy but to approach this Hon'ble Court's inherent power

based on the following grounds mentioned below under provisions of article 226 of the Constitution of India as a Public-Spirited citizen only based on the concern of billions of E-Citizens of India will be get victimized and chances of getting defamed and lose their dignity which is being against the preamble of our Constitution of India.

- (i) I submit that this PIL is filed only for the welfare of the lakhs of abovementioned community people, who are comprised as part and parcel of the General Public.
- (ii) I submit that I have not filed any PIL earlier for some relief. I submit that the Petitioner will pay the cost if any, if the PIL is found to be intended for personal gain or oblique motive.
- (iii) I submit that I filed this Petition with my own funds and not through any other source. Moreover I'm a tax Payer and I've enclosed my PAN card in the typed set of documents accompanied with my affidavit bearing Pan No. **AGDPR7801D**.
- (iv) I submit that no PIL arising on the same issue, has been filed anywhere.
- (v) I submit that I have given representation to the respondents and the same has been acknowledged by them.

GROUND

- a) A vacuum of law has been created, since there is a lack of clarity on the limits and restrictions posed on freedom of speech and expression as a right for social media. Consequently, there is no deterrence in the society with respect to condemning excessive exercise of such freedom caused due to the lackadaisical enforcement of the legislations. There has been a gross failure to impose stringent sanctions as a result of which perpetrators seek to take advantage of the loopholes in the law.
- b) Though Constitution of India guarantees freedom of speech and expression under **Article 19(1) (a)**, such freedom is also not unrestricted. This is however not practically pertinent in the case of Social Media, which is neither organized nor monitored as it creates unreasonable breach in the right to privacy and dignified life of a common man.
- c) In this context, **International Convention on Civil and Political Rights (ICCPR)** may also be relied upon where **Article 19** states that "*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. It may*

therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals".

- d) UK's Data Protection bill has landed with a hefty thud, offering recommendations such as "holistic application, data minimization, controller accountability, structured enforcement and deterrent penalties". British consumers are allowed to request for erasing their data and force social media giants like Facebook to delete embarrassing posts under new data protection legislation. Provisions included in the bill would also let parents and guardians give consent for their child's data to be shared by expanding the definition of 'personal data' to include things like IP addresses and internet cookies (data which is stored when you browse the internet). This measure is part of the European General Data Protection Regulations (GDPR), where Facebook has also reported to CNBC (Consumer News and Business Channel) that it is already in compliance with EU data protection laws, and that it would be ready for the implementation of the new data sharing framework.
- e) United States federal and state privacy laws structure a comprehensive privacy regime that administers the collection, storage and use of personal data. The Electronic Communications Privacy Act (governs electronic communications), the Computer Fraud and Abuse Act (protects against computer crimes), the Children's Online Privacy Protection Act (governs the collection of personal data from children online and parental notice and consent) and the Family Educational Rights and Privacy Act (governs educational records) are a few notable privacy legislations in USA. Additionally, numerous US state and non-state entities impose varied broad data security and data breach notification laws that affect the storage of sensitive personal data. These statutes regulate the interception of electronic communications and criminalise unauthorized access of computer systems, computer tampering, identity theft, etc. through imposing penalties such as incarceration, forfeiture and restitution. The Cyber-security Information Sharing Act, adopted in 2015, facilitates the sharing of cyber-threat indicators between the Government and private companies, which also boosts companies' capacity to employ network monitoring and other defensive measures.

- f) At present, there is no Data Protection Law in place in India for the safeguarding of such information. There is no assurance whatsoever, on how the sensitive data collected by abusers, with whom it will be shared, under what circumstances, and in the event of it being compromised what consequences a citizen who submitted such data will face. Further, there is no indication that the storing of such information on private servers can be adequately protected being accessed by a private entity.
- g) Section 8(3)(c) of the Aadhaar Act could be relied which lays down as follows: “A requesting entity shall inform, in such manner as may be specified by regulations, the individual submitting his identity information for authentication, the following details with respect to authentication, namely:— (a) the nature of information that may be shared upon authentication; (b) the uses to which the information received during authentication may be put by the requesting entity; and (c) alternatives to submission of identity information to the requesting entity”. Further reliance is placed on few noteworthy provisions of the Information Technology Act, 2000, namely Section 66D (Punishment for cheating by personation by using computer resource) and Section 69B (Power to authorize to monitor and collect traffic data or information through any computer resource for cyber security).
- h) There exists a pressing need for administration, regulation and supervision of social media, especially on abusive and derogatory posts, comments and memes which further promotes misinformation and propaganda. Taking note of the aforesaid factors, particularly their unhealthy effects thereof, mandating linking of Aadhaar is considered to be the most practical way of addressing the menace and imposing stringent penalties, as it paves way for tracking the individual identities uploading multiple posts and memes.
- i) I am approaching this Hon’ble Court directly, because this is an issue of national importance having wide ranging ramifications, and an order of this Hon’ble Court is the heart of the present writ petition.

Prayer:

It is therefore prayed that this Hon’ble Court may be pleased to issue a writ of mandamus directing the Respondents to declare that linking of Aadhaar or anyone of the Government authorized identity proof as mandatory for the purpose of authentication while obtaining any email or user account (Social Media Accounts - Facebook, Instagram, YouTube and Twitter or Utility Accounts - Paytm, Uber, Ola, Gmail, Yahoo and Hotmail) thereof and to

appoint an special and skilled task force to monitor into the rising instances of all sorts of cyber defamations and cyber stalking and to protect the innocent victimized E-Citizens of India every day and pass any other order as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai
on this 19th day of July
2018 and signed his name
in my presence.

BEFORE ME

ADVOCATE: CHENNAI

**IN THE HIGH COURT OF
JUDICATURE AT MADRAS**

