IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. OF 2020
PUBLIC INTEREST LITIGATION
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:
BINOY VISWAM

PETITIONER

VERSUS

1. RESERVE BANK OF INDIA (RBI)
THROUGH ITS GOVERNOR
SHRI SHAKTIKANTA DAS,
CENTRAL OFFICE BUILDING, 18TH FLOOR,
SHAHID BHAGAT SING ROAD, MUMBAI,
MAHARASHTRA. RESPONDENT NO. 1

2. NATIONAL PAYMENTS CORPORATION OF INDIA
THROUGH ITS CHAIRMAN,
1001, A-WING, 10TH FLOOR,
THE CAPITAL, BANDRA-KURLA
B-COMPLEX, BANDRA (EAST),
MUMBAI, MAHARASHTRA. RESPONDENT NO. 2

3. AMAZON PAY (INDIA) PRIVATE LTD
8TH FLOOR, BRIGADE GATEWAY 26/1
DR RAJKUMAR ROAD BANGALORE,
KARNATAKA. RESPONDENT NO. 3

4. AMAZON INC
1100 ENTERPRISE WAY SUNNYVALE,
CA 94089 UNITED STATES. RESPONDENT NO. 4

5. GOOGLE PAY
GOOGLE INDIA DIGITAL SERVICES
PRIVATE LIMITED
WITH REGISTERED OFFICE AT UNIT 207,
2ND FLOOR SIGNATURE TOWER-II,
TOWER A, SECTOR 15 PART II,
SILOKHERA,
GURGAON, HARYANA. RESPONDENT NO. 5

6. GOOGLE INC.
THROUGH ITS CEO
1600 AMPHITHEARE PARKWAY
MOUNTAIN VIEW, CA 94043 RESPONDENT NO. 6

7. WHATSAPP INC.
THROUGH ITS CEO,
1601 WILLOW ROAD,
MENLO PARK, CALIFORNIA 94025,
UNITED STATE OF AMERICA. RESPONDENT NO. 7

8. FACEBOOK INC.
THROUGH ITS CEO,
1601 WILLOW ROAD,
MENLO PARK, CA 94025
THE UNITED STATES. RESPONDENT NO. 8

9. UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF FINANCE,
GOVERNMENT OF INDIA,
NORTH BLOCK
NEW DELHI–110001. RESPONDENT NO. 9

10. UNION OF INDIA,
THROUGH ITS SECRETARY,
MINISTRY OF ELECTRONICS AND
INFORMATION TECHNOLOGY,
ELECTRONICS NIKETAN,
6 C.G.O. COMPLEX, LODHI ROAD,
NEW DELHI. RESPONDENT NO. 10

11. UNION OF INDIA,
MINISTRY OF HOME AFFAIRS,
THROUGH ITS SECRETARY,
NORTH BLOCK, NEW DELHI. RESPONDENT NO. 11

12. INDIAN COMPUTER EMERGENCY
RESPONSE TEAM (CERT-IN),
MINISTRY OF ELECTRONICS AND
INFORMATION TECHNOLOGY,
THROUGH ITS SECRETARY,
ELECTRONICS NIKETAN,
6 C.G.O. COMPLEX, LODHI ROAD,
NEW DELHI. RESPONDENT NO. 12

A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

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

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That by way of the present Writ Petition under Article 32 of the Constitution of India, the Petitioner herein is seeking issuance of Writ of Mandamus or any other appropriate Writ for the protection of fundamental right to privacy of millions of Indian citizens who are using 'Unified payments Interface' (UPI). In India, the UPI payments system is being regulated and supervised by the Respondent No. 1 (i.e. RBI) and Respondent No. 2 (NPCI), however the RBI and the NPCI instead of fulfilling their statutory obligations are compromising the interest of the Indian users by allowing the non compliant foreign entities to operate its payment services in India. The RBI and NPCI have permitted the three members of 'Big Four Tech Giants' i.e. Amazon, Google and Facebook/WhatsApp (Beta phase) to participate in the UPI ecosystem without much scrutiny and inspite of blatant violations of UPI Guidelines and RBI Regulations. The said conduct of the RBI and the NPCI puts the sensitive financial data of Indian users at huge risks, especially when these entities have been continuously accused of abusing dominance, and compromising data, among other things.

2. The Petitioner herein is a member of the Upper House of the Indian Parliament and a member of the National Secretariat of the CPI (Communist Party of India). The Petitioner has earlier served as the Forest Minister in the Government of Kerala. The Petitioner was earlier elected to the Kerala Legislative Assembly from Nadapuram Constituency and

served as Member, Estimates Committee; Chairman, Assurance Committee; and was one of the five members of the Constituency Delimitation Committee for the State of Kerala. The Petitioner is also president of the Engineers Federation of Kerala, Water Authority Association Kerala and Several other Trade Unions. The

3. That the Petitioner does not have any personal interest, personal gain or any other oblique motive in filing the present Writ Petition, and the same has been filed solely in the interest of the public. The Petitioner herein has no civil, criminal or revenue related involvement that has or could have any nexus with the issues involved in the present petition. Further, the Petitioner did not approach any statutory authority concerning the underlying concerns of the present Petition because considering the (i) peculiar nature of the prayers sought in the present Petition; (ii) prolonged and currently prevailing National lockdown in a phased manner owing to the spread of COVID-19 pandemic and; (ii) extreme urgency of the present case in light of the increasing usage of online payments due to the global epidemic and lockdown thereby putting a larger audience and customers' data at risk.

4. That the Petitioner has relied upon information which is already in the public domain. The Petitioner has also placed reliance on Circulars/ Guidelines/Reports issued by the Respondents. The Petitioner has also placed reliance upon various news articles published in leading newspapers.

5. That the present Petition is being filed in the interest of justice for protecting and safeguarding the fundamental right to privacy of Indian citizens and further protection of their personal information and financial data, from being misused without their knowledge or consent, some of the people being represented in the present PIL may not be aware of their legal rights being infringed and may not have the economic means to approach this Hon'ble court.

6. That the Respondent No.1 is the Regulatory Authority for Payments systems in India and Respondent No. 2 is the owner, network operator, service provider, and coordinator of the UPI Network. Respondent No.1 and 2 are responsible for issuing relevant guidelines from time to time to regulate the UPI systems..

7. That the Respondent No. 3 is 'Amazon Pay', which is offering Payments services at UPI Platforms to Indian users. That the Respondent No. 4 i.e. 'Amzaon Inc.' is a foreign entity which is parent company of the Respondent No. 3. That the Respondent No. 5 is 'Google Pay', which is offering Payments services at UPI Platforms to Indian users. That the Respondent No. 6 i.e. 'Google Inc.' is a foreign entity which is parent company of the Respondent

No. 5, Respondent No. 7 is 'WhatsApp Inc.', which is a foreign entity based in the United State of America and having no physical presence/office in India. That the Respondent No.8 i.e. "Facebook Inc" is also a foreign entity based in the United State of America which is the parent Company of the Respondent No.7. The instant petition is maintainable against Respondent No 3, 4, 5, 6, 7 & 8 as these entities are operating in India, and are bound to act within the framework of the Constitution and to uphold its virtues.

8. That the Respondent No. 9 is the Union of India, represented by the Secretary, Ministry of Finance. That the Respondent No. 10 is the Union of India, represented by the Secretary, Ministry of Electronics and Information Technology. That the Respondent No. 11 is the Union of India, represented by the Secretary, Ministry of Home Affairs. That the Respondent No. 12 is Indian Computer Emergency Response Team (CERT-in) represented by the Secretary, Ministry of Electronics and Information Technology and is the nodal agency to deal with cybersecurity threats. All aforesaid parties are proper and necessary parties to the present Writ Petition.

9. That the present Petitioner raises the following questions of general public interest:

a) Whether the Respondents No. 1 and 2 herein have a constitutional and the foremost fundamental duty to protect the fundamental right to privacy of Indian Citizens?

b) Whether the Respondents No. 1 and 2 herein are duty-bound to impose safeguards and measures and ensure that they are followed, in the absence of a consolidated data protection law in the country?

c) Whether the Respondents No. 3 to 8 have violated the right to privacy of millions of Indian citizens, as enumerated under Article 21 of the Constitution?

10. That the present Petition is being filed in the interest of all the Indian citizens who believe that the State is the guardian of their fundamental rights, and use social media applications and make financial transactions through mobile applications, in the belief that their fundamental rights and private financial information are safeguarded by the State. That the Crores of Indian citizens have acted in support of the government's initiative of Digital India, and a cash-less society, and have thus migrated in huge numbers towards cashless payments. Moreover, their belief that Respondent No. 1 & 2 is supposed to safeguard their sensitive financial information, must be protected at all costs.

11. That this Hon'ble Court in several cases has held that the Right to Privacy is a fundamental right, and shall be protected as such. This Hon'ble Court has also felt the need for a data protection framework in this age of increasing digitization and most of the transactions taking place online and through mobile applications.

12. That the Payments and Settlement Systems Act came into force in 2007, through this enactment, RBI was authorized to issue directions and regulations to regulate the Payment Systems in India.

It empowers the RBI to grant permission to the system providers for conducting mobile and digital transactions, and also to revoke such authorization in the event of non-compliance of its guidelines and norms by the system providers.

13. That in the year 2008, the NPCI was set up by the RBI, in order to act as an umbrella organization for the Unified Payments Interface and to be the coordinator thereof. The RBI and the NPCI have both issued circulars and notifications from time to time, and all entities which form part of the UPI ecosystem, have to comply with the same. That the NPCI during October 2019 has issued Guidelines titled, "United Payments Interface Procedural Guidelines", the NPCI, setting out a detailed explanation on the UPI Payment Ecosystem, and described various entities in the ecosystem and their roles and responsibilities.

14. That in February 2018, 'Beta license' was granted to WhatsApp Inc. by the NPCI, to provide its payment services within its messaging application, extending to around 1 million users. Moreover the Amazon Pay and Google Pay were also accorded approval to launch its payments service in India by the Respondent NPCI.

15. That with a view to secure data of India users, the Respondent No. 1 (RBI) vide a circular dated 06.04.2018, directed all system providers to ensure that the entire data relating to the payments system stored by them was done locally on a server within the

territory of India. The RBI also gave the deadline of six months from the date of issuance of the circular for such compliance and system providers were asked to submit a compliance report and a System Audit Report on completion of the requirement of data localization. A true copy of the Circular bearing No. DPSS.CO.OD No. 2785/06.08.005/2017-2018 dated 06.04.2018 issued by the Reserve Bank of India is annexed herewith and marked as **ANNEXURE P-2 (PAGES 35 TO 36)**.

16. However since the systems providers especially WhatsApp, and Google Pay did not intend to adhere to the data localisation norms prescribed by the RBI as they failed to follow the deadline of October 2018, and therefore the RBI in order to oblige the WhatsApp and Google Pay, and in complete disregard to the security of financial data of Indian users toned down the Circular dated 06.04.2018 by issuing Frequently Asked Questions (FAQs) on "Storage of payments System Data" dated 22.06.2019. Under the FAQs the RBI permitted the processing of all payment transaction abroad (including domestic transactions). In the said FAQ it was clarified that in cases of Data Processing done abroad, the data should be deleted from the systems abroad and brought back to India not later than one business day or 24 hours from payment processing, whichever is earlier. A copy of Letter bearing No. NPCI/UPI/2018-19/UPI/124 dated 16.11.2018 issued by the National Payments Corporation of India to the Chief General Manager, Reserve Bank of India, Mumbai, Maharashtra is annexed

Manager, Reserve Bank of India, Mumbai, Maharashtra is annexed herewith and marked as **ANNEXURE P-3 (PAGES 37 TO 38)**.

A true copy of the Frequently Asked Questions (FAQs) dated 22.06.2019 issued by the Reserve Bank of India is annexed herewith and marked as **ANNEXURE P-4 (PAGES 39 TO 41)**.

17. That at this juncture it is relevant to point out that the said FAQ issued by the RBI is illegal and Ultra Vires to the Circular dated 06.04.2018 as the same was issued by the RBI in exercise of its Statutory Power under Payment and Settlements System Act, 2017, and therefore all the participants are required to comply with the Original Circular dated 06.04.2018 in letter and spirit. Moreover it is an admitted position that the Respondent No. 7 i.e. WhatsApp, at least till 05.06.2020 failed to comply with even diluted data localisation norms, and inspite of that the RBI and the NPCI have failed to take any action and permitted non compliant WhatsApp to operate on the UPI platform jeopardizing the security of payments data of Indian citizens.

18. That the issue of Respondent No. 7 not complying with the data localization norms has also been raised before this Hon'ble Court in case of **Centre for Accountability and Systemic Change v. Union of India W.P (C) No. 921 of 2018** wherein the issue of compliance of provisions of RBI Circular dated 06.04.2018 and rule 3(11) of the Information Technology (Intermediary Guidelines) Rules, 2011 was primarily raised. The Hon'ble Court was pleased to issue notice to the Respondents vide order dated 27.08.2018. A

copy of the order dated 27.08.2018 passed by this Hon'ble Court in Writ Petition (Civil) No. 921 of 2018 passed by this Hon'ble Court is annexed herewith and marked as **ANNEXURE P-5 (PAGES 42).**

19. That Respondent No. 1 in its reply submitted in the case of **Centre for Accountability and Systemic Change v. Union of India** has informed this Hon'ble Court that it is not responsible for granting of such permissions to non-banking entities, and has instead maintained that such permission is to be granted by the Respondent No.2. In any event, it does not bear well for the citizens of the country if there continues to be a blame-game between authorities, while the non-state actors are allowed to continue operating as they please.

20. That it is pertinent to point out that the Respondent No. 7 i.e. WhatsApp and Respondent No. 8 i.e. Facebook has a history of data leakage and privacy compromises. In March 2018, a Political Consultant Firm Cambridge Analytica was accused of harvesting the data from the Facebook accounts of millions of users and using it for targeted advertisements and political campaigns. The CEO of Facebook was called upon by the United States and the United Kingdom to answer their questions on the need for tighter regulation of tech companies. A true copy of the article dated 17.03.2018 titled, "Revealed: 50 million Facebook profile harvested for Cambridge Analytica in major data breach" Published in Emma

Graham Harrison First is annexed herewith and marked as **ANNEXURE P-6 (PAGES 43 TO 50)**.

21. That after the breach caused by Cambridge Analytica, it was brought to light that some of those residing abroad were actually Indians. The Government thereby issued notices to the Firm and Facebook, to explain and show cause on the misuse of data. A true copy of the article dated 29.03.2018 titled, "India issues fresh notice to Facebook, Cambridge Analytica, over Indians' data misuse" published in Mint Newsletters is annexed herewith and marked as **ANNEXURE P-7 (PAGES 51 TO 52).**

22. That moreover after the acquisition of WhatsApp by Facebook in 2014, WhatsApp has also suffered from and been accused of several privacy and security breaches as well. The biggest breach among those was the hacking of the devices and accounts of several Indians by software named 'Pegasus', developed by the Israeli organization NSO. The spyware was activated on an individual's device by merely a missed voice call on the application, which highlights the vulnerability of Respondent No. 7's platform.

23. Moreover it was reported in an article published by the Hindustan Times dated 22.02.2020 titled, "Your private WhatsApp Group Chats are on Google Search, and Facebook knows about it", explains that the invite links to group chats were discoverable on Google, and accessible to anyone. Once a person joined such a group, he would have unfettered access to all media and

conversations occurring in such private groups. A true copy of the Article published by Reuters on 22.02.2020 is annexed herewith and marked as **ANNEXURE P-8 (PAGES 53 TO 54).**

24. That it is pertinent to point out that as per the Procedural Guidelines issued by the NPCI, the PSP Bank is tasked with ensuring that the third-party app provider shall require exclusive permission from NPCI and PSP bank for sharing individual UPI transaction data and UPI related customer details with any third party including its own parent, subsidiaries, and subsidiaries of parents other than entities such as the Indian Government, intelligence, law enforcement or regulatory authorities. A true copy of the relevant Extract of the Unified Payments Interface (UPI) Guidelines issued by the National Payments Corporation of India, dated Nil is annexed herewith and marked as **ANNEXURE P-9 (PAGES 55 TO 57).**

25. That as per the Payment Data handling policy of Respondent No.7, it clearly states that when a payment is made, WhatsApp creates the necessary connection between the sender and recipient of the payment using Facebook Infrastructure. The Respondent No. 7 further admits that in some cases, it may share limited data, to help provide customer support and to keep payments safe and secure. Such an admission is in clear breach of the mandatory UPI Guidelines issued by the Respondent NPCI. Moreover, in clear contradiction to the above UPI Guidelines the Respondent No.7 made a public statement that it intends to combine the customer data of WhatsApp, Instagram, and Facebook Messenger. A copy of

the Payment Data Handling Policy of the Whatsapp dated Nil is attached herewith and marked as **ANNEXURE P-10 (PAGES 58)**. A true copy of the Article published in Reuters on 25.01.2019 saying that Facebook to integrate whatsapp, instagram and messenger is annexed herewith and marked as **ANNEXURE P-11 (PAGES 59 TO 61)**.

26. Recently another public interest litigation, was filed by G2 Chambers titled, **"Good Governance Chambers (G2 Chambers) v, Union of India &Ors"** W.P. (C) No. 427 of 2020, wherein the serious risks which WhatsApp Pay poses to the sensitive financial data of Indian users was highlighted. The said petition raised several pertinent issues in addition to the ones raised in the W.P (C) No. 921 of 2018. It was pointed out in the said petition how WhatsApp stores the user Data on its system, in violation of the UPI guidelines which clearly indicates that no customer sensitive data shall be stored by the TPA. It was also highlighted how the WhatsApp pay platform is devoid of the mandatory Two Factor Authentication. The petition further raised grave concern regarding bundling of Payment service by the Respondent No. 7 on its messaging platform which has a history of data breaches.

27. The Hon'ble Court was pleased to issue notice, and the matter was tagged with W.P (C) No. 921 of 2018 vide Order dated 13.05.2020. During the course of the hearing, the Ld. Counsel for the Respondent No. 7 (WhatsApp) also undertook that his client would not go ahead with the Payment Scheme without complying with all

the regulations in force. A true copy of the order dated 13.05.2020 passed by this Hon'ble Court in Writ Petition (Civil) No. 427 of 2020 is annexed herewith and marked as **ANNEXURE P-12 (PAGES 62 TO 63).**

28. Moreover the Respondent RBI and NPCI instead of fulfilling their statutory obligation by addressing the lapses and shortcomings of the WhatsApp platform have turned a blind eye, and are compromising the interest of the Indian users by allowing the non-compliant WhatsApp to operate its payment services in India. The National Payments Corporation Of India (NPCI) vide its letter dated 05.06.2020 informed the Reserve Bank of India (RBI) that it has reviewed the Post Change Review Report- III from M/s Deloitte (i.e. the CERT-In empanelled auditor) of WhatsApp certifying the compliance, and found the same in order. It was further certified by the NPCI that WhatsApp has fully complied with the RBI circular dated 06.04.2018 and that WhatsApp is now fully compliant with Data localization norms, and solely on the basis of this compliance the NPCI has granted approval to ICICI Bank to go live for WhatsApp pay services on UPI system. A true copy of the Letter bearing No. NPCI:2020-21:RBI:UPI:010 dated 05.06.2020 issued by the National Payments Corporation of India to The Chief General Manager, Reserve Bank of India, Mumbai, Maharashtra is annexed herewith and marked as **ANNEXURE P-13 (PAGES 64 TO 65).** A true copy of the News Report "NPCI confirms WhatsApp Pay's data localisation compliance"

published in Times of India dated 28.07.2020 is annexed herewith and marked as **ANNEXURE P-14 (PAGES 66 TO 67)**.

29. It is submitted that the NPCI purely on the basis of the Audit Report submitted by the M/s Deloitte has informed the RBI that WhatsApp has complied with all the five points which is in line with the requirements advised by the RBI vide its letter dated 1st November 2010 in view of the Data Localization requirement. At this juncture it is pertinent to point out that in the year 2019, fraud at a unit of Infrastructure Leasing & Financial Services (IFIN) was detected, wherein at least 22 violations of auditing standards by Deloitte Haskins & Sells (Audit arm of Deloitte TT in India) and a KPMG affiliate were reported. Consequently, the Government sought a five-year ban on Deloitte. It was further reported that Deloitte gave clean audit reports and "deliberately" failed to report fraudulent activities at IFIN. It is pertinent to point out that the Deloitte and other auditors were blamed by the Ministry of corporate affairs for actively aiding and abetting the organised crime in following words- *"Simply put, the fraud committed at IFIN is nothing short of organised crime, actively aided and abetted by the statutory auditors,"*. A true copy of the News Report "Gov. alleges 22 audit violations by Deloitte, KPMG arm in IL&FS fraud case" published in Live Mint on 13.06.2019 is annexed herewith and marked as **ANNEXURE P-15 (PAGES 68 TO 71)**.

30. That despite aforesaid serious allegations against 'Audit arm' of Deloitte, the NPCI has blindly relied on the Audit report of

WhatsApp prepared by Deloitte, and on that basis has concluded that the WhatsApp is compliant with the data localisation norms. Both Respondent RBI and NPCI have been entrusted with the responsibility to conduct extensive Audits of the members of UPI ecosystem as and when required. Despite such mandatory requirements, they failed to conduct an independent audit of the WhatsApp infrastructure and setup. The petitioner in the W.P. (C) No. 427 of 2020 pointed out multiple inconsistencies in the working of WhatsApp in the UPI regime, which is violative of not only the mandatory UPI procedural guidelines but also infringes the Fundamental Rights of Indian citizens. However, being the owner of UPI, instead of treating such violations seriously, the Respondent No.1 shrugged off its responsibility and submits to derive satisfaction and comfort in the WhatsApp platform merely on the basis of an Audit Report by Deloitte, whose own credibility is under the radar. Further, The Respondent NPCI is satisfied with the functioning of WhatsApp Platform only on the basis of alleged compliance with Data Localisation circular, while all other factors are conveniently ignored. Such favourable and preferential treatment offered to Respondent WhatsApp raises serious questions in the larger public interest.

31. That since the Respondent No. 7 despite of serious non compliances and breaches of UPI Guidelines as well as RBI Circulars has already been granted permission to go live, and in such situations, it is reasonably apprehended that the Respondent No. 7 will

continue to flout regulations and norms in its business practices. Therefore, the Petitioner seeks the immediate indulgence of this Hon'ble Court to ensure that the Respondent No. 7 abide by the laws and rules in place, and to safeguard the privacy and security of the citizens of India.

32. Moreover, apart from WhatsApp the other two members of Big Four tech Giants i.e. Amazon, and Google have also been permitted by the Respondents No. 1 & 2 to participate in the UPI ecosystem without much scrutiny which also puts the sensitive financial data of Indian users at bigger risks. As per the data available for the month of May 2020, Google Pay & Amazon Pay have a total market share of about 55% on UPI interface. Although these entities are based in United States and takes Indian Data abroad, however in absence of any strong scrutiny and responsibility the data shared on their platform is at very high risk.

33. It is pertinent to point out that the big four of the internet economy i.e. Amazon, Apple, Facebook and Google have been continuously accused of abusing dominance, killing competition and compromising data, among other things. Recently for the said allegations, CEO of these big four companies were directed to testify in a hearing with the Judiciary Committee of US Congress. During the hearing, the US congress members raised concerns about mishandling of data by the big tech firms, accusing them of hurting competition and gaining advertisers by exploiting user data. A true copy of the News Report *"Big Four Tech Amazon,*

Google, Apple & Facebook Grilled during Antitrust hearing" published in Blockchain News on 30.07.2020 is annexed herewith and marked as **ANNEXURE P-16 (PAGES 72 TO 74)**.

34. Moreover, Google in the past has not only been blamed for the misusing the Data of its users but has also been accused of reneging the promises made to the Law makers and regulators. Recently during the Congressional hearing Mr. Sunder Pichai, CEO of Google faced heat of the lawmakers related to its 2007 acquisition of AdTech platform DoubleClick, and how it went on to renege on an original promise to lawmakers that it would not merge DoubleClick data with Google account data, which it went on to achieve subsequently. Moreover Mr Pichai was questioned about linking internet users' browsing data, and harvesting the same for vastly expanding its ability to profile and target people with behavioural ads. A true copy of the News Report "Google's Sundar Pichai grilled over 'destroying anonymity on the internet'" published on Techcrunchon dated 30.07.2020 is annexed herewith and marked as **ANNEXURE P-17 (PAGES 75 TO 78)**.

A true copy of the News Report Live Blog: Sundar Pichai testifies to Congress on Google's dominance, antitrust concerns published on 9 to 5 Google on 29.07.2020 is annexed herewith and marked as **ANNEXURE P-18 (PAGES 79 TO 81)**.

35. That like Google, the Amazon in the past has also been blamed for misleading the authorities for misusing the data from third party sellers for its own advantage. The said issue was once again raised

during the congressional hearing, wherein Mr Jeff Bezos, CEO of Amazon admitted that they are investigating whether employees use data it acquires from its third-party sellers to launch competing products. A true copy of the News Report "Amazon, Apple, Facebook and Google grilled on Capitol Hill over their market power" published in The Washington Post on dated 28.07.2020 is annexed herewith and marked as **ANNEXURE P-19 (PAGES 82 TO 88).**

36. That at this juncture it is pertinent to point out that most of the allegations mentioned above have been levelled against Facebook, Amazon, and Google, in India over the years. These allegations become particularly worrisome at a time when India has banned a host of Chinese Applications, on the ground that those Applications were or could be used for data theft, and could be portals for several security breaches. Moreover the Respondents instead of actively looking into such allegations have turned a blind eye, and have permitted the operation of Amazon, and Google in the UPI platform even contrary to public interest.

37. Pertinently, Special Leave Petition (Civil) No. 804 of 2017, titled as ***Karmanya Singh Sareen &Anr. v. UOI &Ors.*** is pending before this Hon'ble Court, wherein the Privacy Policy of WhatsApp is under challenge as being violative of the Constitution of India. The said challenge eventually led to the Constitution of a committee of experts to deliberate on a Data Protection Framework for India, headed by Justice B.N Shrikrishna, former Judge of this Hon'ble

Court. Subsequently, the Data Protection Bill, 2019 was introduced in the Lok Sabha which is yet to be passed. This bill contains provisions for data localization, and the importance of liability of all entities engaged in cyberspace which control, use, process or transmit data. In the absence of such law, the country, its people and their data must be protected from exploitation and misuse without the explicit consent of the individual at all costs.

38. Moreover the Google and Facebook already have access to immense personal data of millions of Indian Users. If they are permitted to collect unrestricted financial data of Indian users while operating at the UPI platform the same will give them draconian control over sensitive Indian data. Further, in absence of any compelling state regulation, accumulation of such kind of data at such a large scale is also violative of Article 14 of the Constitution of India. Thus, the continuation of Amazon Pay, Google Pay and WhatsApp Pay, without proper safeguards ensuring that no data gathered by these entities through its payment service would be transferred outside India, stored indefinitely and shared with parent companies, would be against the national interest. It is, therefore, submitted that allowing such foreign entities to integrate with the financial service system of India, with minimal interference, responsibility, and no data protection law in place, will compromise the safety and security of private data of the citizens of India.

39. Further, WhatsApp neither has any registered office in India nor does it have a full-time representative/officer posted within the

territory of India. Thus, in case of any breaches of privacy and/or theft of data suing WhatsApp or holding it criminally liable would involve practical difficulties. Therefore in such a scenario, WhatsApp should not be allowed to continue with its payment service, unless (i) WhatsApp has a registered office within the territory of India; (ii)WhatsApp ensures that no data of any sort would be transferred, under any circumstances whatsoever, outside the province of India; (iii)WhatsApp ensures that the said data when stored in India should be deleted immediately after the said data has been used for effecting the intended payments/ monetary transactions and; (iv) WhatsApp undertakes not to share, under any circumstances, any sort of data whatsoever, with Facebook Inc.

40. Similarly Amazon Pay and Google pay should also not be permitted to continue their payment operations in India unless (i) Amazon Pay and Google pay ensure that no data of any sort would be transferred, under any circumstances whatsoever, outside the province of India; (ii) Amazon Pay and Google pay undertake not to share, under any circumstances, any sort of data whatsoever, with their parent companies.

41. Moreover in the light of the chequered history of the Respondents Nos 3 -8 of misusing the user data, the steps taken by the Respondents RBI and NPCI to protect user data lacks effectiveness, as most of these steps have been limited to asking these global players to store information of Indian users in the country, however no concrete steps have been taken to prevent the misuse of the Data

by these players. It is pertinent to point out that among other things, in the interim, the Respondent must come up with regulations in order to ensure the data is not exploited by these Internet giants to gain undue advantage.

42. Since, Respondent No. 7 has already managed to launch its beta version and now in breach of undertaking recorded before this Hon'ble Court have been granted permission to launch full scale operation, therefore in such situations, it is reasonably apprehended that the Respondent No. 7 will continue to flout regulations and norms in its business practices. Therefore, the Petitioner seeks the immediate indulgence of this Hon'ble Court to ensure that all the Respondents/foreign entities abide by the laws and rules in place, and to safeguard the privacy and security of the citizens of India.

GROUNDS

A. Because the present Petition raises pertinent questions concerning the privacy of the citizens of India, which the State is duty-bound to protect. Respondent No. 1 and 2, being functionaries of State under Article 12 of the Constitution of India, are bound to act in the interests of the people of the country.

B. Because in the absence of a consolidated data protection law in the country, it is the duty of the State to make sure that the basic norms of data protection are complied with, especially by non-state actors, that handle the data of the people of India purely for business and financial reasons.

C. Because as per the Payments and Settlement Systems Act, 2007, the Respondent No.1 is the nodal authority for all Payment Systems in India. As such, it has the authority to grant permission to Payment Service Providers and revoke the same, if they fail to comply with the norms and regulations that it may notify from time to time.

D. Because the Respondent No. 2 has been incorporated by the Respondent No.1 to act as an umbrella organization for the Unified Payments Interface in India, which offers an architecture framework and a set of standard Application Programming Interface (API) specifications to facilitate online payments, and therefore is duty bound to appropriate measures to protect the interest of UPI users.

E. Because the Respondent No. 1 and 2 have failed to perform their duties of coordinating and keeping a check on the activities of the entities in the UPI ecosystem.

F. Because Respondents No. 1 and 2, despite being the functionaries of State and guardians of rights of the citizens, have been observed to be biased towards Respondent No. 7 in their grant of permissions and have been seen to adopt an unwarranted and relaxed approach towards the continuous flouting of regulations and norms by the Respondent No. 7.

G. Because the RBI vide a circular dated 06.04.2018, directed all system providers to store payment Data locally on a server within the territory of India, however subsequently. when the systems providers especially WhatsApp, Google Pay and Amazon Pay failed to follow the deadline of October 2018, and therefore the RBI in order to oblige these foreign entities i.e. WhatsApp, Google Pay and

Amazon Pay, and in complete disregard to the security of financial data of Indian users toned down the Circular dated 06.04.2018 by issuing Frequently Asked Questions.

H. Because the FAQ issued by the RBI is illegal and Ultra Vires to the Circular dated 06.04.2018 as the same was issued by the RBI in exercise of its Statutory Power under Payment and Settlements System Act, 2017, and therefore all the participants are required to comply with the Original Circular dated 06.04.2018 in letter and spirit.

I. Because it is an admitted position that the Respondent No. 7 i.e. WhatsApp, at least till 05.06.2020 failed to comply with even diluted data localisation norms, and in spite of that the RBI and the NPCI have failed to take any action and permitted non-compliant WhatsApp to operate on the UPI platform jeopardizing the security of payments data of Indian citizens.

J. Because despite clear instructions of storage of data locally, Respondent No.7 continues to violate directions, and Respondent No. 1 and 2 have no proper mechanism of fairly ascertaining the status of compliance.

K. Because the WhatsApp does not have a local server in India and operates through the server of its parent company i.e. Facebook. In such an event, granting permission to WhatsApp to run a Payments Service on its messaging application is in blatant violation of regulations, and poses an imminent threat to the privacy of its users.

L. Because the Respondents RBI and NPCI instead of fulfilling their statutory obligation by addressing the lapses and shortcomings of the WhatsApp platform have turned a blind eye, and are compromising the interest of the Indian users by allowing the non compliant WhatsApp to operate its payment services in India.

M. Because the NPCI purely on the basis of the Audit Report submitted by the M/s Deloitte has concluded that WhatsApp has fully complied with the Data Localization requirement, when the sister Concern of Deloitte i.e. Deloitte Haskins & Sells has been recently blamed for actively aiding and abetting auditing fraud at Infrastructure Leasing & Financial Services.

N. Because the Respondent No. 7 in spite of serious non compliances and braches of UPI Guidelines as well as RBI Circulars has already been granted permission to go live, and in such situations, it is reasonably apprehended that the Respondent No. 7 will continue to flout regulations and norms in its business practices. Therefore, the Petitioner seeks the immediate indulgence of this Hon'ble Court to ensure that all the Respondents including Respondent No. 7 abide by the laws and rules in place, and to safeguard the privacy and security of the citizens of India.

O. Because apart from WhatsApp the other two members of Big Four tech Giants i.e. Amazon, and Google have also been permitted by the Respondents No. 1 & 2 to participate in the UPI ecosystem without much scrutiny which also puts the sensitive financial data of Indian users at bigger risks.

P. Because Amazon, and Google are based in United States and takes Indian Data abroad, however in absence of any strong scrutiny and responsibility the data shared on their platform is at very high risk.

Q. Because Amazon, Facebook and Google have been continuously accused of abusing dominance, killing competition and compromising data, among other things. Recently for the said allegations, CEO of these companies were directed to testify in a hearing with the Judiciary Committee of US Congress. During the hearing, the US congress members raised concerns about mishandling of data by the big tech firms, accusing them of hurting competition and gaining advertisers by exploiting user data.

R. Because Google and Amazon in the past has not only been blamed for the misusing the Data of its users but has also been accused of reneging the promises made to the Law makers and regulators.

S. Because the Amazon in the past has also been blamed for misleading the authorities for misusing the Data from third party sellers for its own advantage. The said issue was once again raised during the congressional hearing, wherein MR Jeff Bezos, CEO of Amazon admitted that they are investigating whether employees use data it acquires from its third-party sellers to launch competing products.

T. Because the allegations against these foreign entities become particularly worrisome at a time when India has banned a host of Chinese apps, on the ground that those Applications were or could be used for data theft, and could be portals for several security breaches. Moreover the Respondents instead of actively looking into such allegations have turned a blind eye, and have permitted the operation of Amazon, and Google in the UPI platform even contrary to public interest.

U. Because the Hon'ble Apex Court in 'Karmanya Singh Sareen' has already cautioned the importance of data protection and the need for a comprehensive framework of Data Protection in India, in the absence of such a law, for the time being, all entities operating in the UPI ecosystem are bound by the provisions of the RBI Circulars and the Respondent No.1 is also duty-bound to ensure that no entity operates in the UPI ecosystem without the prior permission, submission of required audit reports and if any such act of non-compliance is brought to light, the permission granted to such an entity must be revoked immediately.

V. Because in the light of the chequered history of the Respondents Nos 3 to 8 of misusing the user data, the steps taken by the Respondents RBI and NPCI to protect user data lacks effectiveness, as most of these steps have been limited to asking these global players to store information of Indian users in the country, however no concrete steps have been taken to prevent the misuse of the Data by these players.

W. Because the grave concerns being raised by the Petitioner herein are (i) the issue of 'liability' in case of any possible breaches of privacy and misuse and theft of sensitive and critical data of the Indian users and; (ii) The draconian control these Tech Giants would acquire over users by using and collecting the data of their users using their payment services for making payments, in addition to the immense personal data of billions of people around the globe, which they already have. Therefore, the Petitioner seeks the immediate indulgence of this Hon'ble Court to safeguard the privacy and security of the citizens of India.

X. Because the Terms of Privacy of an application that facilitates Payment Services is very different and needs to be more stringent than that of an internet-based messaging application, merging the two, in order to provide payment facilities on the same application that has a history if compromised security is not in the interest of the safety and security of the citizens of India.

Y. Because since the Respondents No's 3 to 8are the largest user bases on the internet-based messaging platform, and Respondent No.7 will immediately expand in the payment sector as well, if it is allowed to operate the payments Services as a feature of the same application, and this, in turn, will put the privacy of innumerable citizens at risk.

Z. Because the Respondent No. 7 has a grey history of compromised data and security breaches, which does not make it a viable option for running payment. When the Privacy and Security of an application are so compromised that it does not provide basic safety on a messaging application, it casts an eclipse of doubt on the safety of the financial data of users, if it is allowed to run payment services on the same application.

AA. Because such bundling of services in a single application deprives the users of free and informed consent, it forces the users to either use both the services or none of them.

BB. Because in this age of digitization, when even the Government advocates the spread of a cashless economy, there is a mass exodus of users migrating to such applications. In such circumstances, it is of utmost importance that there is strict scrutiny on the methods of operation of these third-party applications, in order to safeguard the sensitive data of the people of India.

43. That the Petitioner craves, leave to alter, amend or add to this Petition.

44. The Petitioner has no other alternative efficacious remedy except to file the present Writ Petition under Article 32 of the Constitution of India seeking redressal of its grievances.

45. The Petitioner has not filed any other writ petition in any other court in India praying for similar relief in this Hon'ble Court or in any of the High Courts in India.

PRAYER

In the facts and circumstances of the case, as mentioned above, it is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to:

a) Issue a Writ of mandamus or other appropriate Writ or Direction and Direct the Respondent Nos. 1 (RBI) and Respondent No. 2 (NPCI) to ensure that the Respondent No.7 (WhatsApp) is not permitted to launch full-scale operations of "WhatsApp Pay" in India, without fulfilling all legal compliances to the satisfaction of this Hon'ble Court regarding the requisite regulatory compliances ; and

b) Issue a Writ of mandamus or other appropriate Writ or Direction and Direct the Respondent No 1 (RBI) to frame necessary regulations in an order to ensure that the Data collected on UPI Platform is not exploited/used by the Participants in any manner other than for processing the payments, and/or;

c) Issue a Writ of mandamus or other appropriate Writ or Direction and Direct the Respondent Nos. 1 (RBI) and Respondent No. 2 (NPCI) to ensure that the Data collected by the Respondent No.3, 5 & 7 on UPI platform is not shared with their parent company or any other third party under any circumstances whatsoever, and/or

d) Issue a Writ of mandamus or other appropriate Writ and Declare the FAQs dated 26.06.2019 issued by the RBI as Ultra Vires to the Circular dated 06.04.2018 issued by the RBI in exercise of its Statutory Power under Payment and Settlements System Act, 2017, and

e) Pass such other orders or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

Drawn & Filed by

(SRIRAM P.)
ADVOCATE FOR THE PETITIONER

Drawn on: 07.09.2020
Place: New Delhi
Dated: 08.09.2020