

**IN THE SUPREME COURT OF INDIA**

[Order XXI Rule 3(1)(a)]

**CIVIL APPELLATE JURISDICTION**

(Under Article 136 of the Constitution of India)

**SPECIAL LEAVE PETITION (CIVIL) NO. 6218 /2020**

(Arising out of impugned final judgment and order dated 09.12.2019 in

WP(C) 11394/2019 passed by the High Court of Delhi at New Delhi)

IN THE MATTER OF:-

**Ashwini Kumar Upadhyay**

**..... Petitioner**

Versus

Union of India & others

**.....Respondents**

With

I.A.No.....OF 2020

Application for exemption from filing certified copy of impugned  
order

**[PAPER BOOK]**

(FOR INDEX KINDLY SEE INSIDE)

**ADVOCATE FOR PETITIONER: ASHWANI KUMAR DUBEY**

To,  
The Registrar  
Supreme Court of India  
New Delhi – 110001

04.03.2020

IN THE MATTER OF:                      Diary No. .... OF 2020  
(Ashwini Kumar Upadhyay v. Union of India & others)

**DECLARATION**

All the defects have been duly cured. Whatever has been added /  
deleted / modified in the petition, is the result of curing of defects and  
nothing else. Except curing the defects, nothing has been changed.

Paper books are complete in all respects.

(Ashwani Kumar Dubey)

Advocate for Petitioner

AOR Code: 1797

Date: 04.03.2020

Phone: 9818685007

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IN THE SUPREME COURT OF INDIA

[Order XXI Rule 3(1)(a)]

CIVIL APPELLATE JURISDICTION

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IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Versus

Union of India & others

...Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is within the time.
2. The Petition is not bared by time and there is no delay in filing the same against the impugned final judgment and order dated 09.12.2019 in WP(C) 11394/2019 passed by the High Court of Delhi at New Delhi
3. There is no delay in filing the present special leave petition.

New Delhi

BRANCH OFFICER

Date: 04.03.2020

**PERFORMA FOR FIRST LISTING**

**Section: II-A**

The case pertains to (Please tick / check the correct box):

- Central Act: N/A
- Section: N/A
- Central Rule: N/A
- Rule No: N/A
- State Act: N/A
- Section: N/A
- State Rule: N/A
- Rule No: N/A
- Impugned Interim Order: N/A
- Impugned Final Order / Decree: 09.12.2019
- High Court: The High Court of Delhi at New Delhi
- Name of Judges: Hon'ble Chief Justice & Justice Mr. C. Harishankar
- Tribunal / Authority Name : N/A

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1. Nature of Matter: Civil

2. (a) Petitioner / Appellant : Ashwini Kumar Upadhyay

(b) Email ID: aku.adv@gmail.com,

(c) Phone No: 08800278866,

3. (a) Respondent: Union of India and others

(b) Email ID: N/A

(c) Phone No: N/A

4. (a) Main Category: 0816 [Letter Petition & PIL Matters]

(b) Sub Category: SLP against the Judgment passed by the HC in PIL

5. Not to be listed before: N/A

6(a). Similar disposed of matter: WP(C)1247/2019 (Annex P-1)

6(b). Similar pending matter: Transfer Case (Civil) 5/2020

7. Criminal Matters: N/A

(a) Whether accused / convicted has surrendered: N/A

(b) FIR / Complaint No: N/A

(c) Police Station: N/A

(d) Sentence Awarded: N/A

(e) Period of Sentence Undergone including period of detention/custody under gone: N/A

8. Land Acquisition Matters:

(a) Date of Section 4 Notification: N/A

(b) Date of Section 6 Notification: N/A

(c) Date of Section 17 Notification

9. Tax Matters: State the Tax Effect: N/A

10. Special Category: N/A

11. Vehicle No in case of motor accident claim matters): N/A

Date: 04.03.2020

**ADVOCATE FOR PETITIONER**

**(ASHWANI KUMAR DUBEY)**

Advocate-on-Record

Registration Code No-1797

ashwanik.advocate@gmail.com

9818685007, 011-22787061, 45118563

## SYNOPSIS

Petitioner is filing the instant Special Leave Petition against the impugned final judgment and order dated 09.12.2019 in WP(C) 11394/2019 passed by the High Court of Delhi at New Delhi.

It is respectfully submitted that while passing the impugned order, the High Court has failed to appreciate that presently total number of twitter handles in India are around 35 million and total number of Facebook accounts are 350 million and experts says that around 10% twitter handles (3.5 million) and 10% Facebook accounts (35 million) are duplicate/bogus/fake.

The Court also failed to appreciate that there are hundreds of fake twitter handles and bogus Facebook accounts in the name of eminent peoples and high dignitaries including the Hon'ble President of India, Vice President of India, Prime Ministers of India, Chief Ministers, Cabinet Ministers, Chief Justice of India and the Judges of the Supreme Court and High Courts. These fake twitter handles and Facebook accounts use real photo of constitutional authorities and eminent citizens. Therefore, common man rely upon the messages published from these twitter handles and facebook accounts.

The Court also failed to appreciate that fake news is the root cause of many riots including the recent riots in Delhi. Fake accounts are used to promote casteism, communalism, regionalism, linguism, radicalism and separatism, which endangers fraternity unity and national integration.

Political parties and candidates use fake social media accounts for self-promotion and image building and to tarnish the image of opponent political parties and contesting candidates, especially during the elections.



Court also failed to appreciate that many people use fake twitter handles and Facebook accounts for personal interests such as gaining financial income from one person and blackmailing his opponents.

Right to know is integral part of Article 19 and exposure to accurate information is a necessity for electors to make an informed choice, but, fake news has tendency to influence this choice in negative manner. Publication of fake news involves use of black money, under-reporting of election expenses and indulging in other kinds of malpractices. The influence of black money also has the potential to result in an imbalanced election between people of different financial statures. Thus, in order to have free and fair elections, which is a basic dictum of democracy, level playing field is paramount and this cannot be achieved without weeding out fake social media accounts.

Fake news and paid news plays a vitiating role in the context of free and fair elections and there is gap, therefore, executive should ascertain the feasibility of amending the IPC, RPA and IT Act to provide for publishing or abetting the publication of fake news and paid news so as to further or prejudice prospects of any candidate, as an electoral offence under Chapter III, Part VII of the RPA, 1951, with punishment of a minimum of 2 years of imprisonment. But, Executive has not taken appropriate steps in this regard till date. Similarly, the ECI, which has been conferred plenary power under Article 324, has also not taken appropriate steps in this regard. Hence, this Hon'ble Court is the only hope of citizens and may issue a writ, order or direction to curtail paid news and fake news to ensure free and fair election in spirit of Article 324 of the Constitution of India.

Free and fair election is the foundation of our democracy. However, this can only be achieved when the corrupt powers of black money and its influences are removed from electoral process. According to study conducted by the Election Commission of India, during the State Assembly elections held between 2011-2013, there were 1987 cases wherein notices for paid and fake news were issued to contesting candidates and 1727 cases wherein the practice of paid and fake news being prevalent was confirmed by the District Level Committees appointed by the ECI to control paid and fake news.

Paid news and fake news is a widespread phenomenon during election campaigns. This phenomenon of 'paid news' and its equivalent, political advertising being presented as news are issues that cannot be treated separately. The Press Council of India in its report on paid news had recommended that Paid News and Fake News should be declared to be corrupt practice. General public attaches great value to the news reports as distinguished from advertisements and paid news by political parties and candidates. This makes news items a very important source of information concerning political parties and candidates. But, paid news and fake news only masquerades as news and in actuality, are advertisements under the garb of news items. Thus, they totally mislead the electors. This raises potential concerns relating to the veracity of the claims and possible defamatory consequences of such news items and advertisements.

India's democratic setup is paradigm for many countries in the world due to its remarkable success over the past seven decades. The heart of India's democratic system witnesses regular elections with the participation

of the largest electorate in the world. In order to safeguard the core values of free and fair elections in this dynamic scenario, it is important to have a just unbiased electoral process with greater participation. However, there are certain challenges and issues that electoral system has faced over the years. Trust and confidence of citizens in electoral system can be affected if these challenges remain unattended. Thus, keeping in view these difficulties the Law Commission of India after conducting extensive study and research recommends certain changes that need to be taken up expeditiously to amend certain provisions of law. Taking forward a step in this direction, the Law Commission have made several electoral proposals to remove the glaring lacunae in the law. Many of these proposals have been already put forth in its 244<sup>th</sup> and 255<sup>th</sup> Report have remained unresolved. Some of the proposals pertain to areas, which have not been taken up previously by the Commission but arose due to implementation of certain laws or on the directions issued by the Courts. Petitioner sincerely believes that weeding out fake news will prove to be extremely useful in addressing the existing issues and challenges.

#### **LIST OF DATE**

- 14.10.2019: Petitioner withdrew the WP(C)1247/2019 with liberty to approach the High Court [**Annex P-1, page 14**]
- 23.10.2019: Petitioner filed WP(C)11394/2019 before the High Court of Delhi at New Delhi [**Annexure P-2, pages 15-32**]
- 24.10.2019: High Court adjourned the matter four times before hearing it finally on 9.12.2019. [**Annexure P-3, pages 33-36**]
- 04.03.2020: Hence this Special Leave Petition.

IN THE SUPREME COURT OF INDIA

(ORDER XXI RULE 3(1) (a))

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO 6218 OF 2020

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

(Arising out of impugned final judgment and order dated 09.12.2019 in

WP(C) 11394/2019 passed by the High Court of Delhi at New Delhi)

**IN THE MATTER OF:**

BETWEEN

POSITION OF PARTIES

Ashwini Kumar Upadhyay

High Court

This Court

Petitioner

Petitioner

S/o Sh. Suresh Chandra Upadhyay

Office: 15, M.C. Setalvad Chambers

Supreme Court, New Delhi-110001

Res: G-284, Govindpuram, Ghaziabad-201013

Verses

1. Union of India

Respondent-1

Respondent-1

Through the Secretary,

Ministry of Electronic & IT

CGO Complex, New Delhi-110003

2. Union of India

Respondent-2

Respondent-2

Through the Secretary

Ministry of Law & Justice,

Shastri Bhawan, New Delhi-110001

3. Election Commission of India

Respondent-3

Respondent-3

Through the Director Law

Nirvachan Sadan,

Ashoka Road, New Delhi-110001

TO: THE HON'BLE CHIEF JUSTICE  
AND LORDSHIP'S COMPANION JUSTICES  
OF THE HON'BLE SUPREME COURT OF INDIA  
HUMBLE PETITION OF ABOVE-NAMED PETITIONER  
THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. The petitioner is filing this Special Leave Petition under Article 136 of the Constitution against the impugned final judgment and order dated 09.12.2019 in WP(C) 11394/2019 passed by the High Court of Delhi, whereby the Court dismissed the petition, filed by the petitioner herein.

**2. QUESTIONS OF LAW:**

The following questions of law arise for consideration of this Hon'ble Court.

- a) Whether the High Court has not failed to appreciate that presently total number of twitter handles in India are around 35 million and total number of Facebook accounts are 350 million and around 10% twitter handles (3.5 million) and 10% facebook accounts (35 million) are duplicate/bogus/fake.
- b) Whether the High Court has not failed to appreciate that there are hundreds of fake twitter handles and bogus Facebook accounts in the name of eminent peoples and high dignitaries including the Hon'ble President of India, Vice President of India, Prime Ministers, Chief Ministers, Cabinet Ministers, Chief Justice of India and the Judges of the Supreme Court and High Courts. These fake twitter handles and Facebook accounts use real photo of constitutional authorities and eminent citizens. Therefore, common man rely upon the messages published from these twitter handles and facebook accounts.
- c) Whether the High Court has not failed to appreciate that fake news is the root cause of many riots including the recent riots in Delhi. Fake accounts are used to promote casteism, communalism, regionalism, linguism, radicalism and separatism, which endangers fraternity, unity and national integration.

- d) Whether the High Court has not failed to appreciate that Political parties and candidates use fake social media accounts for self-promotion and image building and to tarnish the image of opponent political parties and contesting candidates, especially during the elections.
- e) Whether the High Court has not failed to appreciate that many people use fake twitter handles and Facebook accounts for personal interests such as gaining financial income from one person and blackmailing his opponents.
- f) Whether the High Court has not failed to appreciate that right to know is integral part of Article 19 and exposure to accurate information is a necessity for electors to make an informed choice, but, fake news has tendency to influence this choice in negative manner. Publication of fake news involves use of black money, under-reporting of election expenses and indulging in other kinds of malpractices. The influence of black money also has the potential to result in an imbalanced election between people of different financial statures. Thus, in order to have free and fair elections, which is a basic dictum of democracy, level playing field is paramount and this cannot be achieved without weeding out fake social media accounts.

**3) DECLARATION IN TERMS OF RULE 3(2) :**

Petitioner states that no other petition for Special Leave to Appeal has been filed against the impugned judgment and order dated 09.12.2019.

**4) DECLARATION IN TERMS OF RULE 5 :**

Petitioner state that Annexures P-2 filed along with the instant petition is true and typed copy of the pleadings and documents, which formed parts of the record of the Court against whose order is sought for in this petition.

## **5) GROUND S:**

Petitioner crave the indulgence of this Hon'ble Court to grant Special Leave to Appeal, inter alia, on the following amongst the other grounds:

- A.** Because the High Court has failed to appreciate that presently total number of twitter handles in India are around 35 million and total number of Facebook accounts are 350 million and around 10% twitter handles (3.5 million) and 10% facebook accounts (35 million) are duplicate, bogus or fake.
- B.** Because the High Court has failed to appreciate that there are hundreds of fake twitter handles and bogus Facebook accounts in the name of eminent peoples and high dignitaries including the Hon'ble President of India, Vice President of India, Prime Minister, Chief Ministers, Cabinet Ministers, Chief Justice of India and the Judges of the Supreme Court and High Courts. These fake twitter handles and Facebook accounts use real photo of constitutional authorities and eminent citizens. Therefore, common man rely upon the messages published from these twitter handles and facebook accounts.
- C.** Because the High Court has failed to appreciate that fake news is the root cause of many communal riots including the recent riots in Delhi, in which many people lost their lives. Fake social media accounts are used to promote casteism, communalism, regionalism, linguism, radicalism and separatism, which endangers fraternity, unity and national integration.
- D.** Because the High Court has failed to appreciate that political parties and contesting candidates not only use fake social media accounts for self-promotion and image building but also to tarnish the image of opponent political parties and contesting candidates, especially during the elections.

- E. Because the High Court has failed to appreciate that many people use fake twitter handles and ghost facebook accounts for personal interests such as gaining financial income from one person and blackmailing his opponents.
- F. Because the High Court has failed to appreciate that right to know the truth is an integral part of Article 19 of the Constitution and exposure to accurate information is a necessity for electors to make an informed choice, but, fake news has a tendency to influence this choice in a negative manner.
- G. Because the High Court has failed to appreciate that publication of fake news involves use of black money, benami transaction, under-reporting of election expenses and indulging in other kinds of malpractices. Influence of black money has potential to result in an imbalanced election between people of different financial statuses. Thus, in order to have free and fair elections, which is a basic dictum of democracy, level playing field is paramount and this cannot be achieved without weeding out fake social media accounts.

6. **GROUND FOR INTERIM RELIEF** : No interim relief

7. **MAIN PRAYER**

It is therefore, respectfully prayed that this Hon'ble Court may be pleased to:

- a) Grant Special Leave to Appeal against impugned final judgment and order dated 09.12.2019 in WP(C) 11394/2019 passed by the High Court of Delhi; and
- b) pass such further order(s) or direction(s) as this Hon'ble Court may deem fit and proper in facts and circumstance of the case.

8. **PRAYER FOR INTERIM RELIEF** : No Interim Prayer

Drawn on: 03.03.2020

(Ashwani Kumar Dubey)

Filed on: 04.04.2020

ADVOCATE FOR PETITIONER



**IN THE SUPREME COURT OF INDIA**

(ORDER XXI RULE 3(1) (a))

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO 6218 OF 2020

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

**IN THE MATTER OF:-**

**Ashwini Kumar Upadhyay**

**.....Petitioner**

Versus

Union of India & Others

.....Respondents

**CERTIFICATE**

Certified that the Special Leave Petition (Civil) is confined only to the pleadings before the High Court whose order is challenged and the other documents relied upon in those proceedings, No additional facts, documents or grounds have been taken therein or relied upon, in the Special Leave Petition. It is further certified that, the copies of the documents/Annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of instructions given by the petitioner/person authorized by the petitioner whose affidavit is filed in support of the Special Leave Petition.

New Delhi

Dated: 04.03.2020

**(Ashwani Kumar Dubey)**

Advocate for the Petitioner

**IN THE SUPREME COURT OF INDIA**

(ORDER XXI RULE 3(1) (a))

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO 6218 OF 2020

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

**IN THE MATTER OF:**

**Ashwini Kumar Upadhyay**

**...Petitioner**

Versus

Union of India & Others

...Respondents

**AFFIDAVIT**

I, Ashwini Kumar Upadhyay, S/o Sh. Suresh Upadhyay, Aged about 44 years, Office at: 15, New Lawyers Chambers, Supreme Court, New Delhi-110001, R/o G-284, Govindpuram, Ghaziabad- 201013, U.P., presently at New Delhi, do hereby solemnly affirm and declare as under:-

1. I state that I am petitioner in the above mentioned Special Leave Petition and am well conversant with the facts and circumstances of the present case and hence, am competent to swear this affidavit.
2. I state that the accompanying Special Leave Petition from paras **1 - 8**, pages **7 - 11**, and synopsis and list of dates from pages **B - E**, and I.A. pages **37 - 38** have been drafted by my counsel as per my instructions and understood by me and are true to my knowledge. The contents of which may kindly be read as part and parcel of the present affidavit which are not being reproduced herein to avoid repetition.
3. That the annexures are true copies of their respective originals.

DEPONENT

**VERIFICATION:-**

Verified at Delhi on this 4<sup>th</sup> day of March, 2020 that the contents of my above said affidavit are true and correct to my knowledge and belief and nothing has been concealed there from.

DEPONENT

**IN THE SUPREME COURT OF INDIA**  
(ORDER XXI RULE 3(1) (a))  
CIVIL APPELLATE JURISDICTION  
I.A. No-.....OF 2020  
IN  
**SPECIAL LEAVE PETITION (CIVIL) NO 6218 OF 2020**  
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

**IN THE MATTER OF:-**

**Ashwini Kumar Upadhyay**

**.....Petitioner**

Versus

Union of India & Others

**.....Respondents**

**AN APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF  
IMPUGNED FINAL JUDGMENT AND ORDER DATED 09.12.2019 IN  
WP(C) 11394/2019 PASSED BY HIGH COURT OF DELHI AT NEW DELHI**

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TO,

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

**THE MOST RESPECTFULLY SHOWETH AS THE UNDER:**

1. That the present Special Leave Petition is being filed under Article 136 of the Constitution of India against the impugned final judgment and order dated 09.12.2019 in WP(C) 11394/2019 passed by the High Court of Delhi, whereby the Hon'ble High Court disposed of the writ petition filed by the petitioner herein. The contents of which are not being repeated herewith for the sake of brevity and may be read as part of this application.
2. That all the facts and circumstances have been set out in the accompanying Special Leave Petition. The petitioner craves leave of this Hon'ble Court to refer and rely upon contents of the same for the purpose of this application.

3. That due to urgency involved in the matter the Original/certified copy of Impugned against impugned final judgment and order dated 09.12.2019 in WP(C) 11394/2019 passed by the High Court of Delhi, is not available and the petitioner undertakes to file same as and when available.
4. That in the interest of justice the petitioner be exempted from filing certified copy of the impugned final judgment and order dated 09.12.2019 in WP(C) 11394/2019 passed by the High Court of Delhi.

**PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may kindly

be pleased to: -

- (a) exempt the petitioner from filing the impugned final judgment and order dated 09.12.2019 in WP(C) 11394/2019 passed by the High Court of Delhi.

And/Or

- (b) pass such other and further order(s) as 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, AS IN DUTY BOUND,  
SHALL EVERY PRAY.**

Filed by

**(ASHAWANI KR. DUBEY)**  
Advocate for Petitioner

Filed on: 04.03.2020