

TEAM CODE: TL-07

**4TH SURANA & SURANA AND CUSAT SCHOOL OF LEGAL STUDIES,
DR. A T MARKOSE MEMORIAL TECHNOLOGY LAW MOOT COURT
COMPETITION**

BEFORE
THE HON'BLE SUPREME COURT OF INDIA

**ON SUBMISSION TO THE HON'BLE SUPREME COURT OF INDIA UNDER
ARTICLE 32 READ WITH ARTICLE 139A AND SECTION 25 OF THE CIVIL
PROCEDURE CODE OF THE INDIA**

IN THE MATTER OF
CG CAR COMPANY AND OTHERS
(PETITIONERS)

v.

UNION OF INDIA
(RESPONDENT)

MEMORANDUM ON BEHALF *of* THE **PETITIONERS**

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STATEMENT OF JURISDICTION

The Petitioners have approached this Hon'ble Supreme Court of India under Article 32¹ read with Article 139A² of the Constitution of India and Section 25 of the Civil Procedure Code³.

The present memorandum set forth the facts, contentions, and arguments in the present case.

¹ 32. Remedies for enforcement of rights conferred by this Part-

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

² 139A. Transfer of certain cases

(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself: Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court

³25. Power of Supreme Court to transfer suits, etc. - (1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.

STATEMENT OF FACTS

BACKGROUND OF THE CASE

On August 13, 2022, at around 7:00 a.m., a family consisting of a husband, wife, and a minor child was heading to Sundarpur National Park near the Antartaka and Aminadu border. They stopped on National Highway No 106 when they saw a car next to which a body was found lying in a pool of blood. The police arrived at the spot and after searching the premises found out that the body was of Mr Anand.

INVESTIGATION PROCESS

After further investigation, police located vehicles leaving between 6:00 p.m. on August 12, 2022, based on the time of death. The Police decided to take a closer look at Mr Ian because his car took longer time for covering the distance. Mr Anand's high-end smartphone was found lying next to the body, and there was no indication of the use of force inside or outside the car. Fingerprint experts did not find any suspicious prints on his car or smartphone. After some examination, the body was sent to a government hospital in Singapore for an autopsy. The investigating authority decided to proceed against CG Car Company and Mr. Ian to access the data in Mr Ian's car through decryption under Section 69 of the IT Act.

CURRENT SITUATION

Mr Ian claimed in the Antartaka High Court that his right against self-incrimination under Article 20(3) of the Constitution of Indica had been violated. Meanwhile, the headquarters of CG Car Company along with automatic car dealers and other car manufacturers in Indica filed a writ petition in the Supreme Court of Indica, alleging that Section 69 of the IT Act violates the Constitution of Indica. The Supreme Court of Indica ordered the transfer of the case from the High Court of Antartaka against Ian and decided to hear both the cases and the writ petition filed by the CG Company.

STATEMENT OF ISSUES

~I~

**WHETHER SECTION 69 OF THE INFORMATION TECHNOLOGY ACT, 2000 IS
CONSTITUTIONALLY VALID?**

~II~

**WHETHER GOVERNMENTAL CONTROL OVER THE USE OF
CRYPTOGRAPHIC TECHNIQUES IS TOO RESTRICTIVE IN NATURE?**

SUMMARY OF ARGUMENTS

~I~

WHETHER SECTION 69 OF THE INFORMATION TECHNOLOGY ACT, 2000 IS CONSTITUTIONALLY VALID?

It is humbly submitted before this Hon'ble Supreme Court of India that Section 69 of the Information Technology Act, 2000 is not constitutionally valid as it infringes the fundamental rights conferred under Article 21, Article 19 and Article 20 of Part III of the Indian constitution. The section under the IT Act is arbitrary in nature and ultra vires to the constitution of India.

~II~

WHETHER GOVERNMENTAL CONTROL OVER THE USE OF CRYPTOGRAPHIC TECHNIQUES IS TOO RESTRICTIVE IN NATURE?

It is humbly submitted before this Hon'ble court that the governmental control over the use of cryptographic techniques is too restrictive in nature and the government has done forceful retrieval of data and illegal hacking, which has resulted in violating the fundamental rights of the petitioner. The rules made thereunder the IT Act, 2000 are ultra vires to the constitution of India and to its Parent Act.

ARGUMENTS ADVANCED

~I~

WHETHER SECTION 69 OF THE INFORMATION TECHNOLOGY ACT, 2000 IS CONSTITUTIONALLY VALID?

1. It is humbly submitted before this hon'ble Supreme Court of India that section 69 of the Information Technology Act, 2000 is not constitutionally valid as it infringes the fundamental rights conferred under Article 21, Article 19 and Article 20 of Part III of the India constitution.

A. ENCROACHMENT ON RIGHT TO PRIVACY

2. This is humbly submitted before this Hon'ble Court that there has been a clear violation of Article 21 by the Police officials as they have invaded the privacy of Mr. Ian and not only that but had forcibly asked CG Company to declare all the details without a proper procedure to be followed up for the sake of the investigation. An incorporated company is a juristic person having certain rights and corresponding duties in the eyes of laws. That these incorporated persons are entitled to the protection of those fundamental rights in the Constitution which are as wide as to cover all 'persons', is a well-settled proposition in law.⁴
3. In the instant case, it should be taken into account that CG Company is under the obligation to provide security to its customers, and following that ambit, it cannot give the private details of Mr. Ian without his consent and be stated in the company's policies. A zone of mental privacy is established by Article 20(3), which the State may not invade to obtain personal information concerning a crucial fact. Further, the Court in Selvi held that

⁴ The State Trading Corporation of India Ltd & Ors v. The Commercial Tax Officer, Vishakhapatnam AIR 1963 SC 1811; Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning & Weaving AIR 1954 SC 119; The State of Bombay v. R. M. D. Chamarbaugwala AIR 1957 SC 699; State of West Bengal v. Union of India AIR 1963 SC 1241; The Narasaraopeta Electric v. The State of Madras AIR 1951 Mad 979; Rajahmundry Electric v. A. Nageswara Rao and Others AIR 1956 SC 213.

if statements may lead to incrimination by themselves or “furnish a link in the chain of evidence” the bar of Article 20(3) of the Constitution would apply. Thus, the Court committed an error in treating the passcode/password as non-testimonial evidence.⁵

4. The passcode is not a document that exists as physical evidence but is personal information that resides in the zone of mental privacy.⁶ It usually exists as a combination of numbers or patterns in the mind and therefore its revelation is protected under Article 20(3) of the Constitution. Secondly, the power to issue a search of mobile/laptop cannot be found. The Court erred in treating electronic devices and the word “place”.⁷ The word “place” has been defined to include a house, building, tent, vehicle, and vessel.⁸ Applying the interpretation rule of ejusdem generis, it cannot be said that electronic devices are of the same kind as a house, building, tent, vehicle, or vessel. Therefore, the mobile search cannot be directed.⁹
5. In the instant case, it can be observed that there has been a clear infringement of Article 21 and a violation of the fundamental rights of Mr. Ian as the person's details are asked including fingerprints and passwords of mobile phone that includes all personal data along with the access to the car keys, just as means of aiding investigation where no strong evidence is yet found to hold Mr. Ian liable for such a stringent and lengthy investigation process.
6. There has been a clash with privacy, the first case against targeted and unwarranted surveillance practices of the state was in 1997 in which the Supreme Court laid down a shadow over the surveillance law in India and put certain guidelines as safeguard against

⁵ Selvi v. State of Karnataka (2010) 7 SCC 263; State of Bombay v. Kathi Kalu Oghad 1962 SCR (3) 10; M.P. Sharma v. Satish Chandra 1954 SCR (1) 1077; Nandini Satpathy v. P.L. Dani (1978) 2 SCC 424; Balkishan A. Devidayal v. State of Maharashtra (1980) 4 SCC 600; Deomam Shamji Patel v. State of Maharashtra AIR 1959 Bom 284.

⁶ Code of Criminal Procedure 1973, s 9.

⁷ Code of Criminal Procedure 1973, s 93.

⁸ Code of Criminal Procedure 1973, s 2(p).

⁹ Code of Criminal Procedure 1973, s 93.

attacks by surveillance.¹⁰ Individual privacy was considered a fundamental right under the ambit of article 21 of the Indian constitution- the 'right to life and personal liberty'. It was said that the right to life also contains life full of dignity and without privacy, dignified life could barely be imagined.¹¹

7. PDP Bill is in the process of being tabled to enhance the privacy laws in India and to give legislative backing to the judicially recognized right to privacy (which includes the right to the protection of data).¹² The “personal data shall only be collected to the extent that is necessary for processing such personal data.”¹³ One of the rights recognized under the right to privacy is the Right to be Forgotten and is recognized by various multiple international agreements and laws like the General Data Protection Regulations, 2016 (hereinafter referred as “GDPR”) which gives the data subject the right to request the controller (herein the “data fiduciary” as per the PDP Bill) to erase personal data concerning him or her without undue delay where certain grounds like lack of necessity, withdrawal of consent, etc. are applicable.
8. It is pertinent to note that, as the PDP Bill¹⁴ and the General Data Protection Regulations, 2016 are clearly stated in the ambit of personal data protection and privacy guidelines, also the court had disallowed an application seeking direction to the accused person for disclosure of the passcode as it directly affects the right against self-incrimination.

However, it held that unlocking the phone through fingerprint/facial recognition would

¹⁰ People's union for civil liberties (PUCL) v. Union of India & another AIR 1997 SC 568; Govind v. State of Madhya Pradesh & Anr AIR 1975 SC 1378; Hukam Chand Shyam Lal v. Union of India & Ors AIR 1976 SC 789; Maneka Gandhi v. Union Of India AIR 1978 SC 597.

¹¹ Justice KS Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1; *See also*: Rajasthan State Electricity Board v. Mohan Lal AIR 1967 SC 1857; X v. Principal Health Secretary AIR 2022 SC 4917; Thappalam Service Cooperative Bank Limited v. State of Kerala (2013) 16 SCC 82; NM & Ors v. Smith & Ors 2007 (5) SA 250 (CC); Central Public Information Officer, SC v. Subhash Chandra Agrawal (2020) 5 SCC 481; Renu v. District & Sessions Judge (2014) 14 SCC 50; Govind v. State of Madhya Pradesh AIR 1975 SC 1378; Olmstead v. United States 72 L Ed 944:277 US 438 (1928); I v. Finland (20511/3) (2009) 42 E.H.R.R. 31.

¹² Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1; G.S. Kaushik & Anr v. Union of India & Ors JT 1996 (5), State of Karnataka and Anr Etc v. Shri Ranganatha Reddy & Anr AIR 1978 SC 215, National Human Rights Commission v. State of Arunachal Pradesh & Anr AIR 1996 SC 1234, State of Andhra Pradesh v. McDowell & Co. & Ors AIR 1996 SC 1627.

¹³ The Personal Data Protection Bill 2019, s 6.

¹⁴ The Personal Data Protection Bill 2019.

not violate Article 20(3) of the Constitution. The compelled unlocking of phones or laptops also affects the right to privacy.¹⁵

9. The Supreme Court delivered a significant interpretation of Article 21, emphasizing the broad scope of “personal liberty” and the welfare state concept in the Preamble. The Court ruled that the freedom to go abroad is protected under Article 21, and administrative orders, like those under the Passport Act, cannot be challenged for being unfair, unreasonable, or unjust.¹⁶ However, the Court held that authorities must provide valid reasons for actions like impounding passports to avoid arbitrariness. This judgment also overruled the earlier case and established the “golden triangle” or “trinity” principle, emphasizing the interrelationship of Articles 14, 19, and 21, which should be read together to achieve the principles of natural justice.¹⁷
10. The Supreme Court was required to balance the intra-conflict of fundamental rights flowing from Article 21, that a ‘right to fair trial’ of the accused.¹⁸ Thus, there has been a violation of fundamental rights by the authorities not only on Mr. Ian but also, on the CG Company by forcing them to leak the personal data of the customers without their knowledge who have entrusted their trust with them.

B. INFRINGEMENT OF RIGHTS AGAINST SELF-INCRIMINATION

11. While deciding the scope of password retrieval under Article 21, the hon’ble court in the case of Central Bureau of Investigation v. Mahesh Kumar Sharma & Anrs., held that “In

¹⁵ CBI v. Mahesh Kumar Sharma Case Number CBI-31/2021.

¹⁶ Maneka Gandhi v. Union of India AIR 1978 SC 597; *See also*: Ram Singh and Ors v. The State of Delhi and Anr AIR 1951 SC 270; Bennett Coleman & Co. & Ors v. Union of India & Ors AIR 1973 SC 106; All India Bank Employees v. National Industrial Tribunal AIR 1962 SC 171; Suresh Kumar Kaushal v. Naz Foundation AIR 2014 SC 563; Joseph Shine v. Union of India AIR 2018 SC 1676; Rayala M. Bhuvneswari v. Nagaphomender Rayala AIR 2008 AP 98; Indian Hotels & Restaurant Ass’n (AHAR) v. State of Maharashtra (2019) 3 SCC 429; Dattaraya Govind Mahajan v. the State of Maharashtra AIR 1977 SC 915.

¹⁷ A.K. Gopalan v. State of Madras & Union of India AIR 1950 SC 27; *See also*: King v. Military Dep’t 245 So. 3d 404 (Miss. 2018); Local Government Board v. Arlidge [1915] AC 120; Abraham Mallory Dillet v. The Queen 1887 12 AC 459.

¹⁸ P. Gopalkrishnan v. State of Kerala and Ors CrI. MC. No.758 OF 2020; State of Gujarat v. Shyamlal Mohanlal Choksi & Another AIR 1965 SC 1251; State of Bombay v. Kathi Kalu Oghad AIR 1962 SC 1809, M.P Sharma v. Satish Chandra AIR 1954 SC 300.

the case of Narco Analysis/Lie Detection Test, the Hon'ble Supreme Court of India has held that such procedure involves personal knowledge of the accused, therefore, this cannot be done without his consent. Same logic applies to a password which is sought in this case as it also involves import of personal knowledge.”¹⁹ The private key, in the present case, also involves the personal knowledge of Mr Ian.

12. In the case of *Selvi & Ors v. State of Karnataka & Anr*²⁰, it was held by the hon'ble court that “*every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part.*” In the present case, the proceedings of police to retrieve the private key from Mr Ian is indubitably coercive and the actions of the police themselves are an act of testimonial compulsion.

13. Furthermore, in the case of *Central Bureau of Investigation v. Mahesh Kumar Sharma & Anrs*²¹, it was held that “No doubt, a password does not itself constitute a ‘self-incriminating testimony’ against an accused who gives such password, but from practical point of view, the said password alone is not the sole objective of the IO and in fact he wants to use it for the purpose of accessing the data which is contained in a computer system or a mobile phone which is/are seized from the accused and, therefore, the said password is to be taken as integral part of the said computer system/mobile phone which is/are not severable from it.”

14. In the present case also, the private key through which the decryption of blockchain technology used in Mr Ian's car can happen is itself not a self-incriminating testimony.

¹⁹ CBI v. Mahesh Kumar Sharma Case Number CBI-31/2021.

²⁰ *Selvi & Ors v. State of Karnataka & Anr* Criminal Appeal No. 1267 of 2004; *See also-* *State v. Lindemuth* 56 N.M. 237 (1952); *People v. Jones* 42 Cal. 2d 219 (1954); *Lindsey v. United States* 237 F. 2d 893 (9th Circ. 1956); *Lawrence M. Dugan v. Commonwealth of Kentucky* 333 S.W.2d. 755 (1960); *Townsend v. Sain* 372 US 293 (1963).

²¹ *Central Bureau of Investigation v. Mahesh Kumar Sharma & Anrs* Case Number CBI-31/2021.

But the data which can be accessed through the decryption with the access of the private key can be self- incriminating and the forceful retrieval of which can infringe the rights of Mr Ian against self-incrimination conferred under Article 20 of the Indian constitution.

15. In the CBI case²², it was also held that “*While considering the status of such information being incriminating or not, this Court cannot consider password alone in isolation. It is also pertinent to note that such data may or may not contain incriminating evidence but if there is an apprehension that it may probably contain incriminating information, the accused is within his right to maintain silence as per Section 161(2) Cr.P.C.*” Mr Ian, in the present case, under his rights enshrined under Article 21 of the Constitution of India and Section 161 of CrPC, has the right to maintain silence regarding the whereabouts or location of the private key and he cannot be forced to hand over the private key if he has the apprehension that it may contain incriminating evidence.

C. VIOLATION OF ARTICLE 19

16. It is humbly submitted before the Hon’ble Court of Indica that Article 19(1)(g) of the constitution provides all the citizens of the country the right to practice any profession, or to carry on any occupation, trade or business. The right is not absolute, and the government may impose reasonable restrictions.
17. In the State of Karnataka v. State of Tamil Nadu²³, the court held that the “*Supreme Court must provide a protective umbrella for the sustenance of the Fundamental Rights of the citizens of India. The protection of fundamental rights has to be interpreted keeping in mind the social, economic, and environmental issues.*” In the present case, an economic issue arises as CG Car Company contended that Section 69 of the IT Act and

²² Central Bureau of Investigation v. Mahesh Kumar Sharma & Anrs Case Number CBI-31/2021.

²³ State of Karnataka v. State of Tamil Nadu (2017) 3 SCC 362; *See also*: Common Cause, A Registered Society v. Union of India AIR 1999 SC 3020; Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty AIR 1996 SC 922; Hussainara Khatoon & Ors v. State of Bihar AIR 1979 SC 1369; Janta Dal v. HS Choudhary AIR 1993 SC 892.

the Rules made thereunder is in violation of the Constitution of India²⁴ as it encroached upon the fundamental right of the company to carry their business freely. The Supreme Court has thus been constituted as the protector and guarantor of fundamental rights.

18. The Supreme Court in the case of *Daryao v. State of Uttar Pradesh*²⁵ has observed that “The fundamental rights are intended not only to protect individual’s rights but they are based on high public policy. Liberty of the individual and protection of Fundamental Rights are the very essence of the democratic way of life adopted by the Constitution, and it is the privilege and the duty of this court to Uphold those rights. This court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself.”
19. In the present case, the restrictions imposed by the government under Section 69 of the Act are unreasonable as it curtail the liberty of the company to carry their business freely. The restrictions laid under Article 19 (6) transgress the constitution by violating the fundamental rights of the company encapsulated under Article 19 (1) (g).
20. In the case of *Excel Wear v. Union of India*²⁶, the Supreme Court of India declared Section 25-O of the Industrial Disputes Act, 1947, as unconstitutional and invalid because it violated Article 19(1)(g) of the Constitution. The court held that the right to carry on a business includes the right to shut down the business, and hence, the government’s requirement for prior permission to close an industrial undertaking was deemed unconstitutional. However, the court clarified that there is no fundamental right to hold a specific job of one’s choice, and the closure of an establishment leading to job loss does not violate the right to carry on an occupation.

²⁴ Moot Proposition ¶20.

²⁵ *Daryao v. State of Uttar Pradesh* AIR 1967 SC 1457; *See also: Dattaraj Nathuji Thaware v. the State of Maharashtra* (2005) 1 SCC 590; *State of Bombay v. United motors Ltd* AIR 1953 SC 252; *Kochunni v. State of Madras* AIR 1959 SC 725; *Harbansal Sahnia v. Indian Oil Corporation Ltd* AIR 2003 SC 2120; *District Registrar and Collector, Hyderabad v. Canara Bank* (2005) 1 SCC 496; *Kerala State Beverages (M&M) Corp. Ltd. v. P.P. Suresh* (2019) 9 SCC 710.

²⁶ *Excel Wear Etc v. Union of India & Ors* AIR 1979 SC 25.

21. In the instant case, Section 69 of the IT Act violates the right of the petitioners enshrined in Article 19(1)(g) as it is contended by the company that the restrictions imposed by the competent authority are likely to affect their business in Indica substantially, as the security features they offer to their cars are the feature that mostly attracts their clients. Therefore, the restrictions imposed by the government are not in conformity with the law.
22. The legality of the IT Act, 2000 has been questioned in many cases. In *Shreya Singhal v. Union of India*²⁷, the Supreme court analyzed certain provisions of the IT Act were an unreasonable intrusion on the freedom of speech and expression of the people and hence, struck them down. In the instant case, the mandatory requirement to share the cryptographic techniques used in such vehicles with the government is too restrictive and arbitrary in nature, affecting the fundamental rights of the citizens.
23. The Supreme Court in the case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*²⁸, has ruled that the phrase "in the interest of the general public" in Article 19(6) has broad meaning, encompassing public order, public health, public security, morals, community economic welfare, and the objects mentioned in Part IV of the Constitution. The impugned Section 69 of the Act is nowhere in the interest of general public.

Hence, it is humbly submitted before this Hon'ble Court that the Section 69 of the IT Act, 2000 is arbitrary and violative of Articles 14, 19 and 21 of the constitution.

²⁷ *Shreya Singhal v. Union of India* AIR 2015 SC 1523.

²⁸ *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* (2005) 8 SCC 534.

~II~

WHETHER GOVERNMENTAL CONTROL OVER THE USE OF CRYPTOGRAPHIC TECHNIQUES IS TOO RESTRICTIVE IN NATURE?

1. It is humbly submitted before this hon'ble court that the governmental control over the use of cryptographic techniques is too restrictive in nature and the government has done forceful retrieval of data and illegal hacking. The rules made under IT Act are ultra vires to its parent act and the constitution of India. Also, the intermediaries enjoy an immunity under section 79(1) of the IT Act.

A. IMMUNITY OF INTERMEDIARIES UNDER SECTION 79(1) OF THE IT ACT

2. It is humbly contented that there has been an immunity granted to all the intermediaries under 79 of the IT Act, 2000 following this CG Car Company cannot be held liable for not disclosing the personal details of Mr. Ian. Section 79 of the Act is a 'safe harbour' provision that grants conditional immunity to intermediaries from liability for third-party acts. Section 79(1) of the Act grants intermediaries conditional immunity about any third-party information, data, or communication link made available or hosted by them. This immunity is subject to sections 79 (2) and 79 (3) of the Act.
3. Section 79 of the Information Technology Act, 2000 provides that subject to the intermediary complying with certain requirements, it shall not be liable for any third-party data or information made available by it. The conditions to be fulfilled by an intermediary include the following:
 - a) *It needs to exercise due diligence while discharging obligations under the law;*
 - b) *It needs to comply with the provisions of the Information Technology Act, 2000 and rules and regulations made thereunder;*
 - c) *It must not need to conspire or abet in the commission of any offence;*

d) Once called upon to remove or disable access to any content, it must expeditiously do so without vitiating the original electronic evidence.

4. If these conditions are fulfilled, the intermediary cannot be made liable for third-party data. A majority of intermediaries are today hiding behind the judgment of the Supreme Court of India.²⁹ In the instant case, it can be seen that CG Car Company has successfully complied with all the above-stated conditions by not disclosing the personal data of its customers without their prior knowledge and henceforth is immune under section 79 of the IT Act, 2000. Intermediaries are also persons and entities that collect sensitive personal data and information and to store and disseminate such information they become intermediaries. The intermediary is neither supposed to own any content nor have any control over it.³⁰
5. The nature of the provisions relating to exemption from intermediary liability is elucidated in the cases discussed subsequently. In, the court observed that as per section 79 (2)(b), an intermediary could avail the protection under section 79 if it is not involved in the initiation of the transmission, selection of receiver, and modification of the information. Moreover, an intermediary has to comply with the due diligence provision under section 79 (2)(c) of the IT Act according to Rule 3 of the Information Technology (Intermediary guidelines) Rules, 2011.³¹
6. In the instant case, it is pertinent to note that the investigating authority decided to proceed against the CG Car Company as well as Mr. Ian under section 69 of the IT Act,

²⁹ Shreya Singhal v. Union of India AIR 2015 SC 1523; *See also:* Sakal Papers (P) Ltd. & Ors v. Union of India 1962 SCR (3) 842, Romesh Thappar v. Madras 1950 SCR (1) 594; Ambikesh Mahapatra & Anr v. State of West Bengal & Ors Writ Petition No. 33241 (W) of 2013; Modern Dental College and Research Center v. State of Madhya Pradesh AIR 2016 SC 2601; Malak Singh v. State of P&H (1981) 1 SCC 420.

³⁰ Jitendra Singh Yadav v. Union of India Writ Petition No.4682/2015; Jai Shankar Agrahari v. Union of India and others 2020 (3) ADJ 645.

³¹ My Space Inc. v. Super Cassettes Industries Ltd (2017) 236 DLT 478 (DB); *See also:* Entertainment Network (India) Ltd v. Super Cassettes Industries 2008 (9) SCALE 69; State of Maharashtra v. Praful B Desai (Dr.) (2003) 4 SCC 601; Bharat Forge Co. Ltd. v. Utam Manohar Nakate (2005) 1 LLJ 738 SC; M.P. Gopalakrishnan Nair and Anr v. State of Kerala & Ors AIR 2005 SC 2053; Sales Tax Officer, Circle I, Jabalpur v. Hanuman Prasad 1967 SCR (1) 831; Babu Khan v. Nazim Khan (2001) 5 SCC 375.

2000 for decryption, and the CG Car Company claimed that if the Government is imposing restrictions like this, it is likely to affect their business in Indica substantially.

**B. FORCEFUL RETRIEVAL AND ILLEGAL HACKING THROUGH
GOVERNMENTAL CONTROL**

7. It is humbly submitted that there has been a clear forceful retrieval method adopted by the government in the whole investigation process, by hacking through the personal data and system of Mr. Ian and forcing CG Company to disclose the same. Under section 43, a simple civil offense where a person without permission of the owner accesses the computer and extracts any data or damages the data contained therein will come under civil liability.
8. The landmark digital rights case in which the Indian Supreme Court ruled that the right to privacy is a fundamental right under the Indian Constitution. Since then, the government, instead of overhauling the surveillance law framework and enacting robust data protection mechanisms, has used public safety and national security arguments in court and in parliament to deflect concerns about violations of privacy rights.³²
9. Hacking is illegal under Indian law, and thus far the Indian government has not said whether it used Pegasus to hack into devices. The government has only made vague statements that safeguards are in place to avoid unauthorized surveillance. It has also stalled any attempts by opposition leaders in parliament to investigate the allegations.
10. These rules target internet intermediaries, including social media services, digital news services, and curated video streaming sites. While the government says they are aimed at curbing misuse of social media, including the spread of “fake news,” they allow greater

³² Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1; *See also*: Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225; M.P. Sharma & Others v. Satish Chandra & Others AIR 1954 SC 300; Kharak Singh v. State of U.P. & Others AIR 1963 SC 1295; Gobind v. State of M.P. & Another (1975) 2 SCC 148; R. Rajagopal & Another v. State of Tamil Nadu & Others (1994) 6 SCC 632; Civil Liberties (PUCL) v. Union of India & Another (1997) 1 SCC 301; Rustom Cavasjee Cooper v. Union of India (1970) 1 SCC 248.

governmental control over online content, threaten to weaken encryption, and seriously undermine rights to privacy and freedom of expression online.³³

11. International human rights law establishes a right to privacy and bars arbitrary or unlawful infringements on the right.³⁴ The Indian Supreme Court has also observed that restrictions on privacy are only permissible if they are necessary and proportionate to achieve a legitimate purpose, and are provided for in law. The disproportionate, illegal, or arbitrary use of spyware, like Pegasus, for surveillance violates the right to privacy, undermines freedom of expression and association, and threatens personal security and lives, the groups said.
12. The government has argued in several petitions filed in the Supreme Court regarding the Pegasus spyware that the cases had national security implications that could not be publicly disclosed. Instead, the details would be revealed to a government-appointed committee of experts. In the instant case, it is pertinent to take into account the fact that the investigating authority decided to proceed against the CG Car Company as well as Mr. Ian under section 69 of the IT Act, 2000 for decryption. Digital forensic experts tried to hack into Mr. Ian's smartphone trying to access the private key. However, they informed me that the private key was stored in some other means, which could be accessed only by the owner of the vehicle. This infuriated Mr. Ian and CG Car Company as there has been a breach of privacy rights.
13. State surveillance powers will be further enhanced by a proposed law on personal data protection that will grant exemptions to government agencies on vague and overbroad grounds. The current draft of the Personal Data Protection Bill should be amended to

³³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021.

³⁴ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 12; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 17.

restrict the government's discretionary powers, and mandate prior judicial authorization for access to data and surveillance on a case-by-case basis.

14. Hacking violates Article 21, which deals with the right to life and personal liberty, which includes the right to live in dignity, according to constitutional norms. Furthermore, hacking infringes on an individual's right to privacy, which is now a basic right. By breaking into a system, black hats gain access to a person's or organization's confidential information, whereas ethical hacking prevents this from happening. As a result, ethical hacking is permissible as long as it follows constitutional guidelines.
15. A Supreme Court ruling held that a bank's disclosure of content or copies of private documents of its customers would amount to a breach of confidentiality, thereby violating the privacy rights of those individuals.³⁵ In the instant case, too there has been a clear violation of the system as the decryption of data could be made possible only by using the private key, the CG Car Company responded by saying that they could not provide any assistance to the authorities because it was against the security offered by them to the customers. Experts in digital forensics attempted to hack into Mr. Ian's smartphone to obtain the private key. However, they were informed that the private key was kept in another location and could only be accessed by the vehicle's owner.

C. RULES MADE UNDER THE IT ACT ARE ULTRA VIRES TO THE PARENT

ACT AND THE CONSTITUTION

15. The rules made under the IT Act are ultra vires to the Constitution of India. Article 13 of the Constitution of India states that "law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law". The rules formulated by the Central Government of India under the IT Act also come

³⁵ District Registrar and Collector v. Canara Bank (2005) 1 SCC 496; *See also*: Raja Ram Pal v. Lok Sabha (2007) 3 SCC 184; Indira Nehru Gandhi v. Raj Narain Singh AIR 1975 SC 2299.

under the definition of ‘law’ enshrined under Article 13 of Part III of the Indian Constitution.

16. The restrictions under the impugned rules are violating the fundamental rights of the petitioners. Article 13 of the Indian constitution has limited the law-making power of parliament as- “The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.” As the impugned rules come under the ambit of the definition of law in Article 13 and infringe on the fundamental rights stipulated under Part III of the Indian Constitution, the impugned rules are ultra-vires to the Constitution.
17. Also, the impugned rules are ultra vires of its Parent Act, Information Technology Act, 2000. In the case of *Ajoy Kumar Banerjee v. Union of India*³⁶, it was held by a 3-judge bench of the Hon’ble Supreme Court, that “There is no unlimited right of delegation and subordinate legislation cannot go beyond the object and the scope of the parent Act. If such Rule or Regulation goes beyond what the parent Act contemplates, then it becomes ultra vires the parent Act.”
18. In the case of the *State of Karnataka and another v. Ganesh Kamath & Ors*³⁷, it has been held by the hon’ble Supreme Court that “It is a well-settled principle of interpretation of statutes that conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.” In the present case also, the government does not have the power to enact guidelines or rules, the scope of which goes beyond the scope of IT Act, 2000.

³⁶ *Ajoy Kumar Banerjee v. Union of India* (1984) 3 SCC 127.

³⁷ *State of Karnataka and another v. Ganesh Kamath & Ors* 1983 SCR (2) 665; *See also*: *Union of India and others v. S. Srinivasan* (2012) 7 SCC 683; *Additional District Magistrate v. Siri Ram* (2000) 5 SCC 451; *Commanding-in-Chief v. Subhash Chandra Yadav* (1988) 2 SCC 351; *State of TN v. P. Krishnamurthy* (2006) 4 SCC 517.

19. Similarly, in the case of *Sri Sudarshan v Biradar v. State of Karnataka*³⁸, it was held by the Hon'ble Court that "The doctrine of ultra vires envisages that a rule-making body must function within the purview of the rule-making authority conferred on it by the parent Act. As the body making rules or regulations has no inherent power of its own to make rules, but derives such power only from the statute, it has to necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the Parent Act. If it does, it is ultra vires and cannot be given any effect."
20. In the present case, the Government of Indica is only empowered to make rules regarding cryptographic algorithms that stay within the purview of the Information Technology Act, of 2000. And the rules that go beyond the purview of the statute of the Parent Act cannot be given any effect, as the rules derive power only from the enabling statute³⁹. The rules that the Government of Indica made relying on the powers under IT Act under Section 16 read with Section 69 concerning the use of cryptographic tools⁴⁰ functions outside the ambit of IT Act, 2000 and is ultra vires.

Hence, it is humbly submitted before this Hon'ble Court that the governmental control over the use of cryptographic techniques is too restrictive in nature.

³⁸ *Sri Sudarshan v Biradar v. State of Karnataka* Writ petition no.15800 of 2022.

³⁹ *Sri Sudarshan v. Biradar v. State of Karnataka* Writ petition no.15800 of 2022.

⁴⁰ Moot Proposition ¶11.

PRAYER

WHEREFORE IN THE LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, SUBMISSIONS MADE HERETO ABOVE AND THOSE TO BE URGED AT THE TIME OF HEARING.

THE PETITIONERS HUMBLY PRAY THAT THIS HON'BLE TRIBUNAL MAY BE PLEASED TO ADMIT THE PRESENT APPLICATION AND DECLARE THAT:

1. Section 69 of the Information Technology Act, 2000 is constitutionally invalid.
2. The governmental control over the use of cryptographic techniques is too restrictive in nature.

AND/OR

PASS ANY OTHER ORDER, DIRECTION OR RELIEF THAT MAY DEEM FIT
BEST IN THE INTEREST OF JUSTICE, FAIRNESS, EQUITY AND GOOD
CONSCIENCE FOR WHICH THE PETITIONERS MAY BE DUTY BOUND
FOREVER PRAY.

FOR THIS ACT OF KINDNESS, THE PETITIONERS SHALL BE DUTY BOUND
FOREVER

S/D _____

ON BEHALF OF THE PETITIONERS