

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**CIVIL WRIT PETITION NO. \_\_\_\_\_ OF 2021**

In the matter of:

Sanjay Kumar Singh

Petitioner

Versus

Union of India & Others

Respondents

**WRIT PETITION UNDER ARTICLE 226 OF THE**  
**CONSTITUTION OF INDIA CHALLENGING THE**  
**LAWFULNESS AND CONSTITUTIONALITY OF**  
**INFORMATION TECHNOLOGY (INTERMEDIARY**  
**GUIDELINES AND DIGITAL MEDIA ETHICS CODE)**  
**RULES, 2021.**

Most respectfully sheweth:

1. That the present writ petition is filed challenging the lawfulness and constitutionality of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 as published and coming into force on February 25, 2021 on the date of their publication in the Official Gazette. A copy of the said rules as published in the Official Gazette is attached herewith marked as **annexure P1**.

2. That the petitioner is a practising advocate and devoted to protection of fundamental rights including freedom of speech and expression. In support of the same, it is respectfully submitted that this honourable court, in a matter in which the petitioner had appeared had laid down, most probably for the first time in India, that no interlocutory injunction staying publication, prima facie, would be granted in matters involving freedom of speech and expression. [“Asoke Ghosh Vs. Urmi Goswami & Another, 133 (2006) DLT 69”]

Simply to show petitioner’s devotion to freedom of speech and expression and nothing more, it is further respectfully stated that the petitioner, apart from being a practising advocate, is also a writer and is author of the book “The Moon in the Sun” (A novel in poetry on Love, Life, Soul and Wildlife).

The petitioner is constrained to file the present writ petition as the impugned rules significantly intrude and unconstitutionally restrict petitioner’s freedom of speech and expression in so far as posting content on social media platforms is concerned. The petitioner values his freedom of speech and expression which includes posting content on social media platforms. The impugned rules so flagrantly trample the requirements under the law insofar as laying down restrictions on freedom of speech and expression is concerned; that the petitioner finds himself compelled to file the present writ petition.

The impugned rules ask for removal by social media platforms of content posted by users such as the petitioner and also provide for immediate termination of access to such social media platforms if such content posted, shared or published by users such as the petitioner are thought to be inconsistent with the provisions laid down by the impugned rules. [rule 3(1)(c)]

Under rule 3 (1) (d), the intermediary is required to remove and not allow to be posted or published any content regarding which it is notified by the government or its agencies on the basis purportedly of the grounds given in the said rule. The first proviso to rule 3 (1) (d) makes it clear that when the intermediary receives directions from a government agency or a court, it has to remove the content in question or disable access to such content within thirty six hours. If the intermediary fails to do so, it faces imprisonment up till seven years under subsection 3 of section 69 A of the Information Technology Act. The impugned rules, at the very outset, state that the impugned rules stand framed under sub-section 1 of section 87 as also clauses (z) and (zg) of sub-section 2 of section 87 of the Information Technology Act and the aforesaid clause (z) refers in this connection to section 69 A of the act under which, as stated, imprisonment up till seven years is provided for the intermediary if it fails to remove such content or fails to block access to such content regarding which it has been notified by the government or its agency.

This means, it is respectfully submitted, that the intermediary or the social media platform is under tremendous pressure so far as removal of content posted by users such as the petitioner or blocking of access to users such as the petitioner is concerned.

Such tremendous pressure coupled with the fact that the substance of the provisions of the impugned rules are laid down in such an excessively overbroad manner without any necessary guidelines, clarifications or exceptions creates a tremendous risk of getting removed or not being allowed to be posted or published even such content as is fully permissible to be posted or published under the law. Apart from such risk, is also the sizeable risk of access to the intermediary platform getting blocked to users such as the petitioner

even as regards contents which are otherwise fully permissible under the law relating to freedom of speech and expression.

All this, it is most respectfully submitted, not only creates a chilling effect as to the exercise of petitioner's freedom of speech and expression but also acts as a prior restraint in posting content on intermediary platform and all this arises, it is most respectfully submitted, because of the excessively overbroad manner in which the provisions under the impugned rules have been laid down without any necessary guidelines, clarification or explanation which brings about, as submitted, chilling effect and prior restraint with respect to even contents as are fully permissible to be posted or published under the law, infringing thereby the petitioner's fundamental right to freedom of speech and expression.

3. That respondent number one is the union of India which stands to be significantly involved in bringing out and enforcing the impugned rules.

Respondent number two is Ministry of Electronics and Information Technology which has a significant role and involvement in bringing out and enforcing the impugned rules.

Respondent number three is the Ministry of Information and Broadcasting which again has a significant role and involvement in bringing out and enforcing the impugned rules.

Respondent number four is Ministry of Law and Justice which also has a significant role and involvement in bringing out and enforcing the impugned rules.

4. That it is stated that there has been no delay in filing the present writ petition and that no other proceeding has been filed in any other court or in any tribunal challenging the same rules that form the subject matter of the present writ petition.

5. That being aggrieved, the present writ petition is being submitted on the following, amongst other grounds.

### GROUND

A. Because the rules banning postings, publishing or sharing of content on the platform of the intermediary on certain grounds are far too overbroad without the necessary explanations, exceptions or clarifications. This has the effect of deterring posting, sharing or publishing of even such content which is otherwise fully permissible under the fundamental right to speech and expression. The deterrence particularly arises given the immediate termination of access or usage rights of the users to the platform provided by the intermediary [rule 3 (1) (c)]. Such deterrence creates prior restraint on the exercise of rightful content under freedom of speech and expression. Such deterrence, it is respectfully submitted, creates also a chilling effect with respect to rightful exercise of content under freedom of speech and expression.

- (i) The rules provide that nothing is to be posted, published or shared which is defamatory [3 (1) (b) (ii)]. The law is well established, it is respectfully submitted, that a content even if defamatory will be permissible in law if it is, for instance, in the nature of a fair comment. A statutory list of explanations, exceptions or defences which make content

even if defamatory permissible in law is given under section 499 of the Indian Penal Code. By merely saying that defamatory content is not to be posted, published or shared; the provision of the rules in question proscribes even such content which would be permissible in law under the defences or exceptions listed under section 499 of the IPC and prevents thereby exercise of freedom of speech and content even where such exercise is fully permissible. At the bare least, the provision of the present rules where defamation is mentioned as a ground on which nothing is to be posted, published or shared; it should also necessarily have been mentioned that however content which would fall under the exceptions listed under section 499 of the IPC would not be banned. In the absence of such qualification, the provision in question with respect to defamation is far too overbroad and fails to be reasonable within the meaning of article 19 (2) of the Constitution of India.

- (ii) Content invasive of another's privacy is mentioned as another ground on which posting, publishing or sharing of content is banned [rule 3(1)(b)(ii)]. It is respectfully submitted that it is well established now that where the content is with respect to such matters involving or concerning public functionaries as to involve public interest in the same, then such content would be permissible under the law even if it relates to private lives of such individuals (European Court of Human Rights in "Plon V. France", decision of 18 May 2004, paragraphs 49-53; third exception to section 499 of the Indian Penal Code which allows comments, without any qualification, on the character and conduct of a person if the same touches upon a public question). And if records available in the public domain

have been used; the same will not infringe privacy even if this use of such records in the public domain may include reference to matters falling within private life. (R. Rajagopal & Others versus The State of Tamil Nadu and others AIR 1995 SC 264, paragraph 31)

It is respectfully submitted that merely saying that content invasive of another's privacy is not to be posted, published or shared is far too overbroad and not reasonable within the meaning of article 19 (2) of the Constitution of India [rule 3 (1) (b) (ii)]. Explanations, clarifications and exceptions were necessary to enable posting, publishing or sharing of contents which were permissible in law even if they were otherwise invasive of privacy. This duty to lay down the exceptions, clarifications and exceptions so as to not prevent exercise of freedom of speech and expression with respect to contents otherwise fully permissible under the law is necessary given the importance of freedom of speech and expression, particularly in a democracy such as India.

For instance, it is suggested that an explanation, when it is said that nothing is to be posted, published or shared which is invasive of another's privacy, is necessarily required to be given to the effect that contents touching upon matters of overriding public importance or falling in public domain however would be not be banned on this ground. It is respectfully submitted that the aforesaid is only a suggestion to demonstrate that necessary explanations and exceptions in relation to this ground is not that difficult to be provided in the rules itself and is necessarily required to make the ban imposed on the ground of invasion of privacy reasonable within the meaning of article 19 (2).

(iii) Content which is libellous is again banned from being posted, published or shared [rule 3(1)(b)(ii)]. As submitted above with respect to the ground of deformation, even libellous content is permissible under the law if it is under the meaning of certain exceptions or defences. A list of such exceptions or defences is given under section 499 of the Indian penal code. At the bare least, when the ground of libellous is stated to ban a content from being posted, published or shared; necessarily along with it should have been said that content falling under the exceptions or defences given under section 499 of the Indian Penal Code however would not fall under the ban. In the absence of any such guideline, explanation or clarifications; the provision banning on the ground of libellous is far too overbroad and clearly far from reasonable within the meaning of article 19 (two) of the Constitution of India.

B. Because the manner in which contents which are said to threaten the unity, integrity of India are banned from being posted, published or shared [3 (1) (b) (viii)]. It is respectfully submitted that some clarifications and exceptions are also absolutely necessary here if the speech which is otherwise permissible is not to come under a cloud.

(i) For instance, it is suggested that a qualification to the effect that bona fide comment touching upon issues of public interest and not advocating any secession or separation from the union of India including content which are in the nature of advocacy of perceived or purported rights of any region, state, group or section

without advocating any secession from the union of India in connection therewith will not be held to be a threat to unity or integrity of India. The aforesaid is only a suggestion to show that in the absence of necessary qualifications or clarifications; even content which is fully permissible under the law would be deterred and prevented from being published, posted or shared. In the absence of necessary qualifications, clarifications, the bald provision of banning content on ground of unity and integrity threat to India is far too overbroad and acutely failing to be reasonable within the meaning of article 19 (2) of the Constitution of India.

- (ii) Simply saying that any content which threatens defence of India is banned is far from satisfactory [rule 3 (1) (b) (viii)]. It has to be made clear what would not be said to threaten India's defence and what can be said to threaten India's defence.

For instance content discussing or highlighting perceived weaknesses in India's preparedness for defence will not in itself be treated as proscribed unless the same comes under the official secrets act or is strictly confidential from the point of view of India's defence. The aforesaid, it is respectfully submitted, is only a suggestion to show that the necessary required clarification or explanation could have been given so as to not unduly restrict exercise of freedom of speech and expression in relation to this ground. In the absence of such necessary clarification or explanation, it is respectfully submitted that the provision in question is far too overbroad and not meeting the requirements of

reasonableness within the meaning of article 19 (2) of the Constitution of India.

- (iii) Simply saying that content posing a threat to security of India is far too overbroad [rule 3 (1) (b) (viii)]. Explanations or clarifications are necessary to make clear what is permissible and what is not permissible in relation to this ground so as not to unduly restrict exercise of freedom of speech and expression in relation to this ground. For instance, bona fide comment, as perceived on part of the person making such comments, on any shortcoming in dealing with India's security issues unless until such content falls foul of official secrets act or requirements of confidentiality duly arising cannot be banned. The aforesaid, it is respectfully submitted, is only a suggestion to show that necessary qualifications, explanations stand to be possible and feasible in the interests of freedom of speech and expression so that contents in connection with this ground which is permissible in law is otherwise not unduly deterred by laying down a blanket bar. In the absence of such necessary qualifications or explanations, it is respectfully submitted that the provision in question on the ground of threat to security of India is far too overbroad and fails to meet the requirement of reasonableness under article 19 (2) of the Constitution.
- (iv) Simply saying that content threatening the sovereignty of India is not enough for the purposes of banning content from being posted, published or shared on such ground. For instance, there may be bona fide content on

grounds of perceived or purported benefit to India advocating India to join some union, group or order of nations which otherwise may entail loss of sovereignty as, for instance, on the lines of European nations when joining European Union. Such content cannot be banned on the ground of threat to sovereignty of India. The provision in question in the absence of necessary qualifications or clarifications debars from publication even content which is otherwise permissible in relation to any loss of sovereignty as may arise as the aforesaid suggestion demonstrates. In the absence of any necessary clarification or explanation, the provision in question is overbroad and fails to meet the requirement of reasonableness under article 19 (2) of the Constitution, especially given the paramount importance of freedom of speech and expression.

- (v) Simply saying that all content which threaten friendly relations with foreign states will not be permitted is again far too overbroad [rule 3 (1) (b) (viii)]. For instance bona fide criticism of any foreign nation cannot be proscribed especially if it touches upon matters of public interest. There has to be necessary qualification or clarification attached when content is sought to be banned on the ground of threat to friendly relations with foreign states to the effect that bona fide criticism of any foreign state is permitted provided that substantially false comments would not constitute bona fide criticism. The aforesaid, it is respectfully submitted, is only a suggestion to show the necessity of clarifications attached to this ground which are feasible otherwise to be laid down. In the absence of such necessary

clarification, it is respectfully submitted that the provision in question banning content from being posted, published or shared is far too overbroad and far from reasonable within the meaning of article 19 (2) of the Constitution of India given the paramount importance of freedom of speech and expression particularly in a democracy.

- (vi) So far as banning content on the purported ground of threat to public order is concerned [rule 3(1)(b)(viii)]; it is respectfully submitted that necessary qualification to such banning has to be given stating that contents other than such as both intend to as also are likely to bring about public disorder are not disallowed to be published, posted or shared. [Niharendu Dutt Majumdar V. King Emperor, 1942 F.C.R 38, paragraph 16 approved by Supreme Court in Kedar Nath Singh V. State of Bihar, AIR 1962, SC 955; Brandenburg V. Ohio, 395 U.S. 444 (1969) paragraph 7 where the US Supreme Court stated the following, “These later decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action”]

In the absence of such qualification, the ground as in the manner stated is far too overbroad, failing to meet the requirement of reasonableness of restriction under article 19 (2) of the Constitution of India on matters of freedom of speech and expression.

- (vii) Simply saying that content which prevents investigation of any offence shall be banned is again highly questionable. [rule 3(1)(b)(viii)] There have to be guidelines as to what would constitute prevention of investigation. Mere views of non-maintainability of an offence cannot be said to be preventing investigation. As such, it is respectfully submitted that clarifications are necessary with respect to this ground laying down guidelines as to what would be taken as prevention of investigation and what would not be taken as prevention of investigation. In the absence of such guidelines or clarifications, it is respectfully submitted that the provision in question is far too overbroad and fails to meet the requirement of reasonableness within the meaning of article 19 (2) of the Constitution with respect to freedom of speech and expression.
- (viii) Simply saying that content which is insulting to other nations shall not be permissible is again untenable [rule 3(1)(b)(viii)]. Bona fide criticism of other nations cannot be banned. Bona fide criticism will include criticism on matters of public interest. However substantially false remarks would not be bona fide criticism. It is respectfully submitted that the aforesaid qualification has been given only as a suggestion to show that necessary qualification on this ground is feasible apart from being absolutely necessary so as not to proscribe content which otherwise is fully permissible under freedom of speech and expression in relation to this ground. In the absence of such qualification, it is respectfully submitted that the ground as in the manner laid down is far too overbroad and fails to meet the

requirement of reasonableness under article 19 (2) of the Constitution of India with respect to freedom of speech and expression.

C. Because under rule 3(1)(d), government agencies, apart from courts have been given the power to direct the intermediaries not to publish content or to disable access to content in relation to the grounds given under this rule. If the intermediary does not comply with such directions within 36 (thirty six) hours, the intermediary faces imprisonment up to 7 (seven) years. If such tremendous pressure has been brought to bear on the intermediary to remove or to disable access under directions of government agencies apart from the court orders; then it becomes absolutely necessary to lay down clarifications and explanations in relation to grounds given under this rule so as not to prevent publication of content which is permissible under the law in relation to such grounds and so as not to create a chilling effect or prior restraint with respect to publication of permissible content in relation to such grounds. This has not been done. The grounds have been mentioned in far too broad manner thereby placing restrictions on freedom of speech and expression which cannot be said to be reasonable within the meaning of article 19 (two) of the Constitution of India.

- (i) For instance, bona fide comments advocating India joining some group, union or order of nations creating benefits to India even entailing loss of sovereignty as in the case of European nations joining European Union cannot be banned or be directed by the government agencies, or the courts, to be removed or be disabled from access by the intermediary. In the absence of

necessary guidelines such as the aforesaid clarifying what would stand to be lawful and what would stand to be unlawful, directions cannot be given by government agencies especially to the intermediary to remove or to block access to contents purportedly unlawful in relation to the interest of sovereignty of India. The same cannot be sustained as being far too overbroad placing undue restrictions on freedom of speech and expression of users such as the petitioner. [rule 3(1)(d)]

- (ii) Similarly duty cannot be placed on the intermediary nor directions especially by government agencies can be given to remove or disable access to contents purportedly unlawful in relation to integrity of India, The same stands to be far too overbroad in the absence of clarifications or explanations as to what would constitute unlawfulness on this ground. For instance bona fide comments seeking to advocate or even agitate issues with respect to perceived or purported rights of any region, state, group or section within India but not advocating secession would not unlawful, on the face of it, in relation to the interests of integrity of India. Qualifications therefore are necessary to guide as to what would be unlawful in relation to integrity of India before duty is laid down to remove contents as in the manner provided or to even block access to the user. In the absence of such guidelines, it is respectfully submitted that the provision in question is far too overbroad, failing to meet the requirement of reasonableness within the meaning of article 19 (2) of the Constitution of India. [rule 3 (1) (d)]

- (iii) Duty cannot be placed on the intermediary nor can directions especially by government agencies be given to remove or disable access to contents purportedly unlawful in relation to the interests of security of India in the absence of necessary guidelines with respect to the same. Such guidelines are necessary if the provision in the manner as laid down is not to prevent even rightful exercise of freedom of speech and expression. For instance, bona fide comments unless they are not in contravention of official secrets act or in contravention of confidentiality required or imposed, cannot be prohibited or be made subject to the aforesaid duty of removal and even blocking of access.[rule 3 (1) (d)] It is respectfully submitted that in the absence of necessary guidelines as to what would be unlawful and what can be said to be lawful in connection with interests of security of India, the provision as in the manner laid down is far too overbroad failing to meet the requirements of reasonableness of restrictions under article 19 (2) of the Constitution with respect to freedom of speech and expression.
- (iv) Laying down a duty on the intermediary to remove contents or to block access when asked to do so on the ground of being purportedly unlawful in relation to the interest of friendly relations with foreign states cannot be sustained unless and until necessary guidelines are laid down as to shed light on what would be unlawful and what may not be unlawful in such connection. For instance, bona fide comments touching upon matters of public interest cannot be said to be inimical or unlawful in relation to friendly relations with foreign states. It can

be said along with that a comment cannot be said to be bona fide if it is substantially false. In the absence of such necessary guidelines; freedom of speech and expression of users such as the petitioner is seriously jeopardised as it creates an unacceptable scope of directions being given to the intermediary within the meaning of the provision to remove contents on such purported ground even if the content otherwise in relation to such ground is fully permissible. In the process, both prior restraint as well as chilling effect is created to exercise of freedom of speech and expression apart from prevention of exercise of freedom of speech and expression under the provision as in the manner laid down given the threat of both removal of the content as well as blocking of access to the user.[rule 3(1)(b) (viii) read with rule 3 (1) (c) read with rule 3 (1) (d)]

- (v) Necessary guidelines or clarifications have to be given as to what would constitute unlawful content in relation to the interest of public order before any direction can be given to the intermediary to remove such content. For instance only such speech or content on this ground would be unlawful as is designed or intended to bring about public disorder and also is likely to bring about public disorder.[Niharendu Dutt Majumdar V. King Emperor, 1942 F.C.R 38, paragraph 16 approved by Supreme Court in Kedar Nath Singh V. State of Bihar, AIR 1962, SC 955; Brandenburg V. Ohio, 395 U.S. 444 (1969) paragraph 7]

In order therefore not to prevent even permissible content in relation to this ground and not to invite removal or blocking of access on basis of even permissible content in relation to this ground; it is respectfully submitted that it is necessary to add a proviso in relation to this ground to the effect that directions to remove any content in relation to this ground should be given only when the content in question is likely to bring about public disorder and not otherwise.

In the absence of such necessary guidelines, directions to remove the content in question under the provision as in the manner laid down prevents rightful exercise of freedom of speech and expression and also acts as a prior restraint and chilling effect to exercise of freedom of speech and expression.[rule 3(1)(b) (viii) read with rule 3 (1) (c) read with rule 3 (1) (d)]

- (vi) So far as the grounds of decency or morality are concerned on which directions can be given to the intermediary not to host, store or publish any unlawful content in relation to such ground; it is respectfully submitted that decency, and definitely morality, are far too broad and vague terms as well established under authoritative decisions. It is necessary that guidelines should be laid down before directions can be given not to publish contents on the purported ground of being unlawful in relation to decency or morality. At the bare least, it is required to be stated that the matter of unlawfulness in relation to decency and morality is not to be unreasonably construed by government agencies

empowered to direct removal of content on intermediary platform and that objectivity such as taking into account contemporary standards is to be exercised in construing what constitutes unlawfulness in relation to these grounds. It is respectfully submitted that in the absence of such necessary proviso, given the threat of removal of content or even blocking of access to the user, not only even the rightful exercise of freedom of speech and expression in relation to these grounds is prevented but also brings into play both prior restraint and chilling effect with respect to rightful exercise of freedom of speech and expression.[rule 3(1)(b) (viii) read with rule 3 (1) (c) read with rule 3 (1) (d)]

- (vii) It is respectfully submitted that directions cannot be given on the ground of simply purported unlawful content in relation to contempt of court for the purposes of removal of such content. For instance, bona fide criticism of judgements, and at times conduct of judicial officers and judges insofar and the same is in the light of their official duty cannot be said to be contempt of court and the same is required to be made clear before any power is given to direct removal of purportedly unlawful content in relation to contempt of court. In the absence of such necessary guidelines as to what would be unlawful and what would be lawful in relation to the ground of contempt of court, the provision as in the manner laid down is far too wide placing undue restrictions on the exercise of freedom of speech and expression.[rule 3(1)(b) (viii) read with rule 3 (1) (c) read with rule 3 (1) (d)]

(viii) Again power cannot be given to direct removal of contents on the purported ground of being defamatory unless until guidelines are laid down as to what would be unlawful in such context and what would be prevented from being said to be unlawful in such context. At the bare least, a necessary clarification that along with was required to be given was to state that the exceptions given under section 499 of the Indian Penal Code would prevent a matter to be unlawful on grounds of being defamatory and would not come under the ambit of the said provision. In the absence of such necessary guideline, the power given to direct removal of such content along with the provision for even blocking of access [rule 3(1)(b) (viii) read with rule 3 (1) (c) read with rule 3 (1) (d)] prevents publication of even lawful speech in connection with such ground and acts both as a prior restraint and chilling effect with respect to freedom of speech and expression in connection with such ground.

D. Because it is respectfully submitted that the ground of partial nudity as given under rule 3 (2) (b) is necessary to be clarified inasmuch as all manners of partial nudity cannot act as a ground for removal of content and only certain manners of partial nudity would justify such removal. The blanket manner in which duty is given to remove content on this ground of partial nudity on the basis of any complaint by such removal prevents exercise of even such content as would be lawful within the meaning of the said ground of partial nudity. Such prevention on the basis of the provision as in the manner laid down is far too wide and cannot be said to be reasonable

within the meaning of article 19 (2) of the Constitution of India with respect to freedom of speech and expression.

- E. Because it is respectfully submitted that while guidelines, clarifications or explanations may not be such as to cover every conceivable exception or defence to the ground mentioned; basic, broad guidelines, the generality of the language of which can cover different situations arising as in the manner submitted and suggested above in relation to various grounds, are both feasible as also necessary to be given and in the absence of even such basic, broad guidelines, the provisions impugned as above cannot be sustained with respect to freedom of speech and expression given the requirement of reasonableness of any restriction sought to be laid down under article 19 (2) of the Constitution.
  
- F. Because it is respectfully submitted that given such noticeable absence of even basic guidelines in connection with the various grounds given irrefutably yields a conclusion that the rules have been far too hastily and casually drafted which is untenable especially when it deals with a matter of such paramount importance as freedom of speech and expression to a democracy.
  
- G. Because where freedom of speech and expression is involved, there has to be some supervision by judicial, or at least a quasi-judicial, body of the directions given by government agencies which amount to restrictions on freedom of speech and expression [3(1) (d)]. All directions given by government

agencies to remove any content from any social media platform should be subject to at least post facto scrutiny and approval by a judicial or at least a quasi-judicial body. It is respectfully submitted that this is necessary. At stake is freedom of speech and expression which enables intermingling of ideas and enables debates and discussions which are so important, particularly for a democracy. A judicial or at least a quasi-judicial body is necessary to balance better the arguments on both sides when restriction on freedom of speech and expression is concerned. Government agencies are susceptible to political pressure by the government of the day and where political rivals are involved or viewpoints contrary to government decisions or policies are involved – all of which can be widespread, at times at least, in matters of contents posted on social media platforms. It is necessary to involve a judicial or at least a quasi-judicial body to supervise the removal of content from social media platforms under directions of the government agencies. The same is necessary not only from the point of view of the training that a judicial mind has in better balancing the pros and cons involved but also from the point of view of better independence that such a judicial body would possess in such matters. In the absence of such supervision and scrutiny of the power given to the government agency to direct removal of content from social media platforms amounting to restrictions on freedom of speech and expression; the rules cannot be sustained, failing as they do on account thereof from being reasonable within the meaning of article 19 (2) of the Constitution of India.

- H. Because the practice of bringing into play statutory rules before approval to them is given by Parliament is against the

doctrine of Parliamentary democracy [section 87 (3) of the IT Act). Anything statutory has to have the approval of Parliament beforehand before it can be enforced. This is supported by the fact that at times, such as in the present case, the rules bring into play as much, if not more, new conduct required on a substantial scale at the threat of coercive action. A prior scrutiny by Parliament itself, if found hard to be practicable at times due to the urgency involved in enforcing the rules; then at least prior scrutiny by Parliamentary committees is required.

Bringing into play new rules of conduct at a substantial scale at the threat of coercive action under the authority of the Parliament that any statutory instrument has cannot be without some bare minimal scrutiny by Parliamentary committees on behalf of the Parliament before full-fledged scrutiny by the Parliament itself is undertaken. Not doing so goes against the basic structure of Parliamentary democracy in the Constitution and the present rules are thereby vitiated on such count alone from legitimacy or lawfulness.

- (I) Because the impugned rules, on the face of it, go noticeably beyond the scope of the act under which they have been framed. The act definitely does not contemplate mapping out a statutory framework with respect to publishers of news and current affairs content or with respect to publishers of online curated content as has been done under the rules.

Even with respect to the grounds mapping out a statutory framework for intermediaries and the resultant repercussions on the users; the rules have added additional grounds which

are not mentioned in the act itself, especially when it is kept in mind that section 66 A of the act stands invalidated by the Honourable Supreme Court of India. Laying down of grounds on which restrictions are permissible on fundamental right to speech and expression lie within the exclusive jurisdiction of the legislature as a matter of legislative policy and cannot be done so under rules framed by the executive.

(J) Because it would not be out of place to respectfully submit that given the depth, diversity and resilience of our country; it is hard to imagine that mere tweets on Twitter or posts on other social media platform can pose any worthwhile threat to matters of integrity, security or sovereignty of India. The rules as they have been framed are far too disproportionate to any threat capable of materialising to security, integrity or sovereignty of India from tweets on Twitter or posts on other social media platforms.

(K) Because the impugned provisions of the rules even otherwise are unacceptable having regard to the requirement of reasonability of any restriction sought to be placed upon freedom of speech and expression under article 19 (2) of the Constitution.

### **PRAYER**

That in the facts and circumstances this honourable court may be graciously pleased to:

(a) Hold that Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 do not meet the requirements of placing restrictions on freedom of speech and expression and therefore are unconstitutional to be struck down accordingly;

(b) Hold that the grounds of defamation, invasive of another's privacy, libellous as in the manner laid down in rule (3) (1) (b)(ii) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 do not meet the requirements of placing restrictions on freedom of speech and expression and therefore are unconstitutional to be either struck down or read down on that basis as is considered appropriate;

(c) Hold that the grounds of unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, public order, preventing investigation of any offence, insulting other nations as in the manner laid down in rule 3(1)(b)(viii) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 do not meet the requirements of placing restrictions on freedom of speech and expression and therefore are unconstitutional to be either struck down or read down on that basis as is considered appropriate;

(d) Hold that the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, in relation to contempt of court, defamation as in the manner laid down in rule 3(1)(d) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 do not meet the requirements of placing restrictions on freedom of speech and expression and therefore are

unconstitutional to be either struck down or read down on that basis as is considered appropriate;

(e) Hold that the ground of partial nudity as in the manner laid down in rule 3(2)(b) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 does not meet the requirements of placing restrictions on freedom of speech and expression and therefore is unconstitutional to be either struck down or read down on that basis as is considered appropriate;

(f) Hold that it is against the doctrine of Parliamentary democracy acting as a basic structure of the Constitution to enforce Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 before approval to them is given by at least Parliamentary committees acting in such respect on behalf of the Parliament and accordingly hold such rules as unconstitutional to be struck down on such basis;

(g) Hold Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 to be unconstitutional on the basis of any other ground as submitted in the present writ petition or otherwise applicable as per the extraordinary powers of this honourable court and strike down or read down such rules as is considered appropriate on such basis;

(h) Pass any other order or orders as is considered apt and appropriate.

IT IS PRAYED ACCORDINGLY.

Place :

Date:

PETITIONER

Through

Sanjay Kumar Singh/Tushar Saini

(Advocates)

543, Windsor Greens

Plot No. F – 28, Sector 50

Noida – 201307, Uttar Pradesh

Mobile : 9818842877/9999922342

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

CIVIL WRIT PETITION NO. \_\_\_\_\_ OF 2021

In the matter of:

Sanjay Kumar Singh

Petitioner

Versus

Union of India &amp; Others

Respondents

**AFFIDAVIT**

I, Sanjay Kumar Singh, s/o Krishna Deo Singh, aged about fifty two years with address at 543, Windsor Greens, Plot No. F-28, Sector 50, Noida - 201301 do hereby solemnly affirm and state as under :-

1. That I am petitioner in the above case and as such I am conversant with the facts of the case. I am competent to swear the present affidavit.
2. I say that I have read and understood the accompanying writ petition under Article 226 of the Constitution of India, which I as a practicing advocate have drafted. I say that I have gone through the contents of the accompanying writ petition and understood the same in vernacular also.
3. That the contents of paragraphs 1 to 5 including the GROUNDS A to K in paragraph 5 are true and correct as derived from the records of the matter, personal knowledge and belief held to

be true and correct and legal knowledge held to be correct and applicable. No part of it is false and nothing material has been concealed therefrom. The last paragraph is the prayer clause.

4. I say that I have not filed any other writ petition or legal proceeding regarding the subject matter in the present writ petition in this Hon'ble Court or in the Supreme Court of India or in any other Court or tribunal.

5. I say that Annexure 1 to the writ petition is a true copy of the original.

**DEPONENT**

#### **VERIFICATION**

Verified at \_\_\_\_\_ on this \_\_\_\_\_ day of March, 2021 that the contents of paragraph 1 to 5 of the above affidavit are true and correct to the best of my knowledge and belief and that no part of it is false and nothing material has been concealed therefrom.

**DEPONENT**