



2026:KER:33754

WP(C) No.9839 OF 2024

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 22ND DAY OF MAY 2026 / 1ST JYAISHTA, 1948

WP(C) NO. 9839 OF 2024

PETITIONER/S:

- 1 **MR.ANTO AUGUSTINE**
AGED 35 YEARS
S/O AUGUSTINE, MOONGANANIYIL HOUSE, VAZHAVATTA PO,
WAYANAD, KERALA, INDIA,, PIN - 637312
- 2 **MR. JOSEKUTTY AUGUSTINE**
AGED 40 YEARS
S/O AUGUSTINE, MOONGANANIYIL HOUSE, VAZHAVATTA PO,
WAYANAD, KERALA, INDIA., PIN - 637312
- 3 **MR. ROJI AUGUSTINE**
AGED 48 YEARS
S/O AUGUSTINE, MOONGANANIYIL HOUSE, VAZHAVATTA PO,
WAYANAD, KERALA, INDIA, PIN - 637312

BY ADVS.

SHRI.A.KUMAR (SR.)

SHRI.MUHAMMED FIRDOUZ A.V.

SHRI.LIBIN VARGHESE

SMT.A.H.SINCEY

SHRI.AKHIL PHILIP MANITHOTTIYIL

SHRI.M.P.SHAMEEM AHAMED

RESPONDENT/S:

- 1 **UNION OF INDIA**
REPRESENTED BY: THE SECRETARY, MINISTRY OF ELECTRONICS
AND INFORMATION TECHNOLOGY : OFFICE AT: ELECTRONICS
NIKETAN 6, CGO COMPLEX, LODHI ROAD, NEW DELHI , EMAIL-
SECRETARY@MEITY.GOV.IN, PIN - 682025
- 2 **UNION OF INDIA**
REPRESENTED BY: THE SECRETARY, MINISTRY OF INFORMATION
AND BROADCASTING, OFFICE AT: 655-A, WING SHASTRI
BHAVAN, NEW DELHI, E-MAIL- SECY.INB@NIC.IN, PIN -
110001
- 3 **GOOGLE INTERNATIONAL LLC**
REPRESENTED BY:CEO HAVING ITS OFFICE AT : 1600
AMPHITHEATRE PARKWAY, MOUNTAIN VIEW, CA 94043, USA, E-
MAIL : LIS-APAC@GOOGLE.COM



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- 4 **GOOGLE LLC**
REPRESENTED BY:CEO HAVING ITS OFFICE AT: 1600
AMPHITHEATRE PARKWAY, MOUNTAIN VIEW, CA 94043, USA, E-
MAIL : LIS-APAC@GOOGLE.COM
- 5 **GOOGLE INDIA PVT LTD**
REPRESENTED BY:MANAGING DIRECTOR HAVING ITS OFFICE
AT :NO.3 RMZ INFINITY - TOWER E, OLD MADRAS ROAD, 4TH
& 5TH FLOOR, BANGALORE, KARNATAKA, E-MAIL : LIS-
APAC@GOOGLE.COM, PIN - 560016
- 6 **TIDING DIGITAL PUBLICATIONS PVT LTD.**
REPRESENTED BY:MANAGING DIRECTOR, HAVING ITS OFFICE
AT: TC-17/3164(11), PANACHAMOODU LANE, PATTOM PALACE.
PO, THIRUVANANTHAPURAM, KERALA, INDIA, PIN - 695004
- 7 **SHAJAN SKARIAH**
AGED 52 YEARS
DIRECTOR, TIDINGS DIGITAL PUBLICATIONS PVT LTD HAVING
ITS OFFICE AT: TC-17/3164(11), PANACHAMOODU LANE,
PATTOM PALACE. PO, THIRUVANANTHAPURAM, PIN- 695 004,
KERALA, INDIA RESIDENCE AT: KARIYILAKULAM, EDAKADATHY,
ERUMELI SOUTH, KOTTAYAM, KERALA, PIN - 686510

BY ADVS.

FOR R1 & R2 O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA
FOR R4 SHRI.SANTHOSH MATHEW (SR.)
SRI.RIJI RAJENDRAN
FOR R7 SHRI.ARUN V.G. (K/795/2004)
SMT.MITHA SUDHINDRAN
SHRI.SOURADH C. VALSON
SHRI.THEJUS THOMAS KATTADY
SMT.ANUSHREE
SHRI.R.S.DIWAAGAR
SHRI.BHARADWAJARAMASUBRAMANIAM R.
SRI.K.R.SYAM SEKHAR
SRI.NEERAJ NARAYAN
FOR R6 SHRI.SREEKUMAR G.(CHELUR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31.10.2025, THE COURT ON 22.05.2026 DELIVERED THE FOLLOWING:

**'C.R'****J U D G M E N T**

This writ petition is submitted by the petitioners who are the managerial employees of M/s. Broadcasting Company Pvt. Ltd., a news and current affairs content broadcasting channel in India. The grievance highlighted by the petitioners in this writ petition is against certain contents of the publications made by 6th and 7th respondents through the social media platforms, operated and managed by respondents 3 to 5 herein, which according to the petitioners, contain certain news items, which are defamatory in nature. It is also the case of the petitioners that, despite being brought to the notice of the 1st and 2nd respondents, no actions are taken by them, against the respondents 6 and 7 or remove the said contents. The publication of the news items of the said nature, are even now continuing and according to the petitioners, the respondents 1 to 5 are bound to take necessary steps to remove the aforesaid contents from the online platforms or otherwise, block the access of the public to the said content. It is also their grievance that, inaction on the part of the respondents are amounting to violation of the Constitutional rights of the petitioners guaranteed under 21 of the Constitution of India



and the same also violates various provisions of the Cable Television Network (Regulation) Act, 1955, Information Technology Act, 2000 and the various Rules framed under the said enactments.

2. The reliefs sought by the petitioners in the writ petition are as follows:-

- A *To issue a writ of mandamus or such other Writ or direction to the Respondents No.1 & 2 to administrate the Information Technology Act, 2000 and Information Technology Intermediary guidelines and Digital Media Ethics code, Rule 2021 in India.*
- B *The business of the Respondent No.3 to 5 is against the Petitioner's Constitutional rights and is contrary to Article 19(2) of the Constitution of India and against the Program Code of the Information Technology Intermediary guidelines and Digital Media Ethics code, Rule 2021. So the Respondent No.1 & 2 to be directed to remove the channels who do not comply with the regulations.*
- C *The Respondents No.1 & 2 are required to direct all the Digital Media including youtube.com operating in India to remove the contents published against the Petitioners and which are contrary to the Article 19(2), and Information Technology Intermediary guidelines and Digital Media Ethics code, Rule 2021.*
- D *The Respondent No.1 & 2 have made huge financial gain by the illegal broadcasting of the contents against the Petitioner and the Petitioner lost their Fundamental Right to do any Job as envisaged by the Constitution of India. Therefore, in order to recover the lost Fundamental Right of the Petitioners and as a punishment for the illegal business conducted by the Respondents No.3 to 7 in India is to pay an amount as compensation to the Petitioners of Rs. 10 Crores INR each.*
- E *Respondents No.1 & 2 to ensure that the Digital Media and Intermediaries*



- operating in India comply with Information Technology Intermediary Guidelines and Digital Media Ethics code, Rule 2021 and in accordance with Section 5 of the Cable Network Act, 1995 as its program code.*
- F The Respondent No.1 & 2 is required to pass an order to all Digital Media who are not complying with the Program Code and other rules in Information Technology Intermediary guidelines and Digital Media Ethics code, Rule 2021 to stop broadcasting in India with immediate effect.*
- G The Respondent No.1 & 2 may clarify whether YouTube.com, Facebook.com, Instagram, X etc. operating in India are Intermediaries, Significant Social media Intermediaries or Digital Media publishers.*
- H The Respondent No.1 & 2 required to instruct the Respondents No.3 to 5 if they are the ‘Publisher’ of News and Current affairs contents in India then part III of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 is applicable. Or if the Respondents No.3 to 5 are considered as Intermediaries or Significant Social Media Intermediaries then they should obey Part II of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021. It is specified in Section 4 of the Rule that under sub-section 1 (a) such Significant Social Media Intermediaries must appoint a “Chief Compliance Officer” who is resident in India to ensure that the Respondent No.3 to 5 comply with the laws in India and Legal responsible person in Indian Territory, so that officer must be appointed to continue their Business.*
- I The digital Media and Social Media Intermediaries should be restricted from publishing illegal contents like teaching for making Bombs, killing people, publishing contents against kids and women etc.*
- J Respondents No.1 & 2 to direct Respondents No.3 to 5 to pay the entire amount earned India or a certain percentage of the total amount earned in India to the Indian Government as a penalty for the illegal business conducted by the Respondents No.3 to 5 in India so long.*
- K To grant such other relief as this court deems fit in the facts and circumstances of the case.*



3. Thus, the specific case of the petitioners is that, the 6th and 7th respondents, who are operating an online channel, in the social media platform named 'Marunadan Malayali', are repeatedly publishing various news items, defaming the petitioners and circulating the same with the help of the other social media platforms also. Ext.P1 is the legal notice issued by the petitioner addressed to the respondents 3 to 5, highlighting the defamatory contents published by the 6th and 7th respondents where, the petitioners have required the said respondents to remove the video contents from the links mentioned in the said notice within seven days and also to pay an amount of Rs.10 Crores each as compensation to the petitioners.

4. In response to the aforesaid notice, Exts.P2 and P3 were received from the said respondents. The contents of Ext.P3 reads as follows:-

“Thank you for submitting your claim. Because we are not in a position to adjudicate the veracity of postings, we do not remove video postings based upon allegations of defamation.If you are concerned about the content, we suggest that you address your concerns directly with the uploader of the content in question. Some users list ways they can be contacted in their channel. Learn more about how to contact other users here. If you cannot reach agreement with the uploader and choose to pursue legal action, we are prepared to comply with any



orders passed by a court of competent jurisdiction, involving the posting in question. In cases where the author is anonymous, Google LLC may disclose or preserve personal information, as may be available in its systems, only to comply with valid legal process, such as a statute, court order or a search warrant or subpoena as issued by a law enforcement agency. Such legal process could include a notice under Section 91 of the Code of Criminal Procedure, sent by a police organization who is investigating this case, addressed to "Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA", printed on their letter head and duly signed by the officer concerned. A scanned copy of the signed Section 91 notice should be emailed to lisapac@google.com so that the appropriate support team can process it and respond as per applicable policies."

5. Thus, according to the petitioners, the said respondents are not proposing to take any positive action to redress the grievances of the petitioner. Therefore, Ext.P4 legal notice was sent by the petitioner through their lawyer, to the 1st and 2nd respondents, requiring them to issue an order to pay an amount of Rs.10 Crores which has to be recovered from M/s. Google LLC and Google India Pvt. Ltd. Since, the aforesaid communication did not evoke any response from the authorities concerned, this writ petition was submitted, seeking the reliefs mentioned above.

6. The 4th respondent filed a detailed counter affidavit, controverting the averments contained in the writ petition and



also raising the question of maintainability of the writ petition. It was pointed out that, as far as the 4th respondent and the respondents 3 and 5, which are the subsidiaries of the 4th respondent are concerned, no reliefs, as claimed in the writ petition can be granted to the petitioners. This contention is raised by them, mainly on the ground that, according to the 4th respondent, the objectionable contents are neither created nor owned or otherwise modified by the 4th respondent, and those are third party contents, uploaded by the 6th and 7th respondents. It is contended that, 'YouTube' is merely a platform, where any person, who is creating an account in the platform, can upload videos, through such account and the same can be accessed on the internet by any users of the said platform. Thus, it was contended that, they are not the "originator" of the content, as defined under Sec.2 (za) of the Information Technology Act, 2000, but, the 4th respondent is only an "intermediary", as defined under Sec.2(w) of the said Act. As far as the intermediaries are concerned, the role of them in the above matter is very limited.

7. With regard to the blocking or removal of the contents on the allegation of defamatory nature, the objection raised by the 4th respondent is to the effect that, such blocking or



removal can be affected by an intermediary, only when, a competent Court of law, or a Government agency competent in this regard, issues an order directing them to do so. It was specified by the said respondent that, since the allegation is publication of defamatory contents by the 6th and 7th respondent, unless a competent court or authority is declaring that those are defamatory, the 4th respondent cannot on its own, adjudicate the nature of the said content, so as to remove or block the same.

8. Since the petitioners have contended in the writ petition that, the social media platforms established and managed by the 4th respondent, failed to fulfill its obligations, as envisaged under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, by not appointing a Chief Compliance Officer, it was averred in the counter affidavit filed by the 4th respondent that, they have complied with all such stipulations. It was further averred that, the details of the Chief Compliance Officer and also about the grievance redressal mechanism, provided by them are already in the public domain, which is made accessible to all users of their social media platforms. It was also contended that, since the 4th respondent is not a 'publisher', but only an



‘intermediary’, the provisions under the Cable Television Networks Act, 1995, cannot be made applicable to the said respondents.

9. A detailed reply affidavit was submitted by the petitioner, in response to the counter affidavit filed by the 4th respondent. Apart from the above, I.A. NO. 4/2024, was submitted by the petitioner, seeking permission to amend the writ petition by substituting the reliefs sought in the writ petition with the following:-

- I *To issue a writ of mandamus or such other Writ or direction to the Respondents No.1 & 2 to take appropriate steps against the digital media publishers, Intermediaries including the Respondent No. 3 to 7 for non compliances with the provisions of the Information Technology Act, 2000 and Information Technology Intermediary guidelines and Digital Media Ethics code, Rule 2021 (“IT Rules 2021”) and more particularly the provisions of Sec 79 R/w Rule 3,4,5, 8 and 9 of the IT Rules 2021.*
- II *To issue a writ of declaration or such other writ or direction to declare that the Respondent No. 3 to 7 are not entitled for the protection provided under Sec 79 of the IT Act, 2000 in view of the specific features made available for the uploaders of the content.*
- III *To issue a writ of mandamus or such other writ or directions to the Respondent No. 3 to 7 for removal of all the defamatory contents against the Petitioners, which are published through Youtube.com by the joint efforts of Respondent No. 3 to 7.*
- IV *To issue a writ of mandamus or such other writ or directions to Respondent No. 1 and 2 to implement the provisions of Rule 18 of the IT Rules 2021 and to take appropriate legal actions against those publishers of news and current affairs content through the online medias who fails to comply with*



Rule 18 of the IT Rules 2021.

- V *To issue a writ of mandamus or such other writ or directions to Respondent No. 3 to 5 to implement such safeguards on its computer network which prohibits the uploading and automatic screening and transmission of online content including videos which induces or promotes the commission of criminal offenses, illegal activities, child pornography and similar activities by the viewers of such content.*
- VI *To issue a writ of mandamus or such other writ or directions to the Respondent No. 1 & 2 to ensure that the Foreign Direct Investment Policy with respect to entities engaged in publishing news and current affairs through the platforms are fully complied with and to take appropriate steps against the entities violating the same and to direct the Respondent No. 3 to 5 to disable the uploading of any such news and current affairs content by the entities which are not complying with the FDI Policy.*

Serious objections have been raised by the 4th respondent to the amendment sought by petitioner, by filing a detailed counter affidavit to the said Interlocutory Application.

10. I have heard Sri. A Kumar, the learned Senior Counsel, assisted by Sri. Muhammed Firdouz, the learned counsel appearing for the petitioners, Smt. O.M.Shalina, the learned Deputy Solicitor General of India, Sri. Santhosh Mathew, the learned Senior counsel appearing for the 4th respondent, Sri. Sreekumar (Chelur), the counsel appearing for the 6th respondent and Sri.Arun V.G., the learned counsel appearing for the 7th respondent.

11. The learned Senior Counsel appearing for the



petitioners, raised various contentions with regard to the lapses on the part of the respondents 3 to 5, in fulfilling their obligations, as contemplated under the IT Act, and the Rules framed thereunder, including the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021(hereinafter referred to as Ethics Code Rules, 2021). On the other hand, the learned Senior counsel appearing for the 4th respondent argued elaborately about the obligations of the ‘intermediary’, as defined under Sec.2(w) of the IT Act, under the Act and the Rules referred to above. He also brought to the attention of this Court, various measures the 4th respondents and its subsidiaries have taken, in fulfillment of such obligations.

12. The questions that arise in this writ petition are to be considered in the above factual and legal background. Before considering the relevant issues, it is profitable to refer to the relevant statutory provisions applicable to the case. The publication and circulation of various contents through social media platforms are governed by the Information Technology Act (IT Act) and the Rules framed thereunder. Sec.2(w) of the Act defines the “intermediary” which reads as follows:-



“Section 2(w) - “intermediary”, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.”

13. The expression, 'originator', is defined under Sec.2(za), which reads as follows:-

Section 2 (za)- “originator” means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary.

14. Sec.66A to 66F and Sec.67A to 67B deal with various punishments for the offenses referred to therein, in relation to the publication of the contents in the computer network and matters incidental thereto. Among the aforesaid provisions, Sec.66A is specifically dealing with the sending of the offensive messages or has a menacing character or information, which the publisher knows to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or illwill. However, the Hon'ble Supreme Court, as per the decision rendered in **Shreya Singhal v. Union of India 2015 (5) SCC 1**, struck down Sec.66A as unconstitutional.

15. Sec.79 of the IT Act, provides certain exemptions to



the intermediary, from liability in certain cases, which reads as follows:-

Section 79. Exemption from liability of intermediary in certain cases.—

(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if—

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not—

(i) initiate the transmission,

(ii) select the receiver of the transmission, and

(iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if—

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation.—For the purposes of this section, the expression “third party information” means any information dealt with by an intermediary in his capacity



as an intermediary.

16. Ethics Code Rules, 2021, was enacted invoking the powers of the IT Act. Rule 3 of the said Rules, as amended vide G.S.R. 120(E), dated 10.02.2026, provides for the due diligence to be performed by an intermediary,(amended vide which reads as follows:-

Rule 3 . (1) Due diligence by an intermediary: *An intermediary, including a social media intermediary, a significant social media intermediary and an online gaming intermediary, shall observe the following due diligence while discharging its duties, namely:—*

(a) the intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the rules and regulations, privacy policy and user agreement in English or any language specified in the Eighth Schedule to the Constitution for access or usage of its computer resource by any person in the language of his choice and ensure compliance of the same;

(b) the intermediary shall inform its rules and regulations, privacy policy and user agreement to the user in English or any language specified in the Eighth Schedule to the Constitution in the language of his choice and shall make reasonable efforts by itself, and to cause the users of its computer resource to not host, display, upload, modify, publish, transmit, store, update or share any information that,-

(i) belongs to another person and to which the user does not have any right;

(ii) is obscene, pornographic, paedophilic, invasive of another's privacy including bodily privacy, insulting or harassing on the basis of gender, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or an online game that causes user harm, or promoting enmity between different groups on the grounds of religion or caste with the intent to incite violence;

(iii) is harmful to child;

(iv) infringes any patent, trademark, copyright or other proprietary rights;

(v) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any



misinformation or information which is patently false and untrue or misleading in nature or, in respect of any business of the Central Government, is identified as fake or false or misleading by such fact check unit of the Central Government as the Ministry may, by notification published in the Official Gazette, specify

- (vi) impersonates another person;*
- (vii) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence, or prevents investigation of any offence, or is insulting other nation;*
- (viii) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;*
- (ix) is in the nature of an online game that is not verified as a permissible online game;*
- (x) is in the nature of advertisement or surrogate advertisement or promotion of an online game that is not a permissible online game, or of any online gaming intermediary offering such an online game;*
- (xi) violates any law for the time being in force;*

Explanation.—In this clause, “user harm” and “harm” mean any effect which is detrimental to a user or child, as the case may be;

(c) an intermediary shall periodically inform its users, at least once every three months, in a simple and effective manner through its rules and regulations, privacy policy, user agreement, or any other appropriate means, in English or any language specified in the Eighth Schedule to the Constitution, that—

(i) in case of non-compliance with such rules and regulations, privacy policy or user agreement, by whatever name called, it has the right to terminate or suspend the access or usage rights of the users to the computer resource immediately, or to remove or disable access to non-compliant information, or both, as the case may be;

(ii) where such non-compliance relates to the creation, generation, modification, alteration, hosting, displaying, uploading, publishing, transmitting, storing, updating, sharing or otherwise disseminating of information in contravention of any law for the time being in force, the user who is responsible for such noncompliance may be liable to penalty or



punishment under the provisions of the Act or any other applicable law; and

(iii) where such violation relates to the commission of an offence under any law for the time being in force, such as the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023) or the Protection of Children from Sexual Offences Act, 2012 (32 of 2012) which requires such offence to be mandatorily reported, reporting of such offence to the appropriate authority in accordance with the provisions of the applicable law;

(ca) without prejudice to sub-clauses (i) and (ii) of clause (c), where an intermediary referred to under sub-rule (3) offers a computer resource which enables, permits or facilitates the creation, generation, modification, alteration, publication, transmission, sharing, or dissemination of information as synthetically generated information, such intermediary shall additionally inform its users that—

(i) directing, instructing or otherwise causing the computer resource of the intermediary for creation, generation, modification, alteration publication, transmission, sharing, or dissemination of information as synthetically generated information in contravention of sub-clause (i) of clause (a) of sub-rule (3) may attract penalty or punishment as may be applicable under any law for the time being in force, including the provisions of the Act, the Bharatiya Nyaya Sanhita, 2023 (45 of 2023), the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), the Representation of the People Act, 1951 (43 of 1951), the Indecent Representation of Women (Prohibition) Act, 1986 (60 of 1986), the Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013 (14 of 2013), and the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); and

(ii) any such contravention of sub-clause (i) of clause (a) of sub-rule (3) may lead to-

(I) the immediate disabling of access to or removal of such information;

(II) suspension or termination of the user account of the user who violates this sub-rule without vitiating the evidence;

(III) in accordance with applicable law, identification of such user and disclosure of the identity of the violating user to the complainant, where such complainant is a victim of, or an individual acting on behalf of a victim of, such contravention; and

(IV) where such violation relates to the commission of an offence under any law for the time being in force, including the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023) or the Protection of Children from



Sexual Offences Act, 2012 (32 of 2012) which requires such offence to be mandatorily reported, reporting of such offence to the appropriate authority in accordance with the provisions of the applicable law;

(cb) where an intermediary becomes aware, either on its own accord or upon receipt of actual knowledge or on the basis of any grievance, complaint or information received under these rules, of any violation of sub-rule (3), in relation to the creation, generation, modification, alteration, hosting, displaying, uploading, publishing, transmitting, storing, updating, sharing or otherwise dissemination of information as synthetically generated information covered under sub-clause (ii) of clause (a), it shall take expeditious and appropriate action, including those specified in sub-clause (ii) of clause (ca).

(d) an intermediary, on whose computer resource the information which is used to commit an unlawful act which is prohibited under any law for the time being in force in relation to the interest of the 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; incitement to an offence relating to the above, or any information which is prohibited under any law for the time being in force is hosted, displayed, published, transmitted or stored shall, upon receiving the actual knowledge under clause (b) of sub-section (3) of section 79 of the Act on such information, remove or disable access to such information within three hours of the receipt of such actual knowledge, and such actual knowledge shall arise only in the following manner, namely:—

- (i) by an order of a court of competent jurisdiction; or*
- (ii) a reasoned intimation, in writing,—*

(I) issued by an officer authorised, by order in writing, for the purpose of issuing such intimation by the Appropriate Government or its agency, being not below the rank of Joint Secretary or an officer equivalent in rank or where an officer at such rank is not appointed, a Director or an officer equivalent in rank, to the Government of India or to the State Government, as the case may be, and, where so authorised, acting through a single corresponding officer in its authorised agency, where such agency is so appointed:

Provided that where such intimation is to be issued by the police administration, there may be one or more authorised officers, each not below the rank of Deputy Inspector General of Police, especially



authorised by the Appropriate Government in this behalf:

Provided further that all such intimations shall be subject to periodic review by an officer not below the rank of the Secretary of the concerned Appropriate Government once in every month to ensure that such intimations are necessary, proportionate, and consistent with clause (b) of sub-section (3) of section 79 of the Act and this clause;

(II) clearly specifying the legal basis and statutory provision invoked, the nature of the unlawful act, and the specific uniform resource locator, identifier or other electronic location of the information, data or communication link required to be removed or disabled;

(e) the temporary or transient or intermediate storage of information automatically by an intermediary in a computer resource within its control as an intrinsic feature of that computer resource, involving no exercise of any human, automated or algorithmic editorial control for onward transmission or communication to another computer resource shall not amount to hosting, storing or publishing any information referred to under clause (d);

(f) the intermediary shall periodically, and at least once in a year, inform its users in English or any language specified in the Eighth Schedule to the Constitution in the language of his choice of its rules and regulations, privacy policy or user agreement or any change in the rules and regulations, privacy policy or user agreement, as the case may be:

Provided that an online gaming intermediary who enables the users to access any permissible online real money game shall inform its users of such change as soon as possible, but not later than twenty-four hours after the change is effected;

(g) where upon receiving actual knowledge under clause (d), on a voluntary basis on violation of clause (b), or on the basis of grievances received under sub-rule (2), any information has been removed or access to which has been disabled, the intermediary shall, without vitiating the evidence in any manner, preserve such information and associated records for one hundred and eighty days for investigation purposes, or for such longer period as may be required by the court or by Government agencies who are lawfully authorised;

(h) where an intermediary collects information from a user for registration on the computer resource, it shall retain his information for a period of one hundred and eighty days after any cancellation or withdrawal of his registration, as the case may be;

(i) the intermediary shall take all reasonable measures to secure its



computer resource and information contained therein following the reasonable security practices and procedures as prescribed in the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011;

(j) the intermediary shall, as soon as possible, but not later than seventy two hours 2 [and in case of an online gaming intermediary who enables the users to access any permissible online real money game not later than twenty-four hours] of the receipt of an order, provide information under its control or possession, or assistance to the Government agency which is lawfully authorised for investigative or protective or cyber security activities, for the purposes of verification of identity, or for the prevention, detection, investigation, or prosecution, of offences under any law for the time being in force, or for cyber security incidents: Provided that any such order shall be in writing stating clearly the purpose of seeking information or assistance, as the case may be;

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

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

(l) the intermediary shall report cyber security incidents and share related information with the Indian Computer Emergency Response Team in accordance with the policies and procedures as mentioned in the Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013.

(m) the intermediary shall take all reasonable measures to ensure accessibility of its services to users along with reasonable expectation of due diligence, privacy and transparency;

(n) the intermediary shall respect all the rights accorded to the citizens under the Constitution, including in the articles 14, 19 and 21.

(2) Grievance redressal mechanism of intermediary: (a) The intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the name of the Grievance Officer and his contact details as well as mechanism by which a user or a victim may make complaint against violation of the provisions of this rule or sub-rules (11) to (13) of rule 4, or in respect of] any other matters pertaining to the computer resources made available by it, and the



Grievance Officer shall-

(i) *acknowledge the complaint within twenty-four hours and resolve such complaint within a period of seven days from the date of its receipt: Provided that the complaint in the nature of request for removal of information or communication link relating to clause (b) of sub-rule (1) of rule 3, except sub-clauses (i), (iv) and 5 (xi), shall be acted upon as expeditiously as possible and shall be resolved within 6 thirty-six hours of such reporting; Provided further that appropriate safeguards may be developed by the intermediary to avoid any misuse by users;*

(ii) *receive and acknowledge any order, notice or direction issued by the Appropriate Government, any competent authority or a court of competent jurisdiction.*

Explanation.—In this rule, “prominently publish” shall mean publishing in a clearly visible manner on the home page of the website or the home screen of the mobile based application, or both, as the case may be, or on a web page or an app screen directly accessible from the home page or home screen.

(b) *The intermediary shall, within two hours from the receipt of a complaint made by an individual or any person on his behalf under this sub-rule, in relation to any content which is prima facie in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of such individual, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it:*

(c) *The intermediary shall implement a mechanism for the receipt of complaints under clause (b) of this sub-rule which may enable the individual or person to provide details, as may be necessary, in relation to such content or communication link.*

(3) Due diligence in relation to synthetically generated information: (a) *Where an intermediary offers a computer resource which may enable, permit, or facilitate the creation, generation, modification, alteration, publication, transmission, sharing, or dissemination of information as synthetically generated information, it shall ensure that,—*

(i) *it deploys reasonable and appropriate technical measures, including automated tools or other suitable mechanisms, to not allow any user to create, generate, modify, alter, publish, transmit, share, or disseminate, as the case may be, any such synthetically generated information that violates any law for the time being in force, including the*



Act, Bharatiya Nyaya Sanhita, 2023 (45 of 2023), Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Explosive Substances Act, 1908 (6 of 1908), and includes any such synthetically generated information that,—

(I) contains child sexual exploitative and abuse material, non-consensual intimate imagery content, or is obscene, pornographic, paedophilic, invasive of another person's privacy, including bodily privacy, vulgar, indecent or sexually explicit; or

(II) results in the creation, generation, modification or alteration of any false document or false electronic record; or

(III) relates to the preparation, development or procurement of explosive material, arms or ammunition; or

(IV) falsely depicts or portrays a natural person or real-world event by misrepresenting, in a manner that is likely to deceive, such person's identity, voice, conduct, action, statement, or such event as having occurred, with or without the involvement of natural person; and

(ii) every such information not covered under sub-clause (i) of clause (a) is prominently labelled in a manner that ensures prominent visibility in the visual display that is easily noticeable and adequately perceivable, or, in the case of audio content, through a prominently prefixed audio disclosure, that can be used to immediately identify that such information is synthetically generated information which has been created, generated, modified or altered using a computer resource and such information shall be embedded with a permanent metadata or other appropriate technical provenance mechanisms, to the extent technically feasible, including a unique identifier, to identify the computer resource of the intermediary used to create, generate, modify or alter such information;

(b) the intermediary shall not enable the modification, suppression or removal of the label, permanent metadata, including the unique identifier, displayed or embedded in accordance with subclause (ii) of clause (a).

17. Rule 2(v) of the said Rules defines “significant social media intermediary” as a social media intermediary, having number of registered users in India, above such threshold as notified by the Central Government. As per Ext.P5 notification



dated 25.02.2021, the threshold of the registered users in terms of numbers have been prescribed as fifty lakhs, for treating an intermediary, as a “significant social media intermediary”.

18. Going by the said notification, 'Youtube', is a “significant social media intermediary”. Rule 4 of the Ethics Code Rules, 2021,(amended vide G.S.R. 120(E), dated 10.02.2026), provide for additional due diligence to be observed by the significant social media intermediary, which reads as follows:-

4. Additional due diligence to be observed by significant social media intermediary and online gaming intermediary.—*(1) In addition to the due diligence observed under rule 3, a significant social media 5 [intermediary, within three months from the date of notification of the threshold under clause (v) of sub-rule (1) of rule 2, and an online gaming intermediary that enables the users to access any permissible online real money game, shall observe the following additional due diligence while discharging its duties, namely:—*

(a) appoint a Chief Compliance Officer who shall be responsible for ensuring compliance with the Act and rules made thereunder and shall be liable in any proceedings relating to any relevant third-party information, data or communication link made available or hosted by that intermediary where he fails to ensure that such intermediary observes due diligence while discharging its duties under the Act and rules made thereunder:

Provided that no liability under the Act or rules made thereunder may be imposed on such significant social media intermediary or such online gaming intermediary without being given an opportunity of being heard.

Explanation.—For the purposes of this clause “Chief Compliance Officer” means a key managerial personnel or such other senior employee of a significant social media intermediary or an online gaming intermediary, as the case may be, who is resident in India;

(b) appoint a nodal contact person for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their



orders or requisitions made in accordance with the provisions of law or rules made thereunder.

Explanation.—In this clause, “nodal contact person” means the employee of—

(i) a significant social media intermediary, other than its Chief Compliance Officer; or

(ii) an online gaming intermediary, who is resident in India

(c) appoint a Resident Grievance Officer, who shall, subject to clause (b), be responsible for the functions referred to in sub-rule (2) of rule 3.

Explanation.—For the purposes of this clause, “Resident Grievance Officer” means the employee of a significant social media intermediary or an online gaming intermediary, as the case may be, who is resident in India;

(d) publish periodic compliance report every month mentioning the details of complaints received and action taken thereon, and, in respect of a significant social media intermediary, the number of specific communication links or parts of information that the intermediary has removed or disabled access to in pursuance of any proactive monitoring conducted by using automated tools or any other relevant information as may be specified;

(1A) A significant social media intermediary which enables displaying, uploading, or publishing any information on its computer resource shall, prior to such display, uploading, or publication,—

(a) require users to declare whether such information is synthetically generated information;

(b) deploy appropriate technical measures, including automated tools or other suitable mechanisms, to verify the accuracy of such declaration, having regard to the nature, format, and source of such information; and

(c) where such declaration or technical verification confirms that the information is synthetically generated, ensure that the same is clearly and prominently displayed with an appropriate label or notice, indicating that the content is synthetically generated:

Provided that where such intermediary becomes aware, or it is otherwise established, that the intermediary knowingly permitted, promoted, or failed to act upon such synthetically generated information in contravention of these rules, such intermediary shall be deemed to have failed to exercise due diligence under this sub-rule.



Explanation.—For the removal of doubts, it is hereby clarified that the responsibility of the significant social media intermediary shall extend to taking reasonable and proportionate technical measures to verify the correctness of user declarations and to ensure that no synthetically generated information is published without such declaration or label.

(2) A significant social media intermediary providing services primarily in the nature of messaging shall enable the identification of the first originator of the information on its computer resource as may be required by a judicial order passed by a court of competent jurisdiction or an order passed under section 69 by the Competent Authority as per the Information Technology (Procedure and Safeguards for interception, monitoring and decryption of information) Rules, 2009, which shall be supported with a copy of such information in electronic form:

Provided that an order shall only be passed for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order, or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material, punishable with imprisonment for a term of not less than five years:

Provided further that no order shall be passed in cases where other less intrusive means are effective in identifying the originator of the information:

Provided also that in complying with an order for identification of the first originator, no significant social media intermediary shall be required to disclose the contents of any electronic message, any other information related to the first originator, or any information related to its other users:

Provided also that where the first originator of any information on the computer resource of an intermediary is located outside the territory of India, the first originator of that information within the territory of India shall be deemed to be the first originator of the information for the purpose of this clause.

(3) A significant social media intermediary that provides any service with respect to an information or transmits that information on behalf of another person on its computer resource—

(a) for direct financial benefit in a manner that increases its visibility or prominence, or targets the receiver of that information; or

(b) to which it owns a copyright, or has an exclusive license, or



in relation with which it has entered into any contract that directly or indirectly restricts the publication or transmission of that information through any means other than those provided through the computer resource of such social media intermediary,

shall make that information clearly identifiable to its users as being advertised, marketed, sponsored, owned, or exclusively controlled, as the case may be, or shall make it identifiable as such in an appropriate manner.

(4) A significant social media intermediary shall deploy appropriate technical measures, including automated tools or other suitable mechanisms to proactively identify information that depicts any act or simulation in any form depicting rape, child sexual abuse or conduct, whether explicit or implicit, or any information which is exactly identical in content to information that has previously been removed or access to which has been disabled on the computer resource of such intermediary under clause (d) of sub-rule (1) of rule 3, and shall display a notice to any user attempting to access such information stating that such information has been identified by the intermediary under the categories referred to in this sub-rule:

Provided that the measures taken by the intermediary under this sub-rule shall be proportionate having regard to the interests of free speech and expression, privacy of users on the computer resource of such intermediary, including interests protected through the appropriate use of technical measures:

Provided further that such intermediary shall implement mechanisms for appropriate human oversight of measures deployed under this sub-rule, including a periodic review of any automated tools deployed by such intermediary:

Provided also that the review of automated tools under this sub-rule shall evaluate the automated tools having regard to the accuracy and fairness of such tools, the propensity of bias and discrimination in such tools and the impact on privacy and security of such tools.

(5) A significant social media intermediary and an online gaming intermediary who enables the users to access any permissible online real money game] shall have a physical contact address in India published on its website, mobile based application or both, as the case may be, for the purposes of receiving the communication addressed to it.

(6) A significant social media intermediary and an online gaming intermediary who enables the users to access any permissible online real money game] shall implement an appropriate mechanism for the



receipt of complaints under sub-rule (2) of rule 3 and grievances in relation to the violation of provisions under this rule, which shall enable the complainant to track the status of such complaint or grievance by providing a unique ticket number for every complaint or grievance received by such intermediary:

Provided that such intermediary shall, to the extent reasonable, provide such complainant with reasons for any action taken or not taken by such intermediary in pursuance of the complaint or grievance received by it.

(7) A significant social media intermediary and an online gaming intermediary who enables the users to access any permissible online real money game] shall enable users who register for their services from India, or use their services in India, to voluntarily verify their accounts by using any appropriate mechanism, including the active Indian mobile number of such users, and where any user voluntarily verifies their account, such user shall be provided with a demonstrable and visible mark of verification, which shall be visible to all users of the service:

Provided that the information received for the purpose of verification under this sub-rule shall not be used for any other purpose, unless the user expressly consents to such use.

(8) Where a significant social media intermediary removes or disables access to any information, data or communication link, under clause (b) of sub-rule (1) of rule 3 on its own accord, such intermediary shall,—

(a) ensure that prior to the time at which such intermediary removes or disables access, it has provided the user who has created, uploaded, shared, disseminated, or modified information, data or communication link using its services with a notification explaining the action being taken and the grounds or reasons for such action;

(b) ensure that the user who has created, uploaded, shared, disseminated, or modified information using its services is provided with an adequate and reasonable opportunity to dispute the action being taken by such intermediary and request for the reinstatement of access to such information, data or communication link, which may be decided within a reasonable time;



(c) ensure that the Resident Grievance Officer of such intermediary maintains appropriate oversight over the mechanism for resolution of any disputes raised by the user under clause (b).

(9) The Ministry may call for such additional information from any significant social media intermediary as it may consider necessary for the purposes of this part.

(10) An online gaming intermediary who enables access to its users to any permissible online real money game, shall display a demonstrable and visible mark of verification by an online gaming self-regulatory body on such permissible online real money game.

(11) While informing the users of its rules and regulations, privacy policy, terms of service and user agreements under clause (b) of sub-rule (1) of rule 3, an online gaming intermediary who enables the users to access any permissible online real money game, shall include the following information in respect of every such online games, namely:

—

(a) the policy related to withdrawal or refund of the deposit made with the expectation of earning winnings, the manner of determination and distribution of such winnings, and the fees and other charges payable by the user;

(b) the know-your-customer procedure followed by it for verifying the identity of the users of such online game;

(c) the measures taken for protection of deposit made by a user for such online game; and

(d) the framework referred to in rule 4A, relating to such online game.

(12) An online gaming intermediary shall, before accepting any deposit in cash or kind from any user for a permissible online real money game, identify such user and verify his identity:

Provided that the procedure required to be followed by an entity regulated by the Reserve Bank of India for identification and verification of a customer at the commencement of an account-based relationship shall apply, mutatis mutandis, in identification and verification of the users of such online gaming intermediary.

(13) An online gaming intermediary who enables the users to access any permissible online real money game shall not itself finance



by way of credit or enable financing to be offered by third party for the purpose of playing such online game.

19. The specific case of the petitioners is that, the publication of the contents made by the 6th and 7th respondents are defamatory in nature, as it contains certain false information, showing the petitioners in the bad light before the general public. Therefore, that affects the fundamental rights of the petitioners under 21 of the Constitution of India. It is pointed out that, even though the 6th and 7th respondents are publishing the said items, claiming to be news items, and seeking protection of their rights under Article 19(1) (a) & (g) of the Constitution of India, the official respondents are bound to interfere, as they are under an obligation to ensure that, while exercising such rights, the respondents 6 and 7 are not infringing the fundamental rights of the petitioner. Article 19(2) of the Constitution of India was also referred to, which provides for the enactment of the laws to impose reasonable restrictions on Article 19(1)(a) for various reasons, including defamation as well. Besides, the learned senior counsel for the petitioners, also highlighted the failure of the respondents in fulfilling the obligations in the Ethics Code Rules, 2021.

20. The learned DSGI pointed out that, the reliefs sought in



this writ petition cannot be entertained in view of the fact that, the petitioners miserably failed to make out any case for issuance of a writ of mandamus. This submission is made, mainly bringing to the attention of this Court, Ext.P2 notice issued by the petitioners, wherein, the relief sought is confined to the compensation of Rs.10 Crores alone, which according to the learned DSGI, cannot be pursued before the 1st and 2nd respondents. Therefore, the petitioners cannot ask for the reliefs, as sought in this writ petition, it was contended.

21. The 6th and 7th respondents also, vehemently opposed the reliefs sought for in the writ petition and also challenged the maintainability of the writ petition as such.

22. I have carefully gone through the records, examined the relevant statutory provisions and considered the arguments of all the parties concerned. It is to be noted that, the sole ground on which the petitioners are seeking removal of the contents published by the respondents 6 and 7 is that, those contain certain false information regarding the petitioners and their establishment, which are defaming them before the general public at large. Thus, it is a fact that the objection of the petitioners against the publication of the 6th and 7th respondents is on the ground of defamatory nature of the contents. As far as



the said ground is concerned, it is subjective, as it varies from person to person. Besides, it depends upon various aspects, truth behind the said content, circumstances under which the same were published, etc.

23. The 6th and 7th respondents are apparently publishing it as news items and information of current affairs, which according to them, is falling within their fundamental right, guaranteed under Article 19(1) (a) of Constitution of India. On going through the nature of the social media platform and the functioning thereof, as rightly contended by the learned Senior Counsel for the 4th respondent, it is evident that, the said platform does not have any role in generating or uploading of the contents. Therefore, there cannot be any dispute that, the role that is played by the 4th respondent and its subsidiaries, is that of an intermediary, as defined under Sec.2(w) of the IT Act. Sec.79 of the Act, specifically deals with the exemptions available to the intermediaries from the liability. The most relevant provision in this regard is Sub.Sec.3(b) of Sec.79, which provides that, the exemption under sub.Sec.(1) shall not be available, if such intermediary, upon receiving actual knowledge or on being notified by the appropriate Government or its agency that, any information, data or communication link



connected to a computer resource controlled by the intermediary is being used to commit an unlawful act, fails to remove or disable access to that material.

24. Thus it can be seen that, the said provision contemplates an obligation upon the intermediary to remove the content on happening of two events; firstly, upon receiving actual knowledge, and secondly, on being notified by appropriate government or its agency, as to the unlawful nature of the content. As far as the 'actual knowledge' referred to in such provision, it is to be noted that, **Shreya Singhal's case (supra)**, the Hon'ble Supreme Court read down the said provision to mean that, the intermediary, upon receiving the actual knowledge that, a Court order has been passed asking it to expeditiously remove or disable access to certain material, must then fail to expeditiously remove or disable access to that material.

25. Thus, the event of the actual knowledge referred to above, in the said provision, is deemed to have occurred only when an order has been passed by a competent Court in respect to the same and not otherwise. Therefore, so long as there is no order passed by a competent Court, or notified by appropriate government or its agency, there is no obligation upon the



intermediary to block the content.

26. However, this would not mean that, in all circumstances the intermediary should wait for an order of the Court or notification from the appropriate Government or its agency. Rule 3 of Ethics Code Rules, 2021 provides the guidelines in this regard. Sub Rule 1(b) of Rule 3 specifically provides the matters to be informed to the users as a condition for uploading the contents, if;

(i) belongs to another person and to which the user does not have any right;

(ii) is obscene, pornographic, paedophilic, invasive of another's privacy including bodily privacy, insulting or harassing on the basis of gender, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or an online game that causes user harm, or promoting enmity between different groups on the grounds of religion or caste with the intent to incite violence;

(iii) is harmful to child;

(iv) infringes any patent, trademark, copyright or other proprietary rights;

(v) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any misinformation or information which is patently false and untrue or misleading in nature or, in respect of any business of the Central Government, is identified as fake or false or misleading by such fact check unit of the Central Government as the Ministry may, by notification published in the Official Gazette, specify

(vi) impersonates another person;

(vii) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence, or prevents investigation of any offence, or is insulting other nation;

(viii) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any



computer resource;

(ix) is in the nature of an online game that is not verified as a permissible online game;

(x) is in the nature of advertisement or surrogate advertisement or promotion of an online game that is not a permissible online game, or of any online gaming intermediary offering such an online game;

(xi) violates any law for the time being in force;

Explanation.—In this clause, “user harm” and “harm” mean any effect which is detrimental to a user or child, as the case may be.

27. From the above, it can be seen that, even though the due diligence to be observed by the intermediary contains several aspects, defamation is not something which is specifically included therein. In this regard it is to be noted that, when the Ethics Code Rules, 2021, was originally enacted, it contained the term “defamatory”, in clause 3(1) (b) (ii) along with the words, “obscene, pornographic, paedophilic etc”. The expression “defamatory” was removed from the said provision as per the amendment subsequently brought in, vide G.S.R 794(E) dated 28.10.2022. Thus, the legislature consciously removed “defamation”, from among the matters pertaining to which due diligence is to be observed by the intermediary. From the above it is clear that, the defamation is not something, which needs to be taken note of by the intermediary, while observing due diligence. This is evidently because, intermediaries, being



private entities, it may not be possible or proper for them to decide the question whether a content is defamatory or not, since, such an adjudication requires, consideration of various aspects touching upon the legal aspects of the matter. Thus, it can only be adjudicated by a court or an authority having competence in this regard.

28. Of course, Rule 3(1) (b) (xi) provides that, the information that violates any law in force, cannot be uploaded and hence the publication of a defamatory statement can be treated as some thing, that violates the law. However, as far as the content allegedly involving defamatory statements is concerned, unless a competent Court or authority is declaring it as defamatory, the same cannot be treated as something that violates any law for the time being in force. As mentioned above, since the intermediary being a private entity, it cannot adjudicate the question as to whether the contents published by a user of its platform, is defamatory in nature or not. This is because, an intermediary is not entrusted with any power to take a decision on the above aspect and therefore, the duty of the intermediary would be confined to the fulfillment of its obligation under Sec.79 of the IT Act, to remove the content, on the ground of defamation, upon getting actual knowledge of any order passed by a



competent Court, or on being notified by the appropriate government, or its agency as to the unlawful nature of the content.

29. It is also noted in this regard that, in Rule 3(1)(d) of the Ethics Code Rules, 2021, it is specifically stipulated that, intermediary has to act upon the receipt of actual knowledge in the form of an order by a Court of competent jurisdiction. Thus, the observations made by the Honourable Supreme Court in ***Shreya Singhal's case (supra)***, have been incorporated in the statute through the above provision. The view taken by this Court in this regard, is fortified by the observations made by a learned Single Judge of this Court in ***Aneesh K Thankachan v. Union of India [2024 KHC OnLine 1616]*** where, after referring to the observations made by the Hon'ble Supreme Court in ***Shreya Singhal(supra)***, it was observed as follows:-

“12. In view of the categoric pronouncement by the Hon'ble Supreme Court, the direction sought against respondents 6 and 7 cannot be granted for removal of the alleged objectionable video, so long as there are no orders of the Court finding that the material in question is defamatory. The content that has been uploaded also does not fall within the scope of Section 69A of the Act since it is not alleged to be something affecting the sovereignty and integrity of India, the defence of India, the security of the State, or friendly relations with foreign States. Apart from alleging that the material is defamatory, there is no specific allegation that it amounts to incitement to the commission of any cognizable offense



relating to the earlier mentioned aspects like sovereignty and interest of India, etc. The prayer for quashing Ext.P5 also cannot be sustained since the reply is justified, going by the limited statutory obligations of the intermediary.”

30. Thus the only conclusion possible in this case is that, apart from the allegations of the petitioners that the contents published by the respondents 6 and 7 are defamatory in nature, there is nothing to show that the petitioners have invoked their remedies available before them, to get the issue as to whether it is defamatory or not, adjudicated, before any competent Court. Since this is a proceeding under Article 226 of the Constitution of India, the question as to whether, the contents published by the 6th and 7th respondents are defamatory or not, cannot be adjudicated, as it being a question of fact and hence, the same is beyond the scope of a writ petition. In this regard, the learned senior counsel for the petitioners relied on the decision rendered by the High Court of Delhi in ***Yusuffali Musaliam Veettil Abdul Kader v. Shajan Skariah and Others, [2023 SCC OnLine Del 8643]***, wherein, the 7th respondent herein was directed to forthwith take down all/any content published on any platform/social media platforms concerning the plaintiff



therein. However, the decision rendered by the High Court of Delhi may not be applicable in this case because, the said decision was rendered invoking the Civil original jurisdiction, whereas, this case filed invoking Writ jurisdiction under Article 226 of the Constitution.

31. The view taken by this court is supported by the decision rendered by the High Court of Orissa in ***Varsha Priyadarshini v. Government Of India and Others [W.P. (C) No. 13508 of 2022]*** , wherein, the Writ petition was filed under Article 226 filed with a prayer to direct the Ministry of Information and Broadcasting, Government of India and Registrar of Newspapers of India to instruct the Print and Electronic Media not to publish and circulate any news item in the matter pertaining to marital dispute between the Petitioner and Opposite Party. Dismissing the Writ petition , it was observed by the Court that;

10.3“The general principle that a writ petition is not maintainable against a private individual cannot be brushed aside completely. As discussed above, the Petitioner has to make out a strong case for issuance of a direction as sought for. No case is made out by the Petitioner in this writ petition to call for an immediate intervention of this Court. No material is placed before this Court to infer that the Petitioner had no efficacious remedy for redressal of her grievance. No doubt, a writ petition is



maintainable even if an alternative remedy is available. But when the alternative remedy is equally efficacious the writ Court should be slow to intervene in the matter.

10.4 In addition to the above, the allegations and counter allegations require factual adjudication by receiving evidence from the parties. A competent Civil Court has jurisdiction to delve and adjudicate the issue involved in the instant writ petition. It has also the power to grant any interim relief as sought for in the present writ petition. Thus, in my considered opinion the writ petition, in the facts and circumstances of the case, is not maintainable.”

32. There is yet another aspect that prompts this Court not to grant the reliefs sought in this writ petition, to direct the respondents to remove the contents. As claimed by the respondents 6 and 7, publication of news items is forming part of the fundamental rights of the said respondents under Article 19(1)(a), being the right of speech and expression and also under 19(1)(g); freedom to pursue a profession. The obligations of the Government in interfering with such rights in the light of the stipulations under Article 19(2) of the constitution of India was elaborately considered by a Constitution Bench of th Hon'ble SC in ***Kaushal Kishor v. State of Uttar Pradesh and Ors [(2023) 4 SCC 1]*** in which in paragraph 193, it was observed as follows:



“193. What emerges from the Hohfeldian conception of rights and correlative duties, qua the right to freedom of speech and expression may be summed up as follows.

193.1. The Constitution of India confers under Article 19(1)(a), the right to freedom of speech and expression to all its citizens. The State has a correlative duty to abstain from interference with such right except as provided in Article 19(2) of the Constitution which are reasonable restrictions on the right conferred under Article 19(1)(a). The extent of such duty depends upon the content of speech. For instance, in respect of speech that is likely to be adverse to the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality; or speech that constitutes contempt of court, defamation or is of such nature as would be likely to incite the commission of an offence, the duty of the State to abstain from interference, is nil. This principle is constitutionally reflected under Article 19(2) which enables the State to enact law which would impose reasonable restrictions on such speech as described under the eight grounds listed hereinabove which are the basis for reasonable restrictions.

193.2. Per contra, in respect of speech and expression which constitutes an exchange of ideas, including dissent or disagreement, and such ideas are expressed in a manner compatible with the ethos cultivated in a civilised society, the duty of the State to abstain from interference, is high.

193.3. Similarly, in respect of commercial speech, the State is completely free to recall or curb commercial speech which is false, misleading, unfair or deceptive. Therefore, the threshold of tolerance towards commercial speech or advertisements depends on the content of such speech and the object of the material sought to be propagated/circulated. The duty of the State to abstain from interference would also depend upon the nature and effect of the commercial speech.

193.4. As is evident from the above illustrations, the extent of protection of speech would depend on whether, such speech would constitute a



“propagation of ideas” or would have any social value. If the answer to the said question is in the affirmative, such speech would be protected under Article 19(1)(a); if the answer is in the negative, such speech would not be protected under Article 19(1)(a). In respect of speech that does not form the content of Article 19(1)(a), the State has no duty to abstain from interference having regard to Article 19(2) of the Constitution and only the grounds mentioned therein.

193.5. Having noted that the protective perimeter within which a person can exercise his/her rights depends on the degree to which the State is duty-bound to protect the right, it may also be said as a corollary that in respect of speech that does not form the content of Article 19(1)(a), the State has no duty to abstain from interference and therefore, speech such as hate speech, defamatory speech, etc. would lie outside the protective perimeter within which a person can exercise his right to freedom of speech. Such speech can be subjected to restrictions or restraints. While restrictions on the right to freedom of speech and expression are required to be made only under the grounds listed under Article 19(2), by the State, restraints on the said right, do not gather their strength from Article 19(2). Restraints on the right to freedom of speech and expression are governed by the content of Article 19(1)(a) itself i.e. any kind of speech, which does not conform to the content of the right under Article 19(1)(a), may be restrained. Questions pertaining to the voluntary or binding nature of such restraint, the force behind the same, the persons on whom such restraints are to be imposed, the manner in which compliance thereof could be achieved, etc., are aspects left to be deliberated upon and answered by Parliament. However, the finding made hereinabove is only to the extent of clarifying that any kind of speech, which does not form the content of Article 19(1)(a), may be restrained as such speech does not constitute an exchange of ideas, in a manner compatible with the ethos cultivated in a civilised society. Such restraints need not be traceable only to Article 19(2), which exhaustively lists eight grounds on which restrictions may be imposed on the right to freedom of speech and expression by the State.”



33. Of course it is true that, in the observations made by the Hon'ble Supreme Court as above, there is a reference to "defamation", as it is one of the ingredients in Article 19(2) based on which, reasonable restrictions can be imposed upon the fundamental right under Article 19(1)(a). However, as observed above, unless there is finding by a competent Court that, the publications made by the 6th and 7th respondents are defamatory, no relief can be granted to the petitioners in the matter of removal of the contents.

34. Apart from the aspects referred to above, the petitioners have alleged failure on the part of the respondents 3 to 5, in fulfilling the statutory mandate contemplated under the provisions of the IT Act and the Rules framed thereunder. The said submissions were made mainly alleging violation of Rule 3 and 4 of the Ethics Code Rules, 2021.

35. However, in response to the same, the 4th respondent have clearly highlighted the measures they have taken in fulfillment of the obligations upon them, being the 'intermediary', as defined under 2(w) of the Act and also as a 'significant social media intermediary', as defined under Sec.2(v) of the Ethics Code Rules, 2021. I have no reason to



discard the said contentions of the 4th respondent, as no materials are placed before this Court, highlighting any violations on the part of the 4th respondent and its subsidiaries in this regard. It was also contended by the petitioner that, the provisions of Cable Television Network (Regulation) Act, 1955 was violated. However, the provisions of Cable Television Network (Regulation) Act cannot be applied as what governs in this case are the provisions of Information Technology Act, 2000.

36. During the pendency of this writ petition, an application was submitted by the petitioners to amend the writ petition by substituting the prayers sought therein. However, the amendment was stoutly opposed by the respondents for various reasons, including that, it alters the nature of the writ petition as such. After carefully going through the objections, I find that, the reliefs sought to be substituted as per the said application, cannot be considered in this writ petition, in view of the fact that the said reliefs are either in public interest or without any sufficient pleadings.

37. Apart from the above, some of the reliefs sought in the writ petition are for certain general directions to the 1st and 2nd respondents in the matter of regulating the public media



platforms including that of the respondents 3 to 5. However, the crucial aspect to be noticed in this regard is that, as rightly pointed out by the learned DSGI, the petitioners have never moved the competent authorities under the 1st and 2nd respondents, highlighting these aspects. The petitioners can seek the issuance of a writ of mandamus, only when there is failure on the part of the official respondents in performing their statutory functions. In this case at no point of time, the petitioners have sought for any action against the respondents 3 to 5 for non-compliance of any statutory provisions, stating that the said respondents failed to appoint any Chief Compliance Officer or to establish a Compliant Redressal mechanism, as contemplated under the relevant Rules. Ext.P1 is the only notice issued by them, which is submitted seeking a compensation of Rs.10 crores. To be precise, the allegations of noncompliance of the provisions, and the actions against the respondents 3 to 5 in respect of the same, are not matters that were sought by the petitioners before the competent authorities and therefore the petitioners cannot agitate the same before this court for issuing a writ of mandamus for the said purpose.

38. When it comes to the question of the relief of compensation, it is to be noted that, the Apex Court has



observed in ***Nilabati Behera v. State of Orissa, [(1993) 2 SCC 746]***, and held thus;

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

39. In ***K.K. Saksena v. International Commission on Irrigation & Drainage, [(2015) 4 SCC 670]*** and held thus;



“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.”

Therefore, I am of the view that, the petitioners have miserably failed to make out of a case for issuance of writ of mandamus in respect of such directions. Thus, after considering all relevant aspects, I do not find any justifiable grounds to grant the reliefs sought in the writ petition and accordingly, this writ petition is dismissed. However it is clarified that, the dismissal of this writ petition will not stand in the way of the petitioners in invoking their civil and criminal remedies against the 6th and 7th respondents.

Sd/-

**ZIYAD RAHMAN A.A.
JUDGE**

APPENDIX OF WP(C) NO. 9839 OF 2024**PETITIONER EXHIBITS**

Exhibit P1	LETTER TO THE RESPONDENTS NO.3 TO 5 DATED 25 FEB 2024
Exhibit P2	REPLY FROM RESPONDENT NO.3 TO 5 DATED 28 FEB 2024
Exhibit P3	SECOND REPLY FROM RESPONDENT NO.3 TO 5 DATED 1ST MARCH 2024
Exhibit P4	LETTER DATED 25 FEB 2024 SENT TO THE RESPONDENTS NO.1 & 2 ON 26 FEB 2024
Exhibit P5	COPY OF GAZETTE NOTIFICATION DATED 25 FEB 2021
Exhibit R4(f)	Copy of YouTube policy on Defamation as available in https://support.google.com/youtube/answer/6154230hlen
Exhibit R4(d)	Copy of about the 'report' option as available in https://support.google.com/youtube/answer/2802027hlenampcoGENIE.Platform3DDesktop
Exhibit R4(a)	Copy of Terms of Service of YouTube as available in https://www.youtube.com/t/terms
Exhibit R4(b)	Copy of privacy policy of Google as available in https://policies.google.com/privacyglSamphle n
Exhibit R4(c)	Copy of Community Guidelines of YouTube as available in http://in.youtube.com/t/community_guidelines
Exhibit R4(e)	Copy of YouTube India's array of grievances and legal policies as available in https://support.google.com/youtube/answer/10728153
Exhibit P9	Copy of YouTube help page dated 12/08/2024
Exhibit P6	Copy of the youtube help page dated 07/08/2024
Exhibit P7	Copy of the Particular page of the Audited Profit and loss account of Respondent No.6
Exhibit P8	Copy of the Creators Help Page of YouTube as on 12/08/2024
Exhibit P11	Copy of the screen print of the images displayed
Exhibit P12	Copy of the email printout on 06/09/2023
Exhibit P13	Copy of the help page as on 09/08/2024
Exhibit P14	Copy Helping Page and printoutas on



01/08/2024

Exhibit P16 Payment receipt of Google LLC and Google India Pvt Ltd as on 09/08/2024

Exhibit P15 Copy of the share holding pattern filed before the Ministry of corporate affairs as on 31 march 2022

Exhibit P17(a) THE THUMBNAIL OF THE VIDEO NO.1 PUBLISHED ON 06/09/2024

Exhibit P17(b) THE THUMBNAIL OF THE VIDEO NO.2 PUBLISHED ON 06/09/2024

Exhibit P17(c) THE THUMBNAIL OF THE VIDEO NO.3 PUBLISHED ON 06/09/2024

Exhibit P17(d) THE THUMBNAIL OF THE VIDEO NO.4 PUBLISHED ON 06/09/2024

rule 150 petition PETITION FOR INTERIM ORDER UNDER RULE 150
150 Application PETITION FILED UNDER RULE 150 OF THE KERALA HIGH COURT RULES

Exhibit P18 Copy of the invoice dated 30/06/2020

Exhibit P19 Screen print copy of the Google response

Exhibit P20 Copy of the Youtube creators page pertaining how to make money on youtube dated 21/07/2025

Exhibit P21 Copy of the newsletter published by Respondent No.3 to 5 on March 18, 2024

Exhibit P22 Copy of the YouTube Partner Program

Exhibit P23 Copy of the YouTube Shorts Monetization page

Exhibit P24 Copy of the First Information Report No.2629 dated 12/11/2023

Exhibit P25(a) COPY OF THE PRIVACY GUIDELINES AS ON 17 JANUARY 2026.

Exhibit P25(b) COPY OF THE PRIVACY GUIDELINES TITLED 'PROTECTING YOUR IDENTITY', AS ON 17 JANUARY 2026