

IN THE SUPREME COURT OF INDIA, AT NEW DELHI

CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil) No. _____ of 2020

PUBLIC INTEREST LITIGATION

[PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA R/W ORDER XXXVIII RULE 12(1)(d) OF THE SCR,
2013]

SKAND BAJPAI & Anr.

... Petitioners

VERSUS

UNION OF INDIA & Ors.

... Respondents

PAPER-BOOK

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FOR I.A. KINDLY SEE INDEX.

FILED ON: 16/07/2020

DRAWN & FILED BY:

PETITIONERS-IN-PERSON

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IN THE SUPREME COURT OF INDIA, AT NEW DELHI

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PUBLIC INTEREST LITIGATION

(PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA R/W ORDER XXXVIII RULE 12(1) (d) OF THE SCR,
2013)

In the matter of:

1. **SKAND BAJPAI**, S/o Mr. Aseem Bajpai & Mrs.
Aneeta Bajpai, aged about 22 years, R/o

_____, Email: _____, (Mob):
_____.Petitioner No. 1

2. **ABHYUDAYA MISHRA**, S/o Mr. Sudheer Mishra &
Mrs. Yogita Mishra, aged about 19 years, R/o

_____, Email:
_____, (Mob): +91-
_____.Petitioner No. 2

VERSUS

1. UNION OF INDIA,

Through its Secretary, North Block,
New Delhi-110001, Ph.: 011-23092989, Email:
hshso@nic.in ...Respondent No. 1

2. MINISTRY OF ELECTRONICS & INFORMATION

TECHNOLOGY, Govt. of India, Through its
Secretary, Electronics Niketan, 6, CGO
Complex, Lodhi Road, New Delhi: 110003
Ph.: 011-24364041, Email:
secretary@meity.gov.in. ...Respondent No. 2

3. MINISTRY OF HUMAN RESOURCE DEVELOPMENT,

Govt. of India, Through its Secretary,
Shastri Bhawan, New Delhi-110001
Ph.: 011-23386451, Email: secy.dhe@nic.in.
...Respondent No. 3

4. MINISTRY OF LAW AND JUSTICE, Govt. of India

Through its Secretary, 4th Floor, A-Wing,
Shastri Bhawan, New Delhi-110001
Ph.: 011-23384205, Email: secylaw-dla@nic.in
...Respondent No. 4

A Writ Petition in Public Interest under Article 32 of the Constitution of India read with Order XXXVIII Rule 12(1)(d) of the Supreme Court Rules 2013 seeking issuance of appropriate Writ, directions and orders to be undertaken by the Respondents for a) regulation of age regarding access to social media, b) uprooting fake profiles and devising a profile verification mechanism, c) elimination of illicit content surfacing over the social media and devising a mechanism to prevent such content in future, d) upgradation of education policy for inclusion of efficient and mandatory adolescent sex education along with introduction of subject for educating individuals about their conduct on social media with associated risks and safety features, e) formulation of appropriate gender neutral law against revenge porn and impersonation on the internet.

To,

HON'BLE THE CHIEF JUSTICE OF INDIA,

AND HIS HON'BLE COMPANION JUSTICES OF THE SUPREME COURT OF INDIA. THE HUMBLE PETITION OF THE PETITIONERS ABOVENAMED.

IT IS MOST RESPECTFULLY SHOWETH:

1. That the Petitioners named above have preferred the instant Public Interest Litigation vide the present Writ Petition under Article 32 of the Constitution of India read with Order XXXVIII Rule 12(1)(d) of The Supreme Court Rules 2013 seeking indulgence of this Hon'ble Court and issuance of a Writ of *Mandamus* or any other appropriate writ, order or directions to the Respondent herein to undertake efficient actions in regard with a) regulation of age regarding access to social media, b) uprooting of fake profiles and catfish accounts by devising a profile verification mechanism, c) elimination of illicit content surfacing over the social media and devising a mechanism to prevent such content in future, d) upgradation of education policy

for inclusion of efficient mandatory adolescent sex education along with introduction of subject for educating individuals about their conduct on social media with associated risks and safety features and e) formulation of appropriate law against revenge porn, impersonation and morphing on the internet.

2. That Petitioner No. 1 herein is a permanent resident of Kanpur, Uttar Pradesh, and is currently pursuing BA.LLB as a bona fide student of New Law College, Bharati Vidyapeeth Deemed to be University, Pune and is an active member of the society. The petitioner bears PAN [REDACTED] and Aadhaar number [REDACTED] and belongs to the no income group category. The Contact details are as follows:

Residence: [REDACTED]
[REDACTED], Email:
[REDACTED], (M) : [REDACTED].

3. That Petitioner No. 2 is a permanent resident of Gorakhpur, Uttar Pradesh and is currently pursuing BA.LLB as a bona fide student of New Law College, Bharati Vidyapeeth Deemed to be University, Pune and is a public-spirited citizen. The Petitioner bears PAN [REDACTED] and Aadhaar number [REDACTED] and belongs to the no income group category. The Contact details are as follows:

Residence: [REDACTED]

[REDACTED]

[REDACTED]

Email: [REDACTED] (M):

[REDACTED].

4. That Respondent No. 1 is Union of India, through its Secretary responsible for home affairs of the State.

5. That Respondent No.2 is Ministry of Electronics & Information and Technology through its Secretary, responsible for

notifying IT Intermediary Rules and other regulatory notifications.

6. That Respondent No. 3 is The Ministry of Human Resource Development through its Secretary, regulating education as applicable.

7. That Respondent No. 4 is The Ministry of Law and Justice through its Secretary, responsible for approval and regulation of laws.

8. That neither of the Petitioners has filed any other petition before this Hon'ble Court or any other Court or Tribunal in the present subject matter.

9. That the Petitioners herein have approached this Hon'ble Court for common public good since the affected parties are either incapable of approaching the redressal agencies or are unaware of the facts of the petition. The Petitioners have no ulterior motives or personal gain in filing of this petition and are bringing the instant issues

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.

10. That there is no civil, criminal or revenue litigation, involving the petitioners, which could have a legal nexus with the issues invoked in the present Public Interest Litigation.

11. That the contents of this petition are witness gross violation of legal and fundamental rights of individuals in the virtual space.

12. That the cause of action of this petition arose when no satisfactory action was taken on the complaint dated 9.06.2020 filed by the petitioners on cybercrime.gov.in with regard to illicit content being traded on social media.

13. That the Annexures P-1 to Annexure P-8 submitted along with this Writ Petition are true copy of their source.

FACTS: -

14. That the Petitioners on 9th June 2020 raised a complaint at cybercrime.gov.in giving information about sale of sexually explicit content including private graphic information, rape videos and CSAM. The details of which have not been repeated here for the sake of brevity (**Annexure P-1** at page 32)

15. The concept of 'revenge porn' has been prevailing since 2010. On 06 Feb 2020 at an IAMAI event, Shri Ravishankar Prasad, Hon'ble Minister of Law and IT, Government of India expressed his concern over this issue by saying "*Revenge porn is creeping in India...girlfriend and boyfriend split up... then what happens, platform is being abused...*". Several Nation States have expressly criminalised revenge porn in their territories, however in India there exists no such legislation.

16. People have been purchasing, selling and transmitting private graphic information, rape videos and CSAM of unidentified people on social media platforms in exchange of money received by way of e-wallets and UPI transactions. (**Annexure P-2** at page 33)

17. These accounts have made packets of the media of persons with their faces identifiably visible and have then labelled it with number of photos and videos the packet contains, what type of media it has, the price for which it shall be sold and also an identification code on it. These packets are being advertised on the Instagram Stories and Posts of these accounts in large numbers. This also includes the sale of pornographic content including CSAM and rape videos.

18. Such accounts have been mushrooming on these platforms and when one gets reported or blocked another is created for the same business and such individuals have the

audacity of mentioning keywords such as "old account blocked hence new one" in the Instagram bio column of their new accounts.

19. These accounts are getting endorsed on troll and meme pages which have huge following and thus are being accessed by public at large. They also send 'follow requests' to random people on social media as a means of advertisement and promotion. They have also been posting comments on the posts of public figures inviting people to subscribe to their illegal services.

20. Many catfish accounts are offering paid sexual advances on live chat and video graphic sessions impersonating unidentified girls and women.

21. These accounts in order to establish their credibility in this illegal trade have been posting screenshots confirming the transmission of the desired media to individual buyers by way of online link

access to cloud storage accounts such as MEGA application after receiving payment.

22. These accounts in this trade and business are largely public accounts open to all members of the social media community. A simple search of the keyword "Pic Seller" or other similar words, would land one in a pool of results all related to this trade.

23. In previous cases when private or intimate photographs of individuals were leaked and had gone viral on social media or internet, the affected individuals have at times committed suicide or have tried harmed themselves. **(Annexure P-3** at page 58)

24. The Ministry of Electronics & Information and Technology has published draft of The Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018, however they have not yet been notified and enforced, an approval from the Ministry of Law and Justice is pending in this matter.

25. An 'Ad-hoc committee of the Rajya Sabha to study the alarming issue of pornography on social media and its effect on children and society as a whole' constituted under the Chairmanship of Shri Jairam Ramesh, Hon'ble Member of Parliament, Rajya Sabha, submitted its report on 25th January, 2020 to the Hon'ble Chairman of Rajya Sabha which was tabled in Rajya Sabha on 3rd February, 2020. No action has been taken on the recommendations made by the committee.

(Annexure P-4 at page 59)

26. In April 2020 a New Delhi based NGO named India Child Protection Fund, published a report stating that there has been a surge in the search for keywords 'Child porn', 'sexy child', 'teen sex videos' on the internet. It was further stated that 18% individuals exhibited explicit intent for videos where children were choking, bleeding, tortured, in pain or screaming. The demand for this kind of content grew as

much as 200% during the project duration. The report also claims that a large number of individuals were found to be concealing their location and criminal activity by using virtual private networks (VPNs) to circumvent government regulation and platform security. (**Annexure P-5** at page 62)

27. In a recent press release dated 15.04.2020, the Childline Helpline India 1098, stated that it responded to 4.6 lakh calls within a period of 21 days starting from 20.03.2020. It further stated that "As the helpline for children in distress, CHILDLINE continues to prevent abuse of children as well as rescue them from abusive situations. Of these 9385 interventions, to name a major few category; CHILDLINE emergency interventions for child protection aspects (protection from abuse) accounted for 20% which includes preventing child marriage, physical abuse, emotional abuse, sexual abuse, trafficking, abandonment,

neglect, child labour etc.” This is suggestive of the paedophilic and degrading environment prevailing against children.

(Annexure P-6 at page 69)

28. Under a Memorandum of Understanding (MoU) between the Government of India and National Centre for Missing and Exploited Children's (a non-profit organization established by the United States Congress), the Government of India received approximately 25,000 cyber tip line reports on CSAM videos being uploaded online as of January 23, 2020.

(Annexure P-7 at page 71)

29. A website by the name of Deep Nude has gone operational again after being taken down once before. This website uses a simple Artificial Intelligence algorithm to generate naked photographs of clothed people. The website requires the user to upload a picture and within seconds generates a nude version of the subject in the picture. These morphed photographs are

then used for personal or commercial purposes or as catfish accounts and the subjects in the photographs are often harassed and exploited using them. (**Annexure P-8** at page 75)

30. As per the terms and conditions of Facebook, an individual aged not less than 13 years or any other lawful age as per law applicable can hold an account on their platforms. Individuals agree and provide consent for several conducts on such platforms. There is no law governing age eligibility for using social media in India. The United States of America has a legislation on this subject matter titled as 'Children's Online Privacy Protection Act'¹, wherein the consent of parents or guardians of children below the age of 13 years is taken into consideration while processing data belonging to minors, however this also

¹ Children's Online Privacy Protection Act, 15 U.S.C. §§6501-6506 (1998)

does not create any age related barrier in access to social media or internet.

31. According to the report by Committee of Experts under the Chairmanship of (Retd.) Justice B.N. Srikrishna "Children on social media platforms are extremely vulnerable and they are unable to fully understand the consequences of their actions." These minor children fall an easy prey and are often manipulated and exploited by the predators on these social media platforms.

32. That the present Writ Petition in public interest is based on the following grounds, which are without prejudice to each other.

GROUND S: -

33. Because the availability of CSAM, rape videos and private graphic information like a commodity on social media violates the right to control dissemination of personal information by the affected individuals thereby infringing their right to privacy as

held by this Hon'ble court in the judgement of **K.S. Puttaswamy v. Union of India**², the availability of such material further violates the right to live with dignity and reputation, causes irreparable damage to the social image and status of individuals and makes them prone to harassment and exploitation.

34. Because there exists no law in India to regulate minors' access to social media. Since minors fall under the category of vulnerable groups as recommended by the committee headed by (Retd.) Justice B.N. Srikrishna, and are prone to exploitation and harassment for not being able to comprehend the consequences of their actions on social media platforms, they need to be protected by law in consonance with the International law and standards.

35. Because the age of consent in India stands at the age of majority and therefore minor's

² (2017) 10 SCC 1

consent on social media is *void ab initio* and inconsistent with the existing Indian legal framework.

36. Because the concept of revenge porn, online sale of private graphic information, rape videos and CSAM on social media has created a harassing, exploitative and paedophilic environment on these platforms.

37. Because there is a need to uproot fake social media profiles and catfish accounts and devise a mechanism for verification of these social media profiles as multiplicity of accounts and unverified profiles promote anonymity and impersonation. It makes it gruelling for the law enforcement agencies to trace a cyber offender. Verified social media profiles would encourage accountability and deter individuals from engaging themselves in offences in the virtual world.

38. Because there is a need to bring a change in the mind-set of the people and upgrading

the education policy for inclusion of efficient and mandatory adolescent sex education to remove the social taboo surrounding sex and sexuality.

39. Because there is a need to educate individuals about their conduct on social media with associated risks and safety features.

40. Because there is a need to deter people from engaging in revenge porn. Several nation states have already expressly criminalised revenge porn. However, in India there exists no gender-neutral legislation on this and revenge porn acts as a tool for coercion, exploitation and extortion.

41. Because incidents of morphing pictures and videos online have been increasing and there is a need to curb this as it leads to harassment and exploitation.

42. Because impersonation in the online world has been growing each day and there is a

need to expressly criminalise impersonation to protect the identity of individuals.

43. Because the central government has yet not notified and enforced the Information Technology [Intermediary Guidelines (Amendment) Rules] 2018. It is humbly submitted that the consultative process cannot be forever long when the situation is worsening each day.

44. Because there is a need to hold the intermediaries liable and accountable for the content featuring on their platform and increase their coordination and accountability with regard to Indian jurisdictions.

45. Because the present legal framework recognises as offender the person who transmits or publishes private graphic information, pornography and obscene material, but no liability arises on part of the person who consumes or subscribes to such content except in the cases of CSAM.

46. Because no action has yet been taken on the report by the Ad Hoc committee of the Rajya Sabha to study the alarming issue of pornography on social media and its effect on society as a whole.

PRAYER

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

- a) Issue an appropriate Order to Respondent No. 1 to institute proper investigation and legal proceedings against the users of social media profiles who are indulged in the advertisement, sale and procurement of illicit content (CSAM, rape videos) and private graphic information and to ensure deletion of such content, along with formulation of an efficient mechanism to deal with such content in the future.
- b) Issue an appropriate Order directing Respondent No. 4 to formulate appropriate laws or amend the existing laws to increase the

accountability of the intermediaries towards Indian jurisdictions, encourage mandatory reporting of CSAM and further directing them to make the intermediaries liable with regard to the content featured on their platforms.

- c) Issue an appropriate order directing the Respondent No. 2 to notify and enforce the Information Technology [Intermediary Guidelines (Amendment) Rules] 2018.
- d) Issue an appropriate Order directing Respondent No. 3 to work in collaboration with Ministry of Women and Child Development, Government of India, to upgrade the National Education Policy and inculcate adolescent sex education as a compulsory subject, further directing them to introduce a subject related to online safety, security and conduct.
- e) Issue an appropriate Order to Respondent No. 4 to formulate a gender-neutral legislation or to amend the existing laws to expressly criminalise revenge porn, morphing and impersonation.

f) Issue an appropriate Order directing Respondent No. 4 to formulate an appropriate law regulating minor's access to social media and laying down appropriate age limit for such access in consonance with the present Indian legal framework.

g) Issue an appropriate Order directing Respondent No. 2 & 4 to frame appropriate law governing the verification mechanism of social media profiles along with curbing fake social media profiles including catfish accounts.

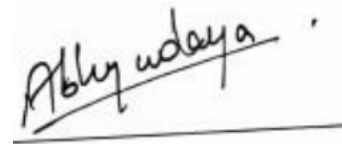
h) Any Order(s) as may be deemed fit and proper in light of above facts and circumstances or in the interest of justice;

And for this act of kindness, the Petitioners shall, as in duty bound, forever pray

Drawn & Filed by:



Petitioner No.1 in-person

A handwritten signature in black ink, reading "Abhyudaya", is written above a horizontal line.

Petitioner No.2 in-person

Drawn on: 12.07.2020

Filed on: 16.07.2020

IN THE SUPREME COURT OF INDIA, AT NEW DELHI

CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil) No. _____ of 2020

PUBLIC INTEREST LITIGATION



In the matter of:

SKAND BAJPAI & ANR.



VERSUS

UNION OF INDIA & ORS.

AFFIDAVIT OF PETITIONER NUMBER 01

I, Skand Bajpai, S/o Mr. Aseem Bajpai & Mrs. Aneta Bajpai, aged about 22 years, R/o [REDACTED]

[REDACTED] do hereby solemnly affirm, declare and state as under:

1. That I am the Petitioner number 01 herein and as such I am well conversant with the facts and circumstances of the case and hence competent to swear this Affidavit.

Saro-166

2. That the facts set out in the Synopsis and List of Dates and also in the accompanying Writ Petition, the contents of which have not been

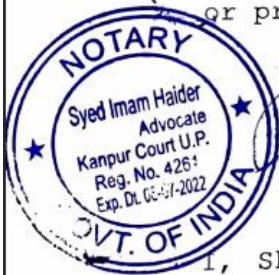


14/07/20

Skand Bajpai

repeated herein for the sake of brevity may be read as an integral part of this affidavit, are true and correct to my knowledge, information and belief; and submissions as to law, Questions of law, Grounds and Prayer are based on the best of my ability and knowledge on the subject matter.

3. That the deponent belonging to the noble profession of law has filed the accompanying Writ Petition before this Hon'ble Court with a bona fide motive and with the sole intention of seeking public good and the good of the common people and without any personal gain, ulterior or private motive or oblique reason.



[Handwritten Signature]

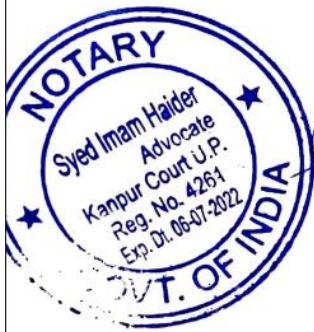
DEPONENT


VERIFICATION:

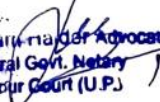
I, Skand Bajpai, S/o Mr. Aseem Bajpai & Mrs. Aneeta Bajpai, aged about 22 years, R/o [REDACTED]

[REDACTED], the abovenamed deponent, do hereby verify that the contents of the Affidavit

hereinabove, are true and correct to my knowledge, information derived from the record and my legal knowledge which I believe to be true. No part of this Affidavit is false nor anything material has been concealed there from. Verified at Kanpur, Uttar Pradesh on this the 14th day of July, 2020.




DEPONENT

Certified that this documents is presented before me today by Shri. Skand Bhatnagar who is identified by Sr. _____ verified by _____ Hence Attest

Syed Imam Haider Advocate
Central Govt. Notary
Kanpur Court (U.P.) 14/07/20

IN THE SUPREME COURT OF INDIA, AT NEW DELHI

CIVIL ORIGINAL JURISDICTION



Mishra
Shanti Prasad
15/7/2020
Writ
NOTARY
GORAKHPUR

Petition (Civil) No. _____ of 2020

PUBLIC INTEREST LITIGATION

In the matter of:

SKAND BAJPAI & ANR.

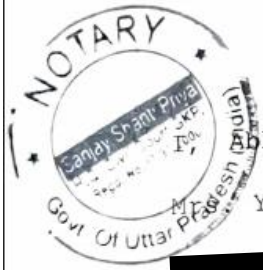


VERSUS



UNION OF INDIA & ORS.

AFFIDAVIT OF PETITIONER NUMBER 02



Abhyudaya Mishra, S/o Mr. Sudheer Mishra &
Yogita Mishra, aged about 19 years, R/o [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] do hereby solemnly affirm,

declare and state as under:

1. That I am the Petitioner number 02 herein and as such I am well conversant with the facts and circumstances of the case and hence competent to swear this Affidavit.

Sanjay
Sanjay Shanti Prasad
NOTARY
GORAKHPUR

Abhyudaya

2. That the facts set out in the Synopsis and List of Dates and also in the accompanying Writ Petition, the contents of which have not been repeated herein for the sake of brevity may be read as an integral part of this affidavit, are true and correct to my knowledge, information and belief; and submissions as to law, Questions of law, Grounds and Prayer are based on the best of my ability and knowledge on the subject matter.

3. That the deponent belonging to the noble profession of law has filed the accompanying Writ Petition before this Hon'ble Court with a bona fide motive and with the sole intention of seeking public good and the good of the common people and without any personal gain, ulterior or private motive or oblique reason.

Abhyudaya

DEPONENT

VERIFICATION:

I, Abhyudaya Mishra, S/o Mr. Sudheer Mishra & Mrs. Yogita Mishra, aged about 19 years, R/o

Sanjay Shanti Priva
NOTARY
GORAKHPUR

[REDACTED]
[REDACTED]
[REDACTED],

the abovenamed deponent, do hereby verify that the contents of the Affidavit hereinabove, are true and correct to my knowledge, information derived from the record and my legal knowledge which I believe to be true. No part of this Affidavit is false nor anything material has been concealed there from.

Verified at Gorakhpur, Uttar Pradesh on this the 1st day of July, 2020.



Abhyudaya

DEPONENT

Sanjay
Sanjay Shakti Prasad
NOTARY
GORAKHPUR