**Swami Ramdev and Anr. v. Facebook Inc. and Ors.**

Date of Judgment: 23 October, 2019

Case Number: CS (OS) 27/ 2019

Judicial Body: Appellate Court

Type of Law: Civil Law

Themes: Online Defamation and Intermediary Liability

Tags: online defamation, intermediary liability, global takedown orders, technology, extra-territorial jurisdiction, internet

1. **Summary and Outcome**

In a far-reaching decision, the Delhi High Court (**High Court/ Court**) issued an interim injunction against Facebook, Google/ Youtube and Twitter (**Defendants**), directing the intermediaries to globally take down user generated content from the platforms which were defamatory. The decision comes in a suit wherein the Plaintiff alleged the dissemination of various defamatory remarks, including videos, based on a book titled ‘*Godman to Tycoon – the Untold Story of Baba Ramdev’*. After a detailed analysis of the law on intermediary liability in India as under the Information Technology Act, 2000[[1]](#footnote-1) (**Act**) and the Information Technology (Intermediaries Guidelines) Rules, 2011 (**2011** **Rules**), the Court held that the intermediaries were obliged to take down and block all such illegal content which had been uploaded from I.P. addresses within India, **on a global** **basis**. Further, for illegal content which is uploaded outside the Indian territory, the Court directed blocking access and viewership of such content within India.

1. **Facts**

The present decision originates from a gamut of litigation related to the publication of a book titled ‘*Godman to Tycoon – the Untold Story of Baba Ramdev’*, authored by Ms. Priyanka Pathak Narain (**Book**). In a separate suit before the lower court i.e., Karkardooma District Court, Swami Ramdev/ Plaintiff , the main protagonist of the Book, a renowned public figure in India, challenged the contents of the Book as defamatory. After a trail of decisions rendered by the lower court, Swami Ramdev (Plaintiff herein) approached the High Court under Article 227 of the Constitution of India, alleging that the Book contained defamatory content about the Plaintiff. The High Court, through order dated 29.09.2018, held certain parts of the Book as defamatory (**Judgment**).[[2]](#footnote-2) Accordingly, it restrained the publisher and author from publishing, distributing and selling the book without deleting such offending portions. directed the removal of such defamatory content. While the Judgment has been challenged by the publisher before the Supreme Court and is pending consideration, no stay has been imposed on the Judgment.

The decision under analysis pertains to a separate suit (**Suit**) filed by the Plaintiff seeking permanent and mandatory injunction in terms of a global take down of defamatory content from the Defendant platforms as well as from other intermediary platforms. The Hon’ble Court held that the videos and content under challenge are based solely on the Book, parts of which have been held as defamatory by the Judgment of the Court. The Court, therefore, limited its observations and findings to take down obligations of the Defendants. On the first date of hearing i.e., 24.01.2019, the Court passed an interim order for injunction, directing the Defendants to block/ remove/ disable all the offending URL and web links from the Indian domain, forthwith. The Defendants agreed to implement geo- blocking[[3]](#footnote-3) technique to comply with the interim injunction. However, the Defendants raised objections to the global take down order.

The Plaintiff argued that the Defendants who sought protection under Section 79 of the Act as passive intermediaries, were bound to disable the content globally under direction of the Court. A reading of the Act shows that its application is based on the principle of ‘long arm jurisdiction’ and is not merely limited to the Indian territory. Therefore, the Defendants, on gaining ‘actual knowledge’[[4]](#footnote-4) of the defamatory content on their platform through the court order must necessarily comply, without raising objections. (para. 8) Lastly, the Plaintiff submitted that as per the 2011 Rules, intermediaries are not empowered to decide whether the content is defamatory, which is the duty of the Court.

In response thereto, the Defendants submitted that the present Suit was liable to be dismissed as the Plaintiff had failed to implead necessary parties such as the publisher, author of the Book along with the persons disclosed in the basic subscriber information (**BSI**) which was submitted to the Court. The primary defence was that a global take down order would be “contrary to the principle of comity of Courts and would result in conflict of laws as standards and tests applicable to defamation varied between countries.” (Para. 10- 12) It was argued that the grant of a global injunction at the interim stage was like decreeing the suit therefore, the same ought not to be allowed. (Para. 16) The mere apprehension of use of VPN and proxy servers to access global websites was not enough to presume that the data was likely to be transmitted and accessed in India. (Para. 17) The Defendants further argued that relief sought against defamation being a *right in personam*, the Suit ought to have been filed by the Plaintiff himself instead of being filed by the Power of Attorney. (Para. 14) In support of the above arguments, the Defendants relied on different international decisions[[5]](#footnote-5) and judgments of Indian courts.[[6]](#footnote-6)

The Hon’ble Court held that once content was uploaded from India and was made available globally, access to such content (once ordered by a competent court) should be blocked/ disabled ‘world-wide’ and not just restricted to India. Court orders must be implemented fully and effectively, more so if its global application is not specifically limited by the statute. For uploads made outside India, the Court directed the Defendants to ensure that they use appropriate geo-blocking measures so that such content cannot be accessed within India. (Para. 94) In addition to this, the Court allowed the Plaintiff to notify the Defendant platforms in case any offending material was discovered by them in the future (for take down either from India or globally, depending on from where the content was uploaded). In cases where the platforms disagreed, they could intimate their disapproval, after which the complainants would have to approach the court. (Para. 95)

1. **Decision Overview**

Pratibha Singh, J. delivered the decision as the sole presiding judge. The Court opined on three issues, namely: a) Mis-joinder / non-joinder of parties; b) Whether the uploaded content was defamatory; c) Whether the Defendants are intermediaries and if so, what should be the form of injunction order that may be passed?

The Plaintiffs argued that the suit was liable to be dismissed due to non-impleadment of the necessary parties i.e., the publisher and author of the book as well as the uploader of the video. The Court held that the Book was not the direct subject matter of the dispute. Insofar as the publisher / author of the Book was concerned, the Plaintiff had already availed of its legal remedies against them and a detailed judgment had already been passed by the ld. Single Judge in CM(M) 556/2018. (Para. 24) In relation to non-impleadment of the uploaders of infringing content, the Court held that the BSI filed by the Defendant platforms merely disclosed certain cryptic details pertaining to the account IDs along with IP addresses, without any particulars of the said users. Relying upon the New South Wales decision in *X v. Twitter Inc.[[7]](#footnote-7),* the Court held that the nature of internet is such that information could be uploaded without disclosing complete identity, thus justifying the grant of *Norwich Pharmacal Order.[[8]](#footnote-8)* (Para. 25) In view of this, the Plaintiff could only array the individuals without detailed investigation into the BSI details, at the time of filing of the suit.

The next issue under consideration was in relation to defamatory nature of the content in the videos. The Court noted that the video has consciously recorded the fact that the Book has been banned in India since August 11, 2017. The ultimate credit of the video was given to the Book’s author as the content was solely derived from the Book. In fact, the platforms concluded the video by disclaiming any relationship with the views expressed either in the Book or the video. (Para. 26, 27) All the information in the video, had been derived solely as a summary of the Book and there was no denial of this fact by the Defendants. Accordingly, without deliberating on the issue of defamation, the Court placed reliance on the Judgment where the Single Judge, the law of defamation, including the balance between the Article 21[[9]](#footnote-9) and Article 19(1)(a)[[10]](#footnote-10) of the Indian Constitution and concluded that the content of the Book was not justified. The justification of the Defendants that the platforms were strictly neutral and operated as mere passive intermediaries did not provide much respite and the Court has ultimately concluded that the video, which is based on the Book is defamatory. (Para. 33)

The final and the most crucial issue for consideration pertains to Defendants’ status as intermediaries and the form of injunction order which would be issued against such Defendants. The Defendants pleaded that they were protected as intermediaries under Section 79 of the Act read with the 2011 Rules. The Defendants contended that they had no role in initiating transmission, selecting the receiver of any transmission, or selecting or modifying the information contained in the transmissions. The user generated content was uploaded on the Defendant platforms in an ‘as is’ basis. Facebook even contended that it was not obliged to pro-actively monitor posts in order to block offending posts. In terms of the decision in *Shreya Singhal[[11]](#footnote-11)*, the Defendants were only required to act upon a valid court order or request from an authorized government agency. (Para. 35) The Defendants had already taken action in respect of the impugned URLs however, the Plaintiff’s request for global blocking could not be adhered to, as it would result in a conflict of laws situation. The Defendants unanimously submitted that a global injunction may not be in consonance with the laws of other jurisdictions. (Para. 35, 45) It was further submitted that a global injunction order would expose the Defendants to liability for censoring content in various countries, contrary to free speech standards and may also expose the platforms to legal proceedings thus, resulting in ‘libel tourism’ and ‘forum shopping’. (Para. 41) In view of this, the Defendants submitted that the Court ought to restrict the injunction order to geo-blocking of content in India. (Para. 45) Twitter, one of the Defendants also submitted that no order in the form of a prospective injunction can be passed against unidentified future content as it did not have any policy in place to monitor, detect and remove content.[[12]](#footnote-12)

The Court held that a global blocking order was necessary as any content uploaded in India, would be accessible to users and viewers across the globe and such access could only be disabled upon Court order received by the intemediaries subject to laws of the particular jurisdiction. The Court’s decision in directing a global take down order is based on an analysis of the global network of computer systems which transmit content and disseminate information instantaneously across geographical boundaries, even without human intervention, thus necessitating issuance of global take down orders (Para. 48, 49). After a detailed analysis of judgments rendered by courts in USA[[13]](#footnote-13), Australia/ New Zealand[[14]](#footnote-14), Canada[[15]](#footnote-15), the Court observed that, “worldwide, courts have passed global injunctions/ blocking orders, restricting/ blocking access to offending / defamatory content, in situations where compliance with the court order cannot be guaranteed by limiting the applicability of the orders only within territorial jurisdiction”. The Court held that Defendants’ reliance on *Equustek Solutions* judgments was misplaced. In fact, contrary to the Defendants’ arguments against grant of a global blocking order, the Supreme Court of British Columbia, in *Equustek Solutions Inc. v Jack[[16]](#footnote-16)* (Equustek III) rejected Google’s request to set aside the injunction granted by Canadian court as Canadian courts had “the ability to protect the integrity of their own process through orders directed against parties over whom the Canadian courts had personal jurisdiction.” (Para. 60) In Equustek, the Court held that, “the national Court of each member state in the European Union would have to adjudicate the right to privacy and the personal data of the citizens on the one hand and the right to freedom of information on the other and while weighing the two, the Court would have to direct as to whether the search engine has to de-reference only specific country domain name extensions or all versions of the search engine.” (Para. 68) Similarly, the CJEU in *Eva Glawischnigh- Piesczek v. Facebook Ireland Limited*[[17]](#footnote-17), while interpreting the EU Directive 2000/31 in a case pertaining to allegations of defamation, held that national courts of a member state could order blocking of access to the information on a worldwide basis. Indian courts on earlier occasions have also directed removal of defamatory posts[[18]](#footnote-18) and offending content[[19]](#footnote-19) without any geographical limitation.

In response to the Defendants’ arguments that they were protected as intermediaries, under Section 79 of the Act, the Court held that Section 79(3)(b) had already been read down in *Shreya Singhal* *(Supra)* to mean that in cases where intermediaries were served with blocking / take down orders from Court, such intermediaries were not required to apply their mind as to whether the information should be blocked or not. The actual knowledge that can be attributed to an intermediary is only by a Court order asking it to ‘expeditiously remove or disable access.’ (Para. 73) The intermediaries have to remove or disable access to the material/ information ‘residing in or connected to a computer resource’. (Para. 76) In fact, a reading of the terms ‘computer resource’ under Section 2(k) with Section 79(3)(b) of the Act requires the intermediary to remove the information from the entire computer resource which was initially connected while uploading the information along with removal from the computer network completely where such information has been uploaded. The Court held that any other interpretation of the provisions, would render it otiose. (Para.78,82) The intermediaries are obliged to disable access of all kinds, including disabling access to viewers not only from India but also global viewers. (Para. 83) Therefore, mere geo-blocking as suggested by the Defendants was not in consonance with Section 79 of the Act and would be against the purport and intent of the Supreme Court’s decision in *Shreya Singhal*.[[20]](#footnote-20) Further, the Information Technology Act is premised on long arm jurisdiction therefore, Indian courts had the power to pass global injunctions.

The Court directed the Defendant platforms to take down, remove, block etc, all the videos/links which had been uploaded from IP addresses within India, on a global basis. For videos/ links which were uploaded from outside India, the Defendants were directed to block access and disable them from being viewed in the Indian domain. Upon discovering any further defamatory content, the Plaintiffs would notify the Defendant platforms which shall take down/ block access to URLs as per the above directions of the Court. (Para. 95)

**Decision Direction**

**Contracts Expression**

Courts strive hard to achieve balance between issues such as “comity of Courts, conflict of laws and the right of freedom of speech and expression under Article 19(1) on one hand and right to privacy, the right of reputation of a citizen, national security, national integrity, threats to sovereignty, etc on the other.” At the same time, “it is the duty of court to pass orders which implement the statute in letter and spirit and which orders can be implemented effectively.” The decision of the Court in issuing a global injunction order is an attempt to maintain the aforesaid balance. The decision is based upon and guided by the purport and intent of the Information Technology Act. A geo-blocking order alone would render the order meaningless as the defamatory content would still be accessible from computer networks globally thus, rendering the Act futile and also affecting the fundamental rights of the person forming the subject matter of the Book.

While the Court in all its legal acumen aimed to attain a balance between the competing rights, the proportionality and reasonableness of the global take down order is worth the consideration. Issuance of global take down orders by different countries will pose a major threat to free speech on the internet. Moreover, implementation of such an order in countries with advanced and liberal free speech jurisprudence will be a major impediment. Global take down orders should be an exception and not the norm as the latter would lead to diminishing freedom of speech, globally.

1. **Global Perspective**

**National standards, law or jurisprudence**

* Ind., Singhal v. Union of India, [2015] Pet. No. 167 of 2012
* Ind., Suresh Jindal v. Rizosli Corriere Della Sera Pradzioni T.V. S.p.a., 1991 Supp (2) SCC 3
* Ind., Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Bombay and Others, (1992) 2 SCC 524
* Ind, Modi Entertainment Network and Another v. W.S.G. Cricket PTE Ltd., (2003) 4 SCC 341
* Ind., Sasikala Pushpa v. Facebook & Ors. CS (OS) 510/2016
* Ind., Patanjali Ayurved Ltd. v. Facebook Inc. & Ors. CS(OS) 449/ 2018
* Ind., Swami Ramdev v. Juggernaut Books Pvt. Ltd. and Ors., CM (M) 556/ 2018
* Ind., Myspace Inc. v. Super Cassettes Industries Ltd., 2016 SCC Online Del 6382
* Ind., Kent RO Systems Ltd. & Ors. v. Amit Kotak and Ors., 2017 (69) PTC 55I(Del)
* Ind., You Tube v. Geeta Shroff, FAO 93/2018 (Delhi High Court)
* Ind., Subodh Gupta v. Herdscene & Ors. CS(OS) 483/2019 (Delhi High Court)

**Other National Standards, Law or Jurisprudence**

* U.S (District Court), Google LLC v. Equuestek Solutions Inc., et al, US District Court, Case No. 5:17-cv-04207- EJD
* U.S. (Supreme Court of New York County), Ajitabh Bachchan v. India Publications 154 Misc. 2d 228 (N.Y. Misc 1992)
* U.S., Playboy Enterprises, Inc v. Chuckleberry Publishing Inc., 939 F. Supp. 1032 (S.D.N.Y. 1996)
* ECJ, Google Inc. v. CNIL, Case C-507/17
* CJEU, Eva Glawischnigh- Piesczek v. Facebook Ireland Limited Case C-18/18
* Aust. (New South Wales), X v. Twitter Inc., [2017] NSWSC 1300
* Aust. (New South Wales), Macquarie Bank Limited & Anr. v. Berg [1999] NSWSC 526
* Cand., Google Inc. v. Equustek Solutions, Robert Angus and Clarma Enterprises Inc 2017 SCC 34
* Cand. (British Columbia), Equustek Solutions Inc. v. Jack 2018 BC SC 610
* U.S. (Maryland), Vladimir Ivanovich Telnikoff v. Vladimir Matusevitch, 702 A.2d 230 (1997) 347 Md. 561
1. **Case Significance**

**The decision establishes persuasive precedent within its jurisdiction.**

The decision, arising out of the single judge bench of the Delhi High Court, establishes a binding precedent for all lower courts throughout the National Capital Territory of Delhi. It has a persuasive precedent for all other courts. The present decision has been challenged before a larger bench of the Delhi High Court in Facebook, Inc. v Swami Ramdev & Ors., FAO (OS) 212/ 2019. Arguments in the appeal are partly heard and it is posted for further hearing later in January 2020. The precedential value of the present judgment will depend on the outcome of the larger bench of the Court, once the appeal is adjudicated and accorded finality.

**LINKS:**

* [**https://sflc.in/detailed-analysis-swami-ramdev-v-facebook-judgment**](https://sflc.in/detailed-analysis-swami-ramdev-v-facebook-judgment)
* [**http://www.nishithdesai.com/information/news-storage/news-details/article/global-blocking-by-intermediaries-of-defamatory-content-uploaded-from-india.html**](http://www.nishithdesai.com/information/news-storage/news-details/article/global-blocking-by-intermediaries-of-defamatory-content-uploaded-from-india.html)
* [**http://www.mondaq.com/india/x/863542/Libel+Defamation/Delhi+High+Court+Exercises+LongArm+Jurisdiction+Directs+Facebook+YouTube+Google+And+Twitter+To+Take+Down+Content+Globally**](http://www.mondaq.com/india/x/863542/Libel%2BDefamation/Delhi%2BHigh%2BCourt%2BExercises%2BLongArm%2BJurisdiction%2BDirects%2BFacebook%2BYouTube%2BGoogle%2BAnd%2BTwitter%2BTo%2BTake%2BDown%2BContent%2BGlobally)
* [**https://economictimes.indiatimes.com/news/politics-and-nation/hc-agrees-to-hear-facebooks-appeal-against-order-to-globally-block-access-to-video-defaming-ramdev/articleshow/71833877.cms?from=mdr**](https://economictimes.indiatimes.com/news/politics-and-nation/hc-agrees-to-hear-facebooks-appeal-against-order-to-globally-block-access-to-video-defaming-ramdev/articleshow/71833877.cms?from=mdr)
1. Section 79 of the Information Technology Act, 2000 provides for intermediary liability and safe harbour exemptions to intermediaries. [↑](#footnote-ref-1)
2. Swami Ramdev v. Juggernaut Books Pvt. Ltd. and Ors., (India) CM (M) 556/ 2018. [↑](#footnote-ref-2)
3. Geo-blocking refers to blocking of content only in the domestic boundaries of a country where the content is in breach of the domestic laws. [↑](#footnote-ref-3)
4. The principle of ‘actual knowledge’ of an intermediary is derived from Shreya Singhal v Union of India, AIR 2015 SC 1523. Protection granted to an intermediary ceases to exist in case the intermediary fails to remove the illegal content, even after gaining ‘actual knowledge’ of such illegal content. [↑](#footnote-ref-4)
5. Google LLC v. Equuestek Solutions Inc., et al, US District Court, Case No. 5:17-cv-04207- EJD (December 14, 2017), Ajitabh Bachchan v. India Publications 154 Misc. 2d 228 (N.Y. Misc 1992), Supreme Court of New York County, Google Inc. v. CNIL, ECJ Case C-507/17. [↑](#footnote-ref-5)
6. Suresh Jindal v. Rizosli Corriere Della Sera Pradzioni T.V. S.p.a., 1991 Supp (2) SCC 3, Sasikala Pushpa v. Facebook & Ors. CS (OS) 510/2016, Patanjali Ayurved Ltd. v. Facebook Inc. & Ors. CS(OS) 449/ 2018, Shreya Singhal v Union of India (*Ibid)*. [↑](#footnote-ref-6)
7. [2017] NSWSC 1300 [↑](#footnote-ref-7)
8. Norwich Pharmacal Order is a court order against an innocent third party seeking the disclosure of documents or information. The order was first granted by the House of Lords in [Norwich Pharmacal Co. v. Customs and Excise Commissioners](https://en.wikipedia.org/wiki/Norwich_Pharmacal_Co._v_Customs_and_Excise_Commissioners) [1974] AC 133.  [↑](#footnote-ref-8)
9. Right to Life and Personal Liberty, Article 21 of the Constitution of India. [↑](#footnote-ref-9)
10. Freedom of Speech and Expression, Article 19(1)(a) of the Constitution of India. [↑](#footnote-ref-10)
11. *Ibid* at 4. [↑](#footnote-ref-11)
12. Myspace Inc. v. Super Cassettes Industries Ltd., 2017 (69) PTC 1 (Del) and Kent RO Systems Ltd. & Ors. v. Amit Kotak and Ors., 2017 (69) PTC 55I(Del). [↑](#footnote-ref-12)
13. Playboy Enterprises, Inc v. Chuckleberry Publishing Inc., 939 F. Supp. 1032 (S.D.N.Y. 1996). [↑](#footnote-ref-13)
14. Macquarie Bank Limited & Anr. v. Berg [1999] NSWSC 526., X. v. Twitter Inc., [2017] NSWSC 1300. [↑](#footnote-ref-14)
15. Google Inc. v. Equustek Solutions, Robert Angus and Clarma Enterprises Inc. 2017 SCC 34 (Supreme Court of Canada). [↑](#footnote-ref-15)
16. Equustek Solutions Inc. v. Jack 2018 BC SC 610. [↑](#footnote-ref-16)
17. Eva Glawischnigh- Piesczek v. Facebook Ireland Limited Case C-18/18. [↑](#footnote-ref-17)
18. Subodh Gupta v. Herdscene & Ors. CS(OS) 483/2019 (Delhi High Court) (September 18, 2019). [↑](#footnote-ref-18)
19. You Tube v. Geeta Shroff, FAO 93/2018 (Delhi High Court) (May 17, 2018). [↑](#footnote-ref-19)
20. *Ibid*, at 4. [↑](#footnote-ref-20)