

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 Reserved on: 12th April, 2022
 Date of decision: 30th August, 2022
+ **CS (COMM) 282/2020**

NEETU SINGH & ANR. Plaintiffs
Through: Ms. Rajeshwari H. & Ms. Swapnil
Gaur, Advocates. (M:9897905254)
versus Defendants
TELEGRAM FZ LLC & ORS. Defendants
Through: Mr. Amit Sibal, Sr. Adv. with Ms.
Anushka Sharda, Mr. Madhav Khosla,
Ms. Smriti Nair, Mr. Vinay Tripathi,
Mr. Madhav Chitale, Mr. Aishwary
Vikram and Mr. Saksham Dhingra,
Advs. For Defendant No.1.
(M:8377065347)

CORAM:

JUSTICE PRATHIBA M. SINGH
JUDGMENT

Prathiba M. Singh, J.

I.A. 8461/2020 (u/O XI CPC seeking discovery and directions to Defendant
No. 1 to disclose identity of infringing channels)

Brief Facts

1. The Plaintiffs – Ms. Neetu Singh and K.D. Campus Pvt. Ltd. have filed the present suit seeking permanent injunction restraining infringement of copyright, damages and other reliefs in respect of unauthorized dissemination of the Plaintiffs' videos, lecture, books, etc.
2. The case of the Plaintiffs is that Plaintiff No.1 is a renowned author of books which are designed to train students aspiring to take various competitive examinations including the examinations of Staff Selection Commission (SSC), Bank Probationary Officer (PO), CDS, NDA, etc.

Plaintiff No.1 – Ms. Neetu Singh founded Plaintiff No.2 – M/s K.D. Campus, which runs coaching centres for these competitive exams. The suit has been filed by the Plaintiffs against Defendant No.1/Telegram FZ LLC (*hereinafter “Telegram”*) and Defendant No.2/John Doe, i.e., unknown persons.

3. The Telegram app is a messaging platform capable of being downloaded on mobile phones, computers, tabs and other similar gadgets, which enables transmission of text, audio files, video files, images, documents etc. The allegation in the suit is that the Plaintiffs’ copyrighted works including course material, online lectures and other works are being disseminated unauthorizely through various Telegram channels, some of which, as set out in the plaint, are as under:

- *Neetu maam course* (t.me/vshusinha1010);
- *Neetu singh mam* (t.me/EnglishbyNeetusinghmam);
- *English* (t.me/neetu_singh_mam);
- *English Spoken by Neetu Singh* (t.me/NeetuEnglish4Me);
- *English By Neetu singh PDF* (t.me/camastrammeena);
- *Careerwill Paid classes* (t.me/careerwill_ssc);
- *Neetu mam English discussion* (t.me/neetumamenglish);
- *Neetu mam* (t.me/Neetu2865);
- *Kd campus live* (t.me/kdcampusofficial22);
- *Kd Campus Live* (t.me/kdcampuslive);
- *Kd live neetu mam* (t.me/cjnvdb);
- *Neetu mam English (free)* (t.me/paidcourseforfree009);
- *English by Neetu singh* (t.me/kdcampus02);
- (t.me/neetuenglish);
- *ENGLISH SPECIAL NEETU SINGH PAID VIDEO* (t.me/rahul202122);
- *SSC Courses Neetu* (t.me/ssccoursepaid1);
- *Free all course* (t.me/freeallcourse);

- *Free all course (t.me/careerwillfreeallcourseofficial);*
- *FREE PAID COURSES FOR ALL EXAMS (t.me/Paid_Coursefree);*
- *PAID VIDEO FREE COURSE (t.me/paidvideofreecourse);*
- *Ssc bank mains paid material (t.me/bankingpd);*
- *Neetu English (t.me/Neetuenglishfree);*
- *NEETU SINGH ENGLISH (t.me/digitalboardhai);*
- *NEETU SINGH ENGLISH (t.me/getpaidcourse5);*
- *All competition class (t.me/PRATEEKNAIK);*
- *SSC Courses Neetu Singh, gopal verma, abhinay sir plus, e1 coaching, neon classes, CGL CHSL and many more. (t.me/ssccoursespaid1);*
- *English mains by gopal verma& Christopher (t.me/egvianss);*
- *Govtclasses:tm:Govt:exclamation:Classes:black_circle: (t.me/govtclasses);*
- *Exam Material For You (t.me/exammaterialforyou);*
- *Carrer will app paid videos (t.me/carrerwillvideosfree), etc.*

4. The Plaintiffs aver that on these channels, videos of the lectures delivered by Plaintiff No.1 are being uploaded on a daily basis and being made accessible to students at discounted rates. The screenshots of the said videos are extracted in the plaint. The Plaintiffs also found that the books of the Plaintiffs including books titled ‘*Plinth to Paramount*’ etc. are being circulated in PDF formats on Telegram channels.

5. In so far as Telegram’s role is concerned, according to the Plaintiffs, as per the Privacy Policy of Telegram, any abuse on Telegram channels can be reported. Accordingly, after acquiring knowledge of the illegal dissemination of the Plaintiffs’ works, e-mails were sent to the e-mail addresses where abuse can be reported including abuse@telegram.org and dmca@telegram.org, and the Plaintiffs called upon Telegram to take down the impugned channels. Upon receipt of the said notices some channels were taken down by Telegram,

but some infringing channels continued to exist and new channels came up almost on a daily basis, with names such as:

- ‘Neetu Singh English (t.me/neetu_singh_kd_campus);
- Spoken English by Neetu Singh (t.me/englishspokenbyneetusingh);
- SSC (t.me/paidvidios);
- ALL SSC COURSE FREE (t.me/paidvideo123).

6. The Plaintiffs then, in view of the repeated channels over which dissemination of the infringing copies of the copyrighted works was being carried out, approached this Court by way of the present suit. The reliefs sought in the present suit are as under:

“A. For a decree for permanent injunction restraining the Defendant No. 1 and 2, their agents, its partners / proprietors, dealers, distributors, agents, stockists and all other persons acting on its behalf from reproducing, publishing, distributing, selling, offering for sale, circulating and unauthorized use of the literary work “Plinth to Paramount”, lectures, videos, notes and any other original work of the Plaintiffs; on its platform .

B. For a decree for amount of damages as may be determined by this Hon’ble Court;

C. Costs of the suit be awarded to the Plaintiffs; and

D. Any other relief which the Hon’ble Court thinks fit and proper in the circumstances of the case be allowed in favour of the Plaintiffs and against the Defendants.”

7. The suit was first listed on 28th July, 2020, on which date, after hearing the parties, an ad-interim order was passed in the following terms:

“8. Learned Senior Counsel further clarifies that all the channels as prayed for in prayer (B) of IA 6215/2020 have been taken down except Neetu maam course (t.me/vshusinha1010) and SSC Courses

Neetu(t.me/ssccoursepaid1) which do not exist on the defendant No.1's cloud services.

9. Considering the fact that immediate grievance of the plaintiffs has been addressed by the defendant No. 1 and in view of the statement of the learned Senior Counsel for the defendant No. 1 that as and when intimated, the defendant No. 1 will take down the offending channels within 36 hours of the intimation, this Court is not passing any ad-interim injunction at this Stage, awaiting the reply affidavit."

8. The said order was modified on 23rd September, 2020 in the following terms:

"9. In the meantime, defendant No.1 is directed to take down the channels mentioned at Sr.Nos.1 to 201 of document No.1 with the present application irrespective of the fact whether they are private or public channels."

9. Thereafter, in the said suit, an application being **I.A. No.8461/2020** has been filed by the Plaintiffs under Order XI Rule 10 CPC, seeking discovery of the details of the persons who are operating these channels. Arguments have been heard in the said application.

Submissions

10. Ms. Rajeshwari, ld. counsel appearing for the Plaintiffs, primarily submits that:

- (i) As per the Privacy Policy of Telegram itself, in terms of Clauses 3.3.5, 5.3, 8.3 and the FAQs attached, if there is any violation of law, Telegram is liable to take down such channels and also disclose the information relating to the persons who are running the said channels.

(ii) Further, while the channels that were impugned earlier in the suit by the Plaintiffs are being taken down pursuant to the interim orders of this Court, new channels by adding some prefixes or suffixes or by making small modifications in the names of the channels continue to be created. Accordingly, ld. counsel for the Plaintiffs submits that the identity of the persons who are disseminating the infringing materials on these channels ought to be disclosed, so that the Plaintiffs can avail of their remedies against the said persons.

11. On behalf of Telegram, Mr. Sibal, ld. Senior Counsel, submits that:
- (i) The interim arrangement which is already in place directing Telegram to take down the impugned channels is sufficient to protect the interest of the Plaintiffs.
 - (ii) As per the Privacy Policy of Telegram, Clause 8.3 is clear that until and unless a person is expected to be a terror suspect, the disclosure of the subscriber information cannot be made. The said clause reads as under:

“8.3. Law Enforcement Authorities

If Telegram receives a court order that confirms you're a terror suspect, we may disclose your IP address and phone number to the relevant authorities. So far, this has never happened. When it does, we will include it in a semi-annual transparency report published at: <https://t.me/transparency>. ”

- (iii) He further relies upon the judgment of the Supreme Court in ***Justice K.S. Puttaswamy v. Union of India & Ors., (2017) 10 SCC 1***, paragraphs 310 and 328, to argue that unless and until a

law requires disclosure of such information, it is not permissible to direct disclosure of the same inasmuch as the privacy of the person operating the said channel would be protected by Article 21 of the Constitution of India.

- (iv) Post the judgment of *Puttaswamy (supra)*, it is submitted that the Government has enacted the Information Technology Intermediary Guidelines and Digital Media Ethics, 2021 (*hereinafter “IT Guidelines”*), which is also relied upon by Telegram. Specific reliance is placed on Rule 3(1)(d) of the IT Guidelines, which primarily requires the intermediary to take down or remove or disable access to the unlawful information. Further, on the basis of Rule 4 of the IT Guidelines, it is argued that unless and until, any one of the situations as contemplated in the first *proviso* to Rule 4(1)(2) of the said guidelines is satisfied, even a Court order cannot be passed directing disclosure of the basic subscriber information.
- (v) Vehement reliance is also placed on the fact that Telegram has its servers based in Singapore which has encrypted data. Accordingly, decryption of that data would not be permissible except as per the laws of Singapore. Reliance is placed upon the Personal Data Protection Act, 2012, of Singapore (*hereinafter “PDPA”*), specifically, on the definitions relating to “personal data proceedings” under Sections 17 and 29 of the PDPA read with Schedule IV. He submits that while under Section 17 of the PDPA, Telegram may reveal certain information upon direction by a “Court”, since the “Court” in terms of the Interpretation Act

of Singapore, 1965, would only mean a Court based in Singapore, a Court in India would not be empowered to direct disclosure of the information relating to the subscriber who may be running the allegedly infringing channels.

- (vi) Finally, Section 72A of the Information Technology Act, 2000 (*hereinafter “IT Act”*), is stressed upon, which provides that any disclosure of information in breach of a lawful contract i.e., the contract between the Telegram platform and the subscriber/creator of the impugned channels, would also be contrary to law and could constitute an offence.

12. In rejoinder, Ms. Rajeshwari, Id. Counsel for the Plaintiffs, submits that:

- (i) Reliance on Singapore law would not be appropriate in the present circumstances inasmuch as this Court or any Court of competent jurisdiction would be empowered to pass directions in respect of a mobile platform which is operating in India.
- (ii) The laws of Singapore may apply in the context of a request being made by any private party to Telegram, to disclose information. However, this would not apply in the case of a Court order being passed.

Findings and Analysis

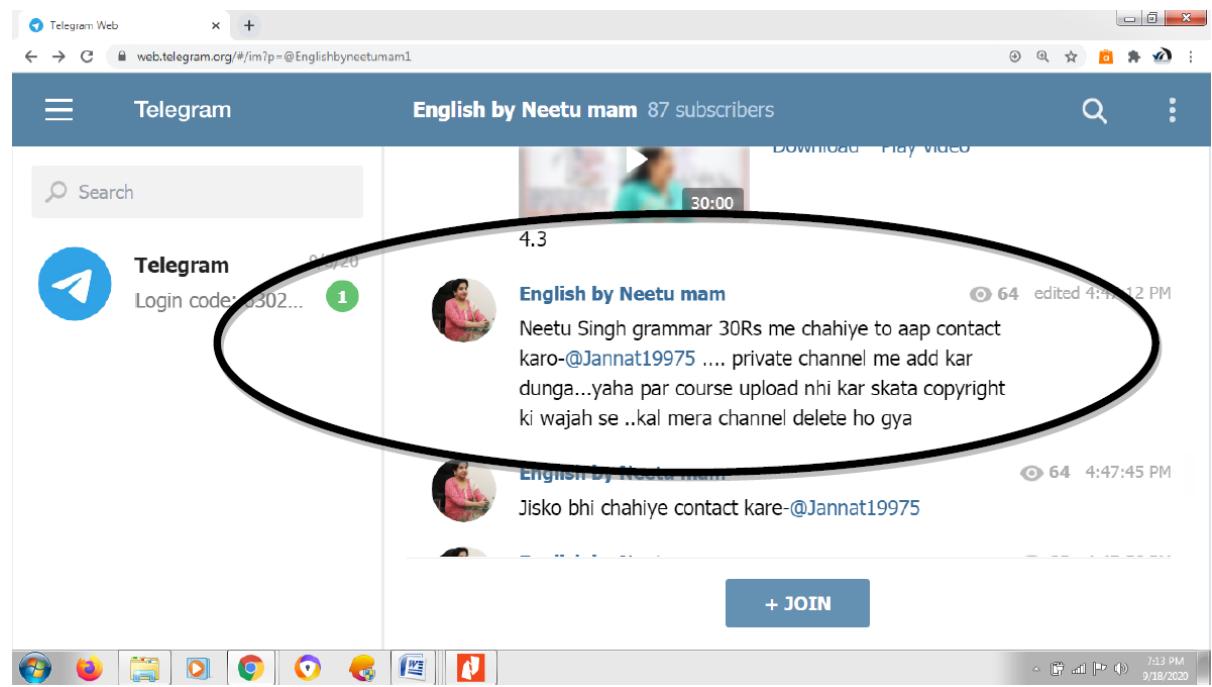
13. The short but vexed legal issue that is to be decided in **I.A.8461/2020** is whether Telegram can be directed to disclose the identity of the creators of the infringing channels which unauthorisedly and illegally disseminate the Plaintiffs’ copyrighted works.

14. Telegram does not dispute, for the purposes of this application, the copyright of Plaintiff No.1 in her course material and videos. In fact, it is already taking down the infringing channels in terms of the interim order. Telegram has only opposed the grant of relief in this application to the extent that it cannot share the data relating to the creators or users of the channels, as the said data is stored in Telegram's data servers in Singapore and the law of Singapore prohibits such disclosure. Moreover, as per Telegram, it being an intermediary under the IT Act, none of the pre-conditions which permit the intermediary to disclose the identity of the users, as per the IT Guidelines are satisfied.

15. This Court, first, notes that the fact that the infringing content was disseminated on various channels on the Telegram app, is not in dispute. Such channels are being blocked by Telegram. However, the users on Telegram are creating new channels and operating the same in private mode, hence they are able to mask their identity. On the said channels, the infringing copyrighted works have been shared, communicated, and uploaded. Charges are also being collected by the infringers, for providing the same.

16. The discovery application filed by the Plaintiffs, sets out the manner in which a Telegram account can be opened and the app can be downloaded by the users. According to the Plaintiffs, the Telegram app permits users to operate their businesses, either through a public channel or private channels. If they operate through private channels, the phone numbers or other details would not be visible. Thus, it is not possible to locate the owners of such channels. Such information is exclusively available only with Telegram. Since Telegram also makes secret chats possible, the phone numbers cannot be traced and the identity of the person(s) is also unknown. Some of the screen

shots, which have been placed on record by the Plaintiffs, show that the channel operators are brazenly using the name of the Plaintiffs, Plaintiff No.1's image, and referring to the course material with her name. For example:



17. The Plaintiffs, thus, realized that amounts were being charged by one private operator who was running one of the private channels for sharing the Plaintiffs' course material unauthorizedly. Pursuant to the injunction order granted by this Court dated 28th July, 2020, the channels which were being run earlier were blocked and now the said channel operators have taken refuge under privacy services and secret chat features to hide their own identity and have created new channels. Thus, the original works of the Plaintiffs are being transmitted on channels, which are created almost instantaneously, if an earlier channel is blocked. For example, the comparison between the earlier and new channels, has been tabulated by the Plaintiffs illustratively, as below:

<i>S.no.</i>	<i>Original channel</i>	<i>New channel</i>
1.	English by Neetu Mam (t.me/englishbyneetumam) [reported on 16.9.2020] [blocked on 18.9.2020]	English by Neetu Mam - 't.me/Englishbyneetumam1' [new channel appeared on 19.9.2020]
2.	SSC Paid Courses (t.me/C_W_Videos)	SSC Paid Courses (Private) (t.me/C_W_Videos1)
3.	Complete English free (t.me/careerwillenglish)	Free all course (t.me/freeallcareerwillcourses)
4.	ALL CARRIERWILL VIDEOS FREE (t.me/carrierwillvedio)	Careerwill Paid classes (t.me/careerwill_ssc)
5.	Neetu mam paid latest (t.me/spoken45),	Neetu mam spoken english paid (t.me/spoken46),
6.	Neetu maam (t.me/spoken1212)	Neetu maam (t.me/spoken1213)
7.	Neetu Singh, E1 coaching Gopal verma, Gagan Pratap, Aman Vasisth paid videos SSC CLG (t.me/ssccoursespaid2)	Neetu Singh, E1 coaching, Gopal verma, Gagan Pratap, Aman Vasisth paid videos SSC CLG (t.me/ssccoursespaid3) Neetu Singh, E1 coaching, Gopal verma, Gagan Pratap, Aman Vasisth paid videos SSC CLG (t.me/ssccoursespaid3)
8.	SSC mains paid videos (t.me/rakeshpaidvideo),	Neetu mam paid course free (t.me/paidcoursesrakesh)

18. A perusal of the above table would show that the difference between the earlier channel and the new channel could be as little as:

- a letter being written in capital letters as opposed to small letters;

- adding of an underscore;
- changing the number from 1212 to 1213; or
- shuffling the words within the name of the channel such as: t.me/rakeshpaidvideo being changed to t.me/paidcoursesrakesh.

19. The number of channels that can be created in this manner are innumerable. The Plaintiffs' works have thus been disseminated without any hindrance whatsoever, despite the injunction order, and the infringers are operating under completely masked identities. Repeated blocking of the channels is proving to be insufficient. It is in view of this unsurmountable challenge to curb infringement, that the Plaintiffs seek the prayer in the present application for disclosure of identity of the creators of the infringing channels. The prayer in the present application reads as under:

"15. In light of the above-mentioned facts and circumstances, it is most humbly prayed before this Hon'ble Court that it may be pleased to pass an order:

- a. directing Defendant No 1 to disclose the identity of the creators of the infringing channels reported by the Plaintiffs and listed at DOCUMENT 2*
- b. any other order as may be deemed necessary in the facts and the circumstances of the case."*

20. In reply to this application, the following broad defences are taken by Telegram:

- (i) A substantial number of channels have already been blocked. Telegram shall continue to remove infringing content as may be reported by the Plaintiffs.

- (ii) The data centres and servers of Telegram are located outside India and the direction for disclosure would violate the laws of the jurisdiction where the servers are located. Moreover, Telegram uses a distributed physical infrastructure and is bound by the provisions of the PDPA, Singapore.
- (iii) Telegram itself is a Dubai-based company and is bound by the laws of Dubai.
- (iv) In any event, Telegram is an ‘intermediary’, which is only expected to act as per the IT Act and IT Guidelines. Such an intermediary only has to remove the infringing content upon being given notice and is not liable for third party information circulated on its platform.
- (v) In case Telegram discloses such personal data, it might be in breach of Section 72A of the IT Act, which makes unauthorised disclosure of information in breach of a contract, a criminal offence punishable with imprisonment for a term that may extend to three years.
- (vi) There is no proof of infringement of copyright produced before the Court, and even the current impugned channels have been removed in good faith. However, the order dated 28th July, 2020 was passed on the understanding that the Plaintiffs would provide verifiable proof of the channels sought to be removed.
- (vii) There is no valid ground for directing discovery, as the Plaintiffs have not proven how the private user data sought to be disclosed is material or relevant to the present suit’s adjudication, as required by the CPC.

(viii)The right to freedom of speech and expression would be curbed, if the prayer for disabling the new channel feature for channel creators is accepted.

21. At the outset before delving into the legal issue in this case, the Court first notes the various features and policies of Telegram, which would be relevant for ascertaining what information Telegram may possess and the process of its disclosure.

A. *The Telegram App and its Features and Policies*

22. The Telegram application is one of the most used messaging platforms in India with its publicly declared monthly active users being approximately 700 million.¹ Telegram's largest user base is India, accounting for more than 20% of its user base.² Reportedly, Telegram grew its active user base by 110% in India in 2020-2021- i.e., more than 115 million active users.³ The Telegram app can be used for transmitting messages, photographs, videos, voice recordings, documents in PDF and other forms, etc. In order to enable a person to use Telegram, all that is required is to download the app by giving a phone number, which is verified through a one-time password (*hereinafter “OTP”*). Telegram, in fact, permits the user to use the screen name, profile pictures, and user name as the user chooses.

23. Telegram has two kinds of users:

- (i) Free users; and

¹ *700 Million Users and Telegram Premium*, Telegram Blog, Jun. 21, 2022, <https://telegram.org/blog/700-million-and-premium>.

² A. Chakravarti, *WhatsApp rival Telegram has highest number of users in India, clocks 1 billion downloads globally*, India Today, Aug. 31, 2021, <https://www.indiatoday.in/technology/news/story/whatsapp-rival-telegram-has-highest-number-of-users-in-india-clocks-1-billion-downloads-globally-1847681-2021-08-31>.

³ I. Mehta, *Telegram grew its active user base by 110% in India last year*, The Next Web, Jan. 13, 2021, <https://thenextweb.com/news/telegram-grew-its-active-user-base-by-110-in-india-last-year>.

(ii) Premium users.

24. The former category uses the app freely whereas premium users obtain a subscription membership. Premium accounts are chargeable on a monthly basis and provide various special features. A premium Telegram app service would enable voice to text conversion, increased download speed, no ads, etc. However, the same are not relevant in the present case.

25. In so far as the data is concerned, Telegram stores its data on a cloud server. It is claimed that the same is in an encrypted form. The personal data is claimed to be protected under Telegram's Privacy Policy⁴ and its Terms of Service.⁵ The relevant features as per Telegram's Privacy Policy and data related policies are as under:⁶

(a) Verification of Users/Details Collected

- (i) Clause 3 notes that the unique identification as far as Telegram goes, is the phone number. The app can also sync the user's contacts if the user so permits.
- (ii) The only verification done by Telegram is through a code sent to the given mobile number. Another way of verification is when the user allows permission to Telegram to access its phone call logs. Telegram then verifies the number by transmitting a phone call and confirming receipt of the same in the user's phone call logs. Thus, instead of a code, a phone call is given to verify.
- (iii) Clause 3.2 provides that in case a person opts for a two-step verification or avails of storage of documents through the

⁴ Telegram, *Telegram Privacy Policy*, <https://telegram.org/privacy>.

⁵ Telegram, *Terms of Service*, <https://telegram.org/tos>.

⁶ While the said policies have been filed with the suit as of July, 2020, for the purposes of this decision, the latest copies of the said policies available on the Telegram website, as cited above, have been relied upon.

Telegram Passport feature, an email address of the user, would be used for sending a passport recovery code in case the user forgets the same.

- (iv) Clause 3.5 clarifies that Telegram does not seek the real name, gender, age of a person. The screen name and the real name can be different and it is only the screen name, which would be visible to the other Telegram users.

(b) User's Data: Storage and Processing

- (v) Clause 1.1 provides that the user's data is not stored for the purpose of showing ads or commercial purposes. However, advertisers can promote their services through various public one-to-many channels.
- (vi) Data up to 100 MB can be stored in the device and all media can be kept in the cloud.
- (vii) All the messages, photos, videos and documents of/for a user are stored on the cloud chat so that a user would be able to access the same from any device. Thus, the Telegram app content does not need to be backed up on any external/third-party backup.
- (viii) Clause 3.3.4 provides that apart from private messages, public channels and groups are also enabled on Telegram. All the public chats are cloud chats. Though this data of public chats is also encrypted, both in storage and transit, since the content is posted publicly, it is accessible to all users.
- (ix) The Telegram app as per Clause 3.3.2, permits secret chats, which can be decrypted only by the devices they were sent to or from. Such chats also use end-to-end encryption.

- (x) Clause 7.2 notes that credit card information submitted through payment gateways for premium services is not made available to Telegram and the said data is not stored.
- (xi) Clause 9.3 notes that minimal data may be required for the Telegram application to function in a secured manner.
- (xii) Clause 2 provides that the data collected is processed to further Telegram's legitimate interest, including for the provision of effective and innovative services, detection, prevention of fraudulent activities, and security related concerns.
- (xiii) As per clause 2 of the Privacy Policy, processing of personal data is done unless the user's overriding interest is to be protected or the fundamental rights mandate protection of the personal data.

The relevant clause is as under:

“We process your personal data on the ground that such processing is necessary to further our legitimate interests (including: (1) providing effective and innovative Services to our users; and (2) to detect, prevent or otherwise address fraud or security issues in respect of our provision of Services), unless those interests are overridden by your interest or fundamental rights and freedoms that require protections of personal data.”

- (xiv) A section of the Privacy Policy deals with the rights of the user in respect of personal data under Clause 9.1. If a user wishes to seek deletion or a copy of the data, amendment of the data, object to the processing of the data and correct any data or lodge a complaint with the National Data Protection Authority, a specific link has been provided for contacting Telegram.

(c) Location of Data Centres

- (xv) Clause 4 provides that the data centres where the data is stored are geographically located in different jurisdictions. Location data can also be stored either on cloud or on secret chats.
- (xvi) The servers for the EEA or UK are located in the data centres in Netherlands.
- (xvii) Clause 8.2 provides that Telegram may share a user's personal data with its parent company, Telegram Group Inc. in the British Virgin Islands and Telegram FZ-LLC a group member in Dubai, to provide, improve and support its services. It notes that appropriate safeguards as per a European Commission approved agreement between Telegram and its group companies, will be implemented during such data sharing.

(d) Spam, Phishing, etc.

- (xviii) Clause 5.2 provides that for the purpose of safety and security, to prevent spam, abuse and other violations of Telegram's Terms of Service, Telegram may collect metadata such as IP address of the user, devices used by the user, history of username changes, etc. Such data can be stored for 12 months.
- (xix) Clause 5.3 notes that spamming, phishing and other kind of abuse is barred on Telegram. If there is a report of spam, which is confirmed by Telegram's moderators, temporary or permanent disablement can take place. The account may also be finally banned. In order to stop spamming and phishing, Telegram can also use automated algorithms to analyse messages.

(xx) Clause 8.3 provides that if Telegram receives a court order that confirms someone is a terror suspect, it may disclose such user's IP address and phone number to the relevant authorities.

(e) Copyright Infringement

(xxi) "*Q: A bot or channel is infringing on my copyright. What do I do?*

All Telegram chats and group chats are private amongst their participants. We do not process any requests related to them. But sticker sets, channels, and bots on Telegram are publicly available.

If you see a bot, channel, or sticker set that is infringing on your copyright, kindly submit a complaint to dmca@telegram.org. Please note that such requests should only be submitted by the copyright owner or an agent authorized to act on the owner's behalf."

Thus, Telegram in its FAQs states that in case of a channel infringing someone's copyright, all Telegram chats and group chats are private amongst their participants. Telegram does not process any requests related to them. But sticker sets, channels, and bots on Telegram are publicly available. Therefore, if a bot, channel, or sticker set is infringing copyright, the aggrieved user can submit a complaint to dmca@telegram.org.

C. Scheme and Provisions of Copyright Act, 1957

26. The present suit is one seeking restraining of infringement of the copyright of the Plaintiffs in their course material, videos, tutorials etc. To ascertain infringement, the relevant provisions of the Copyright Act, 1957 (*hereinafter "Copyright Act"*) are to be considered. At the outset, in cases of infringement, under Section 62(2) of the Copyright Act, an owner can file a

suit for infringement in a place where the said owner resides or carries on his business. In the present case, the following factors would be relevant for the purposes of jurisdiction:

- (i) The Plaintiffs reside in Delhi and carry on business in Delhi. Thus, this Court is a Court of competent jurisdiction under Section 62(2) of the Copyright Act.
- (ii) The infringement has happened in Delhi, as the copyrighted works are being circulated in Delhi.
- (iii) In all likelihood, as the materials being circulated relate to Indian examinations, the infringers, though unidentified at this stage, may also be based out of India.

27. Therefore, merely due to the fact that the persons disseminating the copyrighted works, are using the Telegram app and the said app retains its data outside India, on Telegram servers, the jurisdiction of this Court cannot be ousted. Having considered the jurisdictional requirements, the substantive provisions of the Copyright Act now merit consideration, as to whether disclosure of details can be directed or not.

28. Plaintiff No.1 is the owner of the course material, which would constitute “literary works” under Section 2(o) of the Copyright Act. The videos consisting of Plaintiff No.1 teaching various subjects would also constitute “cinematographic films” under Section 2(f) of the Copyright Act. Thus, under Sections 2(o) and 2(f) of the Copyright Act, both “literary works” and “cinematographic films” are protected. Further, Section 14 of the Copyright Act recognizes exclusive rights, which vest in the copyright owner. The works of the Plaintiffs being protectable under the Copyright Act, any

unlawful dissemination and communication in print or electronic form would constitute infringement of the copyright of the Plaintiffs. The relevant provisions are set out below:

*"14. Meaning of copyright.-- For the purposes of this Act, **copyright means the exclusive right** subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely--*

(a) in the case of a literary, dramatic or musical work, not being a computer programme,--

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

...

(d) in the case of a cinematograph film,--

(i) to make a copy of the film, including--

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film.

(iii) to communicate the film to the public;”

29. Section 2(m) of the Copyright Act defines the term “infringing copy”, as under:

“infringing copy” means—

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer’s right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;”

30. Such activity of circulating copyrighted materials on Telegram channels would also be “communication to the public” as provided for in Section 2(ff) of the Copyright Act. The copies of the Plaintiffs’ works, which are circulated on the Telegram channels, would constitute infringing copies of the Plaintiffs’ works as defined under Section 2(m) of the Copyright Act. Thus, any reproduction of such literary work would constitute an infringing copy, even if the same is in electronic form.

Remedies for Copyright Infringement:

31. The remedies available for a copyright owner under the Copyright Act are both civil and criminal in nature. In so far as the civil remedies are concerned, the same are set out *inter alia*, in Sections 55 and 58 of the Copyright Act. Section 55 provides for all remedies for infringement of a right such as damages, accounts, injunction, etc. The said provision reads as under:

“55. Civil remedies for infringement of copyright.—

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right: Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, or, subject to the provisions of sub-section (3) of section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears on copies of the work published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.”

32. Under Section 58 of the Copyright Act, all “infringing copies” including the “plates used or intended to be used” for the production of infringing copies shall be deemed to be the property of owner of the copyright. Such owners are also permitted to take proceedings for recovery of possession of such plates used for creating infringing copies. Section 58 reads as under:

“58. Rights of owner against persons possessing or dealing with infringing copies.—

All infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof: Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies if the opponent proves—

(a) that he was not aware and had no reasonable ground to believe that copyright subsisted in the work of which such copies are alleged to be infringing copies; or

(b) that he had reasonable grounds for believing that such copies or plates do not involve infringement of the copyright in any work.”

33. In this regard, Section 2(t) of the Copyright Act defines “plates” as under:

“(t) “plate” includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, duplicating equipment or other device used or intended to be used for printing or reproducing copies of any work, and any

matrix or other appliance by which sound recording for the acoustic presentation of the work are or are intended to be made;”

34. Further, Section 2(hh) of the Copyright Act defines “duplicating equipment” as under:

“2[(hh) “duplicating equipment” means any mechanical contrivance or device used or intended to be used for making copies of any work;]”

35. Thus, in so far as civil remedies are concerned, the Plaintiffs can seek the remedies of injunction, damages, etc. A plaintiff can also seek seizure of the duplicating equipment and plates used for creating infringing copies.

36. Apart from the civil remedies under the Copyright Act, infringement of copyright is also a criminal offence under Section 63. It is, in fact, a cognizable offence, as recently upheld by the Supreme Court in *M/s Knit Pro International v. The State of NCT of Delhi & Anr. [Crl. Appl. No. 807 of 2022, decided on 20th May, 2022]*. The relevant extract of the said decision reads as under:

“5.3 Thus, for the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. Therefore, the learned Magistrate may sentence the accused for a period of three years also. In that view of the matter considering Part II of the First Schedule of the Cr.P.C., if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment

for less than three years or with fine only the offence can be said to be non-cognizable. In view of the above clear position of law, the decision in the case of Rakesh Kumar Paul (supra) relied upon by learned counsel appearing on behalf of respondent no.2 shall not be applicable to the facts of the case on hand. The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever.

...

7. In view of the above discussion and for the reason stated above, it is observed and held that offence under Section 63 of the Copyright Act is a cognizable and non-bailable offence... ”

37. Under Section 63 of the Copyright Act, the offence of infringement is committed not only by a person who infringes but also by a person who abets infringement. The relevant extract of the said Section is as under:

“63. Offences of infringement of copyright or other rights conferred by this Act.

Any person who knowingly infringes or abets the infringement of--

(a) the copyright in a work, or

(b) any other right conferred by this Act except the right conferred by section 53A,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation.-- Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.”

38. Under Section 64, a police officer is empowered to seize all copies of the work and plates used for the purpose of making infringing copies. Under Section 65, any person who possesses plates for the purpose of making infringing copies is also punishable with imprisonment and fine. Under Section 66, the Court trying the offence has the power to direct disposal of the infringing copies or for delivery up to the owner of the copyright. Section 69 provides that if the offences are committed by a company, such persons who are responsible for conduct of the business of the company shall be liable to be proceeded against.

39. Thus, infringement of copyright is indisputably a serious matter as it involves valuable rights of owners of copyright. The significance of the protection and enforcement of such rights cannot be diminished, merely due to the growth of technology, which has made infringers easy to hide and conceal their illegal activities. The propensity of infringers to conceal and hide is the very reason due to which the provisions of law are widely worded. The definition of “plate” includes “any device used for reproducing copies of the work.” The definition of “infringing copy”, as extracted above, is broad enough to cover electronic copies which are circulated on Telegram channels. Electronic devices including smart phones, computers, servers, and such other devices, which permit copies to be made and to be disseminated would undoubtedly fall within the said definitions. This is also clear from the fact that Section 14(1)(a) specifically includes reproduction by “electronic

means.” It is thus clear that the devices of the channel operators, which are permitting and enabling such dissemination and communication, would constitute “plates” within Section 2(t) of the Act and they would constitute “duplicating equipment”. Therefore, both civil and criminal Courts in India would always be vested with jurisdiction to adequately deal with dissemination of infringing material through such devices and merely because the messaging service has its server located abroad, the same cannot result in the infringer escaping from the consequences of infringement. All contentions to the contrary would be untenable.

Right to Claim Damages:

40. Moreover, apart from an injunction, one of the most significant remedies that an IP owner or a copyright owner is vested with, is the right to claim damages. Such damages, especially in cases of infringers who are earning large sums to the detriment and at the cost of the copyright owner, acts as a deterrent against further infringement. If infringers are permitted to mask their identity through technological means provided by messaging apps, and their identity is not directed to be disclosed, the remedy of damages against infringement would be rendered completely nugatory. Under Section 55 of the Copyright Act, the owner has a right to seek damages as also accounts of profits. Accordingly, the grant of injunction *per se* in the absence of commensurate damages or monetary deterrents, would be a toothless relief. Such orders do not constrain the infringers from simply creating new infringing channels and even profit off of their infringement, till the time the plaintiff is able to seek an injunction for every new channel. As discussed above, the broadly worded provisions of the Copyright Act indicate a conscious legislative mandate to eliminate undue and continuous harassment

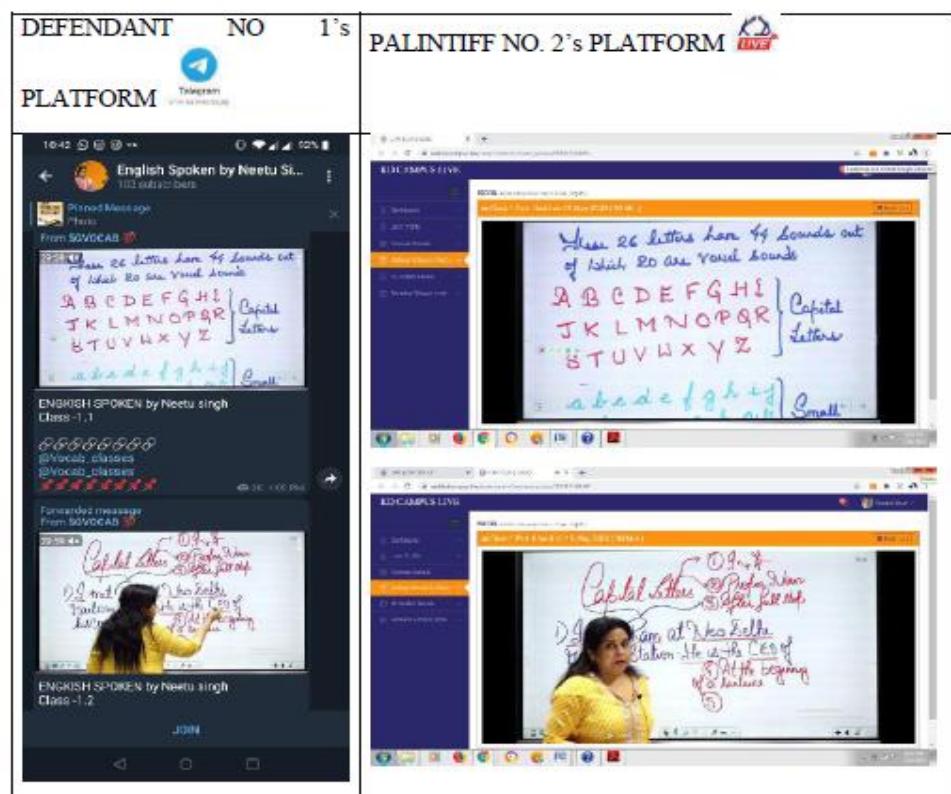
of plaintiffs in such situations where they have to repeatedly seek blocking orders against infringing channels. Thus, unless and until the identity of the operators of these channels – who are *ex facie* infringers of the Plaintiffs' copyright – are disclosed, the Plaintiffs are rendered remediless for recovering damages. ‘Take down’ or blocking orders are merely token relief for the *interregnum* and without monetary relief of damages, coupled with mushrooming of infringing platforms, the copyright owner's spirit to create and write may be considerably negated. The protection of the same is integral to the public policy behind the legislation as well. The legislative intention to prevent such continued infringement and effectively implement the provisions of the Copyright Act would be frustrated by any interpretation to the contrary.

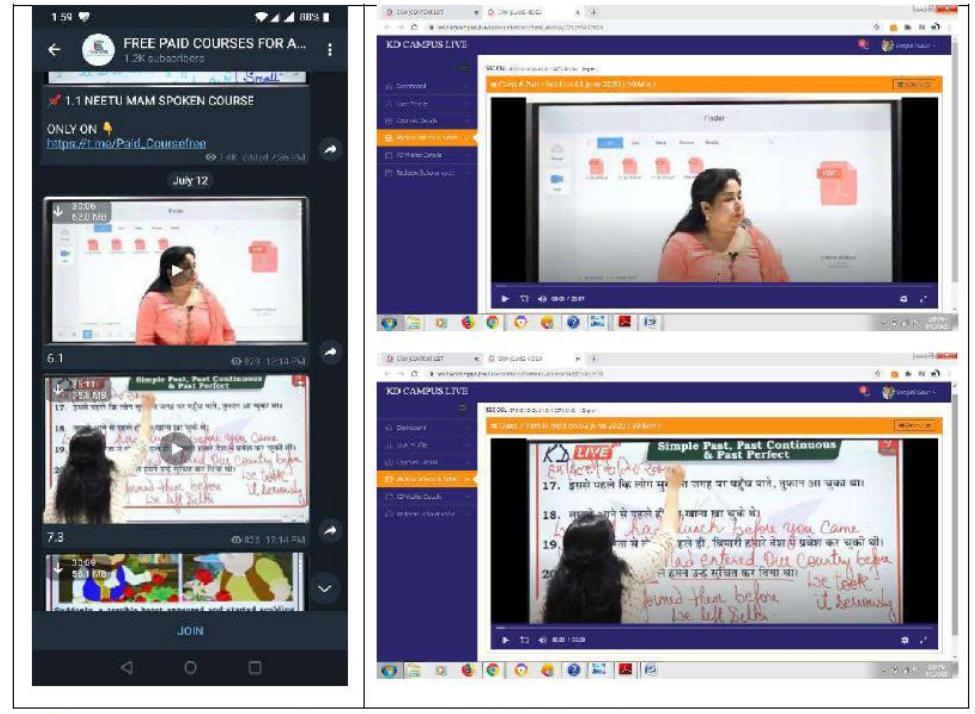
D. Infringement of the Plaintiffs' Copyright and Remedies

41. Plaintiff No.1 is a teacher who has invested enormous effort in preparing books and course material for students, who intend to give competitive examinations. She is a renowned author with various books covering a variety of subjects. She delivers lectures and coaching to students through online platforms, as also through her company KD Campus Pvt. Ltd. – Plaintiff No.2. The said company runs several coaching centres, where thousands of students have enrolled. Both the Plaintiffs have published course material, teaching material, books, sample question papers, educational books, question banks, model questions and previous year's question-answers etc. All this involves enormous labour and effort to satisfy the basic test of originality. During the pandemic, Plaintiff No.1 had delivered lectures online both through the website www.kdcampus.org and the Plaintiffs' mobile

application on Google Play Store. She has also made the lectures and classes available through her own Telegram channel called—t.me/kdlive. All students who wish to avail of the online classes and course materials have to register themselves and deposit the course fee. The students are also permitted to download the videos and view the same at their own convenience. Therefore, the Plaintiffs' material and lectures can be legally obtained by registering and purchasing the relevant courses.

42. The infringers have unabashedly made infringing copies of the Plaintiffs' works. A comparison of the Plaintiffs' material and the impugned channels' content as presented in the plaint, is extracted below:





43. These screenshots which have been incorporated in the plaint and the other infringing material disclosed on record, clearly leave no modicum of doubt that the channels, which are running on the Telegram platform, illegally and unauthorizedly are disseminating and communicating the Plaintiffs' works, that too for monetary gains and infringing the Plaintiffs' rights. The infringing channels are also so brazen that they use the names of the Plaintiffs, such as KD Publications, Neetu Singh, etc., in the channel titles, without any hesitation.

44. As discussed above, as per the provisions of the Copyright Act, the copies of the Plaintiffs' works, which are circulated on Telegram channels, constitute infringing copies of the Plaintiffs' works as defined under Section 2(m). In this background of clear infringement by the impugned channels, relying upon Sections 55 and 58 of the Copyright Act, as discussed above, the Court may direct seizure of the "infringing copies" in case of infringement, as

also of the “plates” used for creating such copies. Therefore, such plates, including mobile devices and servers, can be directed to be recovered. In the present case, the only party that is in possession of the information relating to the devices used, IP addresses used, channels created, number of users, identity of the devices through mobile numbers etc., is Defendant No.1 – Telegram.

45. This brings the Court to the defences taken by Telegram in its response to the prayer for disclosure. In this regard, this Court finds as under:

- (i) In respect of Telegram’s data centre being located in Singapore and it being unable to disclose the details of the devices used, mobile number used, IP addresses etc., of the infringers - It is a fact of which judicial notice can be taken that Telegram is one of the most popular messaging applications in India. Its subscription base runs into millions of users and by merely locating its servers abroad, it cannot escape the rigours of orders passed by competent Courts in India. Indian courts would be the natural forum of jurisdiction in this dispute, in view of the following factors:
 - a. The infringement unabashedly continuing within India, in order to protect the rights of copyright owners, Courts in India would be entitled to pass such orders as are effective and required for enforcement of the copyright owners’ rights;
 - b. Since the copyrighted material is related to Indian examination materials, in all likelihood the source of the infringing channels being in India, the accounts of such

infringing channels would have been created from India and the data of such accounts would have been uploaded from India;

- c. Telegram has not made any averment in the reply filed by it that the devices used in circulating the infringing material are not located in India. It is only the data of such channels and devices, that is claimed to be not located in India. Considering that the Plaintiffs' work relates to competitive examinations in India, it is nigh possible that the devices circulating the infringing content and the persons running the infringing platforms and channels are located in India. Even if some devices and the persons controlling the same are not in India, insofar as Indian law is concerned, the devices/equipment/network from which the transmission originates and the owners of such channels/devices, within India would be relevant.
- d. Cloud computing being the norm these days, as also pointed out by Telegram in its Privacy Policy at Clause 4, even if the data is stored in a physical structure outside India, the same is accessible to the company in other jurisdictions including from India. Telegram itself also states at Clause 8.2 that the data is shared among Telegram's group companies in Dubai and British Virgin Islands. Therefore, the data is accessible across different jurisdictions, including India and the conventional concepts of territoriality no longer exist, such that

locating the physical server outside India would divest Indian Courts of their powers.

- e. In any case, it is also relevant to note that Telegram is actively making its services available in India and now even earning revenue from India, by its Premium services. In this regard, under the IT Guidelines 2021 relied upon by Telegram relies upon, there is an obligation on it to appoint necessary grievance officer(s) in India.
- f. Finally, this Court also notes the Supreme Court's observations in ***Indian Bank v. Satyam Fibres (India) (P) Ltd., (1996) 5 SCC 550*** and ***Krishan Yadav v. State of Bihar, AIR 1994 SC 2166***, where it has been repeatedly held that High Courts are vested with inherent powers to enable themselves to maintain their dignity, and secure obedience to their process and rules, i.e., and to give effective relief.

In view of all these factors, Courts in India would be perfectly justified in directing Telegram, which runs its massive operations in India to adhere to Indian law and adhere to orders passed by Indian Courts for disclosure of relevant information relating to infringers. Infringers cannot be permitted to seek shelter under Telegram's policies merely on the ground that its physical server is in Singapore.

- (ii) In so far as the law in Singapore is concerned, the provisions of the PDPA, in fact, specifically recognize violations of law, as being an

exception to privacy, when details of the originators of the infringing data can be revealed. Such violation of law and investigation/proceedings, would obviously include violation of copyright and other intellectual property rights. The relevant provision of the PDPA of Singapore reads:

“17. Collection, use and disclosure without consent

(1) An organisation may —

(a) collect personal data about an individual, without the individual’s consent or from a source other than the individual, in the circumstances or for the purposes, and subject to any condition, in the First Schedule or Part 1 of the Second Schedule;

(b) use personal data about an individual without the individual’s consent, in the circumstances or for the purposes, and subject to any condition, in the First Schedule or Part 2 of the Second Schedule; or

(c) disclose personal data about an individual without the individual’s consent, in the circumstances or for the purposes, and subject to any condition, in the First Schedule or Part 3 of the Second Schedule.

...

FIRST SCHEDULE

**PART 3
LEGITIMATE INTERESTS**

...

3. The collection, use or disclosure (as the case may be) of personal data about an individual is necessary for any investigation or proceedings.”

Thus, the disclosure of personal data for the purpose of any proceedings, which would obviously include proceedings related to infringement of copyright would be a recognized exception to data privacy under the PDPA of Singapore.

- (iii) Moreover, copyrighted works are entitled to automatic protection in all WTO countries under the Berne Convention for the Protection of Literary and Artistic Works, 1886 read with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995. The Plaintiffs' copyrighted works are no exception to that. Article 1 of the said Convention provides as under:

"Article 1. Establishment of a Union.

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works."

Singapore is a signatory to the Berne convention and a WTO country as well. Thus, the Plaintiffs' works would enjoy protection even under the laws of Singapore. These are reciprocal protections granted to authors who can enjoy rights across the world even without seeking registrations. India recognizes copyright in foreign works and reciprocally, foreign countries recognize the copyright granted under Indian Law. In view of this position of the law regarding copyright, compliance with local law, i.e., PDPA, cannot be an excuse for Telegram to justify the non-furnishing of the information relating to the channels through which dissemination of infringing content takes place as, such dissemination, would in

the opinion of this Court, be violative of law, even under the laws of Singapore.

- (iv) In respect of Telegram's submission of it being an intermediary, and being obliged to not disclose the details of the originator of the information, in the opinion of this Court, merely disabling or taking down channels upon information being given to Telegram is an insufficient remedy, as also discussed in paragraph 39 above. The channels are clearly hydra-headed and are surfacing one after the other owing to the ease with which they can be created, with just another mobile number or email address.
- (v) Telegram has also relied upon Rules 3 and 4 of the IT Guidelines.

The said Rules read as under:

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

(d) an intermediary, on whose computer resource the information is stored, hosted or published, upon receiving actual knowledge in the form of an order by a court of competent jurisdiction or on being notified by the Appropriate Government or its agency under clause (b) of sub-section (3) of section 79 of the Act, shall not host, store or publish any unlawful information, 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:

Provided that any notification made by the Appropriate Government or its agency in relation to any information which is prohibited under any law for the time being in force shall be issued by an authorised agency, as may be notified by the Appropriate Government:

Provided further that if any such information is hosted, stored or published, the intermediary shall remove or disable access to that information, as early as possible, but in no case later than thirty-six hours from the receipt of the court order or on being notified by the Appropriate Government or its agency, as the case may be:

Provided also that the removal or disabling of access to any information, data or communication link within the categories of information specified under this clause, under clause (b) on a voluntary basis, or on the basis of grievances received under sub-rule (2) by such intermediary, shall not amount to a violation of the conditions of clauses (a) or (b) of sub-section (2) of section 79 of the Act;

XXX

Rule 4. Additional due diligence to be observed by significant social media intermediary.

...

(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.”

The above IT Guidelines are specific guidelines, which are provided in respect of “significant social media intermediaries” and the due diligence to be adhered to by them. These guidelines do not in any manner obviate the duty of Telegram as a platform to take all effective steps required to protect IP rights, including rights of

copyright owners. This was also noted by the 1st Division Bench of this court in *My Space Inc. v. Super Cassettes Industries Ltd.*, (2017) 236 DLT 478 (DB). The Court therein held as under:

“47. In this Court's opinion, Section 79 grants a measured privilege to an intermediary. However, that would not mean that the rights guaranteed under the Copyright Act are in any manner curtailed. All Section 79 does is regulates the liability in respect of intermediaries while the Copyright Act grants and controls rights of a copyright owner. Under the circumstances, it is difficult to conceive how one would pose a barrier in the applicability of the other. The true intent of Section 79 is to ensure that in terms of globally accepted standards of intermediary liabilities and to further digital trade and economy, an intermediary is granted certain protections. Section 79 is neither an enforcement provision nor does it list out any penal consequences for non-compliance. It sets up a scheme where intermediaries have to follow certain minimum standards to avoid liability; it provides for an affirmative defence and not a blanket immunity from liability.”

- (vi) As held in *Myspace (supra)*, the intermediary is to be granted safe harbour, so long as it complies with the requirements of law. In the present case, the infringement has to be nipped in the bud, without which Courts would have to continue to repeatedly pass injunction orders against mushrooming channels containing infringing content. The Court cannot perpetually supervise such infringements and, thus, the origin and source of the infringing material has to be traced and such devices or persons involved in the infringement

ought to face consequences in accordance with law, including being held liable for damages. That would not be possible if the source of such infringing copies, i.e., the details of the infringing channels are not disclosed. Pertinently, such production of details of infringing devices or persons or other sources, is not a comment on Telegram's liability and does not derogate from safe harbour provisions. In fact, it is aligned with the view of Telegram's claimed role as an intermediary, which claims to act as a conduit of information.

(vii) Disclosure of such information is relevant and material to the present case, contrary to what is pleaded by Telegram in its reply. Even applying the broad principles of Order XI CPC, the Court can direct disclosure of documents and information relating to '*any matter in question in a suit*'. The Delhi High Court in **A.K. Aggarwal v. Shanti Devi [CM(M) Appeal No.154 and 155 of 1995, decided on 17th October, 1995]**, held that seeking interrogatories must be encouraged:

"4. Order XI of the CPC, contains salutary provision which are intended to curtail evidence thereby expediting trial of suit and as such their provisions are very useful. They have to be liberally used and parties have to be encouraged to use them in the course of trial. The provision of Order XI, Civil Procedure Code do not deserve a technical or truncated approach. Ultimately the use of these provisions saves time of the Court and costs of litigation to the parties. "Jessel M.R. in Attorney-General vs. Gashill (1882) 20 Ch. 519, said: "Now, one of the great objects of interrogatories when properly administered has always been to save evidence, that is to diminish

the burden of proof which was otherwise on the plaintiff. Their object is not merely to discover facts which will inform the plaintiff as to evidence to be obtained, but also to save the expense of proving a part on the case. Cotton L.T., J, said: Interrogatories are "not limited to giving the plaintiff a knowledge on that which he does not already know but include the getting an admission of anything which he has to prove on any issue which is raised between him and the defendant."

(5) *My attention has been drawn to a judgment of this Court in O. S. No. 4 & 5 of 15730 entitled Suresh Chand vs. KM. Vinay Devi etc. decided on 14.9.73. Unfortunately I am informed that this judgment has not been reported though it is an illuminating judgment so far as the provisions of Order XI Civil Procedure Code . are concerned. I am in respectful agreement with the views expressed in the said judgment to quote : 'A party has a right to interrogate with a view to obtaining an admission from his opponent of everything which is material and relevant to the issue raised on the pleadings. The object is to obtain an admission from the opponent which will make the burden of proof easier than it otherwise would have been. The purpose is to get from the defendant an admission of that which no doubt he denied by his defense but not on oath. About the fact of the parentage of the appellant Suresh Chand a fact which is within the knowledge and an admission of it by him must obviously save enormous amount of expense at the trial. Lindley L. J. in the case of Attorney- General (supra) said : "It is no reason for declining to answer the interrogatories to say that the same information may be got by cross-exam, at the trial". If the appellants answer the question regarding parentage and the Will of the deceased Thakur Dass, the plaintiff would be*

relieved of the obligation to prove to that extent. She will not be required to call witnesses. She will save great expenditure and trouble if these interrogatories are answered. It may possibly happen that the plaintiff will find that she has no need to call any witnesses. In short interrogatories are admissible which go to support the applicant's case or to impeach or destroy the opponent's case Plymouth Mutual Co-op. Society vs. Traders Publishing Association (1906) 1 LJ. 415. This means that the right to interrogate is not confined to the facts the existence or non-existence of which is relevant to the facts already in issue (per Lord Esher. M.K. in Marriot vs. Chamberlain (1886) QBD. 154. In the case of Sutherland (Duke) v. British Dominions Land Settlement Corporation. 1926 1 C.H. 746, Mr. Justice Tomlin said that the administering of interrogatories is a step which is more often desirable than undesirable and is to be encouraged rather than to be discouraged, because they not infrequently bring an action to an end at an earlier stage than otherwise would be the case, to the advantage of all parties concerned. ... ”

- (viii) This position was also most recently reiterated in **Tara Batra v. Punam A. Kumar & Ors. [CM(M)No. 925/2019, decided on 10th September, 2021]** by a Coordinate Bench of this Court. In the present suit, the most important information is the details relating to the origin of the infringing copies of the copyrighted works.
- (ix) Even under the provisions of the IT Act, such as under Section 79(3)(b), Telegram has a duty to expeditiously remove or disable access to the unlawful material, *without vitiating the evidence* in any manner. In addition, under Rule 3 of the IT Guidelines, the intermediary has a duty

to tell its users not to host, display, upload, modify, publish, transmit, update or share any information, which infringes on copyright or other proprietary rights or violates any law. This is buttressed by the fact that under its own Privacy Policy, Telegram does not permit spamming, phishing and other abuses. Under such circumstances, as per clause 2 of its own Privacy Policy, fundamental rights would not come to the aid of protection of personal data related to the infringers, as it is only the “processing” of data, which can be stopped for protection of fundamental rights. Disclosure pursuant to an order passed by a Court of law of the details of the channel operators who are disseminating materials infringing the copyrighted works, or the devices and other gadgets used, cannot be shielded under the grounds of protection of privacy or protection of freedom of speech and expression. Disclosure of such data pursuant to a Court order would not fall in the definition of “processing”, which is the only activity that is restricted by the infringing users’ fundamental rights. Telegram’s own privacy policy does not recognize the defence, which has been canvassed before this Court.

- (x) Further reliance was placed by Telegram on the laws of privacy protection under Article 21 of the Constitution and Article 19(1)(a) of the Constitution, which protects the right to freedom of speech and expression. The same is completely inapposite in these facts and circumstances. The right to freedom of speech or the right to life including the right to privacy cannot be used by any person or entity, let alone an infringer, in order to escape the consequences of illegal actions.

- (xi) In this vein, Telegram also relied upon the judgement of the Supreme Court in *Puttaswamy (supra)*. The relevant extract of the said decision reads as under:

"310. While it intervenes to protect legitimate State interests, the State must nevertheless put into place a robust regime that ensures the fulfilment of a threefold requirement. These three requirements apply to all restraints on privacy (not just informational privacy). They emanate from the procedural and content-based mandate of Article 21. The first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. Second, the requirement of a need, in terms of a legitimate State aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary State action. The pursuit of a legitimate State aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not reappreciate or second guess the value judgment of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness. The third requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law. Hence, the threefold requirement for a valid law arises out of the mutual interdependence between the fundamental guarantees against arbitrariness on the one hand and

the protection of life and personal liberty, on the other.

The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms.

XXX

328. *Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the State but from non-State actors as well. We commend to the Union Government the need to examine and put into place a robust regime for data protection. The creation of such a regime requires a careful and sensitive balance between individual interests and legitimate concerns of the State. The legitimate aims of the State would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits. These are matters of policy to be considered by the Union Government while designing a carefully structured regime for the protection of the data. Since the Union Government has informed the Court that it has constituted a Committee chaired by Hon'ble Shri Justice B.N. Srikrishna, former Judge of this Court, for that purpose, the matter shall be dealt with appropriately by the Union Government having due regard to what has been set out in this judgment."*

As per the above extract from K.S. Puttaswamy (*supra*) it is clear that the Supreme Court recognises that if there is a law in existence to justify the disclosure of information and there is a need for the disclosure considering the nature of encroachment of the right then privacy cannot be a ground to justify non-disclosure, so long as the same is not disproportionate. In India, the Copyright Act is clearly a law, which

requires “infringing copies” to be taken into custody. The Copyright Act recognizes the right of the copyright owner to claim damages and rendition of accounts in respect of such infringement. Secondly, whenever the data is sought for a legitimate purpose, and for curbing the violation of law, including infringement of copyright, the same would be in accordance with the legal position recognised in K.S. Puttaswamy (*supra*).

- (xii) Finally, a perusal of the provisions of Section 81 of the IT Act shows that the provisions of the IT Act are supplemental to the provisions of the Copyright Act. The said provision reads as under:

“81. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Provided that nothing contained in this Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957 (14 of 1957) or the Patents Act, 1970 (39 of 1970).”

The *raison d'etre* for the introduction of this *proviso* is in fact made clear in the Lok Sabha Debates when the provision was introduced and the Report of the Expert Committee pursuant to which the said provide was introduced. The said material clearly indicates that the purpose of the *proviso* to Section 81 was for the IT Act to be not in derogation of, but supplementary to the provisions of the Copyright Act. The relevant extract of the said debate is as under:⁷

“Clause 40.— This clause proposes to insert a proviso to Section 81 so that the rights conferred

⁷ *The Information Technology (Amendment) Bill, 2006, Bill No.96 of 2006*, As introduced in the Lok Sabha, Dec 15, 2006.

under this section shall be supplementary to and not in derogation of the provisions of the copyright Act or the Patents Act.”

- (xiii) This position was also upheld by this Court in the context of a trademark infringement case against e-commerce platforms in ***Christian Louboutin Sas v. Nakul Bajaj & Ors., (2018) 253 DLT 728,*** where this Court held as under:

“78. Under Section 81 of the IT Act, the said Act is stipulated to have overriding effect. The provision reads as under:

Section 81 - Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Provided that nothing contained in this Act shall restrict any person from exercising any right conferred under the Copyright Act 1957 or the Patents Act 1970.”

79. The overriding nature of the IT Act has application only if the provisions of the Trade Mark Act are inconsistent with the provisions of the IT Act. The Intermediary Guidelines 2011 themselves require compliance with the TM Act by the persons to host, display or upload the products or services. The provisions of Section 29, Section 101 and Section 102 of the TM Act, are being looked at in order to interpret as to what constitutes ‘conspiring, abetting, aiding or inducing’ the commission of an unlawful act, in the context of trade mark rights. The provisions of the TM Act are not in any manner inconsistent with the provisions of the IT Act. Hence Section 81 of the IT Act does not grant any immunity to intermediaries who may be in violation of the provisions of the TM

Act. While, use of a mark for any of the purposes elaborated above, in respect of genuine goods of the owner would not be infringement, the performance of any service as elaborated above, in respect of counterfeit goods or goods which are not genuine, could constitute infringement.....”

- (xiv) It is also worth noting that during the COVID-19 pandemic, teachers and the education system as a whole, have taken great initiative to ensure access of educational materials to students through online modes such as videos, PDF documents, etc. If the protection of copyright is not evolved as per the changing times, it would have a chilling effect on the progressive initiatives taken by educators in sharing their materials and ensuring accessibility.
- (xv) Lastly, in so far as Telegram's submission regarding the Plaintiffs not providing verifiable proof that their copyright has been infringed are concerned, the Court notes that there is clear inconsistency between the stand of Telegram at different instances. While it states that proof of infringement is required, it has already blocked various infringing channels and abided by the order dated 28th July, 2020, without demanding further proof, including private channels. In any event, this Court has found a *prima facie* case of infringement, which is sufficient to direct Telegram to enable the Plaintiffs to avail of their remedies under the Copyright Act.

46. In view of the above factual and legal position, in the opinion of this Court, merely because Telegram chooses to locate its server in Singapore, the same cannot result in the Plaintiffs' – who are copyright owners of course materials – being left completely remediless against the actual infringers,

especially in order to claim damages and avail of other legal remedies in accordance with law. If such an argument is accepted, in the current world where most dissemination happens through online messaging services and platforms, IP violations would go completely unchecked. This cannot be the intention of law. The provisions of the IT Act and the Rules made therein have to be construed harmoniously with the rights and remedies provided to the copyright owners under the Copyright Act. Indian Courts are competent to decide issues relating to infringement of copyright and the mere fact that Telegram is operating a messaging service in India which chooses not to locate its servers in India cannot divest the Indian Courts from dealing with copyright disputes or divest copyright owners from availing their remedies in Indian Courts. In the present age of cloud computing and diminishing national boundaries in data storage, conventional concepts of territoriality cannot be strictly applied. The dynamic evolution of law is essential to ensure appropriate remedies in case of violation of copyright and other IP laws.

47. In the facts and circumstances of the present case, Telegram-Defendant No.1 is directed to disclose the details of the channels/devices used in disseminating the infringing content, mobile numbers, IP addresses, email addresses, etc., used to upload the infringing material and communicate the same, as per the list of channels filed along with the present application. If there are any further list of infringing channels, the same be also submitted to Telegram within one week. The data relating to the infringing channels and the details as to the devices/servers/networks on which they are created, their creators, operators including any phone numbers, IP addresses, email addresses, used for this purpose shall be disclosed by Telegram within a period of two weeks thereafter. The said information shall at this stage be filed

in a sealed cover with the Court. Upon perusing the said information, directions, if any, shall be passed after hearing the parties.

48. **I.A. 8461/2020** is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

AUGUST 30, 2022/dk/ms



प्रथिबा मिशन