

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
SUO MOTU WRIT PETITION (CRIMINAL) NO. 3 OF 2015**

IN THE MATTER OF:

Prajwala

...PETITIONER

VERSUS

Union of India & Ors.

...RESPONDENTS

BRIEF NOTE ON BEHALF OF THE PETITIONER

1. That the present Petition is the result of a letter dated 18.02.2015 addressed to the then Hon'ble Chief Justice of India by the General Secretary of the Petitioner Organisation Prajwala with respect to two videos circulated on WhatsApp, one being a video of a man raping a girl and another being a video of gang rape by five men on a woman. This Hon'ble Court was pleased to register the said letter as a Suo Motu Writ Petition (Criminal) dealing with the issue of CBI investigation into the incidents and intermediary responsibility for such content circulated on their platforms.
2. That the present Petition raises the following issues:
 - a. Whether a sexually violent act can be recorded, stored, uploaded, shared and circulated using any media by any person, group of persons, association or any body corporate?
 - b. Is it an offence under existing law?
 - c. Can a mechanism be created to ensure that these videos are not circulated, shared and/or otherwise available for viewing by anybody?
 - d. What is the responsibility of the law enforcement agencies to ensure (c) is complied with?
 - e. Do the agencies (including intermediaries) which are the medium used for the purposes of uploading/sharing/circulating have any legal obligation to ensure that the same are not circulated and also report it at first instance to the appropriate law enforcement agency? What are the consequences of failure to comply?
 - f. Mutual cooperation between/of the intermediaries to ensure compliance of this legal obligation and cooperation with law enforcement agencies.
 - g. Creating mechanisms to ensure that these videos are removed/blocked in the first instance so that circulation does not take place.
 - h. Mechanisms for reporting by any concerned member of the civil society without necessarily being a complainant.
 - i. Creation of National Sex Offender Registry.

3. That on 22.03.2017, this Hon'ble Court constituted a Committee comprising of representatives of the Government, the counsel for the Petitioner, the Amicus Curiae and representatives for Microsoft, Google, Yahoo! and Facebook to assist and advise this Court on the feasibility of ensuring that videos depicting gang rape, child pornography and rape should not be made available to the general public. Day-to-day confidential discussions/meetings were held and certain proposals and recommendations were identified. Some of these proposals and recommendations had consensus among all the members and were required to be implemented by this Hon'ble Court's order dated 04.09.2017. For the proposals and recommendations on which there was no consensus, this Hon'ble Court passed certain directions for implementation.
4. That the law in the present matter is clear. Section 67, 67A, 67B of the Information Technology Act, 2000 (hereinafter referred to as the "IT Act") read with Section 13, 14 and 15 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act") and Section 292 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") make the production, uploading and dissemination of Child Sex Abuse Material an offence with each participant independently liable for prosecution depending on their level of complicity and non-adherence of reporting. The IT Act also prescribes mechanisms with which the Central Government may block public access to any information on a computer resource and also imposes takedown obligations on intermediaries and other parties for offensive material transmitted through electronic means. In *Sabu Mathew George v. Union of India* [W.P. (Civil) No. 341/2008], this Hon'ble Court has enforced the principle of "Auto-Block" which refers to a "list of words" based on which any search conducted on an intermediary platform shall stand auto-blocked.
5. That while Section 79 of the IT Act affords certain protections to intermediaries, their responsibility to observe due diligence involves adherence to the laws of the land. The recording of a sexual violent act is a crime and allowing the same to be hosted and circulated on intermediary platforms amounts to aiding and abetting the crime. Such due diligence also includes mandatory reporting of any instance of such material to law enforcement in a timebound manner.
6. That in the United States of America (USA), it is mandatory for intermediaries to report any content that involves child pornography to the National Center for Missing and Exploited Children under 18 U.S. Code § 2258A titled "Reporting requirements of electronic communication service providers and remote computing service providers". In fact, intermediaries such as Facebook have acknowledged on affidavit before this Hon'ble Court that they are complying with such reporting requirements in USA.

7. That as early as in 2015, the Central Bureau of Investigation (CBI), in its affidavit dated 07.10.2015 filed before this Hon'ble Court, has indicated the vantage position it has as an agency to deal with cases of Child Sexual Abuse Material.
8. That in November 2019, the CBI set up an online Child Sexual Abuse and Exploitation (OCSAE) Prevention/Investigation Unit in New Delhi under its Special Crime Zone. The OCSAE is to handle investigation of such offences covered under the provisions of the IPC, POCSO Act and the IT Act. The purpose of the OCSAE is to collect, collate and disseminate information regarding publication, transmission, creation, collection, seeking, browsing, downloading, advertising, promoting, exchanging, distribution of information relating to online child sexual abuse and exploitation. A true and correct copy of CBI press release dated 15.11.2019 titled "CBI SETS UP ON-LINE CHILD SEXUAL ABUSE AND EXPLOITATION (OCSAE) PREVENTION/INVESTIGATION UNIT" is marked and annexed hereto as **ANNEXURE A** (Page No. ____ to ____).
9. That the USA-based National Center for Missing and Exploited Children (NCMEC) has shared data with the National Crime Records Bureau in relation to over 25,000 cases of suspected Child Sexual Abuse Material which were uploaded across social media platforms in India over a period of 5 months until 23.01.2020. According to the data shared by NCMEC, Delhi tops the list in terms of number of uploads of such Child Sexual Abuse Material followed by Maharashtra, Gujarat, Uttar Pradesh and West Bengal. A true and correct copy of a news report titled "India Has a Child Pornography Problem, and Delhi Tops the List of Uploads" published by Vice on 28.01.2020 is marked and annexed hereto as **ANNEXURE B** (Page No. ____ to ____).

BRIEF SUMMARY OF IMPORTANT ORDERS PASSED IN THE PRESENT MATTER	
ORDER DATE	DESCRIPTION
21.11.2016	<p>This Hon'ble Court noted on the basis of an affidavit filed by the Ministry of Home Affairs that a Committee was set up by the Ministry of Home Affairs to look into the issues relating to cyber crimes and suggest a Road Map for effectively tackling cyber crimes in the country and giving suitable recommendations on all facets of cyber crime. The Committee submitted its report in the first week of September, 2015. The Ministry of Home Affairs had accepted the recommendations of the Expert Committee in principle on and in principle approval had also been granted by the Ministry of Home Affairs for the following schemes:</p> <p>a. Scheme for setting up Indian Cyber Crime Coordination Centre (I4C) with the estimate cost of Rs. 464.28 crores (from the allocated budget</p>

	<p>of MHA).</p> <p>b. Scheme for setting up Cyber Crime Prevention against Women and Children (CCPWC) Unit with the estimated cost of Rs. 244.32 crores (from Nirbhaya fund).</p> <p>Additionally, the data based on the Crime and Criminal Tracking Network System (CCTNS) had in principle been approved for publishing in the National Sex Offenders List</p>
05.12.2016	Notice was issued to Microsoft, Google, Yahoo! and Facebook.
22.03.2017	<p>A Committee was constituted to assist and advise this Court on the feasibility of ensuring that videos depicting gang rape, child pornography and rape should not be made available to the general public, apart from anything else, to protect the identity and reputation of the victims and also because a circulation of such videos cannot be in public interest at all. The said Committee comprised of representatives of the Government, the counsel for the Petitioner, the Amicus Curiae and representatives for Microsoft, Google, Yahoo! and Facebook.</p> <p>The Committee was to hold day-to-day confidential discussions/meetings and arrive at a consensus on the possibility of ensuring that objectionable videos pertaining to child pornography, gang rape and rape are not made available on the internet.</p>
11.04.2017	Notice was issued to WhatsApp.
13.04.2017	Representatives for WhatsApp were also made part of the Committee constituted to assist this Court.
08.05.2017	The Report by the Committee was filed in a sealed cover before this Hon'ble Court. There were certain issues on which a final decision could not be taken because of which more time was granted to submit the final and comprehensive report.
04.09.2017	<p>Certain proposals and recommendations on which there was consensus between all the members of the Committee were noted by this Hon'ble Court and were required to be implemented at the earliest. Some of the proposals included the following:</p> <ol style="list-style-type: none"> a. The search engines expand the list of key words which may possibly be used by a user to search for child pornography content. b. Creating an administrative mechanism for reporting and maintenance of data in India. c. Project CCPWC being a general project to alleviate crimes against women and children, a special focus sub-project to be created within the same for eliminating child pornography, rape and gang rape content.

	The Union of India was to prepare a status report on implementation of the recommendations which had consensus.
11.12.2017	It was submitted before this Hon'ble Court by the Union of India that a portal had been prepared for making complaints by citizens with regard to issues pertaining to child sexual abuse, child pornography and rape / gang rape videos and the said portal would be ready within a month.
08.01.2018	<p>It was noted by this Hon'ble Court that the following steps had been taken pursuant to the recommendations on which there was consensus by all members of the Committee:</p> <ol style="list-style-type: none"> a. The Ministry of Home Affairs has identified the keywords for child pornography/rape and gang rape content search and a list of keywords in English language has been compiled and circulated to content providers for further action. Efforts are being made to update the list on regular basis. b. Online cyber crime reporting portal has been developed with access name as www.cyberpolice.gov.in and this portal is undergoing security audit and has been deployed in staging environment for testing and trial. <p>Based on the Petitioner's submissions with regard to certain "proactive detection" technology being developed by Facebook, Facebook was directed to file affidavit in this regard.</p>
15.02.2018	This Hon'ble Court directed the Committee to classify the proposals where there was no consensus into administrative proposals and technology related proposals for appropriate directions to be passed by this Hon'ble Court.
29.09.2018	This Hon'ble Court was informed by the Union of India that a preliminary draft of a Standard Operating Procedure had been prepared for cyber police portal handling complaints of child pornography, CSAM, rape/gang rape and obscene content. The said draft was directed to be circulated with the Petitioner and the Amicus Curiae for their inputs.
22.10.2018	This Hon'ble Court set a deadline of 15.11.2018 for finalizing the abovementioned Standard Operating Procedure.
28.11.2018	<p>This Hon'ble Court noted the following action to have been undertaken by the Ministry of Home Affairs:</p> <ol style="list-style-type: none"> a. Cyber crime portal www.cybercrime.gov.in has been launched. Over 1.06 lakhs visitors to the website till 28.11.2018 forenoon. b. Nodal officer and one level above officers have been nominated by all States / UTs for Grievance redressal. This is uploaded on the Portal. c. SOP has been finalized in consultation with Intermediaries and

	<p>guidance of Amicus and petitioner's advocate.</p> <p>d. Meeting held with intermediaries on 12-11-18 & 26-11-18 and SOP on complaint handling finalized taking their inputs into consideration.</p> <p>e. Concerned stakeholders including Amicus and Petitioner's advocate will be invited to the meetings of existing interministerial committee constituted under the chairmanship of JS (CIS) MHA for regular review of CP/RGR complaint handling mechanism.</p> <p>f. Draft agreement has been sent to the National Centre for Missing and Exploited Children (NCMEC) on 19-11-18 to access cyber tipline reports regarding missing and exploited children. Their reply is awaited.</p> <p>g. Commercial proposal from Photo DNA tool proposal has been received from Microsoft quoting Rs.4.5 crore to Rs.6 crore for various alternatives. Technical committee has been constituted to evaluate alternatives and two rounds of discussions have been held. Clarifications are awaited from Microsoft.</p> <p>h. All India awareness campaign on Radio for promoting use of cybercrime reporting portal and other cybercrime against women and children will start from first week of December. Order placed on BOC.</p> <p>i. M/s Google has been approached for sharing their API developed for identifying CSAM.</p> <p>j. Keyword compilation of English, Hindi, Bengali and Kannada shared with Intermediaries. Keywords in other languages also being compiled.</p> <p>The following steps were identified by the Union of India to be undertaken by the intermediaries:</p> <p>a. setup proactive monitoring tools for auto deletion of unlawful content by deploying Artificial intelligence based tools.</p> <p>b. Deployment of trusted flaggers for identifying and deletion of unlawful content.</p> <p>c. Setting up of 24X7 mechanism for dealing with requisitions of law enforcement agencies.</p> <p>d. Appointment of India based contact officer and escalation officers (with name, designation, email, mobile number)</p> <p>e. Prompt disposal of requisitions of Law Enforcement Agencies to remove unlawful contents.</p>
06.12.2018	<p>This Hon'ble Court directed that the proposed/draft Standard Operating Procedure be filed before this Hon'ble Court by 10.12.2018. With regard to the steps identified by the Union of India to be undertaken by the intermediaries in order dated 28.11.2018, each of the intermediaries had different reactions and they were directed to each give a proposed/draft Standard Operating Procedure for the purposes of implementation of the</p>

	suggestions.
11.12.2018	The Union of India was to frame the necessary Guidelines/ Standard Operating Procedure and implement them within 2 weeks to eliminate child pornography, rape and gang rape imageries, videos and sites in content hosting platforms and other applications.

PLACE: New Delhi

APARNA BHAT

DATE: 03.02.2020

(Advocate for the Petitioner)

