

Date and Event

22/12/2008 The Information and Technology Act, 2000 was amended by Information Technology (Amendment) Bill 2008 and was passed by the Lok Sabha.

22/12/2008 The Information and Technology Act, 2000 was amended by Information Technology (Amendment) Bill 2008 and was passed by the Rajya Sabha.

20/12/2018 The order **S.O. 6227(E)**, passed by the Ministry of Home Affairs, Cyber and Information Security Division under Section 69 of Information and Technology Act, 2000 read with Rule 4 of the Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 under which the Government has authorized the security and Intelligence Agencies to intercept, Monitor, Decrypt any information generated, transmitted, received or stored in any computer resource.

02/01/2019 The cause of Action arose as the order passed by authorities exercising the power conferred by Section 69 Information and Technology Act, 2000 authorising 10 Government agencies to intercept, Monitor, Decrypt any information generated, transmitted, received or stored in any computer resource. Hence the present petition challenging the vires of Section 69 of Information and Technology Act, 2000

SAURABH PANDEY

(Petitioner In- Person)

Aerospace Engineer

2nd year L.L.B (Hons.) with spl. in Intellectual property Law Student

Indian Institute of Technology, Kharagpur

To,

The Hon'ble the Chief Justice and his other companion judges of the aforesaid court.

The Humble application on behalf of the above mentioned petitioner most respectfully showeth:

1. That, all the necessary facts and the grounds of the present application are present in the accompanying writ petition.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to issue an ad-interim mandamus directing the respondent no. 2 to stay with proceeding with the **S.O. 6227(E)** passed by the Ministry of Home Affairs, Cyber and Information Security Division dated 20th December, 2018, during the pendency of the writ petition.

And/or may pass any other and further order which this Hon'ble Court may deem fit and proper on the facts and circumstances of the case in the interest of justice.

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To,

The Hon'ble the Chief Justice and his other companion judges of the aforesaid court.

The Humble application on behalf of the above mentioned petitioner most respectfully showeth:

Brief Facts

1. That, the petitioner is an Aerospace Engineer and is presently pursuing L.L.B (Hons.) with specialization in Intellectual Property Rights from Indian Institute of Technology, Kharagpur and is in the second year of the course.
2. That the petitioner seeks to challenge the Constitutional validity of Section 69 of Information and Technology Act, 2000 which gives "*Powers to issue directions for interception or monitoring or decryption of any information through any computer resource (Substituted Vide ITAA 2008)*" which permits the central Government or a State Government or any of its officer specially authorized by the Central Government or the State Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information transmitted received or stored through any computer resource.

3. That the Government acting through Ministry of Home Affairs, Cyber and Information Security Division in pursuance of Section 69 passed an order **S.O. 6227(E)** dated 20th December, 2018.
4. That the petitioner has instituted the present P.I.L as being aggrieved by the order **S.O. 6227(E)**, herein after refereed as the “order”, passed by the Ministry of Home Affairs, Cyber and Information Security Division dated 20th December, 2018.
5. That the order which is passed under Section 69 of Information Technology Act, 2000 read with rule 4 of the Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 under which the Government has authorized the security and Intelligence Agencies to intercept, Monitor, Decrypt any information generated, transmitted, received or stored in any computer resource.
6. That the order authorises the following agencies to intercept, Monitor, Decrypt any information generated, transmitted, received or stored in any computer resource:

- (1) Intelligence Bureau;
 - (2) Narcotics Control Bureau;
 - (3) Enforcement Directorate;
 - (4) Central Board of Direct Taxes;
 - (5) Directorate of Revenue Intelligence;
 - (6) Central Bureau of Investigation;
 - (7) National Investigation Agency;
 - (8) Cabinet Secretariat (RA W);
 - (9) Directorate of Signal Intelligence (For service areas of Jammu & Kashmir, North-East and Assam only);
 - (10) Commissioner of Police, Delhi.
7. That the order passed is beyond the scope of the section 69 of Information and Technology Act, 2000 which also prescribes that a reason order to be provided for authorising any agencies by the Central Government or the State Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information

transmitted received or stored through any computer resource.

8. That the Government thus seems to have acted in complete ignorance of such prescription by failing to provide any reasoned order for the same.
9. That the Section 69 of Information and Technology Act, 2000 needs to be tested against the constitutional principles as *prima-facie* it seems to be in violation of Article 14 as being arbitrary for the reason being that it gives sweeping power to the executive and is irrational as there is no nexus as to justify having power of such wide magnitude which would result in impinging upon constitutional protected rights of person with impunity.
10. That by providing such a wide sweeping power without any safeguard cannot ensure the protection of rights guaranteed by the constitution and would result in impinging of fundamental rights with impunity.
11. That what Section 69 of Information and Technology Act, 2000 purports to curtail the freedom of speech and expression as guaranteed by Article 19(1)(a) since the sweeping power

given by section 69 of Information and Technology Act, 2000 makes the Union of India into a surveillance state which is diametrically opposite of a welfare state.

12. That what section 69 of Information and Technology Act, 2000 purports to do is to impinge upon natural right to privacy that has been recently read to be a part of the constitution by the Constitutional Branch of Hon'ble Apex court in **Puttaswamy case** and hence needs to be tested against the fundamental rights enshrined in Article 21 specially right to privacy.

13. That also the sub-section (2) of Section 69 of Information and Technology Act, 2000 which provides for safeguard for use of the power conferred by sub-section (1) of section 69 has been completely ignored by the executive and hence the action of the executives are arbitrary and irrational. The safeguard provided are based on the principle of Article 21 which makes it mandatory for any authority to follow due process to curtail liberty of any person which is nothing but a sense of fairness.

Grounds

1. That the petitioner seeks to challenge the constitutional validity of Section 69 of Information and Technology Act, 2000 on the following grounds:
2. That the Section 69 of Information and Technology Act, 2000 needs to be tested against the constitutional principles as *prima-facie* it seems to be in violation of Article 14 as being arbitrary for the reason being that it gives sweeping power to the executive and is irrational as there is no nexus as to justify having power of such wide magnitude which would result in impinging upon constitutional protected rights of person with impunity.
3. That any power that is exercised by the executive should always be within the bounds of the constitution and it should never transgress the constitutional principles and at all point of time be within the constitutional framework and shan't even seem to be transgressing the same. And in the present case the language of section 69 clearly manifest arbitrariness and is irrational and thus being Violative of Article 14.

4. That the state being a welfare state, and bound by the constitutional framework, and can in no circumstances seem to be acting in a manner that is arbitrary and irrational as the present section confers a sweeping power to the executives which clearly is arbitrary.
5. That any power that is being conferred by the legislature or exercised by the executive should always be justified as being rational and proper and it can't go beyond the constitutional framework. And in the present case the power conferred by the legislature can't be said to be proper or rational and is certainly not in tune with the constitution.
6. That what Section 69 of Information and Technology Act, 2000 purports to curtail the freedom of speech and expression as guaranteed by Article 19(1)(a) since the sweeping power given by section 69 of Information and Technology Act, 2000, makes the Union of India into a surveillance state which is diametrically opposite of a welfare state.
7. That the powers conferred by Section 69 of Information and Technology Act, 2000, makes the state a surveillance state and imposes unnecessary restrictions on freedom of

speech and expression and which can't be said to be reasonable by any means of construction.

8. That the power conferred by the legislature allowing an all pervasive intrusion by the state and which can not ensure the protection of fundamental right which ought to be protected within the constitutional framework.
9. That any restriction that is imposed by the legislature needs to be reasonable and it can never be so pervasive as to affect a large number of people for whom the application of the law was itself not contemplated.
10. There is enough possibility of this law being misused by the executives as in the absence of any safeguard the fundamental rights of the citizen are at risk of being impinged by the executives and hence the law needs to be tested as to check that whether it is in tune with the constitutional framework.
11. That the Freedom of speech and expression guaranteed by the constitution is of utmost importance as it ensures smooth functioning of the democracy and any attempt by the executive to impinge such right would amount to tampering

with the democratic principles upon which this great nation is established.

12. That what section 69 of Information and Technology Act, 2000, purports to do is to impinge upon natural right to privacy that has been recently read to be a part of the constitution by the Constitutional Bench of Hon'ble Apex court in **Puttaswamy case** and hence needs to be tested against the fundamental rights enshrined in Article 21 specially right to privacy.

13. That the sweeping power to Intercept, monitor, decrypt and data that is being generated, transmitted to stored in any device by the executives amounts to violation of right to privacy as in todays time electronic devices such as computer, mobile phones can be said to be extension of one's personality and hence ought to protected under Article 21 of the constitution from any unwanted intrusion and only on reasonable grounds.

14. That also there has been no safeguard provided for exercising such powers which is mandatory to impinge upon liberty of any person and in the present case freedom of speech and expression and right to privacy of a person is being violated

without even providing for a safeguard and hence it can be said to arbitrary and irrational. That by providing such a wide sweeping power without any safeguard cannot ensure the protection of rights guaranteed by the constitution and would amount to undermining the democratic principles and thus upset the democratic process of the country.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to quash the **S.O. 6227(E)** passed by the Ministry of Home Affairs, Cyber and Information Security Division dated 20th December, 2018, during the pendency of the writ petition and also hold that Section 69 of Information and Technology Act, 2000 to be Unconstitutional and ultra-vires of the constitution.

And/or may pass any other and further order which this Hon'ble Court may deem fit and proper on the facts and circumstances of the case in the interest of justice.

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