IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 30TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 13710 OF 2022 (GM-RES)

BETWEEN:

X CORP.
A COMPANY INCORPORATED UNDER THE LAWS
OF THE UNITED STATES OF AMERICA,
HAVING ITS REGISTERED OFFICE AT:
1355, MARKET STREET, SUITE 900,
CALIFORNIA 94103.
UNITED STATES OF AMERICA
AND HAVING ITS PHYSICAL
CONTACT ADDRESS IN INDIA AT:
121, 8TH FLOOR,
THE ESTATE, DICKENSON ROAD,
BENGALURU - 560 042.
REPRESENTED BY ITS AUTHORISED SIGNATORY.
(AMENDED AS PER ORDER DATED 19.04.2023)

…PETITIONER

(BY SRI.ARAVIND DATAR & SRI. ASHOK HARANAHALLI,
SR. COUNSELS A/W
SRI. MANU P. KULKARNI., SRI. ANKIT AGARWAL,
SRI. SHARAN BALAKRISHNA, MS. SHLOKA NARAYANAN,
MS. SHRISTI WIDGE, SRI. MANOJ RAIKAR AND
SRI. ABHISHEK KUMAR, ADVOCATES)

AND:

1. UNION OF INDIA
REPRESENTED BY THE
MINISTRY OF ELECTRONICS AND
INFORMATION TECHNOLOGY,
ELECTRONICS NIKETAN, 6,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110 003.

2. THE DESIGNATED OFFICER,
   MINISTRY OF ELECTRONICS AND
   INFORMATION TECHNOLOGY,
   GOVERNMENT OF INDIA, ELECTRONICS, NIKETAN,
   6, CENTRAL GOVERNMENT OFFICES COMPLEX,
   NEW DELHI-110 003.

…RESPONDENTS

(BY SRI. SHANKARANARAYANAN, ASGI, SOUTHERN ZONE A/W
SRI. KUMAR M.N., CGSPC)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE BLOCKING ORDER DATED 02.02.2021 ISSUED BY RESPONDENTS VIDE ANNEXURE-A, BLOCKING ORDER DATED 04.02.2021 ISSUED BY RESPONDENTS VIDE ANNEXURE-B, BLOCKING ORDER DATED 16.02.2021 ISSUED BY RESPONDENTS VIDE ANNEXURE-C, BLOCKING ORDER DATED 05.06.2021 ISSUED BY RESPONDENTS, VIDE ANNEXURE-D, BLOCKING ORDER DATED 24.06.2021 ISSUED BY RESPONDENTS VIDE ANNEXURE-E, BLOCKING ORDER DATED 19.07.2021 ISSUED BY RESPONDENTS VIDE ANNEXURE-F, BLOCKING ORDER DATED 12.08.2021 ISSUED BY RESPONDENTS VIDE ANNEXURE-G, BLOCKING ORDER DATED 27.09.2021 ISSUED BY RESPONDENTS VIDE ANNEXURE-H, BLOCKING ORDER DATED 09.12.2021 ISSUED BY RESPONDENTS VIDE ANNEXURE-J, AND BLOCKING ORDER DATED 28.02.2021 ISSUED BY RESPONDENTS, VIDE ANNEXURE-K ALL MOREFULLY DESCRIBED IN THE SCHEDULE AND PRODUCED IN A SEALED COVER.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner, claiming to be an Intermediary under the Information Technology Act, 2000 (hereafter 'Act'), is knocking at the doors of Writ Court complaining against

certain Blocking Orders issued by the respondents, whereby it is directed to bar access of certain information to the public, by effecting suspension of some accounts on Twitter i.e., www.twitter.com. In the alternative, petitioner seeks a direction at the hands of this court '*to modify the Blocking Orders to the extent of Table A of Annexure S to revoke the account level directions and instead identify specific tweets which are violative of Section 69A of the IT Act with reasons.*' The respondents vide letter dated 27 June 2022 have warned the petitioner of serious consequences such as withdrawal of protection availing under section 79(1) of the Act and initiation of criminal proceedings as well if these orders are not complied with.

Particulars of the said orders are furnished by the petitioner in a tabular form as under:

Blocking Order date	Accounts to be blocked	Tweets to be blocked
02.02.2021	256 URLs and 1 hashtag	
04.02.2021	1178	0
16.02.2021	6	0

05.06.2021	50	27
24.06.2021	39	88
19.07.2021	20	8
12.08.2021	61	5
27.09.2021	55	3
09.12.2021	19	16
28.02.2022	46	28
Total	1474	175

"*Of the above, only a total 39 URLs are being challenged by the petitioner in the present petition*" avers the petitioner at the bottom of paragraph 4 of the petition.

II. After service of notice, the respondent-Union of India and its designated officer from the Ministry of Electronics & Information Technology, have entered appearance through their learned Sr. Standing Counsel and resist the Petition, making submission in justification of the impugned orders and the reasons on which they have been constructed. The respondents have filed their Statement of Objections countering the petition averments. Both the parties have filed certain Write-Ups

which may partake the character of additional pleadings supportive of each other's stand as taken up in the original pleadings.

III. FOUNDATIONAL FACTS OF THE CASE:

(i) Petitioner is a company incorporated under the laws of the United States of America, having its registered office at San Francisco, California. In the petition, it has shown the 'contact address' as Dickenson Road, Bangalore, India. Petitioner provides services on Twitter to users *inter alia* in India; Twitter is claimed to be a global platform for self-expression of its users to communicate and stay connected through messages of 280 characters or less (Tweets), at times with pictures/videos. Petitioner answers the description of "*intermediary*" as given in section 2(1)(w) of the Act since its functions are restricted to receiving, storing & transmitting '*records'* or providing '*any service with respect to that record*', on behalf of any user of Twitter platform.

(ii) 1st Respondent-Union of India [hereafter 'UOI'] is the "*appropriate government*" as defined under Section 2(e) of the Act; 2nd Respondent happens to be the "*Designated Officer"* [hereafter 'Designated Officer'] as defined under Rule 2(c) of the Information Technology (Procedures and Safeguards for Blocking for Access of Information by Public) Rules, 2009 [hereafter 'Website Blocking Rules']. The respondents in exercise of power availing under section 69A of the Act, have issued Blocking Orders on various dates. These Blocking Orders in all comprise of 1,474 Twitter accounts and 175 Tweets. A brief description of this is given in paragraph No.4. Petition also states '*Of the above, only a total of 39 URLs are being challenged by the Petitioner...'*

(iii) Petitioner in June 2022, having received notice of the Blocking Orders, claims to have complied with the same '*under protest'.* It sent a reply dated 9 June 2022 seeking a post-decisional personal hearing. The Designated Officer vide notice dated 27 June 2022 directed compliance with all directions issued under

section 69A of the Act coupled with a warning of serious consequences such as withdrawal of the immunity availing under section 79(1) & penal actions, if the same are not complied. Petitioner sent its response dated 29 June 2022 to the effect that certain so-called objectionable content did not attract the grounds specified in section 69A.

(iv) The Review Committee constituted under Rule 419-A of the Indian Telegraph Rules, 1951, held its meeting on 30 June 2022 and the petitioner having participated therein, requested for revocation of 11 account-level Blocking Orders, on certain grounds. Subsequent to the said meeting, the respondents enlisted 15 Twitter accounts and 12 URLs (Tweets) with a direction to block them. In terms of what was agreed upon in the Meeting, the respondents vide notice dated 1 July 2022 revoked 10 of these 11 accounts that were blocked. Petitioner sent a letter dated 2 July 2022 reporting compliance of the Blocking Orders under protest that were left non complied thitherto, while also pointing out certain discrepancies in the Blocking Orders. This compliance is

acknowledged by the respondents vide e-mail dated 4 July 2022.

IV. Aggrieved by both, the Blocking Orders and the action of respondents in not revoking the blocking of accounts/Tweets/URLs, this Writ Petition is presented.

(A) BRIEF CONTENTIONS OF PETITIONER:

This Petition has been structured essentially *inter alia* on the grounds that: substantive & procedural non-compliance of section 69A of the Act in the light of *SHREYA SINGHAL vs. UNION OF INDIA*[1]; power to issue Blocking Orders is *information-specific;* blocking of anticipatory information is not authorized; absence of prior notice to the originators of the so-called objectionable content, which is mandatory; failure to provide proper reasons in the Blocking Order itself; reasons cannot be outsourced from the file; the impugned order even otherwise is not a speaking order in true sense; non-communication of reasons renders the action void;

[1] (2015) 5 SCC 1

impugned action is grossly disproportionate as the respondents failed to use the *least intrusive means*; gross violation of Articles 14, 19 & 21 of the Constitution of India; no opportunity of hearing before the Review Committee and thus, violation of principles of natural justice. In support of its case, petitioner has relied upon certain Rulings.

(B) BRIEF CONTENTIONS OF RESPONDENTS:

The UOI and the Designated Officer repelled the above contentions of the petitioner, *per contra* contending that: petition by a foreign company complaining of violation of Fundamental Rights, is not maintainable; there is compliance of both substantive & procedural requirement *inter alia* under section 69A of the Act and the provisions of Rules 8 & 9 of Website Blocking Rules; in the decision making process, petitioner having participated, cannot complain of lack of reasonable opportunity; petitioner not being a citizen nor a company of the native soil, cannot invoke Articles 19 & 21 of the Constitution; petitioner has

given up invocation of these Articles during the hearing of petition; no case is made out for invocation of Article 14, either; Rule 8(1) of Website Blocking Rules does not avail to non-citizens; in the absence of statutory enablement, petitioner cannot espouse the arguable cause of account holders/Twitter users; the particulars of account holders are exclusively with the petitioner and therefore, authorities could not issue any notice to them; at no point of time, petitioner furnished particulars of the subject account holders nor otherwise insisted upon issuance of notice to them; the procedural & substantive fairness standards with which the Petitioner-Company has been treated, does not fall short of the standards that are obtaining in any other civilized jurisdictions; even otherwise, no relief in terms of petition prayer can be granted. In support of their stand, the respondents have pressed into service certain Rulings.

V. Having extensively heard learned Advocates appearing for the parties and having perused the Petition Papers, in the light of relevant of the Rulings cited at the

Bar, the following questions have been broadly framed for consideration:

1.	Whether the petitioner-Company being a foreign entity can invoke the writ jurisdiction constitutionally vested in the court under Articles 226 & 227…?
2.	Whether section 69A of the Act read with the Website Blocking Rules does authorize issuance of a direction to block user accounts in their entirety or such power is tweet-specific…?
3.	Whether the impugned Blocking Orders are liable to be voided on the ground of non-communication of reasons on which they have been structured…?
4.	Whether the impugned Blocking Orders are bad since they have not been founded on discernible reasons relatable to objectionable content…?
5.	Whether notice to user of accounts i.e., originators of information in terms of Rule 8(1) is mandatory and in the absence thereof, the impugned Blocking Orders suffer from legal infirmity…?
6.	Whether the impugned Blocking Orders are violative of the doctrine of proportionality and therefore, liable to be invalidated…?
7.	Whether the conduct of petitioner disentitles it to the grant of any discretionary relief at the hands of Writ Court…?
8.	Whether the culpable conduct of the petitioner renders it liable for the levy of exemplary costs…?

(I) AS TO LOCUS STANDI OF THE PETITIONER-A FOREIGN COMPANY TO INVOKE CONSTITUTIONAL JURISDICTION OF THE COURT:

(a) It is a specific contention of respondents that the petitioner-company lacks locus standi and therefore, petition in its present form & substance cannot be entertained in constitutional jurisdiction vested under Articles 226 & 227. Learned ASG submitted that petitioner is a '*foreign commercial entity*' and the same has neither been defined nor taken cognizance of by the Indian law; the rights that are guaranteed to the citizens in Part III of the Constitution do not avail to a juristic person and more particularly, to a foreign entity like the petitioner. Learned advocates appearing for the petitioner replied and this court agrees with the same that the invocation of writ jurisdiction is not confined to the examination of the complaint of violation of Fundamental Rights guaranteed under Part III of the Constitution. Invocation is permissible even in cases that involve infringement of statutory rights as distinguished from the constitutional rights.

(b) That, the constitutional guarantee of certain rights i.e., Articles 19, 21, etc., is citizen-centric, does not need much deliberation. *Provisions in Part II of the Constitution relating to citizenship are clearly inapplicable to juristic persons*. Article 19 as contrasted with certain other Articles like Arts. 26, 29 & 30, guarantees rights to the citizens as such, and associations cannot lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens, that is to say, the right of the citizens composing the body. It is true that in *K.S.PUTTASWAMY vs. UNION OF INDIA*[2]*,* at paragraph 363, Chelameswar J., broadly observed:

> *"…As it is now clearly held by this Court that the rights guaranteed under Articles 14 and 21 are not confined only to citizens but available even to non-citizens, aliens or incorporated bodies even if they are incorporated in India, etc…"*

Admittedly, petitioner-company is an incorporated body. Therefore it cannot be disputed that it is entitled to protection under Article 14. In *INDIAN SOCIAL ACTION*

[2] (2017) 10 SCC 1

FORUM vs. UNION OF INDIA[3] it is observed: "Appellant being an organization cannot be a citizen for the purpose of Article 19 of the Constitution". However, there are rights that avail even to non-citizens, and to juristic persons as distinguished from natural persons.

(c) Mr.Manu Kulkarni is right in pointing out that Article 226 employs the term 'any person'; the word 'person' having not been defined in the Constitution, it assumes meaning given in the General Clauses Act, 1897, the same having been to an extent internalized vide Article 367(1). Section 3(42) of 1897 Act expansively defines 'person' to '*include any company or association or body of individuals, whether incorporated or not*'; secondly, Article 226 also employs the expression 'for any other purpose' and therefore, even a complaint not involving violation of Fundamental Rights may lie to the Writ Court. In *COMMON CAUSE vs. UNION OF INDIA*[4], it is observed:

> *"Under Article 226 of the Constitution, the High Court has been given the power and*

[3] 2020 SCC Online SC 310
[4] (1999) 6 SCC 667

> *jurisdiction to issue appropriate writs in the nature of mandamus, certiorari, prohibition, quo warranto and habeas corpus for the enforcement of fundamental rights or for any other purposes. Thus, the High Court has jurisdiction not only to grant relief for the enforcement of fundamental rights but also for "any other purpose" which would include the enforcement of public duties by public bodies…"*

(d) The related question whether a foreign company can invoke writ jurisdiction need not detain the court for long. In *DWARKADAS SHRINIVAS vs. SHOLAPUR Spg. & Wvg. Co. Ltd*[5]*,* it is observed:

> *'…But what article 19(1)(f) means is that whereas a law can be passed to prevent persons who are not citizens of India from acquiring and holding property in this country no such restrictions can be placed on citizens. But in the absence of such a law non-citizens can also acquire property in India and if they do then they cannot be deprived of it any more than citizens, save by authority of law."*

It is pertinent to state what Mr.H.M.Seervai, a great jurist of the yester decades in "The Emergency, Future Safeguards And The Habeas Corpus Case: A Criticism" (N.M.Tripathi Publication, 1 January 1978) writes:

[5] AIR 1954 SC 119

> *"Article 19 confers well recognized fundamental rights on citizens alone. Thus every citizen has a fundamental right to "acquire, hold and dispose of property" ("property rights"). Does it mean that foreigners in India have no property rights? It is a matter of common knowledge, which a glance at the Statute book would confirm, that foreigners have property rights in India. This is because, broadly speaking, various statutes confer property rights without reference to the citizenship of the person acquiring, holding and disposing of property, as for example, the Transfer of Property Act, the Contract Act, the Sale of Goods Act and the Succession Act. If the question were asked: "Where are the property rights of citizens and non-citizens to be found?" the answer must be in the relevant statutes…"*

In *ERBIS ENGINEERING COMPANY LTD. vs. STATE OF WEST BENGAL*[6], Calcutta High Court has observed:

> *"Now admittedly while the Supreme Court, under Article 32 has the power to issue writs for the enforcement of fundamental rights if infringed, however, High Court under Article 226 has been conferred power not only to issue writs for enforcement of fundamental rights but also "for any other purpose", meaning thereby for enforcement of any legal right. Now it is a settled proposition of law that the words "for any other purpose" in Article 226, which are absent in Article 32, make the jurisdiction of the High Court wide and more extensive than that of the Supreme Court. Therefore, High Court can exercise its power to issue writs under Article 226 for two- fold purposes-for enforcement of (i)*

[6] 2011 SCC OnLine Cal 835

> *fundamental rights and ii) for enforcement of legal rights."*

Similar view is echoed by a Division Bench of Gauhati High Court in W.A.No.268 of 2013 between *OIL INDIA LIMITED vs. DRILLIMEC SPA,* disposed off on 22 July 2014, wherein it observed:

> *"in today's context when Foreign Direct Investment (FDI) in various sectors of our economy is a reality and is being pursued by the executive arm of the State, it will be wholly untenable and opposed to the constitutional mandate to tell the foreign companies that they can do business in India, but they will not be entitled to the guarantee of fair play and equality as enshrined in Article 14 of the Constitution of India… Thus, while agreeing with the views expressed by the learned Single Judge, we hold that a company, a juristic person, whether Indian or foreign, can maintain a legal action based on Article 14 of the Constitution of India alone…"*

Petition has been structured *inter alia* on the provisions of Article 14 of the Constitution, as extensively construed by the Apex Court, precedent by precedent. Paragraph 11, page 10 of petitioner's Rejoinder reads: "*Petitioner is canvassing rights under Articles 14, 19, 21 only to limited extent. Petitioner is mainly urging violation of statutory*

rights". Even otherwise, it cannot claim protection of Article 19(1)(a) because it is not a citizen [Bishwananth Tea Company Ltd.[7]], and Article 21 because it is not a natural person; it also cannot espouse the arguable cause of twitter account holders in the absence of enabling provision of law unlike trade unions espousing the cause of workmen under the provisions of The Trade Unions Act, 1926 & The Industrial Disputes Act, 1947.

(e) The above being said, Rule 8(1)(iii) of Information Technology (Certifying Authorities) Rules, 2000 defines "foreign company" by adopting the meaning assigned to it in section 2(23) of the Income Tax Act, 1961. It is also pertinent to note that Rule 8(3) of the Website Blocking Rules in so many words mentions about the mode of service of notice on a '*foreign entity or body corporate*'. It also recognizes the right of such an entity to reply. Notice was sent to petitioner-Company by the respondents and the same was replied to by it. In *SHREYA SINGHAL supra,* what the Apex Court observed also lends

[7] AIR 1981 SC 1368

credence to the case of petitioner as to locus standi. At paragraph 114, it observed: "…*reasons have to be recorded in writing in such blocking order so that they may be assailed in a writ petition under Article 226 of the Constitution*…" At paragraph 115, it stated: "…*It is only an intermediary who finally fails to comply with the directions issued who is punishable under sub-section (3) of Section 69A…".* Learned counsel for the petitioner is justified in submitting that section 83 of the Code of Civil Procedure, 1908 recognizes right of an alien to sue and his liability to be sued, as if he is a citizen of India. The said section reads as under:

> *"**When aliens may sue**: Alien enemies residing in India with the permission of the Central Government, and alien friends, may sue in any Court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such court.*
>
> ***Explanation**-Every person residing in a foreign country, the Government of which is at war with India and carrying on business in that country without a licence in that behalf granted by the Central Government, shall, for the purpose of*

this section, be deemed to be an alien enemy residing in a foreign country."

However, when it comes to an 'alien enemy', conditions do apply. Mr.Manu Kulkarni is right in submitting that Rule 39 of the Writ Proceedings Rules, 1977 broadly adopts *inter alia* the provisions of CPC. If right to sue is recognized, whether it is prosecuted in an ordinary Civil Court or in Writ Court, in the fact matrix of the case, pales into insignificance. Where the cause of action is animated with abundant public law elements like the State action, writ jurisdiction is invocable. It cannot be said that the action of respondents does not have such elements, when the same has been taken under a special statute. Therefore, contention of learned ASG that Indian law does not take cognizance of a foreign entity/company being too farfetched an argument, cannot be agreed to.

(f) It hardly needs to be stated that many civilized jurisdictions across the globe allow foreign nationals & foreign entities to vindicate statutory rights in the domestic courts, even against the government & its

authorities. Article III of the U.S. Constitution recognizes the right of foreign citizens/entities to sue and their liability for being sued vide *SERVICIOS AZUCAREROS DE VENEZUELA, C.A. vs. JOHN DEERE THIBODE, INC*[8] and *TRANSNOR (BERMUDA) LTD vs. BP NORTH AMERICA PETROLEUM*[9]. The U.S. Supreme Court has repeatedly stated that the 'equality clause' and the 'due process clause' do apply to all persons including the aliens vide *ZADVYDAS vs. DAVIS*[10]. English Law is not much different, in this regard. The London Court of Appeal in *DOMINIC LISWANISO LUNGOWE & OTHERS vs. VEDANTA RESOURCES Plc & ANOTHER*[11], has confirmed that foreign citizens can pursue in England legal claims against English based multinationals. The realm of Cyber Law spurns at traditional concept of territoriality and repels the idea of geographical boundaries. Globe is becoming small. It is not impertinent to mention what our vedic scriptures say. *Mahopanishad* 6.71–75 has the following verse (shloka):

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[8] 702 F.3d 794 (5th Cir.2012)
[9] 666 F. Supp. 581 (S.D.N.Y. 1987)
[10] 533 U.S. 678, 693 (2001)
[11] [2017] EWCA Civ 1528

अयं निजः परो वेति गणना लघुचेतसाम्।
उदारचरितानां तु वसुधैव कुटुम्बकम्॥

ayaṃ nijaḥ paro veti gaṇanā laghucetasām।
udāracaritānāṃ tu vasudhaiva kuṭumbakam॥

Near English translation:

This is mine, that is his, say the small minded,
The wise believe that the entire world is a family.

The Petitioner-Company is not only threatened of losing its protection available u/s 79(1) but also penal action for violation of the mandatory provisions of the Act and the Website Blocking Rules.

In view of the above discussion, this court is of the considered view that petitioner has locus standi to tap the writ jurisdiction of this Court for the redressal of its arguable grievance.

(II) AS TO INHERENT APPREHENSIONS OF UNFETTERED CYBERSPACE AND THE OMINOUS PERVASION OF SOCIAL MEDIA IN A DEMOCRATIC SETUP:

(a) Social media has reshaped the way in which masses consume information. Emergence of social media has changed the way in which people participate in the democratic process. Compared to traditional media, it has a far larger reach & easy accessibility; it enables mass participation and provides instant updates/effects. Social media enables the users to interact and communicate while simultaneously creating & sharing content digitally. This main characteristic allows regular users to create media hypes comparable to news waves. Today, social media functions as the meeting place for participants to exchange information and also propagate views about such information. People increasingly rely on social media than on their traditional counterparts, to become aware of their surroundings and participate in discussions-political, economic or otherwise which may strengthen democracy. However, on the flipside, the abuse of social media is, at times, antithetical to the democratic process. This has led to manipulation & fragmentation of society on the tainted lines of political ideologies.

(b) Social media has also been used to manipulate political choices of voters & opinion generators. This perniciously affects amongst other, the democratic setup of even constitutional institutions. Social media is highly susceptible to exploitation at the hands of organizations/entities. Mass level psychological and intellectual manipulations are also perpetrated. Social networks have evolved into platforms for the generation & huge propaganda of fake news; this in turn empowers disruptive voices & ideologies with cascading effect. These platforms hold the potential to alter civic engagement that may eventually hijack democracy, by influencing the masses toward a particular way of thinking. Social media has enabled a style of populist politics, which if left unregulated allows hate speech & virulent expressions to thrive in digital spaces,. The rise of polarizing & divisive content has been a defining moment of modern politics, which is fed by dissemination of fake news, and such dissemination through social media among populations with low-to-no levels of critical digital literacy, is a big

challenge. To this is added, another dangerous component namely, the labeling and trolling of disruptive voices.

(c) What the Apex Court observed in *AJIT MOHAN & ORS. vs. LEGISLATIVE ASSEMBLY NATIONAL CAPITAL TERRITORY OF DELHI*[12] as to the abuse of social media and its effect on the democratic process is profitably reproduced:

> *"The technological age has produced digital platforms…can be imminently uncontrollable at times and carry their own challenges. One form of digital platforms are the intermediaries that claim to be providing a platform for exchange of ideas without any contribution of their own…on complaints being made, they do remove offensive content based on their internal guidelines. The power and potentiality of these intermediaries is vast, running across borders. These are multinational corporations with large wealth and influence at their command. By the very reason of the platform they provide, their influence extends over populations across borders.*
>
> *…we cannot lose sight of the fact that it has simultaneously become a platform for disruptive messages, voices, and ideologies. The successful functioning of a liberal democracy can only be ensured when citizens are able to make informed decisions….. The information explosion in the digital age is capable of creating*

[12] (2022) 3 SCC 529

new challenges that are insidiously modulating the debate on issues where opinions can be vastly divided…social media…has become a tool in the hands of various interest groups who have recognised its disruptive potential… extremist views are peddled into the mainstream, thereby spreading misinformation. Established independent democracies are seeing the effect of such ripples across the globe and are concerned. Election and voting processes, the very foundation of a democratic government, stand threatened by social media manipulation.…The effect on a stable society can be cataclysmic with citizens being 'polarized and parlayzed' by such "debates", dividing the society vertically. Less informed individuals might have a tendency to not verify information sourced from friends, or to treat information received from populist leaders as the gospel truth.

...The immense power that platforms wield has stirred a debate not only in our country but across the world. The endeavour has been to draw a line between tackling hate speech and fake news on the one hand and suppressing legitimate speech which may make those in power uncomfortable, on the other. The significance of this is all the more in a democracy which itself rests on certain core values. This unprecedented degree of influence necessitates safeguards and caution in consonance with democratic values….

…Debate in the free world has shown the concern expressed by Governments across the board and the necessity of greater accountability by these intermediaries which have become big business corporations with influence across borders and over millions of

> *people…... The width of such access cannot be without responsibility as these platforms have become power centres themselves, having the ability to influence vast sections of opinions….it has to be noted that their platform has also hosted disruptive voices replete with misinformation. These have had a direct impact on vast areas of subject matter which ultimately affect the governance of States. It is this role which has been persuading independent democracies to ensure that these mediums do not become tools of manipulative power structures. These platforms are by no means altruistic in character but rather employ business models that can be highly privacy intrusive and have the potential to polarize public debates. For them to say that they can sidestep this criticism is a fallacy as they are right in the centre of these debates…."*

(d) It is pertinent to note that more or less similar concerns were addressed in the recently conducted Global Dialogue on 'Internet for Trust: Towards Guidelines for Regulating Digital Platforms' held in February 2023, by the UNESCO. The Third Draft Guidelines titled, "Safeguarding freedom of Expression and access to information: Guidelines for a multistakeholder approach in the context of regulating digital platforms", were shared for public consultation. These Guidelines, which encompass social intermediaries, focus *inter* alia on responsibilities of digital platforms with respect to human rights especially in the context of media literacy and intermediary accountability:

"…..Digital platforms have empowered societies with enormous opportunities for people to communicate, engage, and learn. They offer great potential for communities in social or cultural vulnerability and/or with specific needs, democratizing spaces for communication and opportunities to have diverse voices engage with one another, be heard, and be seen. But due to the fact that key risks were not taken into account earlier, this potential has been gradually eroded over recent years…

...The aim of the Guidelines is to safeguard freedom of expression, access to information and, other human rights in the context of the development and implementation of digital platform regulatory processes. They establish a rights-respecting regulatory processes while promoting risk and system-based processes for managing content. They aim to enrich and support a global multistakeholder shared space to debate and share good practices about digital platform regulation; serve as a tool for all relevant stakeholders to advocate for human rights-respecting regulation and to hold government and digital platforms accountable…

...Platforms make available information and tools for users to understand and make informed decisions about the digital services they use, helping them assess the information on the platform as well as understanding the means of complain and redress. They have in place Media and Information Literacy programs and provide information and enable users actions in different languages….Platforms are accountable to relevant stakeholders, to users, the public, advertisers and the regulatory system in implementing their terms of service

and content policies, they give users ability to seek redress against content-related decisions, including both users whose content was taken down and users who have made complaints about content that violates international human rights law"

(III) AS TO A BRIEF & SELECTIVE ASPECTS OF COMPARATIVE LAW RELATING TO TAKEDOWN OF OBJECTIONABLE CYBER CONTENT:

Cyber space is trans-national. That warrants advertence to some aspects of law on the subject as obtaining in a few prominent jurisdictions. The following discussion under this paragraph is structured on the basis of the material furnished by petitioner's counsel Mr.Manu Kulkarni and learned Sr. CGC Mr.Kumar M.N, appearing for the respondents. Mr.Manu Kulkarni and the learned ASG made their submission assisting the court. A brief reference to foreign law is not out of place:

(i) In **USA,** there does not appear to be a law approximating to the regulatory provisions of our Information Technology Act, 2000 in general and section 69A thereof in particular. This is because of the First Amendment as expansively construed by the U.S.

Supreme Court in a catena of decisions beginning with Justice Thurgood Marshall's observation in *POLICE DEPARTMENT OF THE CITY OF CHICAGO vs. MOSLEY*[13]: *"…the First Amendment above all else means that the government may not restrict expression because of its message, ideas, subject matter or content..."* However, now there is The Communications Decency Act, 1996; section 230(c)(1) enacts a 'safe harbor provision' whereby intermediaries are not treated as the publisher or speakers of third party generated content; section 230(c)(2) enacts 'Good Samaritan clause' which provides that the intermediaries & users may not be held liable for voluntarily acting in 'good faith' to restrict access to objectionable material; section 230(e) outlines a few exemptions where immunity will not be available i.e., federal criminal statutes, intellectual property law & sex trafficking prevention laws. A content-based restriction, as opposed to a content-neutral one, is a key differentiation under First Amendment jurisprudence because the former

[13] 408 US 92 (1972) 95

is subject to 'strict scrutiny' analysis, which requires government to show that it has a compelling public interest for its regulation and that the regulation is the least speech-restrictive way to further such interest. Protection under the First Amendment is not available where the speech is directed or likely to incite or produce imminent lawless action[14]. Similarly, there is no protection to speech 'used as an integral part of conduct in violation of a valid criminal statute'[15].

(ii) In **U.K,** principally there are two statutes viz., Terrorism Act, 2006 and The Digital Economy Act, 2017. The former prohibits the glorification, encouragement & promotion of commission or preparation of acts of terrorism (section 3). It enables the constable to issue notice for the removal of objectionable content. Whether such content is objectionable would be assessed on the basis of the contents of the statement as a whole and the circumstances & manner of its publication. The offence is punishable with an imprisonment for a term which may

[14] Brandenburg vs. Ohio 395 US 444
[15] Giboney vs. Empire Storage and Ice Co. 336 US 490

extend to 15 years 'or/and' with fine. Section 23 of the 2017 Act provides for issuance of Blocking Orders in respect of public access to offending material using the services of the internet service provider. Sub-section (2) provides for taking steps for securing compliance of such notices. The statute essentially focuses the prevention of '*extreme-pornography'* and provides for prosecution & penalty.

(iii) In **AUSTRALIA,** The Online Safety Act, 2021, a Federal statute of nascent origin promotes online safety and administration of complaints relating to cyber abuse. It enacts provisions *inter alia* regulating the issuance of warning notice, 'removal notice', removal request, remedial notice, etc., in respect of objectionable content of cyber posts, and revocation of these notices. Commissioner is the designated authority who does process the same. By a notice in writing, he may request or require intermediary amongst others, to take all reasonable steps in 24 hours or within specified time to ensure the removal of 'cyber abuse material' from the

service. Section 91 prescribes a penalty of 500 units for non-compliance (the value of one unit is currently 275 Australian Dollars). Section 95 provides for issuance of blocking requests to the intermediaries to take steps to disable access to the objectionable material. Sub-section (2) of this section provides for taking steps to block URLs or to block IP address itself. It is more than blocking of an account in its entirety. What is notable is the text of sub-section (3): "*The Commissioner is not required to observe any requirements of procedural fairness in relation to the giving of the blocking request".* Section 96 provides that the period of blocking request is three months and it may be extended in the form of renewal. Section 97 provides for revocation of blocking request. Similarly, section 99 provides for issuance of 'blocking notice' which may also cover blocking of accounts in their entirety. This statute also provides for the issuance of warning notices, link deletion notices and remedial notices. It also provides for what the Commissioner should consider in assessing

whether online material is likely to cause significant harm to the community.

(IV) AS TO CERTAIN ASPECTS OF NATIVE LAW & PROCEDURE RELATING TO BLOCKING OF ACCOUNTS, URLS & TWEETS:

(a) The United Nations Commission on International Trade Law (UNCITRAL) in the year 2001 adopted the Model Law on the subject; the UN Resolution No.56/80 dated 12.12.2001 recommended that all Nation States should accord favourable consideration to the same. The Information Technology Act, 2000 is a Parliamentary statute enacted with a view to give fillip to the growth of electronic based transaction, to provide legal recognition for e-commerce & e-transactions, to facilitate e-governance, to prevent computer based crimes and ensure security practices & procedures in the context of widest possible use of information technology worldwide. A rapid increase in the use of electronic devices has given rise to new forms of crimes of several kind and therefore, penal provisions, subsequently, have been enacted. The Act applies to the whole of country and also to offences or

contravention committed outside. In terms of section 3, the Act came into force w.e.f. 17 October 2000.

(b) Section 2 of the Act is the Dictionary Clause of the Act; some of the definitions are relevant to the adjudication of this petition. Section 2(t) defines 'electronic record' to mean data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. Section 2(v) defines 'information' to include data, message, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche. Section 2(w) defines 'intermediary' to mean any person who on behalf of another receives, stores or transmits electronic record or provides any service with respect to that record, etc. Section 2(za) defines 'originator' to mean a person who sends, generates, stores or transmits the electronic message; however, it does not include an intermediary. A set of Rules for effective working of the Act has been promulgated by the Central Government. This petition in

substance relates to section 69A of the Act and Rule 8 of the Website Blocking Rules.

(c) The Act as originally made, did not have certain essential regulatory provisions and therefore, section 66A & section 69A amongst other came to be introduced by the Parliament vide Amendment Act No.10 of 2009 w.e.f. 5 February 2009. Section 66A criminalized the act of sending offensive messages through communication service and prescribed a penalty of three year imprisonment coupled with fine. Section 69A *inter alia* provides for issuance of Blocking Orders. Earlier, there was no such provision. Section 69A has the following text:

> *"**69A. Power to issue directions for blocking for public access of any information through any computer resource**.–*
>
> *(1) Where the Central Government or any of its officers specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government*

> *or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.*
>
> *(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.*
>
> *(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and also be liable to fine."*

(d) Section 69A is couched in a restrictive language since free speech concerns are inherent to such blocking. Keeping this in mind the Parliament has structured the same, providing for the issuance of directions to block public access of information through any computer resource only when, (i) the Central Government or the officer specifically designated by it; (ii) is satisfied that it is necessary or expedient so to do; either (a) in the interest of sovereignty and integrity of India; (b) defence of India; (c) security of the State; (d) friendly relations with foreign States; (e) public order; or (f) for preventing incitement to the commission of any cognizable offence. Section 69A(1)

further states that all such orders shall be in writing. Non-compliance with such direction, may entail the intermediary with an imprisonment for a term which may extend to seven years coupled with fine. Any Website Blocking involves inherent tensions between the competing interests of free speech/expression on the one hand and the restriction on its exercise, on the other. Section 69A(2) provides for normative prescription of procedure & safeguards for effecting Website Blocking, so that the abuse of this power is minimized. Pursuant to Section 69A(2), the Central Government has promulgated the Website Blocking Rules which *inter alia* provide for the appointment of a Designated Officer who should be of the rank of Joint Secretary; he will be responsible for issuing the Website Blocking Orders under Rule 3. Rule 6 enables any aggrieved person to lodge a complaint against any web content and seek its blocking. Such blocking requests will be examined by a '*Committee for the examination of request*' under Rule 7; this Committee is constituted under Rule 419-A of the Indian Telegraph Rules, 1951.

(e) The provisions of Rules 8 & 9 of Website Blocking Rules being relevant, are reproduced below:

> *"**8: Examination of request***
>
> *(1) On receipt of request under rule 6, the Designated Officer shall make all reasonable efforts to identify the person or intermediary who has hosted the information or part thereof as well as the computer resource on which such information or part thereof is being hosted and where he is able to identify such person or intermediary and the computer resource hosting the information or part thereof which have been requested to be blocked for public access, he shall issue a notice by way of letters or fax or e-mail signed with electronic signatures to such person or intermediary in control of such computer resource to appear and submit their reply and clarifications if any, before the committee referred to in rule 7, at a specified date and time, which shall not be less than forty-eight hours from the time of receipt of such notice by such person or intermediary.*
>
> *(2) In case of non-appearance of such person or intermediary, who has been served with the notice under sub-rule (1), before the committee on such specified date and time the committee shall give specific recommendation in writing with respect to the request received from the Nodal Officer, based on the Information available with the committee.*
>
> *(3) In case, such a person or intermediary, who has been served with the notice under sub-rule (1), is a foreign entity or body corporate as identified by the Designated Officer, notice shall be sent by way of letters or fax or e-mail signed*

with electronic signatures to such foreign entity or body corporate and any such foreign entity or body corporate shall respond to such a notice within the time specified therein, failing which the committee shall give specific recommendation in writing with respect to the request received from the Nodal Officer, based on the information available with the committee.

(4) The committee referred to in rule 7 shall examine the request and printed sample information and consider whether the request is covered within the scope of sub-section (1) of section 69A of the Act and that it is justifiable to block such information or part thereof and shall give specific recommendation in writing with respect to the request received from the Nodal Officer.

(5) The Designated Officer shall submit the recommendation of the committee, in respect of the request for blocking of information along with the details sent by the Nodal Officer to the Secretary in the department of Information Technology under Ministry of Communication and Information Technology, Government of India (hereinafter referred to as the "Secretary, Department of Information Technology").

(6) The Designated Officer, on approval of the request by the Secretary, Department of Information Technology, shall direct any agency of the Government or the intermediary to block the offending information generated, transmitted, received, stored or hosted in their computer resource for public access within the time limit specified in the direction: Provided that in case the request of the Nodal Officer is not approved by the Secretary, Department of Information Technology, the Designated Officer shall convey the same to such Nodal Officer.

9. Blocking of information in cases of emergency. —

(1) Notwithstanding anything contained in rules 7 and 8, the Designated Officer, in any case of emergency nature, for which no delay is acceptable, shall examine the request and printed sample information and consider whether the request is within the scope of sub-section (1) of section 69A of the Act and it is necessary or expedient and justifiable to block such information or part thereof and submit the request with specific recommendations in writing to Secretary, Department of Information Technology.

(2) In a case of emergency nature, the Secretary, Department of Information Technology may, if he is satisfied that it is necessary or expedient and justifiable for blocking for public access of any information or part thereof through any computer resource and after recording reasons in writing, as an interim measure issue such directions as he may consider necessary to such identified or identifiable persons or intermediary in control of such computer resource hosting such information or part thereof without giving him an opportunity of hearing.

(3) The Designated Officer, at the earliest but not later than forty-eight hours of issue of direction under sub-rule (2), shall bring the request before the committee referred to in rule 7 for its consideration and recommendation.

(4) On receipt of recommendations of committee, Secretary, Department of Information Technology, shall pass the final order as regard to approval of such request and in case the request for blocking is not approved

by the Secretary, Department of Information Technology in his final order, the interim direction issued under sub-rule (2) shall be revoked and the person or intermediary in control of such information shall be accordingly directed to unblock the information for public access."

(f) The Central Government in its Memo dated 18 April 2023 has stated about the broad procedure that is normally followed in processing blocking requests. Concisely stated, it is as under:

Designated Officer (Rule 3) receives blocking requests from Nodal Officers (Rule 4). The Nodal Officers have to provide for justification/reasons and the grounds enacted in section 69A against each URL in respect of which the request for blocking is made (Rule 6). The Designated Officer shares with the intermediaries (including twitter) the list of URLs having information regarding the content level blocking (for a single content posted), and URLs for account level blocking; this is done in the pre-meeting notices and he ensures that such information/notices are issued 48 hours prior to the scheduled meeting (Rule 8).

Based on the detailed justifications/reason provided in Excel Sheet, the intermediary (including twitter) takes action of blocking/suspension of URL-account if it agrees with the complaint. Where it does not agree, the deliberation takes place in the Inter Ministerial Committee which examines the

evidentiary material, with the participation of all stakeholders including the intermediary's representative, Nodal Officers, Law Enforcement Agencies, etc. If the Committee is convinced of the allegation on the basis of evidentiary material, it recommends for the content or account-level blocking of URLs. Accordingly, minutes of proceedings are drawn. The same are submitted along with all records for approval of the Competent Authority (Secretary, MeitY).

These records, if involving security concerns, will not be shared with the users or intermediaries. At para 10 of the Memo, a format of the Blocking Order is given as under:

"As per the provisions of 69A of IT Act 2000 and rules there under namely Rule 7 of Information Technology (Procedure and Safeguards for blocking for Access of Information for Public) rules 2009, some Twitter URLs that have been found propagating objectionable contents which attract the provisions of section 69A of the IT Act, 2000 for blocking, were shared in our 48 hours advance notice(s) to you prior to the meeting of 'Committee for examination of requests for blocking of access of information by public' which was held on meeting date. Based on the recommendations of the Committee and subsequent approval of the Competent Authority, Twitter Inc. is hereby directed to block xx Twitter Accounts/URLs as provided in enclosed Annexure, expeditiously under the provisions of section 69A of the IT Act."

The Website Blocking Rules also provide for ensuring compliance with the Blocking Orders that are made by

courts too. This apart, the provisions of Rule 9 empower issuance of interim orders of blocking in specific circumstances. Such orders are followed by the final orders, as has happened in the case at hand.

In *SHREYA SINGHAL, supra* the challenge in a social action litigation (u/a 32 of the Constitution), to the validity *inter alia* of section 69A of the Act & the Website Blocking Rules came to be repelled by the Apex Court on the ground that Rule 8 provides for sufficient substantive & procedural safeguards.

(V) AS TO COMPETENCE OF CENTRAL GOVERNMENT/DESIGNATED OFFICER TO DIRECT BLOCKING OF USER ACCOUNTS U/S 69A OF THE ACT:

(a) Learned Sr. Advocates Mr.Arvind Datar & Mr.Ashok Haranahalli, argued that the impugned orders suffer from the lack of jurisdiction inasmuch as section 69A does not authorize the government to direct the *intermediary* to block the entire account. According to them, this provision is tweet-specific. There is a marked difference between blocking of a user account and blocking

of a tweet; in the former, blocking is *ex post facto* in the sense that the information is already available on the portal, whereas in the latter, the blocking constitutes an absolute embargo not only against the existing information but also against all future information that is yet to be generated & posted; this future information could be innocuous. In support of this submission, they drew attention of the court to the language employed in the section. This provision obviously empowers the Central Government *'to block for access by the public…any information generated, transmitted, received, stored or hosted in any computer resource'.* They hasten to add that if Parliament intended the expanse of the power to include blocking of entire account, the language of the section would have been much different. Learned ASG repelled this submission contending that there are no restrictive elements in the language employed in the section; a statute enacted for giving effect to International Conventions needs to be construed with the principles of

purposive interpretation. Let me examine these rival contentions.

(b) In dealing with codified & statutory law, courts across the civilized jurisdictions have the experience that the words of an enactment more often than not reflect the intentions and aims of its framers incompletely or inaccurately. When legislators endeavor to express their thoughts in concise yet general terms, situations are almost invariably omitted that otherwise were within the overall intention of the measure. It is not desirable to bind the Judges to the words of a statute even when a literal interpretation might result in an unfair decision which the legislature itself would not have sanctioned, had it been mindful of the same. Purposive interpretation gives attention to the true intention of text's author, and not just to his *linguistically expressed intention* or which is there but left unexpressed. If the provisions of section 69A(1) are literally construed, as suggested by the petitioner's side, that would fail to effectuate the spirit & larger intent of the Parliament.

(c) The Central Legislation in question has been enacted in the light of the 1997 Resolution passed by the General Assembly of the United Nations that had suggested adoption/revision of UNCITRAL Model Law on Electronic Commerce. In the original statute, there was no provision which empowered blocking of websites & tweets. A Ministerial Order dated 7 July 2003 of Government of India relating to Website Blocking stated: "…*as already noted there is no explicit provision in the I.T. Act, 2000 for blocking of websites. In fact, blocking is taken to amount to censorship…[after listing cases where freedom of speech may not extend]… websites may not claim constitutional right of free speech…Blocking of such websites may be equated to 'balanced flow of information' and not censorship."* Section 69A has been brought on the statute book by way of Amendment w.e.f. 5 February 2009, because of the felt need of the time. This significant provision has been introduced by the Parliament with the accumulated wisdom gained from years of experience of working of the statute. "…*the life of the law has not been*

logic: it has been experience"[16] said Justice Holmes. This Act employing a terminology of rules is apparently interwoven with the science & technology of electronic communication. The fact that this field is rapidly evolving, hardly needs substantiation. The Apex Court in Transfer Petition Nos.1943-1946/2019 in *FACEBOOK INC vs. UNION OF INDIA* vide order dated 24 September 2019 observed about the law relating to information technology: *"We find that the law in this regard is still at a nascent stage and technology keeps changing every day, if not every hour. There are various creases which need to be ironed out…"* The pace of such rapidity repels the invocation of literal interpretation since language has marked elements of statics. There are many technical legal terms employed in the statute as its dictionary clause shows; they are not fully self-explanatory and therefore, warrant construction.

(d) That the Language of a statute limits its interpretation. In matters involving construction of biotic

[16] The Common Law , Oliver Wendell Holmes Jr., DOVER PUBLICATIONS, INC., NEWYORK

legislations of enormous significance, especially in the dynamic cyber space as the one at hand, courts cannot be swayed away by *litera legis*. They have to keep in mind what the law as textually expressed is and what it tends to become to meet the challenges that otherwise were within the contemplation of the law maker. It is pertinent to advert to what Judge Aharon Barak[17] said about the relevance of purposive interpretation:

> `…*Sometimes, it is difficult to know the intent of the legislature; sometimes, the information about intent is not reliable; sometimes, there is no credible intent that can help the interpretative process; sometimes, a statute reflects (intentionally or unintentionally) conflicting intentions*…'

Prof. Frederick F. Schauer[18], of the University of Virginia School of Law writes:

> "…*When the literal interpretation yields an outcome inconsistent with common sense, or inconsistent with probable legislative intention, or inconsistent with the statute's purpose, the Judge may depart from literal meaning in order to produce the most reasonable result…"*

[17] PURPOSIVE INTERPRETATION IN LAW, 2ND Edition, Princeton University Press, USA, (2007) at p.285
[18] THINKING LIKE A LAWYER, Harvard University Press, (2009), p.166

Maxwell on Interpretation of Statutes (12th Edn., page 228), under the caption 'Modification of the language to meet the intention' in the chapter dealing with 'Exceptional Construction' states the position succinctly:

> *"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning..."*

What Friedrich Bodmer, a Swiss Philologist writes[19] in this regard has gained approval of a Nine Judge Bench of our Apex Court in *SUPREME COURT ADVOCATES ON RECORD ASSOCIATION & ORS., vs. UNION OF INDIA*[20]:

> *"Words are not passive agents meaning the same thing and carrying the same value at all*

[19] "The Loom of Language" W W Norton Co Inc; p.720.
[20] (1993) 4 SCC 441

> *times and in all contexts. They do not come in standard shapes and sizes like coins from the mint, nor do they go forth with a degree to all the world that they shall mean only so much, no more and no less. Through its own particular personality each word has a penumbra of meaning which no draftsman can entirely cut away. It refuses to be used as a mathematical symbol."*

(e) The English Courts have the same view of the matter. Lord Diplock in *JONES vs. WROTHAM PARK SETTLED ESTATES*[21] opined as under:

> *"I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."*

Justice Michael Kirby of Australian High Court (highest Arbitral Tribunal of the country) in *NEW SOUTH WALES vs. COMMONWEALTH*[22] took issue with the majority's manner of interpretation (literal) arguing that the language of the corporation's power was not to be read in isolation from

[21] [1978] UKHL J1213-1
[22] (2006) 231 ALR 1 at 127 [470]

the preceding paragraphs of a provision of the statutes concerned. He said:

> *"…context is critical to the understanding of communication by the use of human language. This is nowhere more so than in deriving the meaning of a constitutional text, typically expressed (as in the Australian instance) in sparse language designed to apply for an indefinite time and to address a vast range of predictable and unpredictable circumstances…"*

(f) It is pertinent to mention again that the petitioner-Company is not a native entity; admittedly, it happens to be of American origin. Keeping this in mind, let me examine a few cases which unmistakably show the U.S. Supreme Court moving in the direction of a purpose oriented policy of statutory interpretation i.e., setting legislative intent above the black letter of law.

(i) *CHURCH OF THE HOLY TRINITY vs. UNITED STATES*[23]: Congress in 1885 forbade the encouragement of the importation of aliens by means of contract for labor and services entered into prior to immigration. A proviso excluded professional artists, lecturers, singers, and domestic servants, but made no mention of ministers of

[23] 143 U.S.457 (1892)

the gospel. A church made a contract with an English clergy man to come over and serve as rector and pastor of the church. After he had arrived in this country and assumed his duties, the government sought to recover the penalty provided by the Act. The court refused to interpret the statute literally.

(ii) *UNITED STATES vs. AMERICAN TRUCKING ASSOCIATION*[24]*:* The American Trucking Associations (ATA) had filed suit to compel the Interstate Commerce Commission (ICC) to regulate all employees of trucking industries, rather than only those whose job had affected safety. The Fair Labor Standards Act (FLSA) included an exemption to employees regulated by the ICC under the Motor Carrier Act of 1935. The ATA sought a ruling compelling the ICC to recognize all trucking employees as being within its power to regulate, as such employees would then be exempt from the minimum wage and overtime requirements of the FLSA. The District Court of Columbia had granted a decree in favour of the plaintiff. In appeal, the same came to be reversed with a direction to dismiss the suit. The court launched an attack on the plain-meaning rule in its orthodox form, observing:

> *"When the plain meaning has led to absurd or futile results…this Court has looked beyond the words to the purpose of the Act. Frequently, however, even when the plain meaning did not*

[24] 310 US 534 (1940) at p.543-544

> *produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there can certainly be no "rule of law" which forbids its use, however clear the words may be on "superficial examination."*

(g) Petitioner's counsel Mr.Manu Kulkarni placing reliance on *MUNICIPAL CORPORATION, GREATER BOMBAY vs. NAGPAL PRINTING MILLS*[25] and *GIRIDHAR G YADALAM vs. CWT*[26] contended that the past tense of the words namely '*generated, transmitted, received, stored or hosted'* occurring in section 69A(1) excludes power to block all future information and therefore, blocking of accounts in their entirety, is impermissible. This is too farfetched an argument, which is essentially grounded in the *linguistic interpretation of statutes*. These words appear to have been used in past perfect tense, is true. However, their 'verbal form' remain the same even when employed in present perfect tense & future perfect tense. The text & context of the provision lend support to this

[25] (1988) 2 SCC 466
[26] (2015) 17 SCC 664

view. After all, the rules of grammar cannot jettison the rules of law. Let me examine the Rulings cited on behalf of the petitioner:

(i) Nagpal case involved a challenge to the levy of charges on the water supply, in terms of sections 169, 276 & 277 of The Bombay Municipal Corporation Act, 1888 read with Water Charges and Sewerage and Waste Removal Rules, 1976. By the very structure of the statutory scheme, levy was permissible on the basis of ascertainable '*quantity of water supplied*'. There was no scope for the levy of charges on the water yet to be supplied. In ascertaining this intent of the Law Maker, the Bombay High Court stressed on the past tense of the word '*supply'* and the Apex Court affirmed the same. The municipal subject matter of the Bombay statute being as simple as can be, eminently admitted literal interpretation and therefore, ordinary rules of English grammar & usage were inarticulately called in aid in construing its provisions.

(ii) In *GIRIDHAR supra,* the Apex Court was construing the meaning of the word '*building'* in light of the expression '*which has been constructed' as* occurring in the Explanation to section 2(ea)(v) of the Wealth Tax Act, 1957. It observed:

> *"We have already pointed out that on the plain language of the provision in question, the*

> *benefit of the said clause would be applicable only in respect of the building 'which has been constructed'. The expression 'has been constructed' obviously cannot include within its sweep a building which is not fully constructed or in the process of construction. The opening words of clause (ii) also become important in this behalf, where it is stated that 'the land occupied by any building'. The land cannot be treated to be occupied by a building where it is still under construction."*

The above decisions have been rendered in the context of statutes providing for levy of charges and taxes. The setting in which the above decisions were rendered is totally different. In Mehboob Dawood Shaikh v. State of Maharashtra [2004] 2 SCC 362, the Supreme Court in paragraph 12, has held as follows:

> *"...A decision is available as a precedent only if it decides a question of law. A judgment should be understood in the lights of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court divorced from the context of the question under consideration and treat it to be complete law decided by this court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this court..."*

What is being interpreted in the case at hand is not an ordinary law relating to municipal administration nor a statute concerning taxation. It is an important provision of a Central Legislation; the said legislation is of immense

significance since it has been enacted by the Parliament in light of an International Convention. It has unique complexities & ramifications; *inter alia*, it deals with right to free speech & expression and its regulation on the grounds of interest of the sovereignty & integrity of the nation, amongst other. Therefore, one cannot readily go for the rules of literal interpretation, which would not effectuate the full intent of the law maker. The Rulings on statutes of lesser significance which obviously admit techniques of literal interpretation do not come to much aid in construing the statutes of greater significance & implications. Therefore, the approach to the provisions of such a statute as of necessity has to be different from that to a municipal law or to a tax law.

(h) The term '*any information'* employed in section 69A(1) of the Act is in the nature of genus, and the words '*generated, transmitted, received, stored or hosted'* that follow it, are its species. The numerosity & variety of these words reflect the expansive intent of the Law Maker. Past tense verb forms can also refer to present and future tense. This diversity of species does not admit the 'restrictive argument' of the petitioner that section 69A(1) does not envisage account blocking and the power is

tweet-specific. In any circumstance, the tense of a text *per se* cannot restrict effectuation of the complete intent of the statute. That when such power is exercised, the future information that may be arguably innocuous will also be blocked, is true. If that is the lurking intent of Law Maker, an interpretation that would not give effect to the same, is liable to be discouraged. The legislative logic & purpose coupled with the realities of cyber world repel a contention to the contrary. A statute has to be construed as a living law of the people. It hardly needs to be stated that law is not a slave of the dictionary, nor a captive of grammar. The restrictive interpretation that the ban is tweet specific may make the provision otiose. Considering the detailed procedure to be adopted before imposing a ban which inter-alia includes clear 48 hour notice, the very purpose of ban may be unfulfilled as the subject tweet would have spread like wild fire by then. A tweet specific ban may encourage the tweeter to get into 'better luck next time' approach. Instead, a ban that extends to account could

serve a deterrent effect and thus subserve the objective of the Statute.

(i) The intent of section 69A of the Act is not merely penal & curative but also preventive. This becomes clear by the provisions of the statute which criminalize certain acts by prescribing the severe punishment i.e., upto seven years imprisonment and also fine (limit not specified). When a statute proscribes certain acts, one cannot gainfully argue that it has not enacted the preventive measures but only remedial ones in the sense that the authority has to wait till such proscribed acts are committed and only thereafter, it can punish the offender. A contra argument amounts to saying that The Indian Penal Code, 1860, does not prohibit commission of crimes howsoever heinous they may be but it only provides for punishing of the offender, post commission. In Colonial Countries, codification of criminal law is linguistically paternalistic; at times, intent is left unsaid because of paternalistic usage of language. The benign State Policy to minimize occurrence of crime (by deterrence or

otherwise), underlies all such codes; the punitive & preventive intents are invariably amalgamated. What two eminent Professors of Oxford University namely Mr.Andrew Ashworth & Ms.Lucia Zedner write[27], merits advertence:

> *"…preventive and punitive rationales are intertwined. It makes no sense to suggest that the criminal law's purpose is simply to declare the most serious wrongs and to provide for the conviction and punishment of those who commit them, as if the prevention of such wrongs is not also part of the rationale. Surely it is because these wrongs are so serious that it is important to reduce the frequency of their occurrence: the 'backward-looking' justification for making these wrongs punishable must imply a 'forward-looking' concern that fewer such wrongs should occur in the future. Thus, even the purest retributivists must recognize that a concomitant of the decision to declare certain conduct to be a serious wrong and therefore criminal is a commitment to reduce the frequency of that conduct…"*

The restrictive literal interpretation sought to be placed by the petitioner's counsel on this significant provision of the statute cannot be countenanced without mutilating the true intent of the law maker. As of necessity, this provision has to be construed as empowering the Central

[27] Chapter 13 titled, 'Preventive Rationales and the Limits of the Criminal Law' in Philosophical Foundation of Criminal Law (RA DUFF AND STUART P GREEN) Oxford University Press

Government to direct blocking of any information which may include an individual post/tweet/message or foreclosing of user accounts in their entirety, both of which are identified through a specific URL (address on the internet). Information may already be in existence or is yet to be generated, is true. The text, context & expanse of this provision give abundant scope for the argument that there is a lurking norm enacted to avert imminent harm to the societal interest at large. State need not await the arrival of an avalanche of mishaps; it can take all preventive measures, in anticipation of the danger, more particularly when undoing of the damage is difficult, regard being had to its enormity. To put it metaphorically, a surgeon does not wait till *gangrene* is developed. *A stitch in time saves nine*. The impugned action could be both preventive and curative.

(j) Petitioner's submission that power to block information is akin to the power of forfeiture under Sections 95 & 96 of The Code of Criminal Procedure, 1973, whereas blocking an entire account amounts to preventing

all future publications, at the first blush, appears to be attractive. A deeper examination would show its hollowness. There is a vast difference between the electronic medium and the print medium; in the former, the transmission of voluminous information happens with a lightning speed unlike in the latter; added, the audio-visual impact of electronic medium is instant in time and enormous in coverage. There is a marked difference between print media and electronic media. In SHREYA SINGHAL, at paragraph 102, it is observed: "…*The learned Additional Solicitor General has correctly said that something posted on a site or website travels like lightning and can reach millions of persons all over the world*..." The respondents have offered a plausible explanation as to why they resorted to an extreme measure of blocking accounts in respect of a few users/originators; there were repetitive posts and some originators had behavioural antecedents of repetitive posting or potential and their highly objectionable tweets had a great propensity to incite anti-national feelings. Added, it is not that the

decision to block the accounts has been recklessly taken. Fairness is exhibited by removing the blockage of 10 accounts out of 11, in the Committee meeting held on 30 June 2022 which is admitted by the petitioner at paragraph 80 of its Written Submissions filed on 28 April 2022. There is no allegation of malafide or the like against the members of Committee or *qua* the Designated Officer.

In view of the above discussion, I am of the considered opinion that the power to block under section 69A(1) of the Act read with Website Blocking Rules is not tweet-specific but extends to user accounts in their entirety.

(VI) AS TO SOME ASPECTS OF LAW RELATING TO COMMUNICATION OF REASONS ON WHICH STATUTORY ORDERS ARE FOUNDED:

(a) It was argued on behalf of the petitioner that section 69A(1) empowers the Central Government to issue Blocking Order subject to complying with certain procedure & safeguards and one of them is '*for reasons to be recorded in writing, by order*'. The Apex Court in SHREYA SINGHAL at paragraph 114 states: "*…reasons have to be recorded in writing in such blocking order so that they may be assailed in a writ petition under Article*

226 of the Constitution…". Manu Kulkarni, learned counsel appearing for the petitioner submitted that a challenge to statutory order has to be adjudged on the basis of reasons assigned in its body and that reasons cannot be outsourced from the file or otherwise vide *MOHINDER SINGH GILL vs. CHIEF ELECTION COMMISSIONER*[28]*.* He hastened to add that unless the reasons for the decisions are at leasts otherwise made available, challenge becomes difficult; in any event, at least on solicitation dated 29 June 2022, the authorities ought to have disclosed the reasons; this having not happened, the impugned orders are liable to be voided. In support of this submission, he banks upon certain Rulings. Learned ASG appearing for the respondents *per contra* contended that the ratio in MOHINDER SINGH is not of universal application; it all depends upon the text & context of the provisions of statute concerned and its subject matter; reasons to be recorded in writing does not mean that they should invariably be part of the order or that they should be

[28] AIR 1978 SC 851

invariably communicated to the concerned, whatever be the circumstance. He also stated that sans formal conveyance, if reasons are otherwise made known, there can be no grievance; the representatives of petitioner who participated in the Committee meeting held on 30 June 2022, were apprised of the reasons; the authorities being as fair as can be, agreed to revoke ten of the eleven accounts that were directed to be blocked, after hearing the said representatives.

(b) Every decision of the authority should be reasoned is the requirement of the principles of natural justice. Reasons are the living links between the material available on record and the conclusions drawn on that basis. When reasons are given for a decision, application of mind by the decision maker, is demonstrated. They disclose how the mind is applied to the subject matter in the decision making process. Only in this way, can opinions or decisions recorded be shown to be just & reasonable. It is on the basis of reasons, an aggrieved person decides whether to launch the legal battle against

the decision; reasons also become handy for the Court/Tribunal to adjudge the issue of validity of decisions. In MOHINDER SINGH supra, it is insisted that, reasons be part of the statutory order and that, reasons cannot be outsourced by way of pleadings & affidavits; of course there are some exceptions to this general rule.

(c) Good governance warrants giving of reasons for decisions when such decisions have civil implications. Ordinarily, when the statute employs the expression '*for reasons to be recorded in writing'*, such reasons should be part of the order, is true; when reasons are recorded separately, there being some justification therefor, the same should be furnished to the person concerned. This broad view gains support from the observations in *C.B.GAUTAM vs. UNION OF INDIA*[29]*.* It is pertinent to note that it was a case that arose under the provisions of Income Tax Act, 1961, wherein there was no issue relating to grounds of the kind specified in section 69A(1) of the Act such as interest of sovereignty & integrity of India,

[29] (1993) 1 SCC 78, para 32

Defence of India, security of the State, etc. In *HAJI MD. VAKIL vs. COMMISSIONER OF POLICE*[30]*,* the issue related to cancellation of a citizen's gun licence u/s 18 of the erstwhile Indian Arms Act, 1878. This section had also employed the expression '*for reasons to be recorded in writing'.* At paragraph 12, the Calcutta High Court observed as under:

> *"I would not go to the extent of saying that the reasons must necessarily be communicated, but I think that the licence-holder whose licence has been cancelled or suspended has a right to know the reasons and if the order is challenged the Court has a right to look into it. Otherwise, I do not see the point in making it essential that reasons should be recorded in writing. If it is to be so recorded and kept back from the whole world, there is no point in recording it at all. The object in recording the reasons is obviously to give the licence-holder an opportunity of knowing why such an extreme step had been taken. It is not necessary to give reasons with the minutest details if such a course is not in the public interest. But the licence-holder is entitled to know broadly why his licence has been cancelled. If the reasons are entirely withheld, the licence-holder would never be able to establish a case of mala fides..."*

[30] AIR 1954 Cal 157

(d) In *RATILAL BHOGILAL SHAH vs. STATE OF GUJARAT*[31], paragraph 11 of the Gujarat High Court judgment runs as under:

> *"…Even though as provided in Rule 41-B a copy of the reasons may not be furnished unless the person affected requests for the same and the authority considers the disclosure of such reasons not to be prejudicial to public Interest, the said rule in terms requires that the reasons must be recorded in writing and even if the authority considers disclosure of such reasons prejudicial to public interest, those recorded reasons have got to be communicated to the appellate authority on demand if the person affected had preferred an appeal against the order. These reasons would, therefore, be always placed for scrutiny before the appellate authority... If this necessary safeguard is ignored, the very object for which this provision is inserted would be wholly defeated…"*

This again was a case arising under a fiscal legislation and the aggrieved was an Indian citizen. Obviously, the statute and the Rules promulgated thereunder did not mention anything of the kind unlike section 69A(1) of the Act which specifies certain significant grounds for the making of the Blocking Orders, as indicated above. In *MANEKA GANDHI*

[31] AIR 1966 Guj 244

vs. UNION OF INDIA[32], the requirement of furnishing the reasons for impounding of a passport of a 'citizen of India' was discussed as under:

> *"The power to refuse to disclose the reasons for impounding a passport is of an exceptional nature and it ought to be exercised fairly, sparingly and only when fully justified by the exigencies of an uncommon situation. The reasons, if disclosed being open to judicial scrutiny for ascertaining their nexus with the order impounding the passport, the refusal to disclose the reasons would equally be open to the scrutiny of the court; or else, the wholesome power of a dispassionate judicial examination of executive orders could with impunity be set at naught by an obdurate determination to suppress the reasons. Law cannot permit the exercise of a power to keep the reasons undisclosed if the sole reason for doing so is to keep the reasons away from judicial scrutiny…"*

(e) On the basis of a brief survey of the law relating to *'communication of reasons',* it can be broadly summarized, subject to all just exceptions: Furnishing of reasons for the decision is a mandate of principles of natural justice. It is open to legislature to trim, tone down or expand these principles. Broadly, there are two categories of statutes namely, those which merely employ

[32] AIR 1978 SC 597

the expression '*for reasons to be recorded in writing*' and those which specifically employ a different expression such as '*for reasons to be recorded and communicated*'. There have been more than 700 central legislations that belong to the former category, whereas only a frugal three fall into the latter. These three are, The Indian Statistical Institute Act, 1959 (section 11), The Asiatic Society Act, 1984 (section 12) and The Kalakshetra Foundation Act, 1993 (section 27). Where the statute mandates recording of reasons and their communication as well, the authorities have no discretion to disobey the same. Where the statute requires only recording of reasons in writing, whether reasons have to be communicated to the concerned, depends upon a host of factors such as the text & context of the provision of statute, the principle & policy content of the statute, the subject matter of statute, the stature of the decision making authority, the status of persons who seek reasons i.e., whether they are citizens, aliens or alien enemies, etc., & the like.

(f) It is relevant to see what a Five Judge Bench of the Apex Court in *UNION OF INDIA vs. TULSIRAM PATEL*[33], observed:

> *"It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of that reasons in a departmental appeal or before a court of law and the failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant…"*

Of course, this again was in the context of a departmental enquiry held against a civil servant and thus, obviously matter was not significant, unlike the case at hand. When the statute employs the expression '*for the reasons to be recorded in writing',* ordinarily, the reasons should be part of the order so that when a copy of the order is served on the person, there is communication of reasons too. However, where the order does not contain the reasons in its womb but are separately recorded in a file, such

[33] (1985) 3 SCC 398

reasons need to be communicated to the aggrieved at least on demand. Where the statute empowers withholding of recorded reasons, even then the authority has to assign the *reason for not sharing the reasons* on which the order is founded. Almost invariably, it is open to the Court or the Appellate Authority to call for the records and look into the reasons even when the statute provides for withholding of the same. The extreme cases where file may be withheld '*for reasons of the State*' even from the eyes of court, are marked by their rarity.

(VII) AS TO NON-COMMUNICAITON OF REASONS ON WHICH BLOCKING ORDERS ARE FOUNDED AND ABSENCE OF NEXUS BETWEEN THE REASONS AND THE OBJECTIONABLE TWEETS:

(a) In the light of discussion on the law relating to communication of reasons, let me now examine the contention of petitioner that the impugned orders are bad since the reasons on which they are founded, have not been communicated despite request. This is stoutly denied by the learned ASG who took me through the contents of sealed cover furnished to the court on 31 August 2022.

The cover was opened with the consent of all stakeholders. These papers run into 455 pages, in toto. They comprise of interim order dated 31 January 2021, final order dated 2 February 2021 at Annexure-R5 (pages 115, 116, 125 & 126), notice dated 27 June 2022 directing compliance at Annexure-R6 (pages 135 & 136), list dated 1 July 2022 containing particulars of URLs recommended for unblocking at Annexure-R7 (page 137), compliance of platform for the period between January 2021-June 2022 at Annexure-R8 (page 138), a consolidated copy of notice particulars and copies of Show Cause Notices issued to the petitioner and two Hearing Notices at Annexure-R9 (pages 139-275), a consolidated copy of meetings held between 1 January 2021 and July 2022 at Annexure-R10 (pages 276-277), consolidated copy containing details of 39 URLs/accounts and the corresponding justification conveyed to petitioner at Annexure-R11 (pages 278-289), objectionable content at Annexure-R12 (pages 290-455).

(b) The Blocking Orders are found at Exhibit R5 at Pages 115 & 125 of the sealed cover documents. The

interim order dated 31 January 2021 comprises of 256 twitter URLs and 1 hashtag. Its Un-numbered paragraphs 3 & 5 read:

> *"…the evidence as shared by the LEA indicate that said Twitter URLs and Hashtag are spreading fake news and misinformation about ongoing farmer protest and is promoting farmers protest against the proposed farm bill. The contents have the potential to imminent violence affecting Public Order in the prevailing situation in the country…The information posted on the social media platforms will have provocative contents. The contents being shared by the social media entity has the potential to disturb the public order in the country and also has threat to security of the State."*

The final order dated 2 February 2021 apart from reiterating what was said in the above order adds:

> *"Committee also agreed that the use of terminology "Genocide" was wilfully misleading, mischievous and was likely to lead the agitating farmers to wrong conclusions about the government's intentions. Accordingly Committee recommended to continue blocking the above said URLs and hashtag."*

The extract from Exhibit R11 at page 278 mentions about the details of the objectionable information/material shared with the twitter as a part of meeting notice.

Learned ASG is right in contending that these details provided in a tabulation are clear indicators of application of mind by the Committee and the respondents. Apart from the translation of tweets and the grounds under section 69A, Exhibit R12 contains the details of evidentiary material with the extract of the objectionable tweets and details of URLs, that were shared with the petitioner. It is not the case of petitioner that these details were not furnished. Pages 290-297 relate to only one account and similarly, pages 303-309 relate to one account holder. Evidence available on record indicated that these accounts users were the repeat offenders and they had propensity to repost the objectionable content. The discussion in this subparagraph is in respect of sample material although every page of the sealed cover documents has been read & analysed. Consistent with the policy of the statute and the Rules promulgated thereunder, the full particulars of objectionable content have not been reproduced.

(c) This court is convinced of the contention of learned ASG that the Blocking Orders are reasoned

decisions and they are founded on stronger footings of law, facts & evidentiary material. The objectionable content comprises of tweets, pictures & audios/videos (screenshots). Many of them have outrageous content; many are treacherous & anti-national; many have abundant propensity to incite commission of cognizable offences relating to sovereignty & integrity of India, security of the State and public order. No reasonable person in the trade would agree with the contention of petitioner that, reasons for the impugned orders are lacking. Sufficiency of evidence or reasons again belongs to the domain of the authority. The reasons have a thick nexus with the statutory grounds. It is not that one single official functionary of the government in the fit of anger or anxiety has made these orders. The statutory committee comprises of high functionaries of the government and there is no allegation of malafide or the like leveled against them. True it is legalistically speaking, in the language of Rules 8 & 9, it is one single officer of the high rank, who considers recommendations of the Committee

and passes orders either agreeing or disagreeing with such recommendations. When the Designated Officer agrees with the recommendation, his decision partakes the character of an institutional decision. When he does not agree, it can be his individual decision, and that is not the case here. The impugned orders are a product of institutional deliberation in which the representatives of petitioner with prior notice had participated,. The decision whether certain information is objectionable in the teeth of provisions of the Act and the Website Blocking Rules, does essentially belong to the domain of Executive. In matters like this, Writ Court cannot run a race of opinions with the statutory functionaries.

(d) The vehement submission of Sr. Advocates appearing for the petitioner that even if the entire sealed cover material is perused, no reasonable person can opine that the petitioner had sufficient opportunity of representation, is liable to be rejected. Petitioner is not a poor farmer, a menial labourer, a villager or a novice, who could have pleaded of his inability to understand the

objectionability of the tweets and evidentiary material vouching such objection. It is a multinational IT company whose annual revenue generation is about 5 Billion USD, as submitted by learned ASG. It has technical teams having expertise in the matter relating to law & procedure of Website Blocking not only in India but in other parts of the globe too. Its representatives who admittedly participated in several meetings of the Committee, never indicated to the authorities the grievances that are being now aired. Learned counsel for the petitioner in all fairness admitted during the course of hearing, that the respondents being convinced of the submission of these representatives, agreed to unblock 10 of the 11 user accounts; this they did vide order dated 1 July 2022 at Annexure-P. After all, giving reasons is an aspect of fairness. If processual fairness in the governmental action is otherwise exhibited, the procedural infirmity of not communicating the reasons in a formal way, would not assume significance. That being the position, the contention of absence of communication of reasons, falls

to the ground. For the same reason, the contention as to non-application of mind and frugality of opportunity of hearing would also fail.

In view of the above, I am of the considered opinion that the impugned orders are speaking orders and there is a thick nexus between the orders and reasons assigned, and further that these reasons were disclosed to and discussed with the petitioner in the Committee meetings.

(VIII) AS TO PETITIONER'S INVOCATION OF RATIO IN SHREYA SINGHAL AND "FAILURE TO PROVIDE USER NOTICE":

(a) Learned Sr. Advocates Mr.Arvind Datar & Mr.Ashok Haranahalli appearing for the petitioner, vehemently submitted that where law prescribes a certain procedure for accomplishing certain things, what all is prescribed has to be meticulously observed as a *sine qua non.* In support of that they pressed into service *HUKUM CHAND SHYAM LAL vs. UNION OF INDIA*[34]*.* According to them, no Blocking Order can be made without notice to the user whose account is sought to be blocked inasmuch as the Apex Court in SHREYA SINGHAL, supra, has prescribed hearing of the 'originator' as defined u/s 2(za)

[34] (1976) 2 SCC 128, para 18

of the Act. *Per contra,* learned ASG contended that the provisions of section 69A of the Act have to be read with the working provisions of Website Blocking Rules namely Rules 8 & 9. The question of issuing notice to user of account would arise only where he is identifiable, all his particulars exclusively lying with the intermediary; at no point of time, such particulars were furnished nor issuance of notice was sought for; even otherwise, in the guise of faltering the procedure adopted, petitioner cannot espouse the cause of account users who have not aired any grievance. In support of his contention, he too banked upon certain observations in SHREYA SINGHAL.

(b) Section 69A of the Act provides that Blocking Orders can be made in the interest of sovereignty & integrity of India, Defence of India, security of State, friendly relations with foreign countries or public order. It can also be made for preventing incitement to commission of any cognizable offence relating to these specified grounds. Rule 8(1) of the Website Blocking Rules which is reproduced above prescribes issuance of notice to the user

of account where he is identified or to the intermediary. Learned ASG is right in emphasizing that the text of this Rule employs the word '***or***' occurring between '*such person*' and '*intermediary*' and therefore, rule maker's intent is disjunctive and not conjunctive. The Apex Court at paragraph 113 of SHREYA SINGHAL noted "…*According to the learned counsel, there is no pre-decisional hearing afforded by the Rules particulars to the "originator" of information…".* At paragraph 114, it observed: *"It is also clear from an examination of Rule 8 that it is not merely the intermediary who may be heard. If the "person" i.e. the originator is identified he is also to be heard before a blocking order is passed…"* Mr.Manu Kulkarni's submission that the observations in SHREYA SINGHAL at paragraphs 115 & 121 lend credence to the view that '***or***' should be read as '***and***' appears to be too farfetched an argument. It is not that the court was employing the doctrine of reading down or reading up of Rule 8, to sustain its validity. The subject observation cannot be construed as metamorphosing the disjunctive i.e., '***or***' into a

conjunctive i.e., ***'and'.*** In SHREYA SINGHAL, the Apex Court was enlisting the reasons from the text & context of section 69A and Rules 8 & 9 of the Website Blocking Rules. It hardly needs to be stated that the observations in a judgment cannot be construed as the provisions of a statute. What is said in *UNION OF INDIA vs. MAJOR BAHADUR SINGH*[35]*,* runs as follows:

> *"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments."*

(c) The submission of petitioner's counsel that Rule 8(1) of the Website Blocking Rules imposes a duty on the Designated Officer to make all reasonable efforts to

[35] (2006) 1 SCC 368

identify the user of account, is only a half truth inasmuch as even there, the expression employed is '*to identify the person* ***or*** *intermediary'*. The disjunctive '***or***' is used, giving an option to the authority to identify either the user of account or the intermediary. The word '***both***' is conspicuously absent in the Rule. It is not as though the petitioner had furnished particulars of users of the accounts and even then the respondents chose not to notify them. Sections 69A(2) & 87 of the Act, amongst other, confer Rule making power on the Central Government; sub-section (3) of section 87 prescribes *laying procedure*. After being laid, the Parliament has not altered their text, particularly of Rules 8 & 9, to accord with petitioner's argument. If Parliament intended that both the intermediary and the user of the account should be entailed with notice, it would have simply substituted the word '***and'*** for '***or***', such a power apparently availing from the very text of section 87(3). Mr.Manu Kulkarni's reliance on *J.JAYALALITHA vs. UNION OF INDIA*[36] does not

[36] (1995) 5 SCC 138

come to his aid. It was a case relating to appointment of Special Judges for the trial of cases or class of cases; the government had the power to make appointment; it was in that context that the following observations were made:

> *"…The word `or', which is a conjunction, is normally used for the purpose of joining alternatives and also to join rephrasing of the same thing but at times to mean `and' also. Alternatives need not always be mutually exclusive. Moreover, the word "or' does not stand in isolation and, therefore, it will not be proper to ascribe to it the meaning which is not consistent with the context of Section 3. It is a matter of common knowledge that the word `or' is at times used to join terms when either one or the other or both are indicated. Section 3 is an empowering section and depending upon the necessity the Government has to appoint Special Judges for an area or areas or case or group of cases. Even in the same area where a Special Judge has already been appointed, a necessity may arise for appointing one more Special Judge for dealing with a particular case or group of cases because of some special features of that case or cases or for some other special reasons. We see no good reason to restrict the power of the Government in this behalf by giving a restricted meaning to the Word `or'.* ***In our opinion, the word `or' as used in Section 3 would mean that the Government has the power to do either or both the things****….."*
>
> *(emphasis supplied)*

(d) The emphasised portion in the above observations gives discretion to the government to do either or both, as rightly contended by learned ASG. At paragraph 64 of the Statement of Objections of the Respondents. It is plausibly explained as to why no notice was issued to the users of accounts: the objectionable contents posted by them were anti-India & seditious. They had religious contents that were designed to incite violence and affect communal harmony in the country. A section of originators of the information comprised of terrorists, sedition seekers or their sympathisers, foreign adversaries who intend to discredit & destabilize India and jeopardize national security on communal lines. `*In a way such users are anti-India campaigners. It is not desirable to issue notice to such users about the proposed action. Informing the user by notice will only cause more harm. The user will get alert of the same and get more aggressive, change his identity and will try to do more harm by either getting himself anonymous and spread more severe content through multiple accounts from the*

same platform or from other online platforms.' This considered view of the respondents supported by the observations of the English Court in *CARTIER INTERNATIONAL AG AND ORS. vs. BRITISH SKY BROADCASTING LIMITED & ORS.,*[37]*,* whilst considering defendants' argument of availability of alternative measures to try & combat the infringements of trade marks. One such measure was 'notice & takedown'. At paragraph 198, it is observed:

> *"…the registrants may not be the actual operators of the Target Websites. Experience in the copyright context shows that it is frequently difficult to identify the real operators of offending websites and that attempts to bring proceedings against the oeprattors are rarely effective…"*

(e) Assuming, petitioner is right in saying that Rule 8 of the Website Blocking Rules prescribes a duty to issue notice to the user of account, that requirement is because of the constitutional guarantee enacted in Article 19(1)(a) and that any regulation of the right to free speech & expression has to be both substantively & procedurally

[37] (2015) All ER 949

reasonable. Since Blocking Orders do have implications on the exercise of that right to whom it avails, the government may in its discretion hear the users of account. However, none of them has come forward to complain the infringement of their right. It is not that they are all downtrodden members of society or otherwise suffer from some handicap and therefore, they are disabled from working out the remedies on their own. Apparently, they are literate; presumably have more exposure to the outer world, as the very objectionable content of their posts would indicate. It is not that petitioner is espousing their cause, such espousal obviously not being legally sanctioned. It is also not that they have authorized the petitioner to launch this legal battle on their behalf.

(f) Petitioner being an intermediary, cannot invoke Rule 8(1) as a launchpad of its tirade, when apparently the said Rule is promulgated to protect the interests of only users of account and not others. Such a view finds

sustenance from *GORRIS vs. SCOTT*[38]*.* Facts very briefly stated are: Plaintiff's sheep were washed overboard while being transported by sea. He sued the defendant for damages. He unsuccessfully attempted to establish carrier's negligence by showing that it had violated a regulation that required animals on shipboard being kept in pens of a certain size. Had the defendant complied with the statutory requirement, the plaintiff argued, the sheep would not have been washed overboard. The court refused to find negligence on the basis of this violation holding that the Rule was not meant to protect animals from being washed overboard, but rather to prevent spread of disease. This decision has been approvingly cited by the U.S. Supreme Court in *LEXMARK INT'L vs. STATIC CONTROL COMPONENTS, INC*[39]*.* Scalia J., observed:

> *"…the common-law rule that a plaintiff may not recover under the law of negligence for injuries caused by violation of a statute unless the statute "is interpreted as designed to protect the class of persons in which the plaintiff is included, against the risk of the type*

[38] 9 L.R.Ex. 125 (1874)
[39] 572 U.S. 118 (2014), 134 S.Ct. 1377(2014) at 1389, fn

of harm which has in fact occurred as a result of its violation."

In view of the above discussion, I am of the considered opinion that notice to users of account in terms of Rule 8(1) of the Website Blocking Rules is not mandatory and that in any event, the absence of such notice does not avail to the intermediary as a ground for assailing the Blocking Orders.

(IX) AS TO DOCTRINE OF PROPORTIONALITY & ITS INVOCABILITY FOR THE INVALIDATION OF IMPUGNED ORDERS:

(a) Learned Sr. Advocates appearing for the petitioner vehemently submitted that the impugned orders at least to the extent of blocking the accounts in their entirety, fall foul of the doctrine of proportionality and therefore, are liable to be invalidated. They submitted that there is difference between the power to block individual tweets and the power to block an account in a wholesale way. They hasten to add that while taking the decision to block the information or accounts, the authorities have not kept in view the principle '*thus far and no further'*. They pressed into service the decision of Apex Court in *AKSHAY*

N PATEL vs. RBI[40]*.* Learned ASG appearing for the respondents repels these submissions contending that the doctrine of proportionality itself is of varying import and of restrictive invocation. He also highlights the circumstances that resulted into blocking of 11 accounts and 9 of them being revoked after considering the version of petitioner's representatives in the Committee meetings.

(b) The proportionality as a doctrine essentially in modern constitutional law is of varying import, and it serves various functions. The Apex Court in *K.S.PUTTASWAMY vs. UNION OF INDIA*[41], observed as under:

> "*The fundamental precepts of proportionality, as they emerge from decided cases can be formulated thus:*
>
> *1. A law interfering with fundamental rights must be in pursuance of a legitimate state aim; 2. The justification for rights-infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a rational connection between those measures, the situation in fact and the object sought to be achieved; 3. The*

[40] (2022) 3 SCC 694
[41] (2017) 10 SCC 1

> *measures must be necessary to achieve the object and must not infringe rights to an extent greater than is necessary to fulfil the aim; 4. Restrictions must not only serve a legitimate purposes; they must also be necessary to protect them.5...*"

In *ANURADHA BHASIN vs. UNION OF INDIA*[42], the above postulates having reproduced, it is observed:

> *"In view of the aforesaid discussion, we may summarize the requirements of the doctrine of proportionality which must be followed by the authorities before passing any order intending on restricting fundamental rights of individuals. In the first stage itself, the possible goal of such a measure intended at imposing restrictions must be determined. It ought to be noted that such goal must be legitimate. However, before settling on the aforesaid measure, the authorities must assess the existence of any alternative mechanism in furtherance of the aforesaid goal. The appropriateness of such a measure depends on its implication upon the fundamental rights and the necessity of such measure. It is undeniable from the aforesaid holding that only the least restrictive measure can be resorted to by the State, taking into consideration the facts and circumstances. Lastly, since the order has serious implications on the fundamental rights of the affected parties, the same should be supported by sufficient material and should be amenable to judicial review…"*

[42] **(2020) 3 SCC 637**

It is unmistakable that the doctrine was employed while adjudging the reasonableness of restrictive action in the light of constitutional guarantee of speech & expression and liberty & privacy of persons and not the juristic entity of a foreign country like the petitioner herein, who cannot claim such a protection. The said doctrine may be invoked to adjudge the pleaded 'statutory excess', also. The phrases '*thus far and no further'* and '*least intrusive measure'* are used in cases that involve complaint of violation of Fundamental Rights guaranteed under Article 19(1). As already observed, this guarantee cannot be claimed by the petitioner which is a juristic person and a foreign entity.

(c) Learned ASG is right in pointing out that even from the view of 'proportionality principle', the impugned orders cannot be faltered, the same having come into being after adhering to due process of law, both substantive & procedural. Complaint against tweets & accounts were made by a high functionary of the Union Government; the same having been examined by a

statutory committee comprising again of high functionaries, recommended the action, and accordingly, the Designated Officer who is not below the rank of a Joint Secretary in the Central Government, took the action in challenge. Representatives of the petitioner have participated in the Committee deliberation. On their submission, 10 of the 11 accounts have been cleared from blocking. Petitioner's contention that the respondents ought to have segregated objectionable content at the tweet level and thereafter, resorted to tweet level blocking, is liable to be rejected since such an exercise is impracticable inasmuch as the mischievous originators of the information would designedly mix provocative tweets/illegal contents with the so called innocuous ones. That apart, segregation would not achieve the intended goal especially after the subject tweets are shared thousands of times before any action can be taken against them. The URLs in question have been identified & curated based on the use of specific hashtag in question and also on tweets that related to such hashtags. An exercise to

differentiate amongst the individual tweets in an account and segregate the offending ones from the innocuous, is impracticable and would not serve the statutory purpose. This apart, the scope of Blocking Orders is limited to Indian jurisdiction. Therefore, petitioner's argument that the blocking orders ought to have been confined to individual tweets and not extended to entire handle, and therefore, the impugned orders suffer from the vice of disproportionality, cannot be agreed to.

(d) Learned ASG stoutly asserted that petitioner has permanently suspended @realDonaldTrump, the twitter account of a former U.S. President and thereby, has completely deplatformed the account holder citing public interest framework. A specific plea as to this has been taken at paragraph 36 of the respondents convenience compilation dated 10 April 2023. This assertion is not denied from the side of petitioner either in writing or otherwise. The official blog of the petitioner dated 8 January 2021 reads as under:

> *"After close review of recent Tweets from the @realDonaldTrump account and the context around them — specifically how they are being received and interpreted on and off Twitter — we have permanently suspended the account due to the risk of further incitement of violence.*
>
> *In the context of horrific events this week, we made it clear on Wednesday that additional violations of the Twitter Rules would potentially result in this very course of action. Our public interest framework exists to enable the public to hear from elected officials and world leaders directly. It is built on a principle that the people have a right to hold power to account in the open.*
>
> *However, we made it clear going back years that these accounts are not above our rules entirely and cannot use Twitter to incite violence, among other things. We will continue to be transparent around our policies and their enforcement."*[43]

The above action of the petitioner and the reasons on which it is founded supports the case of respondents that a direction or blocking of accounts as an extreme measure can be given and there is nothing unusual in that. Petitioner has taken such a decision on its own and in terms of Twitter User Agreement, does not diminish its citation value.

[43] https://blog.twitter.com/en_us/topics/company/2020/suspension

(e) Learned ASG is justified in placing reliance on *CARTIER INTERNATIONAL supra* in support of his contention that an extreme measure of blocking the accounts can also be resorted to effectuate the object of the statute. The England and Wales High Court in treating a case involving Trade Mark violation had discussed the doctrine of proportionality *qua* blocking of user accounts, keeping in view the availability of alternate measures to try & combat the infringement of Trade Marks by the defendant in the teeth of provisions of the Copyright, Designs and Patents Act, 1988. Court ruled that the website blocking has its own advantages over 'notice and takedown'. In assessing the question of proportionality & efficacy, the court at paragraphs 232, 236 & 261 observed:

> *"232… without blocking there would be an increase in the overall level of infringement… 236…blocking of targeted websites have proved reasonably effective in reducing use of those websites in the UK… 261…Having given careful consideration, the conclusion I have reached, after some hesitation, is that it is justified. Accordingly, I consider that the orders are proportionate and strike a fair balance between*

> *the respective rights holders that are engaged, including the rights of the individuals that may be affected by the orders, but who are not before this Court…"*

It is pertinent to note that it was not a case of infringement of any Fundamental Right but involved violation of a simple trade mark right. Therefore, what is observed therein bolsters the stand of the respondents. Added, a Writ Court cannot sit in appeal over the subjective satisfaction of high functionaries of the Central Government in issues pertaining to sovereignty & integrity of the nation, security of the State and law & order, that essentially fall within the domain of the Executive. Judicial wing of the State has to show due deference to the decisions of other wings, especially when such decisions have been taken in the normative process and with the participation of stakeholders.

(f) It is the vehement submission of Mr.Manu Kulkarni that in the prominent foreign jurisdictions referred to above, Blocking Orders can be issued for a specific period and after the expiry thereof, such orders

dissolve on their own and therefore, the impugned orders which continue in operation indefinitely offend the rule of reason & justice. He also argued that, this court should issue guidelines to ensure that such Blocking Orders are made limited in duration and susceptible to review at the hands of authorities. As already observed above, the power to issue Blocking Orders under section 69A(1) of the Act read with Rules 8 & 9 of the Website Blocking Rules is marked by its enormity. Section 21 of the 1897 Act reads as under:

> *"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.—Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."*

The text of the above provision being as clear as Gangetic waters, admits no interpretation. It is open to the Central Government/Designated Officer to make the Blocking Orders period specific too.

(g) Rule 8(6) of Website Blocking Rules also supports this view. Petitioner's argument that this court should lay down broad guidelines to regulate the exercise of such discretion, cannot be countenanced for more than one reason: Firstly, there are enough checks & balances that regulate the exercise of that power in the light of SHREYA SINGHAL. Secondly, the periodicity of such orders is a matter left to the discretion of the Executive in the exercise of which a host of factors would enter the fray and most of them are judicially unassessable. Classification of the cases for prescription of periodicity or reviewability, essentially is a matter of policy, and therefore, courts cannot interfere, the *doctrine of separation of powers* being one of the *Basic Features of our Constitution* vide *INDIRA NEHRU GANDHI vs. RAJ NARAIN*[44]. Assuming that thee is power to lay down guidelines for regulating discretion of the kind, this court declines its exercise at the instance of a foreign entity engaged in a speculative litigation. An argument to the contrary has trappings that

[44] AIR 1975 SC 2299

run repugnant to sovereignty of the nation. Lastly to add, there is no sufficient empirical data that supports the argument of abuse of power which is structurally exercised. No provision in the Act nor in the Website Blocking Rules is pointed out to show that the respondents are under a legal duty to consider the request for review of the Blocking Orders. Thus, grievance in this regard, is not justiciable. If such requests are considered by the respondents, that would be ideal & appreciable, is true.

In view of the above, I am of the considered opinion that the impugned orders blocking the tweets/accounts for indefinite period, are unassailable on the doctrine of proportionality.

(X) AS TO DELAY & LACHES, CULPABLE CONDUCT OF PETITIONER AND DENIAL OF WRIT REMEDY:

(a) The text & context of section 69A of the Act the Rules 8 & 9 of the Website Blocking Rules leave no manner of doubt as to their importance & significance, in the cyber space. As already mentioned above, section 69A(1) almost employs the terminology of Article 19(2) of the Constitution. In SHREYA SINGHAL, the challenge to this

provision and the Rules has been repelled by the Apex Court after noting the eminent justification for their being on the statute book. In FACEBOOK INC, *supra*, what is observed hereunder shows the enormity of harm that may be caused by the objectionable tweets & messages, if left unregulated:

> *"The main issue arising in these petitions is how and in what manner the intermediaries should provide information including the names of the originators of any message/content/information shared on the platforms run by these intermediaries. There are various messages and content spread/shared on the social media, some of which are harmful. Some messages can incite violence. There may be messages which are against the sovereignty and integrity of the country. Social media has today become the source of large amount of pornography. Paedophiles use social media in a big way. Drugs, weapons and other contrabands can be sold through the use of platforms run by the intermediaries. In such circumstances, it is imperative that there is a properly framed regime to find out the persons/institutions/bodies who are the originators of such content/messages. It may be necessary to get such information from the intermediaries."*

The compilation filed by the learned ASG contains the legal frameworks concerning the regulation of 'information'

obtaining across the globe and that itself shows the significance of the statute in general and the pivotal role section 69A of the Act is designed to play. As already mentioned, compared to other media, the electronic medium has two marked characteristics, namely the lightening speed with which the information is disseminated and the enormity of its coverage across the globe. Social media transcends the boundaries of time & space; it has cascading effect. The context in which interactive social media dialogue takes place is quite different from the one in which such communication takes place in other modes. The Apex Court in *SECRETARY, MINISTRY OF INFORMATION & BROADCASTING vs. CRICKET ASSOCIATION OF BENGAL*[45] has observed as under*:*

> *"What distinguishes the electronic media like the television from the print media or other media is that it has both audio and visual appeal and has a more pervasive presence. It has a greater impact on the minds of the viewers and is also more readily accessible to all including children at home…"*

[45] AIR 1995 SC 1236

(b) The tweets & URLs have elements of spontaneity both in terms of dissemination of information and impact on the mind of viewers. That is the reason, Rule 9 of the Website Blocking Rules provides for making an interim direction for blocking the tweets/accounts. Learned ASG pointed out that the petitioner purposely perpetrated inordinate delay in complying with section 69A orders despite warning. Some of these orders made in 2021 remained uncomplied for more than a year. Clandestinely, at paragraph 3 of the petition, it is averred *"At the outset, the Petitioner places on record that it has complied with the Blocking Orders that form part of the present challenge, under protest."* Three of these orders were made in February 2021, two in June 2021, five in the second half of 2021 and the last one was made on 28 February 2022. Which order was complied with when, has not been particularized in the pleadings. The petition itself has been filed on 5 July 2022.

(c) The non-compliance with section 69A orders has the potential to make the tweet more viral and spread to other platforms as well. One can imagine the damage potential when such objectionable tweets are allowed to be disseminated despite interdiction. The damage potential is directly proportional to the delay brooked in the compliance of such orders. Petitioner has demonstrably adopted a tactical approach to delay compliance and that shows its intent to remain non-compliant to Indian law. No plausible explanation is offered for the delay in approaching the Constitutional Court, either. Petitioner has abruptly complied with section 69A orders, a bit before coming to court, though the 2nd respondent had issued *compliance requirement notice* way back on 2 February 2021 threatening: "*It needs to be mentioned that Section 69A(3) provides for specific penal consequences in case of non-compliance of the directions issued under section 69A of the Act.*" The penalty prescribed u/s 69A(3) for the offence of non-compliance of the order is imprisonment for a term which may extend to seven years and/or fine. Even

that did not deter the recalcitrant petitioner. The Central Government, in its discretion, did not choose to prosecute the petitioner for the offence in question. It hardly needs to be reiterated that the Constitutional Courts do not come to the aid of litigants whose hands are soiled or who are indolent.

(d) In *STATE OF MADHYA PRADESH vs. NANDLAL JAISWAL*[46], it is observed as under:

> *"It is well settled that the power of the High Court to issue an appropriate writ under Art. 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactory explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extra ordinary remedy under the writ jurisdiction became it is likely to cause confusion and public inconvenience and brings in its train new injustices."*

[46] AIR 1987 SC 251

In view of the above, this court is of the considered opinion that petition is hit by delay & laches and culpable conduct of the petitioner and therefore, no relief can be granted in the equitable jurisdiction constitutionally vested under Articles 226 & 227.

(XI) CULPABLE CONDUCT OF PETITIONER AND LEVY OF EXEMPLARY COSTS:

(a) Petitioner's pleadings, copies of documents accompanying the same and the Rulings cited from the side of the petitioner run into hundreds of pages. To counter petitioner's case, respondents also have filed their pleadings, documents & Rulings, as of compulsion and they are voluminous. This petition was heard for days together, keeping at bay worthier causes of native litigants who were waiting in a militant silence and in a long queue. As already observed above, for more than a year, the Blocking Orders were not implemented by the petitioner and there is no plausible explanation offered therefor. There is a willful non-compliance of the Blocking Orders; arguably, such an act amounts to an offence under section 69A(3) of the Act. The cascading adverse effect of non-compliance of such orders, needs no research, nor

reiteration. Abruptly, the impugned orders have been implemented with a clandestine caveat of reserving the right to challenge. This is a classic case of speculative litigation and therefore, petitioner is liable to suffer levy of exemplary costs.

(b) The Hon'ble Supreme Court in *LIFE INSURANCE CORPORATION OF INDIA vs. ESCORTS LIMITED*[47] had instructively observed as under:

> *"…In the case before us, as if to befit the might of the financial giants involved, innumerable documents were filed in the High Court, a truly mountainous record was built up running to several thousand pages and more have been added in this court. Indeed, and there was no way out, we also had the advantage of listening to learned and long drawn-out, intelligent and often ingenious arguments, advanced and dutifully heard by us. In the name of justice, we paid due homage to the causes of the high and mighty by devoting precious time to them, reduced, as we were, at times to the position of helpless spectators. Such is the nature of our judicial process that we do this with the knowledge that more worthy causes of lesser men who have been long waiting in the queue have blocked thereby and the queue has consequently lengthened. Perhaps the time is ripe for imposing a time-limit on the length of submissions and page-*

[47] AIR 1986 SC 1370

> *limit on the length of judgments. The time is probably ripe for insistence on brief written submissions backed by short and time-bound oral submissions. The time is certainly ripe for brief and modest arguments and concise and chaste judgments. In this very case we heard arguments for 28 days and our judgment runs to 181 pages and both could have been much shortened. We hope that we are not hoping in vain that the vicious circle will soon break and that this will be the last of such mammoth cases. We are doing our best to disentangle the system from a situation into which it has been forced over the years by the existing procedures. There is now a public realisation of the growing weight of the judicial burden. The cooperation of the bar too is forthcoming though in slow measure. Drastic solutions are necessary. We will find them and we do hope to achieve results sooner than expected."*

(c) In adjudging the nature & quantum of costs, what has been observed in *VINOD SETH vs. DEVINDER BAJAJ*[48]*,* needs to be borne in mind:

> *""23. The provision for costs is intended to achieve the following goals :*
>
> *It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence…Costs should provide adequate*

[48] (2010) 8 SCC 1

indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs..."

In the above circumstances, this Petition being devoid of merits, is liable to be dismissed with exemplary costs, and accordingly, it is. Petitioner is levied with an exemplary cost of Rs.50,00,000/- (Rupees Fifty Lakh) only, payable to the Karnataka State Legal Services Authority, Bengaluru, within 45 days, and delay if brooked attracts an additional levy of Rs.5,000/- (Rupees Fife Thousand) only, per day.

This Court places on record its deep appreciation for the able assistance rendered by a Chamber Intern, Mr. Chanakya Subbaramaiah.

Sd/-
JUDGE

cbc