

**ARE GLOBAL TAKE DOWN ORDERS FOR DEFAMATORY
STATEMENTS IN THE SPIRIT OF LAW? : A CRITICAL CASE
COMMENT ON SWAMI RAMDEV & ANR. V FACEBOOK INC &
ORS.**

-Abhishek Wadhawan*

Abstract:

The Honourable High Court of Delhi recently in *Swami Ramdev & Anr. v Facebook Inc. & Ors.* issued a global take down order to various social media platforms like Facebook, YouTube, Twitter etc. to remove defamatory content related to Swami Ramdev. The case dealt with the issue of geo-blocking and global blocking of content on social media platforms and is strongly centred to the Information Technology Act, 2000. The judgment has finely discussed the role of intermediaries and social media platforms in such defamation suits but has finally set a bad precedent in law by allowing global injunction orders. This case comment critically evaluates the decision of the Court and the entire discussion in the case comment relates to the question of global takedown orders. Part I of the comment is the introduction to the entire judgment which is followed by Part II that throws light on the facts of the matter. Part III deals with the central issue of the case and Part IV relates to the various arguments presented by the petitioner and respondent. Part V deals with the final judgment and Part VI, being the most crucial part, talks about the reasoning given by the Court along with the critical assessment of the interpretation of law done by the Court. Final conclusion is elaborated in Part VII. It is strongly proven and stated that global injunction orders are against the spirit of law and comity of the courts and the Courts in India must refrain from passing such global take down orders as such an extra-territorial application of law may not be received well by the international community.

Keywords: Geo-blocking, Global injunction, defamation, comity of courts, freedom of speech

I. INTRODUCTION

The following case comment deals with a judgment of the Honourable High Court of Delhi in the matter of *Swami Ramdev & Anr. v Facebook Inc. & Ors*¹ delivered in October, 2019. The

* Abhishek Wadhawan is a 2nd year student at Gujarat National Law University.

judgment has proved to be a landmark as it sets a precedent for the Indian Courts to pass a global injunction on various social media platforms in cases of a defamatory suits. The Court has applied the idea of extra-territoriality in such cases and passed a global injunction order and ordered Facebook and various other social media platforms to remove defamatory statements related to Swami Ramdev from their global domain. This case comment argues that such global injunctions should not be granted as it is against the sprit of law, more elaborately discussed in the subsequent parts.

II. FACTS

A book titled '*Godman to Tycoon- The Untold Story of Swami Ramdev*' by Priyanka Narain was declared to be prima facie defamatory in an earlier suit.² A video containing the content from this book was being circulated on various social media platforms and subsequent to the court orders, the video was removed by Facebook, YouTube etc. from their Indian domain. However, the petitioner in the present case approached the Court to seek global take down orders for the defamatory content from the social media platforms to which the social media platforms denied.

III. CENTRAL ISSUES

The Court was to decide on the following issues:

- i. Whether geo-injunction did not suffice to protect the rights of the petitioner?
- ii. Whether a global take order should be issued to the various social media platforms and if the Court had the jurisdiction to pass such an order?

IV. ARGUMENTS PRESENTED

¹ Swami Ramdev & Anr. v Facebook Inc. & Ors, (2019) 263 DLT 689.

² Swami Ramdev v Juggernaut Books Pvt. Ltd. & Ors., 2018 SCC OnLine Del 11549.

This part of the comment deals with only the very essential arguments presented by the parties to the dispute. A detailed analysis on the same is presented in the subsequent parts of the comment.

IV.1. Argument presented by the petitioner

It was argued that the social media platforms had not respected the orders of the Court³ and had not removed the defamatory content from their global domain. The protection to the intermediaries under Section 79 of the Information Technology Act⁴ (hereinafter referred to as “Act”) and guidelines in *Shreya Singhal v Union of India*⁵ must not be given if the social media platforms do not honour the orders of the Court. It was further submitted that the Act⁶ did not restrict the Courts from granting any global take down orders and if such a global injunction order would not be passed, grave injustice would be served to the petitioner.

IV.2. Argument presented by the petitioner

It was argued that defamation laws differ for each jurisdiction and such global disabling orders would result into a contravention to the principle of comity of Courts. There would be a conflict of laws. It was further contended that the interpretation of public policy also differs for every country. Global orders may also reduce the level of freedom of speech and expression⁷ would be reduced to the lowest standards of the most regressive law if all courts start giving global injunctions. Furthermore, it was submitted that the Court must respect the territorial jurisdiction of the other Courts in and not impose its decision other jurisdictions. Since the petitioner is a public person for the people of India, a geo-injunction to remove the defamatory content from the Indian domain of the social media platforms should suffice the protection of the petitioner. It was finally submitted that any global take down order would set a bad precedent in the eyes of law and it would also lead to great injustice and inconvenience to the social media platforms.

³ Swami Ramdev v Juggernaut Books Pvt. Ltd. & Ors., 2018 SCC OnLine Del 11549.

⁴ The Information Technology Act, 2000, § 79, No.21, Acts of Parliament, 2000. (India).

⁵ *Shreya Singhal v Union of India*, AIR 2015 SC 1523.

⁶ The Information Technology Act, 2000, § 75, No.21, Acts of Parliament, 2000. (India).

⁷ INDIA CONST art 19 cl 1(g).

V. COURT'S RULING

In its final ruling, the Court held that it had the power to pass global orders under its long arm jurisdiction.⁸ The Court ordered all the social media platforms to remove the defamatory content regarding the petitioner from its global domain to ensure that the justice in terms of injunction is properly supplied to the petitioner. After a major analysis of the arguments of both the parties, the Court had formed the opinion that the Indian Courts shall have the right to issue global take down orders in cases where any content is uploaded on internet from within the Indian territory. A partial injunction in terms of geo-injunction shall not suffice to protect the petitioner from further potential defamation of his identity and character. The reasoning for the Court's decision and its critical analysis has been done in the subsequent part.

VI. RATIONALE OF THE COURT AND ANALYSIS OF DECISION

This part of the comment aims at effectively reproducing the reasoning of the Court for its decision and simultaneously critically analysing the same.

VI.1. Extra-territorial application

The Court held that the Act empowered the Courts to make global takedown orders in cases involving any computer, computer system or computer network located in India.⁹ However, this reasoning used by the Court seems to be bad in law since the defendants were intermediaries and they could have said to be committed no offence.¹⁰ The intermediaries had a 'safe harbour' under the Act and hence the extra territorial interpretation of the Act¹¹ is bad in law.

⁸ INDIAN CONST art 246.

⁹ The Information Technology Act, 2000, § 75, No.21, Acts of Parliament, 2000. (India).

¹⁰ The Information Technology Act, 2000, § 79, No.21, Acts of Parliament, 2000. (India).

¹¹ The Information Technology Act, 2000, § 79, No.21, Acts of Parliament, 2000. (India).

VI.2. Comity of Courts

It was argued before the Court that it must respect the comity of courts and not try to impose its decision on other jurisdictions, however, the same was not paid much attention by the Court. Comity refers to courtesy¹² and comity of nations means a body of rules that States observe against one another out of mutual convenience.¹³ Owing to the principle of comity of courts, no global injunction was passed in a defamatory suit by a Court in Ireland.¹⁴ The Court in the present matter ought to have taken into account the principle and respect the territorial jurisdiction of the other Courts and refrained from giving a global take down order.

VI.3. Freedom of Speech and Expression

The Court did not deliberate upon the potential possibility of violating the rights of the other people in other jurisdiction owing to global injunction. This is a major flaw in the judgment. The rights under freedom of speech is different in all jurisdictions and the Court ought not have given a global injunction owing to the same. Owing to these considerations only, the Supreme Court of India had given injunction limited to India only in an earlier judgment.¹⁵ Internet was made with one of the main objectives to provide information and knowledge to the people and limiting the speech on internet is against its spirit.¹⁶ Such global orders, if encouraged, would reduce the freedom on the internet to the lowest standards equivalent to regressive laws which would make the internet a redundant source of information for the users.

VI.4. A new responsibility on intermediaries

The Court further allowed the petitioner to directly write to the intermediaries in case a defamatory statement is uploaded on the platform in the future and it would be the responsibility of the social media platform to remove it spontaneously. The Court has extended the application of *Shreya Singhal v Union of India*¹⁷ illegally and made it obligatory for the

¹² Black's Law Dictionary 334 (4th ed. 1968).

¹³ *Hilton v Guyot*, 159 U.S. 113 (1895).

¹⁴ *George Galloway v William Frederick Frazer*, (2016) NIQB 7.

¹⁵ *Suresh Jindal v Rizoqli Corriere Della Sera Prodzioni T.V. S.p.a. & Ors.*, (1991) Suppl. (2) SCC 3.

¹⁶ *Zeran v. America Online*, 129 F.3d 327, 328-29 (4th Cir. 1997).

¹⁷ *Shreya Singhal v Union of India*, AIR 2015 SC 1523.

intermediaries to remove the defamatory content on the complaint by the petitioner even without a court order to the same effect. The said arrangement is also flawed as here the intermediary is treated as a publisher and is fastened with the responsibility to decide if the content is defamatory or not. An intermediary should not be treated as a publisher¹⁸ and a third party (intermediary) cannot be held liable for any defamatory content so uploaded on its website by a user of the platform.¹⁹ In the light of the same, it can be effectively said that by making such an arrangement, the Court has taken away the statutory protection given to the intermediaries under the Act²⁰ and hence it must be stated to be bad in law.

VI.5. Recognition of Foreign judgments in relation to defamation

While the Court passed an order for global injunction, it completely ignored a catena of judgments wherein the foreign courts have denied to execute judgments of injunction passed by courts of another jurisdiction. The reason for such denial for recognition of global injunction was either due to the order being against the fundamentals of the First Amendment to the United States Constitution²¹ or on grounds of the constitution and public policy.²² As the meaning and understanding of public policy differs in all jurisdictions and legal systems, the Courts are reluctant to recognise foreign injunctions in defamation cases. In such a case, the Court must have restrained from giving such global takedown order as the non-recognition of the order of injunction of an India Court by a Foreign Court would cause grave disrespect to the Indian Judiciary and to avoid the same, such repugnant orders which may not be executed in the foreign land must not be given by the Indian Courts.

VII. CONCLUDING REMARK

In the light of the above discussion, it may be stated that the order of global injunction passed by the Court should be reconsidered by the Division Bench as it based on a wrong premise and improper interpretation of the statute. The judgment may prove to be a bad precedent for future

¹⁸ Metropolitan International Schools Ltd. v Designtechtechnica Corporation, Google Inc. & Ors., (2009) EWHC 1765 (QB).

¹⁹ Ben Ezra Weinstein & Co. v America Online Inc., 206 F.3d 980 (10th Cir. 2000).

²⁰ The Information Technology Act, 2000, § 79, No.21, Acts of Parliament, 2000. (India).

²¹ Abdullah v Sheridan Square Press, Inc., 154 F.R.D. 591 (S.D.N.Y. 1994)

²² Bachchan v India Pubs, 154 Misc. 2d 228 (N.Y. Misc. 1992).

judgments which may lead to a major chilling effect on the freedom of speech and expression at the global level and it would reduce the social media platforms to abide by highly regressive laws which may lead to the least amount of freedom of speech and expression on the internet.