

ITEM NO.18

COURT NO.6

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No. 943/2021

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

WITH

W.P.(C) No. 956/2020 (PIL-W)

(With IA No. 91135/2020 - APPROPRIATE ORDERS/DIRECTIONS and IA No. 93533/2020 - CLARIFICATION/DIRECTION and IA No. 96666/2020 - EARLY HEARING APPLICATION and IA No. 90944/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 93535/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 94668/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 92913/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 91171/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 91136/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 105261/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 94614/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 91134/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 94600/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 94685/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 98416/2020 - EXEMPTION FROM FILING AFFIDAVIT and IA No. 92885/2020 - INITIATING CONTEMPT PROCEEDINGS and IA No. 96664/2020 - INTERVENTION APPLICATION and IA No. 94643/2020 - INTERVENTION APPLICATION and IA No. 96369/2020 - INTERVENTION APPLICATION and IA No. 94633/2020 - INTERVENTION APPLICATION and IA No. 95678/2020 - INTERVENTION APPLICATION and IA No. 108087/2020 - INTERVENTION APPLICATION and IA No. 95675/2020 - INTERVENTION APPLICATION and IA No. 95066/2020 - INTERVENTION APPLICATION and IA No. 94683/2020 - INTERVENTION/IMPLEADMENT and IA No. 98414/2020 - INTERVENTION/IMPLEADMENT and IA No. 94667/2020 - INTERVENTION/IMPLEADMENT and IA No. 94621/2020 - INTERVENTION/IMPLEADMENT and IA No. 105260/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 6913/2021 (XII-A)

(FOR ADMISSION and I.R. and IA No.61254/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.61346/2021-EXEMPTION FROM FILING AFFIDAVIT and IA No.61255/2021-EXEMPTION FROM FILING AFFIDAVIT and IA No.61345/2021-INTERVENTION/IMPLEADMENT and IA No.61253/2021-PERMISSION TO APPEAR AND ARGUE IN PERSON)

W.P.(C) No. 80/2022 (PIL-W)

(FOR ADMISSION and IA No.17397/2022-EXEMPTION FROM FILING O.T.)

W.P.(C) No. 788/2020 (PIL-W)

Writ Petition (Civil) No. 943/2021 etc.

(With IA No. 48329/2020 - INTERVENTION/IMPLEADMENT and IA No. 50785/2020 - INTERVENTION/IMPLEADMENT and IA No. 72236/2020 - STAY APPLICATION)

W.P.(C) No. 477/2020 (PIL-W)

(With IA No. 48986/2020 - EX-PARTE STAY and IA No. 48987/2020 - EXEMPTION FROM FILING O.T. and IA No. 51005/2020 - INTERVENTION/IMPLEADMENT)

W.P.(C) No. 789/2020 (PIL-W)

(With IA No. 48338/2020 - INTERVENTION/IMPLEADMENT and IA No. 50786/2020 - INTERVENTION/IMPLEADMENT and IA No. 72228/2020 - STAY APPLICATION)

W.P.(Cr1.) No. 391/2021 (X)

(FOR ADMISSION and IA No.118374/2021-EX-PARTE AD-INTERIM RELIEF and IA No.118376/2021-EXEMPTION FROM FILING O.T. and IA No.118377/2021-EXEMPTION FROM FILING AFFIDAVIT)

W.P.(C) No. 907/2021 (PIL-W)

(FOR ADMISSION and IA No.100429/2021-EXEMPTION FROM FILING AFFIDAVIT)

W.P.(C) No. 1265/2021 (X)

(FOR ADMISSION and IA No.150287/2021-EXEMPTION FROM FILING O.T.)

W.P.(C) No. 24/2022 (PIL-W)

(With IA No. 18251/2022 - APPLICATION FOR TAKING ON RECORD and IA No. 64016/2022 - APPROPRIATE ORDERS/DIRECTIONS and IA No. 61197/2022 - APPROPRIATE ORDERS/DIRECTIONS and IA No. 56876/2022 - APPROPRIATE ORDERS/DIRECTIONS and IA No. 59757/2022 - EXEMPTION FROM FILING O.T. and IA No. 5583/2022 - EXEMPTION FROM FILING O.T. and IA No. 5581/2022 - INTERVENTION APPLICATION and IA No. 9313/2022 - INTERVENTION APPLICATION and IA No. 7452/2022 - INTERVENTION APPLICATION and IA No. 18250/2022 - INTERVENTION/IMPLEADMENT and IA No. 12769/2022 - INTERVENTION/IMPLEADMENT and IA No. 11469/2022 - INTERVENTION/IMPLEADMENT and IA No. 56873/2022 - INTERVENTION/IMPLEADMENT and IA No. 64054/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 8935/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 21-09-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE HRISHIKESH ROY

For parties

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Petitioner-in-person

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Mr. Avijit Mani Tripathi, Adv.
Mr. T. K. Nayak, Adv.

UPON hearing the counsel the Court made the following
O R D E R

In these batch of matters, the common question which apparently arises and which has to be addressed by the Court is the phenomenon of hate speech and the inadequacies of the

current law in preventing it in a meaningful way. There is a report of the Law Commission of India which is relied upon by the petitioner in W.P. (C)No. 943 of 2021.

The respondent (Union of India) was directed to file its response by order dated 21.07.2022.

Shri K. M. Nataraj, learned Additional Solicitor General, would submit that in terms of order dated 21.07.2022, 14 States have responded. The inputs provided by the said States are available. With the available inputs provided by the 14 States, Union of India is ordered to put in its response within a period of two weeks from today.

Any response to this stand of the Union of India may be made also within a further period of two weeks.

We notice the following in the report of the Law Commission of India:

"6.31 Hate speech generally is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like (sections 153A, 295A read with section 298 IPC). Thus, hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence.

6.32 Hate speech poses complex challenges to freedom of speech and expression. The constitutional approach to these challenges has been far from uniform as the boundaries between impermissible propagation of hatred and protected speech vary across jurisdictions. A difference of approach is discernible between the United States and other democracies. In the United States, hate speech is given wide constitutional protection; whereas under international human rights covenants and in other western democracies, such as Canada, Germany, and the United Kingdom, it is

regulated and subject to sanctions.

6.33 In view of the above, the Law Commission of India is of considered opinion that new provisions in IPC are required to be incorporated to address the issues elaborately dealt with in the preceding paragraphs. Keeping the necessity of amending the penal law, a draft amendment bill, namely, The Criminal Law (Amendment) Bill, 2017 suggesting insertion of new section 153C (Prohibiting incitement to hatred) and section 505A (Causing fear, alarm, or provocation of violence in certain cases) is annexed as Annexure-A for consideration of the Government."

The Union of India will clearly indicate its stand with regard to the recommendations made by the Law Commission of India namely whether it has contemplated any legislation in terms of the recommendation.

In the nature of the cases, we find it necessary to request Shri Sanjay Hegde, learned Senior Advocate, together with Mr. Anas Tanwar and Mr. Mrigank Prabhakar, learned Advocates-on-Record, to assist the Court by collating all the petitions and addressing the Court.

The States which are respondents in these cases may give their independent suggestions in the matter and it will be channelised through Mr. Sanjay Hegde, learned Senior Advocate.

Parties in these writ petitions may complete their pleadings.

List the matters for final disposal on 23rd November, 2022 as first item.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
ASSISTANT REGISTRAR