

SYNOPSIS & LIST OF DATES

That this petition filed in public interest is seeking protection and enforcement of fundamental right of privacy of crores of Indians, which is being violated by illegal surveillance by Apps and Internet Companies.

That a social media company named WhatsApp, which has crores of Indian users has revealed that its systems were hacked by an Israel based intelligence company called NSO Group, in which data of many Indian users was also compromised. NSO Group has reportedly stated that it sells its technologies only to Government agencies.

India is WhatsApp's biggest market with more than 40 crore users and is also being allowed Payment Services. WhatsApp is owned by Facebook, which also owns Instagram. Facebook has around 30 crore Indian users while Instagram has about 6.9 crore users. Moreover, there are many government agencies, including Police which is present on social media platforms such as WhatsApp. Thus, it is clear that data of Indians, including governmental data is being stored in systems that have already been compromised, which endangers national security.

Facebook has admitted in its submissions before the US District Court that it not only handles the digital security of its group companies but also integrates users' data for commercial gains. Earlier, in operation PRISM, the top nine internet companies of the world had shared data of their users with American intelligence agencies. In Cambridge Analytica, Facebook's systems were used to influence elections all across the world, including India. Thus, it is clear that internet companies are partners in crime with other entities, or are themselves selling data of their users and thereby violating users privacy and endangering their life.

That the Government published the Draft The Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018 in December 2018, but is yet to notify them. During the hearing of Transfer Petition (Civil) 1943/2019, it submitted to this Hon'ble Court that it will further take three months to notify the same. It is submitted that Indians cannot be left remediless, even as the Government forever keeps consulting, often with the same internet companies, which are violating the privacy of Indians.

That investigation by CBI is already ongoing against Google and regarding Cambridge Analytica, but their status is unknown. Several high functionaries, including Delhi Chief

Minister and West Bengal Governor have expressed concerns over surveillance.

During the hearing of Transfer Petition (Civil) 1943/2019, WhatsApp submitted that it is secure, and the situation is akin to a locked room, of which no one, including WhatsApp has the key. This statement is contradictory to its own filing before the US Supreme Court which states that it came to know about the hacking in May 2019. Thus, it is clear that WhatsApp committed perjury by falsely claiming a protected system and failing to disclose about the NSO Hack to the Hon'ble Supreme Court.

As per initial reports, mobile phones of 17 Indians were compromised through Pegasus software of NSO Group. As per new reports, 121 Indian were affected. As per unofficial estimates, the list of affected Indians is likely to go up. WhatsApp has 40 crore Indian users, whose privacy and national security is at stake.

LIST OF DATES

18.12.1996	Hon'ble Supreme Court in PUCL v. Union of India (1997) 1 SCC 301 directed safeguards for telephone tapping and interception.
01.03.2007	Government of India amended Telegraph Rules, 1951 to include Rule 419-A providing for procedure of interception of telephones in line with judgment of the Hon'ble Supreme Court in PUCL v. Union of India.
2007	USA National Security Agency's (NSA) project PRISM (internet data surveillance) by which more than 6.3 billion data of Indians was accessed by US intelligence agencies through nine internet companies, without any consent of Indian Government or users.
27.10.2009	The Information Technology (Procedure and Safeguard for Monitoring and Collecting Traffic Data or Information) Rules, 2009 notified
11.04.2011	The Information Technology

	(Intermediaries Guidelines) Rule, 2011 notified
11.04.2011	Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 notified
06.06.2012	Writ Petition (Civil) 3672/2012 filed by the Petitioner before Hon'ble High Court of Delhi. The Hon'ble High Court through different orders in the same directed for Social Media Policy, Email Policy, and appointment of Grievance Officer.
18.06.2013	Writ Petition (Civil) 381/2013 filed before the Hon'ble Supreme Court seeking prosecution of CEOs of internet companies involved in PRISM.
27.06.2013	Hon'ble Supreme Court disposed off Writ Petition (Civil) 381/2013 granting liberty to approach the High Court
26.09.2013	Google and Facebook appointed Grievance Officer for India, in United States and Ireland respectively.
23.10.2013	Election Commission notifies

	"Instructions on Social Media" as per representation of the Petitioner
19.02.2014	Facebook acquires WhatsApp for US \$19 billion
13.08.2014	Government of India's reply in Lok Sabha that CBI is investigating Google for collection of data including classified data, in violation of the National Map Policy-2005
17.12.2015	Petitioner wrote to Google CEO Mr. Sundar Pichai seeking disclosures about its business in India and payment of taxes
01.11.2016	Delhi Chief Minister claims that phones of judges are being tapped.
24.08.2017	Hon'ble Supreme Court K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1 recognized Privacy as fundamental right.
27.07.2018	Justice Srikirshna Committee Report on Data Protection, despite which the Data Protection Law is yet to be made.
27.08.2018	Hon'ble Supreme Court issues notice in

	Writ Petition (Civil) 921/2018 seeking compliance of RBI data localisation norms by WhatsApp.
23.09.2018	WhatsApp appoints Grievance Officer for India in United States
20.12.2018	Ministry of Home Affairs notified 10 security and intelligence agencies for interception, monitoring and decryption of information
24.12.2018	Ministry of Electronics and Information Technology published Draft "The Information Technology [Intermediaries Guidelines (Amendment) Rules]" 2018
11.01.2019	Writ Petition (Civil) 44/2019 challenging Section 69-B of Information Technology Act, 2000 filed before the Hon'ble Supreme Court.
25.01.2019	Hon'ble Supreme Court issued notice in Writ Petition (C) 61/2019 challenging Section 5(2) of Telegraph Act, 1885 and Rule 419-A of Telegraph Rules, 2005.
May 2019	WhatsApp became aware about its system being compromised and hack by

	three months for finalising and notifying the revised “The Information Technology [Intermediaries Guidelines (Amendment) Rules]”.
22.10.2019	Hon’ble Supreme Court allowed Transfer Petition (Civil) 1943/2019 and directed for listing of all similar matters on 30 th January 2020 before an appropriate bench after obtaining orders of Hon’ble Chief Justice. At the hearing, WhatsApp claimed that it is fully encrypted, and the situation is akin to its data being in a locked room, of which no one, including WhatsApp has the key.
30.10.2019	WhatsApp and Facebook filed a case before the District Court in California claiming its systems were compromised by an Israeli surveillance company named NSO Group. As a result, personal data of several individuals, most of them being lawyers and human rights activists including Indians was acquired by the NSO Group.

01.11.2019	Ministry of Electronics and Information Technology stated that WhatsApp had not informed it about the NSO Spyware Hack.
02.11.2019	Petitioner's representation to the Union Minister for Electronics and IT and Law and Justice seeking removal of Government Accounts from WhatsApp and other private communication services, NIA investigation into WhatsApp-NSO Data Leak and perjury proceedings against WhatsApp and Facebook. (Annexure P-2 pg)
03.11.2019	Chief Justice of India Designate expressed concerns over misuse of social media.
03.11.2019	West Bengal Governor said that privacy is compromised in the State, indicating that State Government is monitoring the devices of individuals.
04.11.2019	Hon'ble Supreme Court issued notice in Writ Petition (Crl) 230/2019 regarding

	phone tapping of suspended IPS from Chattisgarh.
04.11.2019	As per initial reports, mobile phones of 17 Indians were compromised through Pegasus software of NSO Group. As per new reports, 121 Indian were affected. As per unofficial estimates, the list of affected Indians is likely to go up. WhatsApp has 40 crore Indian users, whose privacy is at stake.

HENCE, THE PRESENT WRIT PETITION

IN THE SUPREME COURT OF INDIA
[CRIMINAL ORIGINAL JURISDICTION]
WRIT PETITION (CRL) NO. /2019
(UNDER ART. 32 OF THE CONSTITUTION)
PUBLIC INTEREST LITIGATION:

IN THE MATTER OF

K. N. Govindacharya

S/o Lt. Sh. K. V.

Neelameghacharya

Aged about 76 years

R/o House No. 8313, Sector-C,
Pocket 8, Vasant Kunj, New Delhi-
110070

...Petitioner

VERSUS

1. Union of India
Through Secretary,
Ministry of Home Affairs
North Block, New Delhi-110001
2. Ministry of Electronics & IT
Through Its Secretary
North Block, New Delhi-110001
3. Facebook Inc.
1601, Willow Road, Menlo Park,
California, 94025
United States

4. WhatsApp Inc.

Through its CEO

650, Castro St. Ste 120-29

Mountain View 94041

California, United States

...Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA BEFORE THIS HON'BLE
COURT**

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS

COMPANION JUDGES OF THIS HON'BLE COURT

THE HUMBLE WRIT PETITION OF THE PETITIONER
ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. Writ Petition in public interest under Article 32 of the Constitution of India seeking directions to protect the fundamental right of privacy of Indians from illegal surveillance being carried out.
2. That, Petitioner is founder of Rashtriya Swabhimaan Aandolan. Petitioner is well versed in many Indian languages and has travelled to remote places all over

India and thus developed deep understanding of regional and national issues. The Petitioner had also raised several issues with respect to cyber governance before the Delhi High Court because of which the Central Government formed its Email and Social Media Policy. Many other orders by the Delhi High Court, passed in the petition filed by the Petitioner are landmark in cyber governance. The PAN Card No. of the Petitioner is BHUPG221B and the Aadhar Card No. of the Petitioner is 322238111855. The Petitioner is an ascetic and has no regular income. The Email ID of the Petitioner is kngovindacharya@yahoo.com and the Phone Number of the Petitioner is 9810209020. The address of Petitioner as mentioned in his Aadhaar Card House No. 8313, Sector-C, Pocket 8, Vasant Kunj, New Delhi-110070.

3. That the Respondent No. 1 is the Union of India through Secretary, Ministry of Home Affairs who is responsible for surveillance. The Respondent No. 2 is Ministry of Electronics and Information Technology through its Secretary who is responsible for not notifying IT Intermediary Rules & passing of data protection law in the country. Respondent No. 3 is Facebook Inc., which is parent and security provider of WhatsApp and earlier

allowed Cambridge Analytica app for interference in democratic process. Respondent No. 4 is WhatsApp, which is a social networking platform, onto which several government accounts are also present. Systems of WhatsApp were breached by the NSO Group, leading to violating of privacy of several Indians. It is submitted that all the Respondents are necessary parties to the petition.

4. That, the Petitioner has no personal interest in the litigation and is not guided by self-gain or for gain of any other person/institution/body and that there is no motive other than public interest and is bringing the instant issue to the attention of this Hon'ble Court in the wider interest of people at large, that is, in *bona fide* public interest which is clear from the facts of the Petition.
5. That there is no civil, criminal or revenue litigation, involving the Petitioner, which could have a legal nexus with the issues invoked in the present Public Interest Litigation.
6. That the cause of action for the present petition arose when the Petitioner served a representation dated 02 November 2019 to the Government of India as well as the Secretary General of the Hon'ble Supreme Court.

The Respondents have neither replied to the representation nor taken any steps.

7. That the Annexures P-1 to Annexure P-2 submitted along with the Writ Petition is true typed copy of its respective original.
8. That, no other petition arising out of the same cause of action has been filed by the Petitioner before this honourable court or any other court.
9. That, the brief facts giving rise to the instant petition are as follows: -
10. That a nine judge bench of this Hon'ble Court on 24.08.2017 unanimously recognized Privacy as a Fundamental Right. Earlier, the Hon'ble Court through its judgment in PUCL v. Union of India (1997) 1 SCC 301 had provided for certain safeguards for interception of telephone by government agencies.
11. That on 30.10.2019, WhatsApp Inc., which is a subsidiary of Facebook Inc., revealed to the public that its systems were compromised by an Israel based surveillance company named NSO Group. WhatsApp also disclosed that it has filed a case before the District Court in California against the NSO Group and its related company.

12. That in the above hack, data of many Indian citizens, who are mainly human rights activists and lawyers was also compromised. This was reportedly informed to them by WhatsApp and its partner organisation. Many such individuals have come out in the public.
13. That internet companies have been violating the privacy of Indian users by taking their data abroad and utilizing it for commercial gains. In operation PRISM, which was disclosed in 2013, it was revealed that the top nine internet companies in the world were sharing the data of their users with American intelligence agencies.
14. That in the Cambridge Analytica episode, which came to light in 2018, it was shown how Facebook's platform was used by Cambridge Analytica to influence elections all over the world, including India.
15. That interception strikes at the core of human life and privacy, and thus cannot be allowed without any lawful purpose and process. NSO Group has reportedly stated that it sells its technology only to government agencies.
16. That in case the Government is doing surveillance illegally, it shows the scant respect for rule of law by the instrumentalities of the State. In case private agencies

are doing surveillance of Indian citizens, the same cannot be allowed by the Government, which has a duty to protect the fundamental rights.

17. That at the time of hearing of Transfer Petition (Civil) 1943/2019, regarding the Government's request for decryption, WhatsApp had claimed that its systems are encrypted and the situation is akin to a locked room, of which no one, including WhatsApp has the key.
18. That the above is negated by WhatsApp's own admission in its statement before the United States District Court, wherein it claims that it came to know about the hack in May 2019. Moreover, there are also reports which state that WhatsApp knew about the hack even before May 2019.
19. That it is clear that WhatsApp misled this Hon'ble Court into believing that its systems were safe. WhatsApp deliberately did not disclose the NSO hacking during proceedings before the Hon'ble Supreme Court, and thus has committed perjury.
20. That investigations by CBI are already ongoing against Google for collecting classified data in violation of National Map Policy. In the Cambridge Analytica episode, the CBI has been investigating for a year.

21. That to make the situation better, the Government published the Draft "The Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018" but is yet to notify them.

22. That India is WhatsApp's biggest market with more than 40 crore users. WhatsApp is owned by Facebook, which also owns Instagram. Facebook has around 30 crore Indian users while Instagram has about 6.9 crore users. Facebook has admitted in its submissions before the US District Court that it not only handles the digital security of its group companies but also integrates users' data for commercial gains.

23. That the Petitioner apprised the Union Finance Ministry about the huge income of internet companies and their failure to pay commensurate taxes in India, in June 2019.

True Typed Copy of Representation dated 10.06.2019 sent by Petitioner to Union Finance Minister is attached herewith as **ANNEXURE P-1**.

24. That after the WhatsApp NSO Hack, the Petitioner wrote to the Union Minister for Electronics and IT and sought that government accounts on private communication networks must be removed to protect national security.

True Copy of representation dated 02.11.2019 to Union Minister for Electronics and IT is attached herewith as

ANNEXURE P-2.

25. That the above two representations details many points which are being raised by the Petitioner for a number of years, and may please be read as part of the Writ Petition, and their contents are not being reproduced herein for the sake of brevity.
26. That the writ petition is based on the following grounds, which are without prejudice to each other-

GROUND

- A. Because privacy is a fundamental right and part of Article 21 of the Constitution as per the judgment of this Hon'ble Court in K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1.
- B. Because protection of fundamental rights is essential to the rule of law. Privacy of crores of Indian cannot be curbed without following the procedure established by law, and any such instances is violative of Article 14 of the Constitution.

- C. Because the safeguards directed by this Hon'ble Court in PUCL v. Union of India (1997) 1 SCC 301 are for conventional line based telephony system and are not relevant to sophisticated computer based networks.
- D. Because the private respondents are taking away all data of Indian users outside the country, and exploiting them for commercial gains.
- E. Because instances like Cambridge Analytica show the official partnership of private respondents with entities that violate the privacy of individuals for nefarious purposes, including influencing the elections. Earlier, top nine internet companies of the world had partnered with American intelligence agencies in which more than 6.3 billion data of Indians was accessed by US intelligence agencies.
- F. Because the Chief Justice of India Designate expressed concerns over misuse of social media. It is submitted that all such concerns and challenges can only be handled if social media companies have office and officers in India, for which "The Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018" ought to be notified immediately.
- G. Because the Government has submitted to this Hon'ble Court that it will take further three months to notify

"The Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018". It is submitted that the Government just cannot forever indulge in the consultative process, even as fundamental right of privacy of Indians is being violated with impunity.

- H. Because considering the fact that investigations are already on against Google and regarding Cambridge Analytica, but their status is unknown.
- I. Because in Europe and USA, huge penalties is imposed in such matters. In India, neither any penalty is imposed nor is criminal prosecution of internet companies done for playing with Right to Life of crores of Indians.

PRAYER

It is therefore prayed that this Hon'ble Court may be pleased to:

- a) Direct for perjury proceedings against WhatsApp for deliberately misleading this Hon'ble Court in Transfer Petition 1943-46/2019 by claiming that users data is fully encrypted and no one including WhatsApp has the key
- b) Direct for NIA Investigation and lodging of FIR against Facebook, WhatsApp, NSO Group under the

provisions of the Information Technology Act, 2000
and Indian Penal Code, 1860 for violating
fundamental privacy of Indians

c) Any other relief, as may be deemed fit in light of
above facts and circumstances;

AND FOR THIS ACT OF KINDNESS THE PETITIONER
SHALL EVER PRAY

Drawn by

Filed by

Gaurav Pathak, Advocate

Sachin Mittal

Drawn on: 04.11.2019

Advocate for the Petitioner

Filed on: 04.11.2019

IN THE SUPREME COURT OF INDIA
[CRIMINAL ORIGINAL JURISDICTION]

I.A. NO. OF 2019

IN

WRIT PETITION (CRL) NO. /2019

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:-

K.N. GOVINDACHARYA ...APPLICANT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

INTERIM APPLICATION SEEKING DIRECTIONS

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THIS HON'BLE COURT

THE HUMBLE INTERIM APPLICATION SEEKING
DIRECTIONS OF THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Applicant has filed the accompanying Writ Petition inter alia praying for a initiation of perjury proceedings and investigation against private respondents for violating fundamental right to privacy of Indians. The contents of the same may be deemed to be incorporated herein and are not being repeated for the sake of brevity.
2. That privacy is a fundamental right under Article 21 of the Constitution, which can be curbed only as per “procedure established by law.” With respect to interception of telephone, this Hon’ble Court in PUCL v. Union of India (1997) 1 SCC 301 directed safeguards for telephone tapping and interception.
3. That further law in this regard was through Rule 419-A of Telegraph Rules, 1951. With respect to information relating to computers, The Information Technology (Procedure and Safeguard for Monitoring and Collecting Traffic Data or Information) Rules, 2009 were notified.
4. That the WhatsApp: NSO spyware hack, as detailed in the Writ Petition is neither covered by Rule 419-A of Telegraph Rules, 1951 nor The Information Technology (Procedure

and Safeguard for Monitoring and Collecting Traffic Data or Information) Rules, 2009.

5. That this Hon'ble Court in K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1 has recognized Privacy as fundamental right. Illegal snooping by private or government agencies is against the rule of law and cannot be allowed. Earlier it was reported that data of 17 Indians was compromised in the WhatsApp NSO hack. Now, the figure has gone up to 141, with some experts claiming that it may be around 3500. NSO has stated that it sells Pegasus only to Government agencies. The fact that human rights activists, lawyers etc. have been snooped shows the gravity of the situation. Earlier, Chief Minister of Delhi has stated that the phones of judges are also being tapped.
6. India is WhatsApp's biggest market with more than 40 crore users. WhatsApp is owned by Facebook, which also owns Instagram. Facebook has around 30 crore Indian users while Instagram has about 6.9 crore users. Facebook has admitted in its submissions before the US District Court that it not only handles the digital security of its group companies but also integrates users' data for

commercial gains. Thus, privacy of crores of Indians is at stake.

PRAYER

It is therefore prayed that this Hon'ble Court may be pleased to:

- a) Direct the Government to stop any surveillance through Pegasus or other similar applications.
- b) Direct the Government to notify "The Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018"
- c) further order(s) as may be deemed fit and proper fit in light of above facts and circumstances or the interest of justice;

Drawn by

Gaurav Pathak, Advocate

Drawn on: 04.11.2019

Filed on: 04.11.2019

Filed by

Sachin Mittal

Advocate for the Petitioner