

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2021
(IN THE MATTER OF PUBLIC INTEREST LITIGATION)
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

CONFEDERATION OF ALL INDIA TRADERS...PETITIONER

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

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ADVOCATE FOR THE PETITIONER
VIVEK NARAYAN SHARMA

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SYNOPSIS

The present Public Interest Litigation is necessitated due to the failure of Union's constitutional duty and responsibility to ensure to protect the privacy rights and to protect the freedom to speech and expressions of citizens of India. The Respondent No.1-Union of India has granted permission to Respondent No.2 to 4 to run Whatsapp application in India, but has failed to play the role of a guardian to protect the fundamental rights of citizens in as much as Whatsapp, which is rendering essential public services by enabling citizens to communicate, has recently imposed unconstitutional privacy conditions which are not only violative of the law but can impact the national security of the country. Respondent No.1 has failed to impose necessary and restrictive conditions in the instant case, though on the proposed policy of Whatsapp, European Union's Antitrust Authority had imposed serious restrictions and fine of 110 million euros in 2017. In 2016, Germany, United Kingdom & entire European Union had prohibited similar action of Facebook which was also asked to delete all the data concerning the whatsapp users.

The present Petition raises issues of grave concern for protecting the Privacy of users of "WhatsApp" which is an internet application providing internet messaging, voice calling & video calling service. WhatsApp is a zero-priced communication platform used for exchanging text messages; make audio calls; make video calls; share images; share video and audio clips; share all other types of data.

WhatsApp was launched in 2009 and WhatsApp had published – “So first of all, let's set the record straight. We have not, we do not and we will

not ever sell your personal information to anyone. Period. End of story. Hopefully this clears things up”.Riding on the basis of such privacy policy since its launch, WhatsApp has been growing substantially with a strong networks effect and currently has over 2 billion users worldwide and 400 million users in India.WhatsApp at the time of its launch had extensively promoted its privacy policy which did not allow of sharing of the users’ data with any other party.

In 2014, WhatsApp was acquired by Facebook and even then it was publicly acknowledged by WhatsApp that their privacy policy would not change and they would continue to operate as a communication platform only. However, since August 2016, WhatsApp has been retracting its stance from its earlier privacy policies. It altered the most valuable, basic and essential feature of its messaging service i.e. protection of user’s personal data. The policy allowed sharing of such personal data with Facebook and all its group companies for commercial advertising and marketing. Since then, the company has been altering its policies to collect and process wider range of information, and share the same with the third party applications. However, until recently, the users were also given ‘opt out option’, where they could continue using the services without sharing the data.That, on January 4 2021, WhatsApp introduced its new privacy policy (“Impugned Policy”) through which it scrapped their ‘opt-out policy’ and from now on the users will have to compulsorily consent to share their data with Facebook and its group companies for using the platform. The new policy will come into effect from February 08, 2021.

The Petitioner submits that the updated privacy policy would adversely impact citizens’ fundamental right of privacy and the same is also

fundamentally opposed to their representation in the beginning, when people started to opt for using whatsapp on the basis of privacy policy. Today, high government officials like Ministers & Members of Parliament, Judges, Senior Bureaucrats, Defence Personnel and Crores of Traders and well known Businessmen and so on use whatsapp for sharing confidential and personal information and the compromise in privacy policy would result in serious repercussions even for the National Security of India. That due to this updated policy, the users will now have to compulsorily share all the information that WhatsApp collects, which includes information about the user's activity on their services, like service-related, diagnostic, and performance information. This includes WhatsApp service settings; user-interactions; time, frequency and duration of activity; log files and diagnostic logs etc., the features the user uses like messaging, calling, status, groups, payments or business features; profile photo, 'about' information; whether the user is online, when the user last used the services; and when the user last updated his 'about' information. The data also includes device and connection-specific information like model, operating system, browser, IP address, phone number and device identifier. Besides, the updated privacy policy also specifies battery level, signal strength, app version. Additionally, content shared with business accounts could be made accessible to third-party service providers without the user's consent. Aggrieved by the Impugned Policy and its impact thereof, the Petitioner had written a representation before the Union of India asking them to intervene in this matter and vide their powers provided under applicable law, direct the Petitioner to roll back their policy or alternatively, ask the Petitioner to cease their operations in India.

At a time when information is power, such services of various service providers in the communications industry are utilized by citizens to engage in private conversations and share private and confidential data & information and by businesses to discuss confidential matters which may also include trade secrets. All of this is shared on the assurance that their private and personal conversations along with their confidential data and information will neither be accessed by any other person (including the service provider itself) nor would such data or information be shared/ exploited or utilized by anyone in any manner whatsoever. Indeed, it is because of their assurance that the conversations, data and information shall remain protected and shall not be accessed or shared by anyone in any manner whatsoever- that the citizens are able to enjoy their fundamental right to free speech and expression in true letter and spirit. Thus, the technology giants who deal with such data must have a fiduciary duty to ensure that the information they so possess and collect from citizens and business must be safe and not used for their own commercial gains without the consent of the users. It is also the responsibility of the State to guarantee and ensure the protection of the personal and private data and information of the citizens.

The Petitioner submits that such arbitrary policies imposed by these so called technology giants needs to be immediately checked. Citizen's personal data is being collected by a foreign entity and is being transferred outside the country. It is not only harmful to the integrity of citizens but is also extremely dangerous the security of the country. It is also the responsibility of the State to guarantee and ensure the protection of the personal and private data and information of these millions of citizens, when

they use such modes of communications to engage in conversations and exchange private and confidential data and information.

Hence, the present Petition is being filed before this Hon'ble Court.

LIST OF DATES

- 2009 Internet based messaging services app – “WhatsApp Inc.” commenced its operations. WhatsApp published – “So first of all, let's set the record straight. We have not, we do not and we will not ever sell your personal information to anyone. Period. End of story. Hopefully this clears things up.”
- 2012 WhatsApp's privacy policy was introduced. Strong privacy principles were promised through the policy. Policy used phrases like – “Respect for your privacy is coded into our DNA.” and “Since we started WhatsApp, we've aspired to build our Services with a set of strong privacy principles in mind.” Based on this, millions of users got linked with WhatsApp.
- 2013 WhatsApp changed its business model from subscription based to providing free messaging services.
- 2014 Facebook Inc., another tech giant operating in the business of personal social networking, acquired WhatsApp and its allied services.

After the Facebook acquisition, WhatsApp reiterated its stance, promising to maintain the status quo. “Here's what will change

for you, the users: nothing,” WhatsApp CEO Koum wrote at the time. “WhatsApp will remain an autonomous company and will operate independently.”

26.08.2016 In its revised modification on 25/26.08.2016 WhatsApp introduced a new Privacy Policy which severely compromised the rights of its users and made the Privacy rights of users completely vulnerable.

Under the new privacy policy, WhatsApp could now share the phone numbers of people using the service with Facebook, along with analytics such as what devices and operating systems are being used.

27.08.2016 In Germany, the Hamburg's Commissioner for Data Protection and Freedom of Information issued an administrative order prohibiting Facebook from collecting and storing the data of German WhatsApp users. Facebook was also ordered to delete all data that the messaging service had already handed over.

29.08.2016 Writ Petition (C) No. 7663 of 2016 was filed as a Public Interest Litigation before the Hon'ble High Court of Delhi, with a prayer to prohibit the implementation of this policy alongside other reliefs in order to protect the rights of the millions of citizens who are users of internet messaging services such as WhatsApp.

23.09.2016 Due to *KS Puttaswamy v Union of India* (2017) 10 SCC 1 still pending adjudication, the Hon'ble Delhi High Court issued the

following directions to protect the interest of the users of the WhatsApp:

- i. If the users opt for completely deleting "WhatsApp" account before 25 .09.2016, the information/data/details of such users should be deleted completely from "WhatsApp" servers and the same shall not be shared with the "Facebook" or any one of its group companies.
- ii. So far as the users who opt to remain in "WhatsApp" are concerned, the existing information/data/details of such users upto 25.09.2016 shall not be shared with "Facebook" or any one of its group companies.
- iii. The respondent Nos. 1 and 5 shall consider the issues regarding the functioning of the Internet Messaging Applications like "WhatsApp" and take an appropriate decision at the earliest as to whether it is feasible to bring the same under the statutory regulatory framework.

- 08.11.2016 Facebook agreed to pause its collection of WhatsApp user data in the UK as a result of a probe by the Office of the Information Commissioner of UK
- 16.11.2016 Facebook suspended its collection of WhatsApp user data for advertising purposes across Europe, following intense pressure from data privacy watchdogs in the EU.
- 17.12.2016 A Special Leave Petition (Civil) No. 804/2016 was filed against the judgement of the Delhi High Court passed in WP(C.) No. 7663/2016. The Petition challenged the judgement of the High Court while seeking ad-interim stay of the judgement.
- 16.01.2017 Notice was issued. The matter has been adjudication since then.

- 18.05.2017 European Union's antitrust authority fined Facebook of 110 million euros for giving misleading statements during the company's \$19 billion acquisition of the internet messaging service WhatsApp in 2014. Facebook had told the European Commission at the time of the acquisition that the social network would not combine the company's data with that of WhatsApp. Yet in the August 2016 policy, Facebook announced that it would begin sharing WhatsApp data with the rest of the company.
- 24.08.2017 The Supreme Court in the landmark case of *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1 declared that the right to privacy is an intrinsic part of the right to life and personal liberty under Article 21 and is protected under Part III of the Constitution of India. It also recognized several spheres where the need for privacy is necessary, including 'informational privacy' in the digital world.
- 04.01.2021 The privacy policy of WhatsApp was updated to make certain key changes to its privacy framework. Vide the impugned policy WhatsApp has done away with its 'opt-out choice' – which had been a part of all its previous policies which means that from now on the users will have to compulsorily consent to share their data with Facebook and its group companies for using the platform.
- WhatsApp has offered its users a 'take it or leave it' offer which coerces the users to consent to share their data with third-party companies to use WhatsApp's services. The new policy will come into effect from February 08, 2021.

10/1/2021 The Petitioner herein had submitted a representation to the Ministry of Law & Justice seeking an immediate action in stopping the implementation of the impugned privacy policy.

16/1/2021 Hence, this present petition

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) No. _____ OF 2021
IN THE MATTER OF PUBLIC INTEREST LITIGATION
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Confederation of All India Traders,
Vyapar Bhawan,
925/1, Nalwalan,
Karol Bagh, New Delhi – 110005

... Petitioner

VERSUS

1. Union of India,
Represented by the Secretary,
Ministry of Electronics and Information Technology
India
2. WhatsApp Inc.,
650, Castro Street, Suite 120-219,
Mountain View California 94041,
USA
3. Facebook Inc.
1, Hackerway, Menlo Park,
California – 94025,
USA
4. Facebook India Online Services Pvt. Ltd.
Units Nos. 1203 and 1204,

Level 12, Building No. 20,
Raheja Mindspace,
Cyberabad, Madhapur,
HITECH CITY, Hyderabad,
Kurnool, Telangana – 500081

...Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
SEEKING ISSUANCE OF WRIT OF MANDAMUS OR ANY OTHER
WRIT OR DIRECTION IN THE NATURE THEREOF DIRECTING THE
RESPONDENT NO.1 OR ANY OTHER APPROPRIATE AUTHORITY
TO DISCHARGE THEIR EXECUTIVE, STATUTORY AND ALL
OTHER OBLIGATIONS IN RELATION TO PROTECTION AND
SAFETY OF PRIVACY OF DETAILS / DATA OF EVERY KIND OF THE
SUBSCRIBERS / USERS OF WHATSAPP ALL OVER THE
TERRITORY OF INDIA BY TAKING ALL NECESSARY STEPS /
ACTIONS IN DISCHARGE OF THEIR EXECUTIVE AS WELL AS
STATUTORY FUNCTIONS INCLUDING BY FRAMING RULES /
REGULATIONS / GUIDELINES FOR THE PROTECTION OF RIGHTS
OF CITIZENS INCLUDING THE SAFEGUARDING AND SECURING
THE PRIVACY OF CITIZENS AND NATIONAL SECURITY BY
ENSURING THAT MOBILE APPLICATION PROVIDERS SUCH AS
WHATSAPP AND OTHER INTERNET BASED MESSAGING
SERVICES DO NOT COMPROMISE, SHARE AND/OR EXPLOIT THE
INFORMATION AND DATA INCLUDING MESSAGES, AUDIO,
VIDEO AND OTHER INFORMATION OF USERS IN ANY MANNER
WHATSOEVER**

FURTHER SEEKING WRIT, ORDER OR DIRECTION IN THE NATURE OF PROHIBITION OR ANY OTHER WRIT OR DIRECTION IN THE NATURE THEREOF PROHIBITING RESPONDENT NO.1 FROM ALLOWING RESPONDENTS NO. 2 TO 4 FROM SHARING, IN ANY MANNER WHATSOEVER, DETAILS AND DATA OF EVERY KIND OF THE SUBSCRIBERS / USERS OF WHATSAPP WITH ANY ENTITY INCLUDING FACEBOOK OR ITS FAMILY OF COMPANIES

FURTHER SEEKING WRIT, ORDER OR DIRECTION IN THE NATURE OF PROHIBITION OR ANY OTHER WRIT OR DIRECTION IN THE NATURE THEREOF PROHIBITING RESPONDENTS NO. 2 TO 4 FROM SHARING, IN ANY MANNER WHATSOEVER, DETAILS AND DATA OF EVERY KIND OF THE SUBSCRIBERS / USERS OF WHATSAPP WITH ANY ENTITY INCLUDING FACEBOOK OR ITS FAMILY OF COMPANIES

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present petition is a Public Interest Writ Petition under Article 32 of the Constitution of India seeking issuance of writ of mandamus or any other writ or direction in the nature thereof directing the Respondent No.1 to discharge

their executive, statutory and all other obligations in relation to protection and safety of privacy of details / data of every kind of the subscribers / users of Whatsapp all over the territory of India by taking all necessary steps / actions in discharge of their executive as well as statutory functions including by framing rules / regulations / guidelines for the protection of rights of citizens including safeguarding and securing the privacy of citizens and national security by ensuring that mobile application providers such as whatsapp and other internet based messaging services do not compromise, share and/or exploit the information and data including messages, audio, video and other information of users in any manner whatsoever. Further seeking writ, order or direction in the nature of prohibition or any other writ or direction in the nature thereof prohibiting Respondent No.1 from allowing Respondents No.2 to 4 from sharing, in any manner whatsoever, details and data of every kind of the subscribers / users of Whatsapp with any entity including Facebook or its family of companies. Further seeking writ, order or direction in the nature of prohibition or any other writ or direction in the nature thereof prohibiting Respondents No.2 to 4 from sharing, in any manner whatsoever, details and data of every kind of the subscribers / users of Whatsapp with any entity including Facebook or its family of companies.

2. The Petitioner has not approached any other court for the reliefs claimed in the present Writ Petition.
3. The Petitioner a registered society under the Society Registration Act, 1860 and works to represent the concerns of over 6 crore traders associated with us across the Country and has filed the present public interest litigation to put forward an important privacy issue which not only concerns small and medium sized traders in India but also every citizen of this Country.

4. That the present Writ Petition is concerning the recent privacy policy update that WhatsApp, a messaging application owned by Facebook, has brought in. WhatsApp, after being launched in 2009 has been growing substantially with a strong networks effect and currently has over 2 billion users worldwide and 400 million users in India. WhatsApp at the time of its launch had extensively promoted its privacy policy which did not allow of sharing of the users' data with any other party. When WhatsApp Inc. commenced its operations, WhatsApp published – “So first of all, let's set the record straight. We have not, we do not and we will not ever sell your personal information to anyone. Period. End of story. Hopefully this clears things up.” True copy of WhatsApp's statement 19 November 2009, is annexed herewith as **ANNEXURE – P/1.(PAGE NO. _____ TO _____)**

5. WhatsApp's privacy policy was introduced. Strong privacy principles were promised through the policy. Policy used phrases like – “Respect for your privacy is coded into our DNA.” and “Since we started WhatsApp, we've aspired to build our Services with a set of strong privacy principles in mind.” Based on this, millions of users got linked with WhatsApp. True copy of the Privacy Policy – 7th July 2012 is annexed herewith as **ANNEXURE – P/2. (PAGE NO. _____ TO _____)**

6. In 2014, WhatsApp was acquired by Facebook and even then it was publicly acknowledged by WhatsApp that their privacy policy would not change and they would continue to operate as a communication platform only. However, since August 2016, WhatsApp has been retracting its stance from its earlier privacy policies. It altered the most valuable, basic and essential feature of

its messaging service i.e. protection of user's personal data. The policy allowed sharing of such personal data with Facebook and all its group companies for commercial advertising and marketing. A Writ Petition (C) No. 7663 of 2016 was filed as a Public Interest Litigation before the Hon'ble High Court of Delhi, with a prayer to prohibit the implementation of this policy alongside other reliefs in order to protect the rights of the millions of citizens who are users of internet messaging services such as WhatsApp. True Copy of the Order dated 23.09.2016 passed Hon'ble High Court of Delhi at New Delhi in Writ Petition (C) No. 7663 of 2016 is annexed herewith as **ANNEXURE –P/3 .(PAGE NO._____TO_____)**

7. Since then, the company has been altering its policies to collect and process wider range of information, and share the same with the third party applications. However, until recently, the users were also given 'opt out option', where they could continue using the services without sharing the data. On January 4 2021, WhatsApp introduced its new privacy policy through which it scrapped their 'opt-out policy' and from now on the users will have to compulsorily consent to share their data with Facebook and its group companies for using the platform. WhatsApp has offered its users a 'take it or leave it' offer which coerces the users to consent to share their data with third-party companies to use WhatsApp's services. The new policy will come into effect from February 08, 2021. True copy of the impugned privacy policy 4th January 2021 is annexed herewith as **ANNEXURE –P/4. (PAGE NO._____TO_____)**
8. In summary the key concerns with the impugned privacy policy of the Respondent are: -

- a. That it requires users to forcibly “agree” to share data it collects about them— such as the phone number and location — with Facebook by Feb. 8 or else lose access to their accounts.
- b. This data will be shared with the broader Facebook network, such as Instagram and Messenger, and applies regardless of whether you have accounts or profiles there.
- c. The terms now clearly state that “WhatsApp receives information from, and shares information with, the other Facebook companies. We may use the information we receive from them, and they may use the information we share with them, to help operate” and market services.
- d. In addition to, user’s browser information, language, time zone, IP address and mobile network, the updated policy also collects information like phone’s battery level, signal strength and connection information.
- e. Personal information like messaging, calling, Status, groups (including group name, group picture, group description), payments or business features; profile photo, "about" information; whether you are online, when you last used our Services (your "last seen"); and when you last updated your "about" information, all will now be collected by the Facebook.
- f. The new privacy policy has taken the privacy of business accounts for a toss. Whether one communicates with a business by phone, email, or WhatsApp, it can see what you’re saying and may use that information for its own marketing purposes, which may include advertising on Facebook.

9. It is submitted that the updated privacy policy would adversely impact citizens' fundamental right of privacy which is vested under Article 21 of the Constitution. That due to this updated policy, the users will now have to compulsorily share all the information that WhatsApp collects, which includes information about the user's activity on their services, like service-related, diagnostic, and performance information. This includes WhatsApp service settings; user-interactions; time, frequency and duration of activity; log files and diagnostic logs etc., the features the user uses like messaging, calling, status, groups, payments or business features; profile photo, 'about' information; whether the user is online, when the user last used the services; and when the user last updated his 'about' information. The data also includes device and connection-specific information like model, operating system, browser, IP address, phone number and device identifier. Besides, the updated privacy policy also specifies battery level, signal strength, app version. Businesses on WhatsApp may also share user information. Additionally, content shared with business accounts could be made accessible to third-party service providers. Herein, it is imperative to note that in comparison to its competitors such as Telegram and Signal, WhatsApp collects, processes and shares the maximum amount of information with third party applications.

10. That bare perusal of the privacy policy clarifies that Facebook intends to combine the data sets of individual platforms to create even larger data sets of the users and share the same to third parties for their commercial benefit. This has severely impacted the reasonable expectation of privacy of the users as from now on, information as sensitive and personal as phone number, bank account, card details can be shared with third-party applications. The same is

also a potential concerns of small traders who apprehend that their sensitive data would be misused to the detriment of such small traders.

11. That the updated WhatsApp policy is against the public law and policy of India and cannot sustain on the grounds of legality. That collection of excessive data through unilateral terms and conditions, WhatsApp is infringing the fundamental rights of the citizens of their privacy. Aggrieved by the said policy, the Petitioner made a representation to the Respondent No. 1 requesting the Respondent No. 1 to intervene and pass appropriate orders against Respondent No. 2 to 4. True Copy of Petitioner's representation dated 10.01.2021 is annexed herewith as **ANNEXURE- P/5. .(PAGE NO. _____ TO _____)**

12. A nine-judge bench of the Hon'ble Supreme Court of India in the case of ***Justice K.S. Puttaswamy (Retired) v Union of India, W.P. (C) 494 of 2012 ("Puttaswamy")*** unanimously recognized that the right to privacy is an intrinsic part of the right to life and personal liberty under Article 21. That the Hon'ble Court agreed on one basic principle: that what is central to informational self-determination is the principle of informed consent, which has been globally recognized as the most essential requirement of data sharing. The basic requirements for the effectiveness of valid legal consent are that the consent must be "freely given", specific, informed and unambiguous. This has also been recognised under Section 11 of the Personal Data Protection Bill, 2019.

13. That WhatsApp, owing to its dominant position in the market and realizing that it is now deeply rooted in the lives of the citizens – both for personal and

commercial purposes, has decided to bypass the process of free and informed consent of users while deciding to collect and share their personal data. It has updated its privacy policy and has put in place 'a take it or leave it' contract which coerces the users to consent to share their data with third-party companies. This in-effect has deprived the users of making a real choice and has forced them to share their data if they wish to use the platform. This policy of the WhatsApp compromises the privacy of the citizens and business alike and the Petitioner submits that Respondent No. 1 must step in to ensure that the principles of privacy embedded in Article 21 of the Constitution of India are maintained.

14. That the updated policy is also violative of the statutory scheme envisaged under the Information Technology Act, 2000. In this regard, we draw the attention of this Hon'ble Court to Section 72, which makes obtaining personal information without the valid consent of the users, a penal offence. Furthermore, under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, the Government has made its intention clear in making consent the central point of data sharing and data protection. Rule 5 & 6 deserve special attention as they ensure that the body-corporates providing internet-based messaging services such as the WhatsApp must make full and true disclosure of the effect and consequence of their 'Privacy Policy' and must also seek meaningful consent from the users before collecting and sharing their sensitive data with third-party applications. The Rules deal with protection of "Sensitive personal data or information of a person", which includes such personal information which consists of information relating to:-

- Passwords;

- Financial information such as bank account or credit card or debit card or other payment instrument details;
- Physical, physiological and mental health condition;
- Sexual orientation;
- Medical records and history;
- Biometric information.

Going through the WhatsApp impugned new privacy policy, all the above would be compromised. Once the data travels to other servers, which are situated outside the domain of Indian State, of so called Facebook companies, even deleting the WhatsApp account would be useless.

15. That it is imperative to note the proposed stand of the Legislature through the Data Protection Bill, 2019 which keeps the consent of the ‘data principal’ at the centre. It also necessitates the collection of such data fairly and reasonably. As explained above, the users had signed up to WhatsApp only for using its services for personal and professional communication considering their heightened privacy standards at that point of time and they had consented to the collection of data only to make the communication services better. At no point, the users had expected WhatsApp to suddenly change its privacy policy and share their personal data to third parties for commercial benefits- which is a purpose entirely different from what it was collected for. Furthermore, WhatsApp possesses data of millions of Indian users which it can now share with a foreign entity situated in the United States of America. This is in stark contrast to the intention of the Legislature, as enshrined under section 33 and 34 of the Bill, to restrict the transfer of such large informational data to foreign entities without any check and balances.

16. A notable feature of the WhatsApp’s updated privacy policy is that it does not apply to the users in the European Region. The reason for the same is the

strict provisions of the European Union's General Data Protection Regulation and the imposition of multimillion-dollar fines against such arbitrary privacy policies. In 2017, for instance, the French Data Protection Authority – CNIL, has concluded an investigation into the data sharing practices of the WhatsApp with Facebook and has found that there is no mechanism for the users to refuse the data sharing while continuing to use the application. Moreover, the authority also found that the WhatsApp did not provide sufficient notice on the registration form to data subjects about sharing personal data with Facebook. Another instance is the decision of the German competition authority, Bundeskartellamt (the Federal Cartel Office), which considered Facebook's policy regarding data collection and combination of such data across its all the platforms as an abuse of its dominant position and consequently, ordered Facebook to stop such practice. Therefore, the authorities across jurisdictions have been proactive in protecting their citizen's data and have not shun away from penalizing arbitrary privacy policies.

17. It is also submitted that WhatsApp has played a fraud on the users as the users could not have reasonably anticipated that by selecting a pro-privacy messaging services based on a 'no change policy' of WhatsApp, they would subject their data to third-party applications in future. That due to strong presence and network effect of WhatsApp in the market, several users are left with no option but to compromise on their privacy.

18. Based on the above submission, the Petitioners request this Hon'ble Court to consider our plea and take appropriate action in the matter. It is our sincere appeal that WhatsApp be directed to retract their updated privacy policy of January 2021 with immediate effect, and the users should be allowed to give

an informed consent for collection of their personal data. Also WhatsApp be directed to allow relevant Indian Authorities to carry out 'Technical Audits' of their data centres, where the data of Indian Users are stored.

19. Furthermore, in line with the global jurisprudence, it is our humble suggestion that the WhatsApp and other like applications should be directed to amend their policy and must allow for an "opt-in" clause instead of an "opt-out" clause, meaning that the default settings of such applications must not allow for data sharing with third-party applications. However, if a consumer wishes to share such data with third-party for enhanced services, he must opt-in and allow for the same by changing the default settings. Only such a mechanism would amount to giving free, specific, clear and informed consent to data sharing and data collection.
20. Petitioner has not filed any other petition either in this Hon'ble Court or in any other High Court seeking same and similar directions as prayed in this petition.
21. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this petition. It is not guided for gain of any other individual person, institution or body. There is no motive other than the larger public interest.
22. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with the issue involved in this petition. It is totally bona-fide and there is no other remedy available except approaching this Hon'ble Court.

GROUNDS

- A. Because more than 4 crore citizens of India rely on WhatsApp as their primary means of communication, and the unregulated violation of privacy of citizens poses a grave threat to the Freedom of Life and liberty as also the Freedom of Speech and expression. Such freedoms are to be protected against misuse and the State has a duty to regulate any breach of these rights.
- B. Because Respondent No.1-Union of India has granted permission to Respondent No.2 to 4 to run Whatsapp application in India, but has failed to play the role of a guardian to protect the fundamental rights of citizens in as much as Whatsapp, which is rendering essential public services by enabling citizens to communicate, has recently imposed unconstitutional privacy conditions which are not only violative of the law but can impact the national security of the country. Respondent No.1 has failed to impose necessary and restrictive conditions in the instant case, though on the proposed policy of Whatsapp, European Union's Antitrust Authority had imposed serious restrictions and fine of 110 million euros in 2017. In 2016, Germany, United Kingdom & entire European Union had prohibited similar action of Facebook which was also asked to delete all the data concerning the whatsapp users.
- C. Because The present Petition raises issues of grave concern for protecting the Privacy of users of "WhatsApp" which is an internet application providing internet messaging, voice calling & video calling service. WhatsApp is a zero-priced communication platform used for exchanging text messages; make audio calls; make video calls; share images; share video and audio clips; share all other types of data. WhatsApp was launched in 2009 and WhatsApp had published – “So first of all, let's set the record straight. We have not, we do not and we will not ever sell your personal information to anyone. Period. End of story. Hopefully this clears things up”. Riding on the basis of such privacy

policy since its launch, WhatsApp has been growing substantially with a strong networks effect and currently has over 2 billion users worldwide and 400 million users in India. WhatsApp at the time of its launch had extensively promoted its privacy policy which did not allow of sharing of the users' data with any other party. In 2014, WhatsApp was acquired by Facebook and even then it was publicly acknowledged by WhatsApp that their privacy policy would not change and they would continue to operate as a communication platform only. However, since August 2016, WhatsApp has been retracting its stance from its earlier privacy policies. It altered the most valuable, basic and essential feature of its messaging service i.e. protection of user's personal data. The policy allowed sharing of such personal data with Facebook and all its group companies for commercial advertising and marketing. Since then, the company has been altering its policies to collect and process wider range of information, and share the same with the third party applications. However, until recently, the users were also given 'opt out option', where they could continue using the services without sharing the data. That, on January 4 2021, WhatsApp introduced its new privacy policy ("Impugned Policy") through which it scrapped their 'opt-out policy' and from now on the users will have to compulsorily consent to share their data with Facebook and its group companies for using the platform. The new policy will come into effect from February 08, 2021.

D. Because the updated privacy policy would adversely impact citizens' fundamental right of privacy and the same is also fundamentally opposed to their representation in the beginning, when people started to opt for using whatsapp on the basis of privacy policy. Today, high government officials like Ministers & Members of Parliament, Judges, Senior Bureaucrats, Defence Personnel and Crores of Traders and well known Businessmen and

so on use whatsapp for sharing confidential and personal information and the compromise in privacy policy would result in serious repercussions even for the National Security of India. That due to this updated policy, the users will now have to compulsorily share all the information that WhatsApp collects, which includes information about the user's activity on their services, like service-related, diagnostic, and performance information. This includes WhatsApp service settings; user-interactions; time, frequency and duration of activity; log files and diagnostic logs etc., the features the user uses like messaging, calling, status, groups, payments or business features; profile photo, 'about' information; whether the user is online, when the user last used the services; and when the user last updated his 'about' information. The data also includes device and connection-specific information like model, operating system, browser, IP address, phone number and device identifier. Besides, the updated privacy policy also specifies battery level, signal strength, app version. Additionally, content shared with business accounts could be made accessible to third-party service providers without the user's consent. Aggrieved by the Impugned Policy and its impact thereof, the Petitioner had written a representation before the Union of India asking them to intervene in this matter and vide their powers provided under applicable law, direct the Petitioner to roll back their policy or alternatively, ask the Petitioner to cease their operations in India.

E. Because WhatsApp is now fundamentally interconnected with the lives of citizens in their private as well as public lives. This Hon'ble Court has acknowledged the pervasiveness of technology and its effects in *K.S. Puttaswamy & Anr. v. Union of India* (2017) 10 SCC 1 in the following terms:

“Ours is an age of information. Information is knowledge. The old adage that “knowledge is power” has stark implications for the

position of the individual where data is ubiquitous, an all-encompassing presence. Technology has made life fundamentally interconnected. The internet has become all-pervasive as individuals spend more and more time online each day of their lives. Individuals connect with others and use the internet as a means of communication. The internet is used to carry on business and to buy goods and services. Individuals browse the web in search of information, to send e-mails, use instant messaging services and to download movies. Online purchases have become an efficient substitute for the daily visit to the neighbouring store. Online banking has redefined relationships between bankers and customers. Online trading has created a new platform for the market in securities. Online music has refashioned the radio. Online books have opened up a new universe for the bibliophile. The old-fashioned travel agent has been rendered redundant by web portals which provide everything from restaurants to rest houses, airline tickets to art galleries, museum tickets to music shows. These are but a few of the reasons people access the internet each day of their lives.”

F. Because this Hon’ble Court has also recognized some peculiar features of companies such as WhatsApp acting as ‘network orchestrators’, and their pervasiveness has been identified in the following terms:

'Uber', the world's largest taxi company, owns no vehicles. 'Facebook', the world's most popular media owner, creates no content. 'Alibaba', the most valuable retailer, has no inventory. And 'Airbnb', the world's largest accommodation provider, owns no real estate...

G. That in the same vein, it is also submitted that WhatsApp, one of the world's most widely used instant messaging applications, does not actually own any information. The information is actually the data pertaining to the users of the application, which at best acts as a medium for communication and does not and should not exercise any right or control over the information that is shared using its platform, as such information necessarily contains private information shared between users intended only for the intended recipients and not for WhatsApp to share with other third parties. Such illegal sharing of data would squarely impinge on the right to privacy of the citizens of India, which has been guaranteed under Article 21 of the Constitution of India. That for this reason as well, there is an urgent need for regulation of WhatsApp. Also the policy would result into large tax evasion by respondent Nos.2 to 4 in as they would not only monetise data of WhatsApp's users but also sell without paying taxes on the same to the Indian Government.

H. That it is important to note that the details and data which travel on the medium provided by the internet messaging service provider - do not belong to the said service provider, but belong to the users of this internet based messaging service, constituting a class in itself. The details and data of users of an internet messaging service do not belong to the service provider and, therefore, any capital / monetary valuation of the details and data of users would also never belong to / can, get owned by, the service provider. Unlike any electricity producing company which has to necessarily involve in producing electricity for delivery to its consumers for consumption, an internet messaging service provider - except for providing a medium to its users, does not create / manufacture anything on its own, it only provides a medium for transmission of details / data / messages etc. It therefore does not get entitled

to claim any right of any kind whatsoever with the details and data belonging to users of any internet based messaging service and which should always remain under the ownership and belonging of the users themselves and users as a class.

- I. That in the past this Hon'ble Court has been pleased to exercise its powers under Article 32 to protect the fundamental rights of citizens in the absence of legislative measures (**See Vishaka v. State of Rajasthan (1997) 6 SCC 241**). Since India does not have a robust data protection legislation opposed to the likes of other jurisdictions like United States (which has several sector-specific and medium-specific national privacy or data security laws, including laws and regulations that apply to financial institutions, telecommunications companies, personal health information, credit report information, children's information, telemarketing and direct marketing), Australia (which has The Federal Privacy Act 1988 and its Australian Privacy Principles (APPs) which apply to private sector entities along with several other legislations such as Information Privacy Act 2014, etc.), corporations like WhatsApp have exploited regulatory loopholes to infringe on the right to privacy of more than 400 million Indian citizens who rely on its services.

This is evident from the fact that the impugned policy of the Respondent has been implemented selectively i.e. the policy is not applicable to users of European Union. This is because of the strong regulatory control and restrictive data collection and sharing practices under the European Union's General Data Protection Regulation. For instance, the Facebook was fined £49 million in May, 2017 providing misleading information about its 2014 takeover of WhatsApp. The Facebook at the time of acquisition approval had represented that it wouldn't match user accounts on both platforms in future, but went on to do exactly that.

This is therefore a fit case where this Hon'ble Court needs to exercise its wide powers under Article 32 for the enforcement of Article 21 of the Constitution of India.

J. Because WhatsApp's privacy policy is essentially a take-it-or-leave-it policy which forces its users to agree to its abusive terms to use the platform and is in the nature of an "adhesion contract" or a "standard form contract". It is now accepted that standard form contracts, though admittedly do not have the element of freedom of contract for the weaker party, are nevertheless allowed because the disadvantages of the absence of the freedom to contract is offset by either administrative procedures, or by legislation. However, as already noted, in the present case because of the absence of an effective legislation or remedy to prohibit WhatsApp from sharing sensitive data of its users with Facebook and other third parties which infringes their right to privacy, which is part of the right to life, there is nothing to stop WhatsApp from sharing the personal data of millions of users with third parties without the user's consent and no way for the citizens of the country to enforce their fundamental right to privacy and right to life. Further, it is also possible that even if users do not accept these terms and conditions imposed unilaterally by WhatsApp, their present data which may be stored may nevertheless continue to be shared without their consent, making this a serious case of infringement of the right to life.

K. That the Respondent's unilateral action in taking away the protection of details and data of its users and sharing the same with Facebook and all its group companies for commercial advertising and marketing, without seeking a meaningful consent of the data-principal, amounts to infringing the fundamental rights of privacy and the Petitioner humbly prays that that

Respondent No. 1 must pass direction under appropriate law to Respondent No. 2 to 4 to ensure that the rights guaranteed to the citizens and businesses under Article 21 of the Constitution of India of privacy is upheld. The Supreme Court of India in the *Justice K.S. Puttaswamy (Retired) v Union of India* (“*Puttaswamy*”) (2017) 10 SCC 1 unanimously recognized that the right to privacy is an intrinsic part of the right to life and personal liberty under Article 21. The court in the judgement observed:

“53....an aspect of privacy [is] the right to control the dissemination of personal information. The boundaries that people establish from others in society are not only physical but also informational. There are different kinds of boundaries in respect to different relations. It is but essential that the individual knows as to what the data is being used for with the ability to correct and amend it.”

“457. Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the state but from non-state actors as well....”

Therefore, informational privacy has been held by the Constitutional Bench to be an important facet of the Right to Privacy in India.

L. That Respondent’s impugned policy offers a ‘take it or leave it’ contract to its users to continue using the services. Such a policy coerces the users to compulsorily consent to share their data with third-party applications. This defies the fundamental requirement of *consent* as laid down by the Supreme Court in *Puttaswamy*. The Supreme Court in *Puttaswamy* unanimously agreed on one basic principle that is central to informational self-determination i.e. the principle of *informed consent*. It observed:

informational privacy... does not deal with a person's body but deals with a person's mind, and therefore recognizes that an individual may have control over the dissemination of material that is personal to him. Unauthorized use of such information may, therefore lead to infringement of this right.” (para 81)

M. That Section 72 of the Information and Technology Act, 2000 read with Rule Rule 5 & 6 of Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 deserve special attention as they make it mandatory for the body-corporates providing internet-based messaging services such as the WhatsApp to make full and true disclosure of the effect and consequence of their 'Privacy Policy' and must also seek meaningful consent from the users before collecting and sharing their sensitive data with third-party applications.

N. Legislations all around the globe have defined the threshold for *meaningful consent* in the context of data collection and sharing, much stricter than general consent in contracts. For instance, the European Union's General Data Protection Regulation ("GDPR") defines consent in Article 4(11) as:

Consent of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

O. THAT WhatsApp holds a lot of personal data of its users, and so does Facebook through its personal social networking services. Those data sets,

before the impugned privacy policy, were kept in different silos. The updated privacy policy now allows the silos to interact with each other and produce large data-sets about the users. The enormous potential of information, the concentration of information in a single entity, i.e., Facebook, and enabling easier access to aggregated information puts Facebook in a position to wield enormous power. Given that with advancements in technology, such information can affect every aspect of an individual's personal, professional, religious and social life, such power is a threat to individual freedoms guaranteed under Articles 19(1)(a) to 19(1)(g) of the Constitution and other fundamental rights guaranteed under Article 21 and Article 25 of the Constitution. Furthermore, the very existence of such large data sets containing personal information is in itself dangerous and prone to illegal hacking and misuse. For instance, after the formulation of the updated privacy policy, due to some technical lapse, the WhatsApp groups had started appearing on Google Search, along with user profiles and their profile images through search results. A similar incident also happened a year back in 2019. Therefore, such data lapses can be really hazardous for the security and defense of the state and its citizens.

- P. That the Supreme Court in Puttaswamy had endorsed the findings of a Group of Experts on privacy under the erstwhile Planning Commission. The Expert Group in its Report (dated 16 October 2012) proposed a framework for the protection of privacy concerns. After reviewing internationally best practices, the Expert Group proposed nine essential privacy principles. The impugned policy of the Respondent falls foul of the nine privacy principles enunciated in Puttaswamy, right from the point of collection to the point of use.
- i. Choice and Consent

According to this principle, a data controller must give individuals choices (opt-in/optout) with regard to providing their personal information, and take individual consent only after providing notice of its information practices. However, the impugned policy, rather than giving individual choices in terms of opt-in/opt-out clauses, it forces users to quit the service if they don't agree to the policy.

ii. Collection & Purpose Limitation

A data controller shall only collect personal information from data subjects as is necessary for the purposes identified for such collection. Further, a data controller shall collect, process, disclose, make available, or otherwise use personal information only for the purposes as stated in the notice after taking consent of individuals. If there is a change of purpose, this must be notified to the individual. However, the Respondent collected the user data on the pretext of improving its services but is now sharing such data with third-party applications to enhance their commercial viability.

iii. Disclosure of Information

The data controller shall not disclose personal information to third parties, except after providing notice and seeking informed consent from the individual for such disclosure. The policy of the Respondent - far from seeking informed consent has rendered the act of giving consent to a mechanical process.

Q. Because the change in Privacy Policy of WhatsApp, and the Facebook group of companies amounts to a direct invasion and compromise with the privacy of the users / consumers and amounts to violation of the rights of millions of

users / consumers of the services of WhatsApp and other similar internet based messaging services.

- R. Because of the sheer scale of number of citizens who avail the services of WhatsApp, as well as the crucial service it provides to the public at large, WhatsApp's services would now fall under the domain of public function and WhatsApp must accordingly act in a way that does not violate the fundamental rights of the citizens of the country. It is an accepted principle in common law that "*the more an owner, for his advantage opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it.*" ***Marsh v. Alabama Supreme Court Of The United States 326 U.S. 501.*** That this principle has also been relied upon and affirmed by the Hon'ble Court in a number of cases.
- S. That it is because of the assurance given by WhatsApp in the past that their conversations, data and information shall remain protected and shall not be accessed or shared by anyone in any manner whatsoever - that the citizens are able to enjoy their fundamental right to free speech and expression in its letter and true spirit. Further, it is also the responsibility of the State to guarantee and ensure the protection of the personal and private data and information of these millions of citizens, when they use such modes of communications to engage in conversations and exchange private and confidential data and information. Various laws have been enacted in order to regulate these modes of communications in order to provide these guarantees and assurances to the citizen users including the Telegraph Act, 1885, the Telecom Regulatory Authority of India Act, 1997, the Information Technology Act, 2000 and the various rules and regulations framed thereunder. In the recent past, the form and structure of these modes of communications has rapidly changed and

evolved with the evolution of technology and the growth and spreading of internet-based services.

T. That what has further added to this ' exponential growth in both the form / types of services and the users thereof - is the mushroom growth in the number of mobile telephone users and also the availability of telecommunication services all over the country. According to recent estimates, India's internet penetration has increased over the past few years and has grown from 238 million users [i.e . 23.8 crore users] in June 2015 to nearly 700 million users in 2020. By 2025, the number of internet users in India has been projected to reach around 974.86 million which would be almost more than a half of the entire population. Such numbers are only an understatement when seen in context to the goals of the government to make India a digital economy. Furthermore, the onset of the pandemic has only accelerated people's adoption of the internet, and naturally their dependence on WhatsApp has also grown. Initially, the number of people using the WhatsApp Messaging service was not very high. Slowly, the internet messaging services of WhatsApp gained popularity due to its recognition and respect for the Privacy of the user. It also gained popularity owing to the fact that for using the said services, there was no requirement of having an E-mail ID and it was sufficient to have a mobile number in order to use the said services. Thus, this service became popular not just among the educated urban class but also among the semi-urban and rural classes where citizens were already using mobile phones, but did not have email address, which are normally required to use other internet based platforms and services.

U. That one of the various new modes of communications which have become available with the exponential growth of technology and internet - is internet messaging applications which allow users to exchange text messages, photos, videos, audio clips, other data and information, by way of personal messages

sent over the internet. These applications also offer / provide several features like instant delivery of messages, creation of groups, seamless transmission of data (including text, images, audios, videos etc.). However, since such services are still relatively new, there is no statutory or regulatory framework / mechanism in place in order to ensure that these services comply with the scheme of regulations envisaged for other such telecommunication services - including the protective features thereof.

V. That in light of the enormous potential of information, concentration of information with the WhatsApp, or its parent company Facebook, enabling easier access to aggregated information puts the Respondent Companies in a position to wield enormous power. Given that with advancements in technology, such information can affect every aspect of an individual's personal, professional, religious and social life, such power is a threat to individual freedoms guaranteed under Articles 19(1)(a) to 19(1)(g) and Article 21 of the Constitution as well as other fundamental rights guaranteed under Article 25 of the Constitution and makes it a fit case for exercise of powers granted to this Hon'ble Court under Article 32 of the Constitution.

W. That world over, the authorities have stepped up to prevent misuse and abuse of dominance by these technology-giants. The authorities have worked pro-actively in preventing the misuse of personal data of its citizens. This would be apparent from the enactment of the GDPR in the European Union and also the enactment of the Consumer Privacy Act of 2008 in the United States of America. GDPR lays down the most extensive concept of consent for data collection and data processing. Article 4(11) defines consent and Article 7 sets out further 'conditions' for consent, with specific provisions on - keeping records to demonstrate consent; prominence and clarity of consent

requests; the right to withdraw consent easily and at any time; and freely given consent if a contract is conditional on consent. Recital 43 also defines what would amount to “freely given” consent. One of the major provisions of the Consumer Privacy Act requires companies and websites to mandatorily give consumers the option to "opt-out" of the sale of personal information.

X. That as already noted above and not repeated herein, several jurisdictions have brought in legislations to effectively deal with data privacy issues and to ensure what is being done in India today by WhatsApp cannot be replicated elsewhere. In this regard, it would be relevant to place reliance on the way EU has handled the data protection rules.

Y. That in 2012, the European Union had declared that in light of advanced technologies, there was a need to adapt the existing framework in order to better respond to challenges posed by the rapid development of new technologies (particularly online) and increasing globalisation, while maintaining the technological neutrality of the legal framework. The EU in its proposal for the General Data Protection Regulation 2012/0011 (COD), in particular, acknowledged that:

Personal data which are, by their nature, particularly sensitive and vulnerable in relation to fundamental rights or privacy, deserve specific protection. Such data should not be processed, unless the data subject gives his explicit consent

Z. That because of the changing technological landscape, citizens were afforded protection against the blanket processing of their personal data in violation of

their privacy. Specific rules were enacted to this end, for instance Article 6 of GDPR which would, *inter alia*, allow data processing only in case certain conditions would be met, such as when the data subject had given its consent to the processing of his or her personal data for one or more specific purposes or when processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, etc.

AA. That in the absence of any legislative recourse in case of India, there is practically no limit and consent taken from the citizens before their data is going to be processed. The only option being given by WhatsApp is that users can opt-out of the platform, knowing fully well that a coordinated migration of the vast network of users would be extremely hard if not impossible, and users would invariably have to give their consent to the onerous and abusive terms just so that they can continue to communicate with others on WhatsApp.

GROUND FOR INTERIM RELIEF:

BB. That the Petitioner craves leave of this Hon'ble Court to refer to and rely upon the facts and grounds stated in the main Public Interest Litigation for the purpose of interim relief.

CC. That the change in privacy policy is mandatorily applied to all existing and future users of WhatsApp and does not put any embargo on WhatsApp, Facebook and its associated concerns to disseminate and process individual user data.

DD. That the balance of convenience lies squarely in favour of public interest as the policy violates article 21 of the Constitution by infringing on the users right to privacy

EE. That WhatsApp and Facebook and its associated concerns have flourished economically with the extant policy and would not face any harm whatsoever if the new policy is quashed by this Hon'ble Court. On the other hand, the public at large could face irreversible damage in case the Respondents process their data in violation of their right to life.

INTERIM PRAYER:

In the light of the facts and circumstances stated, and submissions made hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- A. Direct the Respondent No. 1 / Union of India to urgently intervene and frame guidelines to govern large technology companies like Respondents 2 to 4;
- B. In the interim, direct Respondent No. 2 to roll back the privacy policy;
- C. Pass such other order(s) as may be deemed fit and proper in the facts and circumstances of the case.

MAIN PRAYER

In the light of the facts and circumstances stated, and submissions made hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- A. Issue writ, order or direction in the nature of prohibition or any other writ or direction in the nature thereof prohibiting Respondent No.1 from

allowing Respondents No.2 to 4 from sharing, in any manner whatsoever, details and data of every kind of the subscribers / users of Whatsapp with any entity including Facebook or its family of companies;

- B. issue a writ of prohibition or any other writ or direction in the nature thereof prohibiting respondents no. 2 to 4 from sharing, in any manner whatsoever, details and data of every kind of the subscribers / users of WhatsApp with any entity including Facebook or its family of companies;
- C. Issue a writ of mandamus or any other writ or direction in the nature thereof directing the Respondent No. 1 or any other appropriate authority to discharge their executive, statutory and all other obligations in relation to protection and safety of privacy of details / data of every kind of the subscribers / users of WhatsApp all over the territory of India by taking all necessary steps / actions in discharge of their executive as well as statutory functions including by framing rules / regulations / guidelines for the protection of rights of citizens including the safeguarding and securing the privacy of citizens by ensuring that mobile application providers such as Whatsapp and other internet based messaging services do not compromise, share and/or exploit the information and data including messages, audio, video and other information of users in any manner whatsoever;
- D. Issue a writ in the nature of mandamus or any other writ or direction in the nature thereof, directing the Respondents No.1, to take all actions including steps towards making Rules under Section 87 of the Information Technology Act, 2000 so as to regulate the functioning of Respondents No.2 to 4 and other similarly placed internet based messaging services including their Privacy Policy for handling of or dealing in personal information including private messages / photos / conversations / audio messages / videos / documents & data so as to ensure that the privacy rights of the users are not compromised and are duly protected;

- E. Issue a writ in the nature of mandamus or any other writ or direction in the nature thereof, directing Respondents No.2 to 4 to obtain / secure the consent of only those Users who are willing to specifically write to WhatsApp [upon clearly understanding / comprehending the import and extent of the sharing of data / details of the Users proposed in the new Policy of WhatsApp] and the complete / absolute privacy and not sharing details / data in any manner whatsoever – must remain continued for all other Users of WhatsApp;
- F. Issue a writ in the nature of mandamus or any other writ or direction in the nature thereof, directing the Respondents No.1, and any other authority, to formulate appropriate Guidelines so as to regulate the functioning of Respondents No.2 to 4 and other similarly placed internet based messaging services including their Privacy Policy for handling of or dealing in personal information including private messages / Photos / conversations / audio messages / videos / documents & data so as to ensure that the privacy rights of the users are not compromised and duly protected;
- G. Issue a writ in the nature of mandamus or any other writ or / direction in the nature thereof, directing the Respondents No.1, and any other authority, to formulate appropriate Rules / Guidelines so that it is made mandatory for Respondents 'No.2 to 4 and other similarly placed internet based messaging services to duly inform 'its users about the actual and true import of their Privacy Policy in respect of the information provided / shared by the users and further to safeguard the rights of minors;
- H. Issue a writ of prohibition or any other writ or direction in the nature thereof prohibiting and restraining Respondents no. 2 to 4 from discontinuing availability of Whatsapp's service to all those users who do not respond to the so-called Consent being sought by Whatsapp for

changing the privacy policy and the Whatsapp service must continue for all such users till the adjudication of the present writ petition;

- I. Issue a writ of prohibition or any other writ or direction in the nature thereof prohibiting and restraining Respondents' no. 2 to 4 from storing/utilizing the works transmitted through the messaging service for any purpose including taking a presumptive licence for all the works and a further order restraining them from utilizing, reproducing and/or exploiting the said works in any manner whatsoever;
- J. Issue a writ of Mandamus or any other writ or direction in the nature thereby directing Respondent No.2 to 4 to allow Respondent No.1 to carry out 'Technical Audits' of their data centres, where the data of Indian Users are stored, so as to retrieve and delete such data of Indian Users.
- K. Pass such other order(s) as may be deemed fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPELLANTAS IN DUTY BOUND SHALL EVERY PRAY

DRAWN BY :
(ABIR ROY)
ADVOCATE

SETTLED & FILED BY:
(VIVEK NARAYAN SHARMA)
ADVOCATE FOR THE PETITIONER

Drawn on: 15.01.2021

Filed on: 16.01.2021

6. There is no civil, criminal or revenue litigation, involving applicant, which has or could have legal nexus, with issue involved in this.
7. There is no requirement to move concerned government authority for relief sought in this petition. There is no other remedy available except approaching this Hon'ble Court by way of instant petition.
8. I have gone through the Article 32 and Supreme Court Rules and do hereby affirm that present application is in conformity thereof.
9. I have done whatsoever enquiry/investigation, which was available; and which was relevant for this Hon'ble Court to entertain this application.
10. I haven't concealed any data/material/information in this petition; which may have enabled this Hon'ble Court to form an opinion, whether to entertain this or not and/or whether to grant any relief or not.
11. The averments made in this affidavit are true and correct to my personal knowledge and belief. No part of this affidavit is false or fabricated, nor has anything material been concealed there from.

DEPONENT

VERIFICATION

I, Deponent do hereby verify that contents of above affidavit are true and correct to my personal knowledge and belief. No part of this affidavit is false nor has anything material been concealed there from.

Verified at New Delhi on this _____ January 2021.

DEPONENT