

IN THE HON'BLE HIGH COURT OF DELHI, AT NEW DELHI

WRIT PETITION (CIVIL) NO. 13275 OF 2019

IN THE MATTER OF:

SANJAY R HEGDE

...

PETITIONER

VERSUS

MINISTRY OF ELECTRONICS AND  
INFORMATION TECHNOLOGY & ANR.

...

RESPONDENTS

I N D E X

S. No.	PARTICULARS	PAGE NOS.
1.	Counter affidavit on behalf of Respondent No. 1	1-5
2.	<u>ANNEXURE R-1:</u> Copy of The Information Technology (Intermediaries Guidelines) Rules, 2011	6-9

KIRTIMAN SINGH

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COUNTER AFFIDAVIT ON BEHALF OF MINISTRY OF  
ELECTRONICS & INFORMATION TECHNOLOGY (MeitY)  
RESPONDENT NO. 1

I, V K Trivedi S/o Late Shri K C Trivedi , aged about 55 years working as Scientist 'F' in the Ministry of Electronics & Information Technology (MeitY) having its office at Electronics Niketan , 6 CGO Complex Lodi Road, New Delhi -110003 do hereby solemnly affirm and sincerely state as follows:

1. I am duly authorized and competent to affirm this affidavit in my official capacity on behalf of the Respondent. That having gone through the petition and having perused the same and made myself conversant with the facts and circumstances of the present case on the basis of the official records, I am able to depose on oath and file this affidavit.
2. At the outset, I deny all allegations, averments and contentions made in the above mentioned petition individually and collectively. Unless any averment or contention is specifically admitted or traversed, the same may be treated as ~~denied~~  denied. The

answering Respondents crave leave to file a detailed affidavit at a subsequent stage if necessary.


**PRELIMINARY SUBMISSIONS**

3. It is respectfully submitted that vide the present Petition the

Petitioner herein prays for the following reliefs:

- a) issue an appropriate Writ, Order, Declaration or Direction in the nature of Mandamus directing Respondent No. 1 to lay down guidelines in exercise of its powers under Section 79 (2) (c) read with Section 87 (2) (zg) of the Information Technology Act to ensure that any censorship on social media is carried out strictly in accordance with the provisions of Article 19 of the Constitution.
  - b) issue an appropriate Writ, Order, Declaration or Direction directing Respondent No.2 to restore the suspended Twitter account, '@sanjayuvacha' of the Petitioner.
  - c) issue guidelines or directions to ensure that any censorship on social media is carried out strictly in accordance with the provisions of Article 19 of the Constitution till such time as rules/guidelines are framed by Respondent No. 1
  - d) Pass any writ, order or direction that this Hon'ble court may deem fit and proper in the facts and circumstances of the present case.
4. It is respectfully submitted that primarily the Petitioner's prayer against the Answering Respondent is prayer (refer para 3 (a) above) , which prays for the Answering Respondent to lay down guidelines in exercise of its powers under Section 79 (2) (c) read with Section 87 (2) (zg) of the Information Technology Act, 2000 ('IT Act').



5. In this regard it is most respectfully submitted that in terms of section 79 (2) (c) read with section 87 (2) (zg) of the IT Act the Central Government had already enacted "*The Information Technology (Intermediaries Guidelines) Rules, 2011*". A copy of the said rules is being annexed herewith as **Annexure R-1**.
6. It is respectfully submitted that in terms of Rule 3 of the abovementioned guidelines various intermediaries are required to observe due diligence in discharging their duties and shall publish the following: -
  - a) Rules & Regulations
  - b) Terms & Conditions
  - c) User Agreement
  - d) Privacy Policyfor access or usage of the intermediary's computer resource by any person.
7. It is further most respectfully submitted that as regards to blocking of websites for public access is concerned, the power and authority of the Answering Respondent with regard to the same is exercised by virtue of the powers prescribed under Section 69A of the IT Act.
8. In this regard it is submitted that the Answering Respondent is empowered under Section 69A of the IT Act to block for public access any information transmitted, received, stored or hosted in any computer resource under the specified provisions: 

- i. In the interest of sovereignty and integrity of India,
- ii. Defence of India,
- iii. Security of the State,
- iv. Friendly relations with foreign States or
- v. Public order or
- vi. For preventing incitement to the commission of any cognizable offence relating to above.

Furthermore, in terms of Rule 10 of "*The Information Technology (Procedure and safeguard for Blocking for Access of Information by Public) Rules, 2009*" the same can be done in terms of compliance of a Court Order.

**9.** It is further submitted herein that the Petitioner has prima facie failed to plead or place on record any material to show, that the Answering Respondent has failed to perform any of its statutory powers and functions as being provided under the Information Technology Act, 2000.

**10.** It is most respectfully submitted that as the Petitioner's account has been suspended by Respondent No. 2 on the basis of breach of Twitter Rules, the issue prima facie is between the Petitioner and Respondent No. 2. The Petitioner has fully understood and agreed to the terms and conditions of registration and use of the Respondent No. 2's services. The Answering Respondent has not issued/directed the suspension of petitioner's Twitter account.



**PRAYER**

In view of the submissions made hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to pronounce that the Answering Respondent is neither a necessary nor a proper party to this proceeding. Hence the petition is not maintainable for the legal reason of "mis-joinder of parties". Accordingly, it is prayed that the Answering Respondent be relieved from the array of the parties and the Petition may be dismissed qua the said Respondent.



V. K. TRIVEDI  
Scientist 'F' & Director  
Government of India  
Ministry of Electronics & Information Technology  
6, CGO Complex, Lodhi Road, New Delhi-110 003

**DEPONENT**

**VERIFICATION:**

Verified at New Delhi on this      the day of January, 2020, that the contents of the above affidavit are true and correct to my knowledge on the basis of the official records. No part of it is false and nothing material has been concealed therefrom.



V. K. TRIVEDI  
Scientist 'F' & Director  
Government of India  
Ministry of Electronics & Information Technology  
6, CGO Complex, Lodhi Road, New Delhi-110 003

**DEPONENT**

**NOTIFICATION**

New Delhi, the 11th April, 2011

**G.S.R. 314(E).**— In exercise of the powers conferred by clause (zg) of subsection (2) of section 87 read with sub-section (2) of section 79 of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules, namely.:-

**1. Short title and commencement** — (1) These rules may be called the Information Technology (Intermediaries guidelines) Rules, 2011.

(2) They shall come into force on the date of their publication in the Official Gazette

**2. Definitions** — (1) In these rules, unless the context otherwise requires,--

- (a) "Act" means the Information Technology Act, 2000 (21 of 2000);
- (b) "Communication link" means a connection between a hyperlink or graphical element (button, drawing, image) and one or more such items in the same or different electronic document wherein upon clicking on a hyperlinked item, the user is automatically transferred to the other end of the hyperlink which could be another document website or graphical element.
- (c) "Computer resource" means computer resources as defined in clause (k) of sub-section (1) of section 2 of the Act;
- (d) "Cyber security incident" means any real or suspected adverse event in relation to cyber security that violates an explicit or implicit applicable security policy resulting in unauthorised access, denial of service or disruption, unauthorised use of a computer resource for processing or storage of information or changes to data, information without authorisation;
- (e) "Data" means data as defined in clause (o) of sub-section (1) of section 2 of the Act;

[भाग II- खण्ड 3(i)]

भारत का राजपत्र : असाधारण

- (f) "Electronic Signature" means electronic signature as defined in clause (ta) of sub-section (1) of section 2 of the Act;
- (g) "Indian Computer Emergency Response Team" means the Indian Computer Emergency Response Team appointed under sub section (1) section 70 (B) of the Act;
- (h) "Information" means information as defined in clause (v) of sub-section (1) of section 2 of the Act;
- (i) "Intermediary" means an intermediary as defined in clause (w) of sub-section (1) of section 2 of the Act;
- (j) "User" means any person who access or avail any computer resource of intermediary for the purpose of hosting, publishing, sharing, transacting, displaying or uploading information or views and includes other persons jointly participating in using the computer resource of an intermediary.
- (2) All other words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

**3. Due diligence to be observed by intermediary** — The intermediary shall observe following due diligence while discharging his duties, namely : —

- (1) The intermediary shall publish the rules and regulations, privacy policy and user agreement for access-or usage of the intermediary's computer resource by any person.
- (2) Such rules and regulations, terms and conditions or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that —
- belongs to another person and to which the user does not have any right to;
  - is grossly harmful, harassing, blasphemous defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever;
  - harm minors in any way;
  - infringes any patent, trademark, copyright or other proprietary rights;
  - violates any law for the time being in force;
  - deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature;
  - impersonate another person;



THE GAZETTE OF INDIA : EXTRAORDINARY [ PART II-SEC. 3(i) ]

(h) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource;

(i) 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 any other nation

(3) The intermediary shall not knowingly host or publish any information or shall not initiate the transmission, select the receiver of transmission, and select or modify the information contained in the transmission as specified in sub-rule (2):

provided that the following actions by an intermediary shall not amount to hosting, publishing, editing or storing of any such information as specified in sub-rule: (2) —

(a) temporary or transient or intermediate storage of information automatically within the computer resource as an intrinsic feature of such computer resource, involving no exercise of any human editorial control, for onward transmission or communication to another computer resource;

(b) removal of access to any information, data or communication link by an intermediary after such information, data or communication link comes to the actual knowledge of a person authorised by the intermediary pursuant to any order or direction as per the provisions of the Act;

(4) The intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes,

(5) The Intermediary shall inform its users that in case of non-compliance with rules and regulations, user agreement and privacy policy for access or usage of intermediary computer resource, the Intermediary has the right to immediately terminate the access or usage lights of the users to the computer resource of Intermediary and remove non-compliant information..

(6) The intermediary shall strictly follow the provisions of the Act or any other laws for the time being in force.

(7) When required by lawful order, the intermediary shall provide information or any such assistance to Government Agencies who are lawfully authorised for

[भाग II- खण्ड 3(i)]

भारत का राजपत्र : असाधारण

investigative, protective, cyber security activity. The information or any such assistance shall be provided for the purpose of verification of identity, or for prevention, detection, investigation, prosecution, cyber security incidents and punishment of offences under any law for the time being in force, on a request in writing stating clearly the purpose of seeking such information or any such assistance.

(8) 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.

(9) The intermediary shall report cyber security incidents and also share cyber security incidents related information with the Indian Computer Emergency Response Team.

(10) The intermediary shall not knowingly deploy or install or modify the technical configuration of computer resource or become party to any such act which 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 sole purpose of performing the acts of securing the computer resource and information contained therein.

(11) The intermediary shall publish on its website the name of the Grievance Officer and his contact details as well as mechanism by which users or any victim who suffers as a result of access or usage of computer resource by any person in violation of rule 3 can notify their complaints against such access or usage of computer resource of the intermediary or other matters pertaining to the computer resources made available by it. The Grievance Officer shall redress the complaints within one month from the date of receipt of complaint.

[F. No. 11(3)/2011-CLFE]  
N. RAVI SHANKER, Jt. Secy.