

THE 2019-2020 PRICE MEDIA LAW MOOT COURT COMPETITION

A, B AND X

(APPLICANTS)

V

STATE OF SURYA

(RESPONDENT)

MEMORIAL FOR APPLICANTS

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACmHPR / ACommHPR	The African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
CERD	The Committee on the Elimination of Racial Discrimination
CPA	Suryan Criminal Procedure Act
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
HRC	United Nations Human Rights Committee
IACtHR	Inter-American Court of Human Rights
NGO	Non-Governmental Organisations
ICCPR	International Covenant on Civil and Political Rights
PA	Suryan Penal Act
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
US	United States

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Office of the United Nations High Commissioner for Human Rights (OHCHR), Twenty-Seventh Session 'Annual report of the United Nations High Commissioner for Human Rights on The Right to Privacy in the Digital Age' (30 June 2014) A/HRC/27/37	13
Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence' (11 January 2013) UN Doc A/HRC/22/17/Add 4	30, 31, 32, 33, 34, 35, 36
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UN Security Council, 'Implementation of Security Council Resolution 2178 (2014) by States affected by foreign terrorist fighters (2 September 2015) S/2015/683	13
United Nations Human Rights Committee (HRC), CCPR General Comment No. 16, Article 17 (Right to Privacy): The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988	2, 5, 8, 9
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United Nations Human Rights Committee (HRC), CCPR General comment No. 34, Article 19: Freedoms of opinion and expression (12 September 2011)	8, 20, 21, 24, 25, 31
United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur of the Commission of Human Rights on freedom of religion or belief’ U.N. Doc. A/60/399 (30 September 2005)	23
United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on freedom of religion or belief’ U.N. Doc. A/HRC/31/18 (23 December 2015)..	26, 30, 31, 33
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United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (16 May 2011) A/HRC/17/27	5
United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (17 April 2013) A/HRC/23/40	3, 10, 11, 12, 13
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United Nations Human Rights Council (UNHRC), ‘Special Rapporteur on freedom of religion or belief’ <i>Interim report of the Special Rapporteur on freedom of religion or belief</i> U.N. Doc. A/67/303 (Aug. 13, 2012).....	23, 25, 26, 27, 28
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Cases from HRC

<i>G v Australia</i> Communication No. 2172/2012 U.N. Doc. CCPR/C/119/D/2172/2012	8
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<i>Silver and Others v the United Kingdom</i> App nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75 (ECtHR, 25 March 1983).....	12
<i>Sinan Işık v Turkey</i> App no. 21924/05 (ECtHR, 2 May 2010).....	11, 36
<i>Skalka v Poland</i> App no. 43425/98 (ECtHR, 27 May 2003)	48
<i>Smirnova v Russia</i> App nos. 46133/99 and 48183/99 (ECtHR, 24 October 2003).....	2
<i>Soltsyak v Russia</i> App no. 466/05 (ECtHR, 10 February 2011).....	26
<i>Soulas v France</i> App no. 15948/03 (ECtHR, 10 July 2009)	45
<i>Standard Verlags GmbH v Austria (no. 2)</i> App no. 21277/05 (ECtHR, 4 June 2009.....	40, 47
<i>Steel & Morris v UK</i> App no. 68416/01 (ECtHR, 16 February 2005)	28
<i>Stjerna v Finland</i> App no. 18131/91 (ECtHR, 25 November 1994).....	6
<i>Stoll v Switzerland</i> Application No 69698/01 (ECtHR, 10 December 2007).....	21, 47
<i>Stomakhin v Russia</i> App no. 52273/07 (ECtHR, 9 May 2018)	47
<i>Strand Lobben and Others v Norway</i> [GC] App no. 37283/13 (ECtHR, 10 September 2019)	18

<i>Stubbings and Others v The United Kingdom</i> App no. 36-37/1995/542-543/628-629 (ECtHR, 22 October 1996).....	18, 19
<i>Sürek v Turkey (No. 1)</i> [GC] Application 26682/95 (ECtHR, 8 July 1999).....	48, 49
<i>The Sunday Times v The United Kingdom (No.1)</i> App no. 6538/74 (ECtHR, 26 April 1979)	12, 17, 29, 30, 37, 40
<i>Tønsbergs Blad AS and Haukom v Norway</i> App no. 510/04 (ECtHR, 1 March 2007).....	36
<i>Trade Union of the Police in the Slovak Republic and Others v Slovakia</i> App no. 11828/08 (ECtHR, 25 September 2012)	18
<i>Tyrer v United Kingdom</i> App no. 5856/72 (ECtHR, 25 April 1978)	3
<i>Ungváry and Irodalom Kft v Hungary</i> , App no. 64520/10, (ECtHR, 3 December 2013).....	46
<i>Uzun v Germany</i> App no. 35623/05 (ECtHR, 2 September 2010).....	17, 23
<i>Verein Gegen Tierfabriken Schweiz (VgT) v Switzerland (No.2)</i> App no. 32772/02 (ECtHR, 30 June 2009)	12
<i>Volker und Markus Schecke GbR v Land Hessen and Hartmut Eifert</i> Joined Cases C-92/90 and C-93/90 (17 June 2010).....	6
<i>Von Hannover v Germany (no. 2)</i> App nos. 40660/08 and 60641/08 (ECtHR, 7 February 2012)	16
<i>Von Hannover v Germany</i> App no. 59320/00 (ECtHR 24 June 2004)	47
<i>Vukota-Bojić v Switzerland</i> App no. 61838/10 (ECtHR, 18 October 2016)	3,34
<i>Weber and Saravia v Germany</i> App no.54934 (ECtHR,29 June 2006)	17, 20

<i>Wingrove v The United Kingdom</i> App no. 17419/90 (ECtHR, 25 November 1996)	30
<i>X and Y v the Netherlands</i> App no. 8978/80 (ECtHR, 26 March 1985).....	4, 18
<i>Zana v Turkey</i> [GC] App no. 69/1996/688/880 (ECtHR, 25 November 1997)	20, 48, 48

Cases from the IACtHR

<i>Airey v Ireland</i> IACtHR Series A no. 32 (9 October 1979)	10
<i>Carvajal Carvajal v Colombia</i> IACtHR Serie C No. 352, (13 March 2018).....	21
<i>Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism</i> (Arts 13 and 29 American Convention on Human Rights) IACHR Series A No 5 (International court decisions) (13 November 1985)	22
<i>Escher v Brazil</i> IACtHR Series C No. 200 (Merits, Reparations and Costs) (6 July 2009).....	5,8, 11
<i>Escué-Zapata v Colombia</i> , IACtHR Series C No. 165 (Merits, Reparations and Costs)(4 July 2007).....	12
<i>Fontevicchia y D'Amico v Argentina</i> , IACtHR Series C No, 238 (Merits, Reparations and Costs) (29 November 2011)	2, 3, 8, 10
<i>Francisco Martorell v Chile</i> IACtHR OEA/Ser L/V/II.95 Doc 7 rev 234 (3 May 1996).....	21
<i>Gomes Lund v Brazil</i> IACtHR C No. 219, (4 November 2010).....	21
<i>Herrera-Ulloa v Costa Rica</i> IACtHR Series C No 107 (2 July 2004)	21, 22, 26, 28

<i>Kimel v Argentina</i> IACtHR Series C No. 177 (Merits, Reparations and Costs) (2 May 2008)	22, 29, 30
<i>Luisiana Ríos and Others v The Republic of Venezuela</i> Case no. 12.441 (IACtHR, July 2008)	8
<i>Palamara-Iribarne v Chile</i> IACtHR Series C No. 135, (Merits, Reparations and Costs) (22 November 2005)	22
<i>Ricardo Canese v Paraguay</i> IACtHR Series C No. 111 (Merits, Reparations and Costs) (31 August 2004)	22
<i>Usón Ramírez v Venezuela</i> IACtHR Series C No. 207 (Merits, Reparations and Costs) (20 November 2009)	21, 22, 23

Cases from the ACtHR

<i>Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinabe Human and Peoples' Rights Movement v The Republic of Burkina Faso</i> App. No. 013/2011 (ACtHR, 28 March 2014)	30
<i>Lohe Issa Konate v Burkina Faso</i> App no. 004/2013 (ACtHR, 5 December 2014) ...	17, 30, 42

Cases from the ACommHPR

<i>Interights v Mauritania</i> No 242/2001, (2004) AHRLR 87 (ACmHPR)	21
<i>Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa and Zimbabwe</i> Comm no 294/04, (2004) AHRLR 268 (AcommHPR)	21

Cases from Other Jurisdictions

<i>Asia Bibi v State of Pakistan</i> , (Supreme Court) Criminal Appeal No. 39-L of 2015 (Pakistan)	7
<i>Bible Believers v Wayne County</i> , 805 F.3d 228 (2015) (US)	35
<i>Brandenburg v Ohio</i> 395 US 444 (1969)	35
<i>Caruana Galizia v The Planning Authority</i> , Constitutional Application no. 79/2018/LSO, 16 July 2019 (Malta)	35
<i>Chaplinsky v New Hampshire</i> 315 US 568 (1942)	36
<i>Coleman v Power</i> , 220 CLR 1 (2004) (Australia)	36
<i>Dagg v Canada (Minister of Finance)</i> [1997] 2 SCR 403 (Canada)	2
Decision 2010 <i>Hun-Ma</i> 47, 252 (consolidated) announced 28 August 2012	5
<i>Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resource and Others and Kärntner Landesregierung and Others</i> [GC] Joined Cases C-293/12 and C-594/12 (CJEU, 8 April 2014)	6
<i>Garrison v Louisiana</i> 1964 379 U.S. 64	30
Joined Cases C-236/08, C-237/08 and C-238/08 <i>Google France and Google v Louis Vuitton</i> [2010]	37
<i>Justice K.S. Puttaswamy (Retd.) and Anr. v Union of India and Ors</i> Writ Petition (Civil) No.494 of 2012 (India)	1
<i>L'oreal SA v eBay</i> [GC] C-324/09 (CJEU, 12 July 2011)	52
<i>McIntyre v Ohio Elections Commission</i> 514 U.S. 334 (1995)	5

<i>NAACP v Claiborne Hardware Co.</i> 458 U.S. 886 (1982).....	36
<i>New York Times Co. v. Sullivan</i> 1964 376 U.S. 254.....	30
<i>Patrick Breyer v Bundesrepublik Deutschland</i> App no. C-582/14 (19 October 2016).....	6
<i>R v Cole</i> 2012 SCC 53 (Canada)	7
<i>R v Morelli</i> [2010] SCC 8 (Canada)	7
<i>R v Spencer</i> 2014 SCC 43 (Canada).....	2, 3, 5, 6, 7
<i>R v Tessling</i> 2004 SCC 67 (Canada).....	3
<i>R. v Dymont</i> [1988] 2 SCR 417 (Canada).....	3
<i>R. v Vu</i> [2013] SCC 60 (Canada).....	7
<i>R.A.V. v City of St. Paul</i> 505 US 377 (1992).....	36
<i>Singhal v Union of India</i> , Writ Petition No. 167 of 2012 (India).....	36
<i>Talley v California</i> , 362 U.S. 60 (1960)	5
<i>Texas v Johnson</i> 491 US 397 (1989)	35
<i>United States v Alvarez</i> , 132 S. Ct. 2537 (2012) (US)	35
<i>Watchtower v Vill. of Stratton</i> 536 U.S. 150 (2002).....	5

Statutes and Constitutions

Act on the Protection of Personal Data 1998 (Portugal).....	9
Arunachal Pradesh Freedom of Religion Act, Act 4 of 1978 (India)	23
Bhutan Constitution	22

Canada Criminal Code 1985	36
Chhattisgarh Freedom of Religion (Amendment) Act, Act 18 of 2006 (India).....	23
Constitution of Portugal 2005	9
Constitution of Spain 1978	9
Constitution of the Republic of Croatia 2010	9
Constitution, (Ecuador).....	6
Constitution, (Paraguay)	6
Constitution, (Argentina)	6
Constitution, (Mozambique)	6
Criminal Justice Act 2003, (United Kingdom)	30
Criminal Procedure Code 2004, (Peru).....	6
Criminal Procedure Code 2004, (El Salvador)	6
Danish Data Protection Act 2018 (Denmark)	9
Data Protection Act 2018 (UK)	3
Evidence Act 2006, (New Zealand).....	6
Evidence Amendment (Journalists' Privilege) Act 2011 (Australia)	6
Federal Code of Criminal Procedures, (Mexico).....	6
Federal Law 12683/2012 (Brazil)	13
Gujarat Freedom of Religion Act, Act 24 of 2003 (India).	23
Himachal Pradesh Freedom of Religion Act, Act 31 of 2006 (India)	23

Jharkhand Freedom of Religion Act, Act 17 of 2017 (India)	23
Law 16.099, (Uruguay).....	6
Law 67, (Panama)	6
Law for Journalism 4.819, (Venezuela).....	6
Law No. 19.733 (Chile)	6
Madhya Pradesh Freedom of Religion Act, Act 27 of 1968 (India).....	23
Nepal Constitution	22
Orissa Freedom of Religion Act, Act 2 of 1967 (India)	23
Penal Code (Amendment) Act of Bhutan 2011	22
Personal Data Processing Act 2019 (Czech Republic)	9
Personal Data Protection Act 2002 (Bulgaria).....	9
Personal Information Protection and Electronic Documents Act (PIPEDA) 2000 (Canada)....	9
Police and Criminal Evidence Act (PACE) Code G, 1984 (United Kingdom)	13
Police and Criminal Evidence Act, 1983 (United Kingdom)	13
Press Law 7/06, (Angola).	6
Religious Conversion Bill 2015, (Myanmar).....	22
Religious Organizations Act of Bhutan 2007	22
Slovenia Criminal Procedure Act (Official Gazette no. 8/06).....	9
The Muluki Ain (General Code), (Nepal).....	22
The Privacy Act 1985, (Canada).....	9

Uttarakhand Freedom of Religion Act, Act 14 of 2018 (India).....	23
--	----

Books

Francis D. Wormuth and Harris G. Mirkin, ‘The Doctrine of The Reasonable Alternative <i>UTAH Law Review</i> (Vol. 9 1964), Vol.9	19
Guy Miller Struve, ‘The Less-Restrictive-Alternative Principle and Economic Due Process <i>Havard Law Review</i> (1967), Vol.80, No.7.....	19
Ivana Roagna, ‘Protecting the right to respect for private and family life under the European Convention of Human Rights’, Council of Europe Human Rights Handbook, 2012.....	2
Manfred Nowak, <i>U.N. Covenant on Civil and Political Rights</i> (2nd revised edition, N.P. Engel Publisher (2005)).....	10, 11
Marc J. Bossuyt, ‘Guide To The “Travaux Préparatoires” of the International Covenant on Civil and Political Rights’ Martinus Nijhoff Publishers (1987)	10
Meghan G. Fischer, <i>Anti-Conversion Laws and the International Response</i> , 6 Penn. St. J.L. & Int'l Aff. 1 (2018)	22, 23, 27
South Asia Human Rights Documentation Centre, ‘Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights’ Economic and Political Weekly (2008), Vol. 43, No. 2	28
Ursula Kilkelly, <i>The right to respect for private and family life: A guide to the implementation of Article 8 of the European Convention of Human Rights</i> (Human Rights Handbook No. 1 2001).....	2

Voss & Renard, ‘Proposal For An International Taxonomy On The Various Forms of The “Right To Be Forgotten”: A Study On The Convergence Of Norms’, <i>Colorado Technology Law Journal</i> (2016), Vol.14, No.2	1
Warren and Brandeis, ‘The Right to Privacy’, <i>Harvard Law Review</i> (1890), Vol.4, No. 5.....	1
Will T. DeVries, ‘Protecting Privacy in the Digital Age’ <i>Berkeley Technology Law Journal</i> (2003), Vol.18, No.1	2

Articles

Agnes Callamard, ‘Expert meeting on the links between articles 19 and 20 of the ICCPR: Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence’ (UN HCHR Experts Papers, Geneva, 2 – 3 October 2008).....	10
American Civil Liberties Union (ACLU), ‘Privacy Rights in the Digital Age’ A Proposal for a New General Comment on the Right to Privacy under Article 17 of the International Covenant on Civil and Political Rights	3
CoE, ‘Recommendation of the Committee of Ministers to Member States on “Hate Speech”’ (Recommendation 97(20), 1997) (‘CoE on Hate Speech’).....	29
Council of Europe, ‘Ethical Journalism and Human Rights’ (CommDH/IssuePaper1, 2011)	29
Dennis F. Hernandez, ‘Litigating the Right to Privacy: A Survey of Current Issues’ 446 PLL/PAT (1996)	2
European Data Protection Supervisor, ‘Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit’ (11 April 2017)	13

European Data Protection Supervisor, Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit (11 April 2017).....	14
IACtHR ‘Report of the Special Rapporteur for Freedom of Expression’ (30 December 2009) OEA/Ser L/V/II Doc 51	21
United States Commission on International Religious Freedom, ‘Limitations on Minorities’ Religious Freedom in South Asia’ (November 2018).....	22
Working Party 29, Opinion 5/2009 on online social networking, WP 163, 12 June 2009.....	37

Materials from the Internet

‘Ethnic violence threatens to tear Ethiopia apart’ 2 November 2019, < https://www.economist.com/middle-east-and-africa/2019/11/02/ethnic-violence-threatens-to-tear-ethiopia-apart?frsc=dg%7Ce > accessed 5 November 2019	27
‘Extinction Rebellion protest ban was 'abuse of power', court hears’ (<i>The Guardian</i> 24 October 2019) < https://www.theguardian.com/uk-news/2019/oct/24/extinction-rebellion-begin-legal-challenge-against-protest-ban > accessed 28 October 2019	37
‘Guidelines 3/2019 on Processing of Personal Data Through Video Devices’ 10 July 2019, < https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_201903_videosurveillance.pdf > accessed 2 November 2018	4
‘Hong Kong: Anger as face masks banned after months of protests’ (<i>BBC News</i> 4 October 2019) < https://www.bbc.com/news/world-asia-china-49931598 > accessed 28 October 2019.....	37

‘LinkedIn User Agreement’ (<i>LinkedIn</i> , 8 May 2018) < https://www.linkedin.com/legal/user-agreement > accessed 4 November 2019	38
‘Manila Principles on Intermediary Liability’ < https://www.manilaprinciples.org/ > accessed 3 November 2019	10
‘Terms of Service’ (Quora, 23 October 2018) < https://www.quora.com/about/tos > accessed 4 November 2019	38
‘What Names are Allowed on Facebook?’ (Facebook) < www.facebook.com/help/112146705538576 > accessed 4 November 2019.	38
A Global Civil Society Initiative, ‘Manila Principles on Intermediary Liability: Best Practices Guidelines for Limiting Intermediary Liability for Content to Promote Freedom of Expression and Innovation’ 24 March 2015, < https://www.eff.org/files/2015/10/31/manila_principles_1.0.pdf > accessed 4 November 2019	19, 37
Article 17-B. Available at: Mapping Laws on Government Access to Citizens’ Data: Brazil’ < https://www.eff.org/es/node/72806?page=7 > accessed 2 November 2019	13
BBC News, ‘Ethiopia violence: Facebook to blame, says runner Gebrselassie’ (2 November 2019), < https://www.bbc.com/news/world-africa-50276603 > accessed 3 November 2019.	37
BBC News, ‘Why India wants to track WhatsApp messages’ (30 October 2019) < https://www.bbc.com/news/world-asia-india-50167569 > accessed 2 November 2019	37
Lori L. Tharps, ‘The Difference between Racism and Colourism’ 6 October 2016, < https://time.com/4512430/colorism-in-america/. > accessed 29 October 2019.....	27

Shanoor Seervai, ‘The Arguments for and Against a National Anti-Conversion Law’ WALL
ST. J. 9 January 2015, <[http://blogs.wsj.com/indiarealtime/2015/01/09/the-arguments-for-
and-against-a-national-anti-conversion-law/](http://blogs.wsj.com/indiarealtime/2015/01/09/the-arguments-for-and-against-a-national-anti-conversion-law/) > accessed 5 November 2019.....28

Stefan Sottiaux, ‘The “Clear and Present Danger” Test in the Case Law of the European Court
of Human Rights’ 2003, < https://www.zaerv.de/63_2003/63_2003_3_a_653_680.pdf >
accessed 5 November 2019 13

STATEMENT OF RELEVANT FACTS

Surya and the Tarakans

1. Surya's population of 25 million people consist of 90% native ethnic Suryans and 8-10% economic migrants from neighbouring countries, including Chandra.
2. The majority of Suryans profess the 'Suryan' faith, the official religion of Surya which involves the worship of the sun.
3. An ethno-religious civil war engulfing Chandra for decades caused 10,000 Tarakans – who subscribe to *andha*, a minority belief in Chandra – to flee and seek asylum in Surya.
4. A notable practice of the *andha* philosophy is the symbolic wearing of blindfolds premised on the belief that sight is a source of temptation. Some devout believers wear blindfolds in public, during public meditation or during processions. Between 2015 and 2019, the rate of ethnic Suryans adopting the *andha* faith rose sharply from 0.2% to 2%.

Hiya!

5. Hiya! is a registered company in Surya that operates a free online messaging application used by 75% of Suryans. User registration requires only a valid mobile phone number (but not a real name). The Hiya! app has two basic functions: *first*, a private 'bilateral chat' that connects two users on a peer-to-peer basis; *second*, a public 'broadcast channel' where users can stream live or pre-recorded audio-visual content.
6. Users may subscribe to channels to view content broadcasted in real time, and may receive a 'ping' from the broadcaster whenever a broadcast is about to begin in a few minutes or already on-going. A broadcaster can send mass messages to subscribers via bilateral chat. Every broadcast channel comes with a unique 'link' that can be shared and viewed by any user including non-subscribers.

7. Hiya! developed an upload filter called ‘first Artificially Intelligent test of hatred!’ (fAIth!) which blocks broadcasts containing ‘hate speech’ as per its ‘Standards on Hate Speech’ (with an accuracy rate of 87% according to one university study).

Anti-andha movement

8. In January 2019, Suryan nationalist groups launched a campaign demanding the government to introduce laws to ban any blasphemy of the Suryan faith and prevent proselytism and conversion of Suryans into *andha*.
9. SuryaFirst, a prominent group in Suryan society, accused the Tarakans for “*corrupting their social fabric*” and urged for the prohibition of the wearing of blindfolds in public. SuryaFirst maintains a broadcast channel on Hiya! called ‘Seeing is Believing’ with over 100,000 subscribers in Surya.
10. On 20 January 2019, the Suryan government announced the holding of public consultations concerning a new law to regulate proselytism with the specific intent to protect the ‘forefathers of the original faith’. SuryaFirst launched a series of broadcast advocating for such law and calling for its subscribers’ support. Within a week, the link to an online petition with over 30,000 signatures was being circulated over Hiya!
11. On 15 February 2019, Section 220 of the PA was amended to criminalise forced conversion from one faith to another (with a proviso that “*the voluntary returning to the forefathers’ original faith or one’s own original faith*” does not constitute as conversion).

The Sun Prince

12. On 16 February 2019, SuryaFirst broadcasted a video message by a masked individual identifying himself as the ‘Sun Prince’ stating *inter alia*: “...*The Divine Sun is under threat since many who see the light are now turning away to darkness. Today, the true Sons of*

Surya must rise against the unlawful actions of the sightless. We shall strip them of their blindfolds, and force them to see the light...”.

13. A live video followed, featuring a group of masked individuals approaching a blindfolded male person on a street in the capital of Surya. They shouted at the person to remove the blindfold as it was ‘against the law’ and chanted ‘seeing is believing’. The group leader tore off the person’s blindfold without resistance.
14. The broadcast ended with the Sun Prince’s statement: *“Immediately go shine a light on Suryans who have adopted the andha blindness. Seeing is believing”*.
15. The broadcast was downloaded, saved and shared by Hiya! users. Within 24 hours, over 250,000 had viewed the video and the sharing continued for the next few days. The broadcast was not blocked by fAIth! as the algorithm had been trained to consider Section 220(3) of the PA which affirmed the special position of the Suryan faith.

The copycat videos

16. From 18 to 28 February 2019, over 100 videos of groups (masked and unmasked) assaulting blindfolded persons on the streets were shared on Hiya!. In one video, the group shone bright flashlights into the face of a blind young woman whilst chanting ‘seeing is believing’.
17. Such videos were not featured on SuryaFirst’s broadcast channel.
18. On 28 February 2019, SuryaFirst broadcasted a pre-recorded video message showing the Sun Prince thanking his *“faithful followers for taking the message of light to the dark streets of Surya”*.

Criminal investigations

19. On 1 March 2019, two separate complaints were filed.

20. The first complaint was brought by S, the blindfolded male person in the original video broadcasted on SuryaFirst's channel on 16 February, under the newly amended Section 220 of the PA for 'forcible conversion'.
21. The second complaint was brought by T, a visually-impaired young woman in another video, under Section 300 of the PA for 'advocacy of hatred'.
22. In investigating both complaints, the Suryan prosecutor sought assistance from Hiya! by requesting all personal data pertaining to the 'broadcasters' of the SuryaFirst channel and the 'Sun Prince'. Hiya!'s legal team responded positively that it was willing to cooperate if a formal letter was sent.
23. Pursuant to a formal letter by the Suryan prosecutor, Hiya! released the mobile phone numbers of two broadcasters linked to the channel. Also, Hiya! blocked the SuryaFirst broadcast channel without notification.
24. Through a judicial warrant issued to the mobile phone service providers, the police identified A and B as the broadcasters of SuryaFirst's channel.
25. Upon being taken into custody, A and B exposed X as the Sun Prince during police interrogation alongside their lawyer.

Criminal convictions

26. On 1 May 2019, X was charged under Section 220, whilst A and B were charged under Section 300. The Suryan Criminal High Court delivered a verdict of conviction in both cases. X was handed a suspended sentence of two-year imprisonment, whilst A and B were each imposed a fine of USD 2,000.
27. A, B and X appealed against the verdicts before the Suryan Appellate Court on the basis that their convictions violated their constitutional right to privacy and freedom of

expression under Articles 8 and 10 of the Suryan Constitution. The Appellate Court dismissed their appeals and upheld the convictions.

28. After their convictions, Hiya! permanently banned A, B and X on its app, and terminated the SuryaFirst broadcast channel.

29. Having exhausted all domestic remedies, A, B and X filed the present applications to the Universal Court of Human Rights for violations of Articles 17 and 19 of the ICCPR.

STATEMENT OF JURISDICTION

X, A and B, and the state of Surya, which is a party to the International Covenant on Civil and Political Rights (ICCPR), have submitted their differences to the Universal Court of Human Rights ('this Court'), and hereby submit to this Court their dispute concerning Articles 17 and 19 of the ICCPR.

On the basis of the foregoing, this Court is requested to adjudge the dispute in accordance with the rules and principles of international law, including any applicable declarations and treaties.

QUESTIONS PRESENTED

- I. Whether Surya's decision to obtain personal data from Hiya! and from certain other users violated X's rights under article 17 of the ICCPR?

- II. Whether Surya's decision to obtain personal data regarding A and B from Hiya! violated their rights under article 17 of the ICCPR?

- III. Whether Surya's prosecution and conviction of X violated his rights under article 19 of the ICCPR?

- IV. Whether Surya's prosecution and conviction of A and B violated their rights under article 19 of the ICCPR?

SUMMARY OF ARGUMENTS

- I. Surya's decision to obtain personal data from Hiya! and from certain other users violated the two-stage test under Article 17 of the ICCPR. At the *first stage*, Surya interfered with X's right to informational privacy. *First*, the identification of X as the Sun Prince constitutes an interference to X's right to personal data protection. *Second*, there was an interference to X's right to anonymous communication as anonymity is essential for individuals to exercise their freedom of expression without fear of reprisal and repression. *Third*, there was an interference to X's right to manifest his religious beliefs when his identity was unmasked at trial which exposed the full extent of his religious inclinations to the public. At the *second stage*, the interference was unlawful and arbitrary. *First*, the disclosure of X's identity was not provided by law as the requirement to obtain a judicial warrant under the CPA is without any defined conditions or parameters. *Second*, the disclosure of X's identity did not pursue a legitimate aim as the disclosure of X's identity was obtained by the Suryan prosecutor and police without any compelling legitimate reason. *Third*, the disclosure of X's identity was disproportionate to achieving such desired aim because (i) the disclosure was obtained without judicial authorisation; and (ii) there was no reasonable grounds to suspect X of committing a serious crime (e.g. terrorism, drug trafficking, and child pornography).
- II. Surya's decision to obtain personal data regarding A and B from Hiya! violated their rights under article 17 of the ICCPR. At the *first stage*, Surya interfered with A and B's right to privacy. *First*, there was an interference to A and B's right to personal data protection when Hiya! disclosed A and B's mobile numbers to the Suryan prosecutor without their prior consent. *Second*, there was an interference to A and B's right to anonymous communication as Internet publishers and 'public watchdog' to impart

information and ideas on public interest issues, and also the right of the public to receive them. *Third*, there was an interference to A and B's right to manifest their religion in secrecy. At the *second stage*, the interference was unlawful and arbitrary. *First*, the disclosure of A and B's identities was not provided by law as Suryan law does not prescribe with sufficient precision under what conditions and to what extent their online anonymity can be pierced pursuant to criminal investigations. *Second*, the disclosure of A and B's identities did not pursue a legitimate aim as the Suryan prosecutor and police failed to furnish sufficient justifications to identify the broadcasters behind SuryaFirst. *Third*, the disclosure of A and B's identities was disproportionate to achieving such desired aim because: (i) the disclosure was obtained without judicial authorisation; and (ii) any threat to public order (if at all) was posed by the mobs on the streets assaulting *andha* believers rather than A and B.

- III. The prosecution and conviction of X violated his right to freedom of expression under Article 19 of the ICCPR. *First*, the prosecution and conviction of X was not provided by law as the definition of "force" in Section 220 of the PA was vague, overly broad and lacked sufficient precision required for criminal codification. *Second*, the prosecution and conviction of X did not pursue a legitimate aim since the enforcement Section 220 of the PA did not conform with any of the permissible restrictions of Article 19(3) nor the objectives of the ICCPR *i.e.* the principle of non-discrimination. *Third*, the prosecution and conviction of X was disproportionate from a criminal law aspect: (i) X validly exercised his right of religious expression (lack of *mens rea*), (ii) X's statement lacked any element of force (lack of *actus reus*), (iii) re-conversion to the Suryan faith is not a crime (exception); or (iv) alternatively, the conviction of X was disproportionate (sentencing).

IV. Surya's prosecution and conviction of A and B violated their right to freedom of expression under Article 19 of the ICCPR. First, the prosecution and conviction of A and B was not provided by law as Section 300 of PA does not conform with the strict limitations of Article 20(2) of the ICCPR nor in line with its *raison d'être* in protecting vulnerable minorities only. Second, the prosecution and conviction did not pursue a legitimate aim since the risk of harm to *andha* believers and the visually impaired cannot be attributable to A and B. Third, the prosecution and conviction was disproportionate because: (i) A and B did not fulfil the six-element test of 'hate speech' under the Rabat Plan of Action; or alternatively, (ii) criminal sanction is disproportionate as primary blame lies with Hiya! for failing to stem the copycat videos of mob attacks on *andha* believers from going viral online and perpetuating discrimination against them.

ARGUMENTS

I. SURYA’S DECISION TO OBTAIN PERSONAL DATA FROM HIYA! AND FROM CERTAIN OTHER USERS VIOLATED X’S RIGHTS UNDER ARTICLE 17 OF THE ICCPR

1. Article 17 of the ICCPR provides that “*everyone has the right to the protection of the law*”¹ against “*arbitrary or unlawful interference with his privacy, family, home or correspondence*”.² The right to privacy has also been recognised in UNGA resolutions³ and regional human rights instruments in Europe,⁴ America⁵ and Asia.⁶ Such right refers to the right to live privately away from unwanted attention,⁷ or put simply, the ‘right to be left alone’.⁸

¹ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 17(2).

² ICCPR (n 1), art 17(1).

³ Universal Declaration of Human Rights (UDHR) (adopted 10 December 1948) UNGA Res 217A (III, art 12); The right to privacy in the digital age (adopted 18 December 2013) UNGA Res A/RES/68/167, [1].

⁴ European Convention on Human Rights (ECHR) (adopted 4 November 1950, entered into force 3 September 1953), art 8; Charter of Fundamental Rights of the European Union (adopted 2 October 2000, entered into force 1 December 2009), art 7.

⁵ American Convention on Human Rights (ACHR) (adopted 22 November 1969, entered into force 18 July 1978), art 11; American Declaration on the Rights and Duties of Persons (adopted April 1948, entered into force 2 May 1948), art V.

⁶ Arab Charter on Human Rights (adopted 15 September 1994, entered in force 16 March 2008) art 17; ASEAN Human Rights Declaration (adopted 18 November 2012), art 21.

⁷ *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* [GC] App no. 931/13 (ECtHR, 27 June 2017) [130]; *Smirnova v Russia* App nos. 46133/99 and 48183/99 (ECtHR, 24 October 2003) [95].

⁸ *Justice K.S. Puttaswamy (Retd.) and Anr. v Union of India and Ors* Writ Petition (Civil) No.494 of 2012 (India) [299], [323], [409]; Warren and Brandeis, ‘The Right to Privacy’, *Harvard Law Review* (1890), Vol.4, No. 5, 193; Voss & Renard, ‘Proposal For An International Taxonomy On The Various Forms of The “Right To Be Forgotten”’: A Study On The Convergence Of Norms’, *Colorado Technology Law Journal* (2016), Vol.14, No.2, 284.

2. The legality of Surya’s acquisition of personal data regarding X involves a two-stage assessment:⁹ [A] whether such acquisition interferes with X’s right to privacy under Article 17; and if yes, [B] whether such interference was unlawful or arbitrary.

A. Surya Interfered with X’s Right to Privacy

3. The ICCPR being a human rights treaty is a ‘living instrument’ which must be interpreted in light of present day conditions¹⁰ and in harmony with other rules of international law.¹¹
4. Privacy is a broad term¹² not susceptible to exhaustive definition.¹³ The right of privacy ensures that individuals enjoy a private sphere in their lives, protected from the intervention, knowledge, or disclosure of the State or third parties.¹⁴ Generally, there are

⁹ United Nations Human Rights Committee (HRC), CCPR General Comment No. 16, Article 17 (Right to Privacy): The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988 [4]; Ivana Roagna, ‘Protecting the right to respect for private and family life under the European Convention of Human Rights’, Council of Europe Human Rights Handbook, 2012, 10-11; Ursula Kilkelly, The right to respect for private and family life: A guide to the implementation of Article 8 of the European Convention of Human Rights (Human Rights Handbook No. 1 2001), 8-9.

¹⁰ *Tyrer v United Kingdom* App no. 5856/72 (ECtHR, 25 April 1978) [10]; *Glor v Switzerland* App no. 3444/04 (ECtHR, 30 April 2009) [53],[76]; *Lautsi and Others v Italy* App no. 30814/06 (ECtHR, 18 March 2011) [66]; *K.U. v Finland* App no. 2872/02 (ECtHR, 2 December 2008) [44]; *Christine Goodwin v the United Kingdom* App no. 28957/95 (ECtHR, 11 July 2002) [74].

¹¹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force, 27 January 1980), art 31(3)(c); *Magyar Helsinki Bizottság v Hungary* [GC] App no. 18030/11 (ECtHR, 8 November 2016) [123]; *Al-Adsani v the United Kingdom* [GC] App no. 35763/97 (2001) [55]; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland* [GC] App no. 45036/98 (2005) [150], *Hassan v the United Kingdom* [GC] App no. 29750/09 (ECtHR, 16 September 2014) [77], [102].

¹² *S. And Marper v The United Kingdom* App nos. 30562/04 and 30566/04 (ECtHR, 4 December 2008) [66]; *Vukota-Bojić v Switzerland* App no. 61838/10 (ECtHR, 18 October 2016) [52]; *Satakunnan v Finland* (n 7) [129]; *Peck v United Kingdom* App no. 44647/98 (ECtHR, 28 January 2003) [57]; *R v Spencer* 2014 SCC 43 (Canada) [35]; *Dagg v Canada (Minister of Finance)* [1997] 2 SCR 403 (Canada) [67].

¹³ Will T. DeVries, ‘Protecting Privacy in the Digital Age’ *Berkeley Technology Law Journal* (2003), Vol.18, No.1, 284; Dennis F. Hernandez, ‘Litigating the Right to Privacy: A Survey of Current Issues’ 446 PLL/PAT (1996), 425, 429; *Bensaid v United Kingdom* App no. 44599/98 (ECtHR, 6 February 2001) [47]; *Antović and Mirković v Montenegro* App no. 70838/13 (ECtHR, 28 November 2017) [41].

¹⁴ United Nations Human Rights Committee (HRC), CCPR General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, [31]; *Fontevécchia y D’Amico v Argentina*, IACtHR Series C No, 238 (Merits, Reparations and Costs) (29 November 2011) [48].

three broad types of privacy interests — territorial, personal, and informational.¹⁵

5. The *secret* identity of X as the masked ‘Sun Prince’¹⁶ falls within the X’s sphere of privacy from three multi-dimensional aspects: (i) personal data protection;¹⁷ (ii) freedom of expression;¹⁸ and (iii) freedom of religion.¹⁹

1. There was an interference to X’s right to personal data protection

6. Personal data protection is vital to a person’s enjoyment of private life, specifically the right to informational self-determination.²⁰ Hence, privacy protects the confidentiality of all data produced in the private space,²¹ and concomitantly, prohibits disclosure of such data without its owners’ consent.²²
7. Any information which identifies or constitutes a means of identifying a person,

¹⁵ *Satakunnan v Finland* (n 7) [130]-[137]; *Benedik v Slovenia* App no. 62357/14 (ECtHR, 24 July 2018) [103]; *X and Y v the Netherlands* App no. 8978/80 (ECtHR, 26 March 1985) [22]; *Peck v United Kingdom* (n 12) [59],[62]; *Niemietz v Germany* App no. 13710/88 (ECtHR, 16 December 1992) [33]; *Fontevicchia y D’Amico v Argentina* IACtHR Series C No. 238 (29 November 2011) [91]; *R v Spencer* 2014 SCC 43 (Canada) [35]; *R v Tessling* 2004 SCC 67 (Canada) [21]-[24]; *R. v Dymnt*, [1988] 2 S.C.R. 417 (Canada), 428-429.

¹⁶ Record, [16]-[17].

¹⁷ General Comment 16 (n 9), [10].

¹⁸ ICCPR (n 1), art 19.

¹⁹ ICCPR (n 1), art 18.

²⁰ *Satakunnan v Finland* (n 7) [137]; United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (17 April 2013) UN Doc A/HRC/23/40 [22]; American Civil Liberties Union (ACLU), ‘Privacy Rights in the Digital Age’ A Proposal for a New General Comment on the Right to Privacy under Article 17 of the International Covenant on Civil and Political Rights [5].

²¹ *D’Amico v Argentina* (n 14) [83]; Data Protection Act 2018 (UK), s 2(1)(a), 35(2); Regulation of the European Parliament and of the Council on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ 2 119/1, art 6(1)(a).

²² *Leander v Sweden* App no. 9248/81 (ECtHR, 26 March 1987) [48]; *Satakunnan v Finland* (n 7) [133]; *Amann v Switzerland* App no. 27798/95 (ECtHR, 16 February 2000) [68]; *Kopp v Switzerland* App no. 23224/94 (ECtHR, 25 March 1998) [53].

particularly in reference to their forename or surname, is ‘personal data’²³ and falls within the sphere of ‘private life’.²⁴ This includes data which traces sources of electronic communication (e.g. name and address of subscriber, telephone number, or IP address for Internet services),²⁵ even if all the requisite information is not in the hands of one party.²⁶

8. Hence, Surya’s identification of X as the Sun Prince without X’s prior consent²⁷ constitutes an interference to X’s right to privacy over his personal data.

2. There was an interference to X’s right to anonymous communication

9. There is a close connection between privacy and freedom of expression,²⁸ particularly in the context of digital communication.²⁹ This is because *informational* privacy is often

²³ Convention for the Protection of Individuals with regards to Automated Processing of Personal Data (Convention 108), art 2(a); GDPR (n 21), art 4(1); Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA [2016] OJ L 119/89, art 3(1).

²⁴ *Bohlen v Germany* App no. 53495/09 (ECtHR, 19 February 2015) [35]; *Guillot v France* App no. 22500/93 (ECtHR, 24 October 1993) [21]; *Burghartz v Switzerland* App no. 16213/90 (ECtHR, 22 February 1994) [24]; *Stjerna v Finland* App no. 18131/91 (ECtHR, 25 November 1994) [37]; *Henry Kismoun v France* App no. 32265/10 (ECtHR, 5 December 2003) [25]; *Marper v The United Kingdom* App nos. 30542/04 and 30566/04 (ECtHR, 4 December 2008) [103].

²⁵ *Copland v the United Kingdom* App no. 62617/00 (ECtHR, 3 April 2007) [41]-[43]; *Benedik v Slovenia* App no. 62357/14 (ECtHR, 24 July 2018) [104]; *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resource and Others and Kärntner Landesregierung and Others* [GC] Joined Cases C-293/12 and C-594/12 (CJEU, 8 April 2014) [26],[29]; *Volker und Markus Schecke GbR v Land Hessen and Hartmut Eifert* Joined Cases C-92/90 and C-93/90 (17 June 2010) [71].

²⁶ Council of the European Union, ‘Charter of Fundamental Rights of the European Union (2007/C 303/01)’ (14 December 2007), C 303/1, art 7; *Patrick Breyer v Bundesrepublik Deutschland* App no. C-582/14 (19 October 2016) [43]; *Satakunnan v Finland* (n 7) [72]; *Magyar Helsinki v Hungary* (n 11) (Judge Spano) [7]; ‘Guidelines 3/2019 on Processing of Personal Data Through Video Devices’ 10 July 2019, <https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_201903_videosurveillance.pdf> accessed 2 November 2018 [18].

²⁷ Record, [25].

²⁸ ICCPR (n 1), art 19(2).

²⁹ The right to privacy in the digital age (n 8), Preamble (v)-(viii), [4(a)]; Standards for a Free, Open and Inclusive Internet, Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (15 May 2017) [185].

equated with secrecy,³⁰ including confidentiality of correspondence between individuals³¹ and anonymous communication on the Internet.³²

10. The complementarity of both rights has been constantly acknowledged by UN Special Rapporteurs. Frank La Rue describes privacy as “*essential for individuals to expressly themselves freely*” as their “*willingness to debate on controversial subjects in the public sphere*” hinges on the “*possibilities of doing so anonymously*”.³³ David Kaye notes that anonymity provides people “*with a zone of privacy online to hold opinions... without arbitrary and unlawful interference*”.³⁴

11. The right to anonymous communication has received widespread legal recognition worldwide, including:

(a) Apex judicial decisions of the US,³⁵ Canada,³⁶ and South Korea.³⁷

³⁰ *R v Spencer* 2014 SCC 43 (Canada) [38].

³¹ United Nations Human Rights Committee (HRC), CCPR General Comment No. 16 (n 9) [8]; *Escher v Brazil* IACtHR Series C No. 200 (Merits, Reparations and Costs) (6 July 2009) [114]; *Niemietz v Germany* (n 15) [28]-[29]; *Huvig v France* App no. 11105/84 (ECtHR 24 April 1990) [8],[25].

³² African Declaration on Internet Rights and Freedom (adopted 8 September 2014), art 8; IACHR ‘Standards for a Free, Open and Inclusive Internet’ (15 May 2017) [185].

³³ United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (16 May 2011) A/HRC/17/27 [53].

³⁴ United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (22 May 2015) A/HRC/29/32 [16]-[17].

³⁵ *McIntyre v Ohio Elections Commission* 514 U.S. 334 (1995), 342,343; *Talley v California*, 362 U.S. 60 (1960), *Watchtower v Vill. of Stratton* 536 U.S. 150 (2002), 166–167.

³⁶ *R v Spencer* 2014 SCC 43 (Canada) [42].

³⁷ Decision 2010 *Hun-Ma* 47, 252 (consolidated) announced 28 August 2012.

(b) Constitutions of Argentina,³⁸ Ecuador,³⁹ Paraguay,⁴⁰ and Mozambique.⁴¹

(c) Statutory legislations of Australia,⁴² New Zealand,⁴³ Mexico,⁴⁴ Chile,⁴⁵ El Salvador,⁴⁶ Panama,⁴⁷ Peru,⁴⁸ Uruguay,⁴⁹ Venezuela,⁵⁰ and Angola.⁵¹

12. Since privacy protects the means of private communication, rather than its content, the protection of anonymity extends even to communications involving criminal activities.⁵²

The purpose is not to shield the authors from facing criminal prosecution, but from unlawful reprisals and unwanted attention.⁵³

13. Here, X's adoption of the pseudonym 'Sun Prince' and wearing a mask during the video broadcast on SuryaFirst's Hiya! channel on 16 February 2019 evinces a clear intent to

³⁸ Constitution, art. 43 (Argentina).

³⁹ Constitution, art. 20 (Ecuador).

⁴⁰ Constitution, art. 29 (1) (Paraguay).

⁴¹ Constitution, art. 48(3) (Mozambique).

⁴² Evidence Amendment (Journalists' Privilege) Act 2011 s 126H (1), s 131A(1) (Australia).

⁴³ Evidence Act 2006, s 68 (New Zealand).

⁴⁴ Federal Code of Criminal Procedures, art. 244 (Mexico).

⁴⁵ Law No. 19.733 (Chile).

⁴⁶ Criminal Procedure Code 2004, art 73(5) (El Salvador).

⁴⁷ Law 67, art 21 (Panama).

⁴⁸ Criminal Procedure Code 2004, art 170 (Peru).

⁴⁹ Law 16.099, art 6 (Uruguay).

⁵⁰ Law for Journalism 4.819, art 8 (Venezuela).

⁵¹ Press Law 7/06, art 20(1) (Angola).

⁵² *A v France* App no. 14838/89 (ECtHR, 23 November 1993) [35]; *Kruslin v France* App no. 11801/85 (ECtHR, 24 April 1990) [12], [16]; *Benedik v Slovenia* (n 25) [99]; *R v Spencer* 2014 SCC 43 (Canada) [36].

⁵³ *Delfi v Estonia* [GC] App no. 64569/09 (ECtHR, 16 June 2015) [147]-[148]; *Benedik v Slovenia* (n 25) [105]-[106].

express his opinions under the cloak of anonymity.⁵⁴

14. As the Suryan prosecutor's request of information from Hiya! and A and B⁵⁵ to uncover the identity of the Sun Prince constitutes an attempt to “*link a specific person to specific online activities*”, X's informational privacy has been impaired.⁵⁶

3. There was an interference to X's right to manifest religious beliefs

15. Privacy is essential for the effective protection of freedom of religion under Article 18.⁵⁷

16. Sensitive personal data includes information which reveal ethnic origin and religious belief.⁵⁸ Unauthorized disclosure of such information may lead to discrimination⁵⁹ and affect the presumption of innocence.⁶⁰

17. Further, the right to manifest one's religious beliefs has a negative aspect *i.e.* the right *not* to be obliged to disclose one's religious beliefs.⁶¹

18. Surya's unmasking of X as the Sun Prince at a public trial⁶² effectively revealed X as a

⁵⁴ Record, [16]-[17].

⁵⁵ Record, [24].

⁵⁶ *R v Spencer* [50], *R v Morelli* [2010] SCC 8 (Canada) [3]; *R v Cole* 2012 SCC 53 (Canada) [47]; *R. v Vu*, [2013] SCC 60 (Canada) [40]-[45].

⁵⁷ ICCPR (n 1), art 18(3).

⁵⁸ Convention 108 (n 23), art 6.

⁵⁹ *Asia Bibi v State of Pakistan*, (Supreme Court) Criminal Appeal No. 39-L of 2015 (Pakistan).

⁶⁰ Council of Europe Treaty Series No. 223 'Explanatory Report to the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data' [55].

⁶¹ *Sinan Işık v Turkey* App no. 21924/05 (ECtHR, 2 May 2010) [41]-[42]; *Kokkinakis v Greece* App no.14307/88 (ECtHR, 25 May 1993) [31]; *Alexandridis v Greece* App no. 19516/06 (ECtHR, 21 February 2008) [38]; *Buscarini and Others v San Marino* App no. 24645/94 (ECtHR,18 February 1999) [34].

⁶² Clarifications, [64].

devout believer of the Suryan faith.⁶³ Hence, X's freedom of religion was infringed.

B. Surya's Interference with X's Right to Privacy was Unlawful and Arbitrary

19. The test of 'unlawfulness' and 'arbitrariness' under Article 17 of the ICCPR is subject to the same three-part test followed by the ECtHR⁶⁴ and IACtHR⁶⁵ *i.e.* whether the interference: (i) is provided by law; (ii) in accordance with the aims and objectives of the ICCPR; and (iii) reasonable in the particular circumstances.⁶⁶

1. The disclosure of X's identity was not provided by law

20. An interference must have a legal basis in domestic law,⁶⁷ accessible to the public⁶⁸ and formulated with sufficient precision to enable individuals to regulate their conduct accordingly.⁶⁹ The relevant legislation must specify in detail the precise circumstances in

⁶³ Record, [29].

⁶⁴ *Rotaru v Romania* App No. 28341/95 (ECtHR, 4 May 2000) [48]; *Gaweda v Poland*, App No. 26229/95 (ECtHR, 14 March 2002) [39]; *Delfi v Estonia* (n 53) [119]; *Catt v The United Kingdom* App no. 43514/15 (ECtHR, 24 January 2019) [25]; *S. and Marper v The United Kingdom* (n 12) [99].

⁶⁵ *D'Amico v Argentina* (n 14) [17], [71]; *Escher v Brazil* (n 31); *Luisiana Ríos and Others v The Republic of Venezuela* Case no. 12.441 (IACtHR, July 2008) [45].

⁶⁶ General Comment No. 16 (n 9) [3]-[4]; *Toonen v Australia* Communication No. 488/1992 U.N. Doc. CCPR/C/50/D/488/1992 [8.3]; *Van Hulst v The Netherlands* Communication No. 903/1999 U.N. Doc. CCPR/C/82/D/903/1999 (2004) [7.3]; *G v Australia* Communication No. 2172/2012 U.N. Doc. CCPR/C/119/D/2172/2012 [4.5]; United Nations Human Rights Council (UNHRC), Special Rapporteur 2013 (n 20) [28]-[29]; ICCPR (n 1), art 12(3), art 18(3), art 21, art 22(2).

⁶⁷ *Verein Gegen Tierfabriken Schweiz (VgT) v Switzerland (No.2)* App no. 32772/02 (ECtHR, 30 June 2009) [55]; *Rotaru v Romania* (n 64) [52]; *Maestri v Italy* App No. 39748/98 (ECtHR, 17 February 2004) [30].

⁶⁸ *The Sunday Times v The United Kingdom (No.1)* App no. 6538/74 (ECtHR, 26 April 1979) [49]; United Nations Human Rights Committee (HRC), CCPR General comment No. 34, Article 19: Freedoms of opinion and expression (12 September 2011) [2].

⁶⁹ *Groppeara Rodio AG and Others v Switzerland* App no. 10890/84 (ECtHR, 28 March 1990) [68]; *Silver and Others v the United Kingdom* App nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75 (ECtHR, 25 March 1983) [88]; *Herczegfalvy v Austria* App No. 10533/83 (ECtHR, 24 September 1992) [89]; *Leander v Sweden* (n 22) [51]; *Roman Zakharov v Russia* [GC] App no. 47143/06 (ECtHR, 4 December 2015) [228]; *Rotaru v Romania* (n 64) [52]; *Malone v the United Kingdom* App no. 8691/79 (ECtHR, 2 August 1984) [56].

which interferences may be permitted,⁷⁰ and be compatible with the rule of law.⁷¹

21. Similar to Portugal⁷² and Spain,⁷³ the Constitution of Surya recognises the right to privacy.⁷⁴ However, Surya lacks a comprehensive data protection regime vesting power in an independent supervisory authority to regulate the disclosure of personal data arising from criminal activities, such as Canada⁷⁵ and the EU⁷⁶ (e.g. Slovenia,⁷⁷ Czech Republic,⁷⁸ Croatia,⁷⁹ Bulgaria,⁸⁰ Portugal,⁸¹ and Denmark⁸²). The CPA merely “enables law enforcement authorities to obtain a judicial warrant to instruct data controllers to disclose user data” without any defined conditions or parameters.⁸³ Hence, Surya falls short of its positive obligation to provide for a regulatory framework to protect the privacy of

⁷⁰ General Comment No. 16 (n 9) [8]; *MM v United Kingdom* App no. 24029/07 (ECtHR, 13 November 2012) [193]; *Huvig v France* App no. 11105/84 (ECtHR 24 April 1990) [32]; *Malone v The United Kingdom* (n 69) [66]-[68]; *Rotaru v Romania* (n 64) [52] & [55]; *Liberty and Others v The United Kingdom* App no. 58243/00 (ECtHR, 1 July 2008) [59]; *S. and Marper v The United Kingdom* (n 12) [95].

⁷¹ *Kruslin v France* (n 52) [30]; *Malone v The United Kingdom* (n 69) [67]; *Big Brother Watch and Others v the United Kingdom*, App nos. 58170/13, 62322/14 and 24960/15 (ECtHR, 13 September 2018) [305]; *Benedik v Slovenia* (n 25) [125].

⁷² Constitution of Portugal 2005, art 26(1).

⁷³ Constitution of Spain 1978, art 18.

⁷⁴ Record, [28].

⁷⁵ The Privacy Act 1985 (Canada) art 7, art 8 art 36; Personal Information Protection and Electronic Documents Act (PIPEDA 2000, s 20(1) (Canada).

⁷⁶ GDPR (n 21), art 80, art 86, art 94; Directive (EU) 2016/680 (n 23), art 45, 46 and 47.

⁷⁷ Slovenia Criminal Procedure Act (Official Gazette no. 8/06), s 149(b).

⁷⁸ Personal Data Processing Act 2019 (Czech Republic), s 32.

⁷⁹ Constitution of the Republic of Croatia 2010, art 28-29.

⁸⁰ Personal Data Protection Act 2002 (Bulgaria), art V.

⁸¹ Act on the Protection of Personal Data 1998 (Portugal), art 22 (3)(a).

⁸² Danish Data Protection Act 2018 (Denmark), art 8(1).

⁸³ Clarifications, [7].

individuals from unlawful interference,⁸⁴ as well as excessive discretion and abuse by law enforcement agencies.⁸⁵

22. Hence, the disclosure of X's identity obtained by Surya pursuant to its letter to Hiya!⁸⁶ and interrogations of A and B⁸⁷ was not provided by law.

2. The disclosure of X's identity did not pursue a legitimate aim

23. Despite not explicitly providing for any restrictions, Article 17 is universally accepted to be subjected to the general restrictions under the ICCPR:⁸⁸ (a) respect of the rights and reputation of others; or (b) protection of national security, public order, public health or morals.⁸⁹

24. To compel the disclosure of personal data of individuals without their consent, governmental authorities must furnish relevant and sufficient justifications.⁹⁰

⁸⁴ *Hämäläinen v Finland* [GC] App no. 37359/09 (ECtHR, 16 July 2014) [63]; *Airey v Ireland* IACtHR Series A no. 32 (9 October 1979) [33]; *Fontecchia And D'Amico v Argentina* (n 14) [49]; 'Manila Principles on Intermediary Liability' < <https://www.manilaprinciples.org/> > accessed 3 November 2019, Principle 2; African Declaration on Internet Rights and Freedom (n 32), 18.

⁸⁵ United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (30 May 2017) A/HRC/35/22 [6]-[7].

⁸⁶ Record, [24].

⁸⁷ Record, [25].

⁸⁸ United Nations Human Rights Committee (HRC), CCPR General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, [6]; United Nations Human Rights Council (UNHRC), 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' (17 April 2013) A/HRC/23/40, [28]; Marc J. Bossuyt, 'Guide To The "Travaux Préparatoires" of the International Covenant on Civil and Political Rights' Martinus Nijhoff Publishers (1987), 375; Agnes Callamard, 'Expert meeting on the links between articles 19 and 20 of the ICCPR: Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence' (UN HCHR Experts Papers, Geneva, 2 – 3 October 2008); Manfred Nowak, *U.N. Covenant on Civil and Political Rights* (2nd revised edition, N.P. Engel Publisher (2005)), 468-480.

⁸⁹ ICCPR (n 1), art 12(3), art 18(3), art 19(3), art 21, art 22(2).

⁹⁰ *Peck v the United Kingdom* (n 12) [85]; *Mozer v the Republic of Moldova and Russia* App no. 11138/10 (ECtHR, 23 February 2016) [194].

25. However, throughout the criminal investigation, neither the prosecutor⁹¹ nor police⁹² presented any compelling legitimate reason to identify the Sun Prince.

3. The disclosure of X's identity was not reasonable in the circumstances

26. Assuming *arguendo* the disclosure of X's identity pursued a legitimate aim, Surya must delicately balance X's right of privacy, and the rights of others.⁹³ Proportionality dictates that least-intrusive measures must be taken to achieve the desired aim.⁹⁴

a) *The disclosure was made without judicial authorisation*

27. The protection of interference with "correspondence" under Article 17 encompasses all forms of communication, online and offline.⁹⁵ Any form of invasion of privacy by governmental authorities must require judicial authorization,⁹⁶ including interception of

⁹¹ Record, [24].

⁹² Record, [25].

⁹³ *Fuchsmann v Germany* App no. 71233/13 (ECtHR, 19 October 2017) [34]; *Couderc and Hachette Filipacchi Associés* App no. 40454/07 (ECtHR, 10 November 2015) [93]; *Axel Springer AG v Germany* App no. 39954/08, (ECtHR, 7 February 2012) [78]-[88]; *Von Hannover v Germany (no. 2)* App nos. 40660/08 and 60641/08 (ECtHR, 7 February 2012) [109]-[113].

⁹⁴ United Nations Human Rights Council (UNHRC), 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' (22 May 2015) A/HRC/29/32 [16]-[17]; *Lohe Issa Konate v Burkina Faso* App no. 004/2013 (ACtHR, 5 December 2014) [148]-[149]; *Sunday Times* (n 68) [62].

⁹⁵ Manfred Nowak, 'UN Covenant on Civil and Political Rights. CCPR Commentary' *The American Journal of International Law* (1993), Vol. 89(2), 401; United Nations Human Rights Council (UNHRC), 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' (17 April 2013) A/HRC/23/40 [24]; The right to privacy in the digital age (n 8), [3]; *Escher v Brazil* (n 31) [114]; *Klass and others v Germany* App no. 5029/71 (ECtHR, 6 September 1978) [29]; *Halford v the United Kingdom* App no. 20605/92 (ECtHR, 25 June 1997) [44]; *Amann v Switzerland* (n 22) [44].

⁹⁶ *Big Brother Watch v the United Kingdom* (n 71) [320]; *Klass and Others v Germany* (n 95) [56]; *Uzun v Germany* App no. 35623/05 (ECtHR, 2 September 2010) [71]-[72]; *Escué-Zapata v Colombia*, IACtHR Series C No. 165 (Merits, Reparations and Costs)(4 July 2007) [94]; Convention on Cybercrime (adopted 23 November 2001, entered into force 1 July 2004) 23.XI.2001, art 15(2).

private communications⁹⁷ and identification of their authors.⁹⁸

28. This is because judicial control offers the best guarantees of independence and impartiality in a field where the risk of abuse and harm to democratic societies is high.⁹⁹ Police powers to control, prevent and investigate crimes must always be exercised in accordance to due process of law.¹⁰⁰

29. However, Surya did not apply for a judicial warrant to obtain X's personal data from Hiya!,¹⁰¹ unlike from the mobile phone service providers.¹⁰²

b) *X did not commit a serious crime*

30. Grave crimes call for efficient countermeasures,¹⁰³ including the need to identify offenders.¹⁰⁴ However, any intrusion into private correspondences without judicial authorization is only justifiable for the investigation or prevention of serious crimes, such

⁹⁷ United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (17 April 2013) A/HRC/23/40 [54]; *Bykov v Russia* [GC] App no. 4378/02 (ECtHR, 10 March 2009) [74]-[77]; *Uzun v Germany* (n 96) [70]-[72]; *Weber and Saravia v Germany* App no. 54934 (ECtHR, 29 June 2006) [123]-[129].

⁹⁸ *Delfi v Estonia* (n 53) [148]; *Benedik v Slovenia* (n 25) [106].

⁹⁹ *Klass and Others v Germany* (n 95) [56]; *Marršálek v the Czech Republic* App no. 8153/04 (ECtHR, 4 April 2006) [71]; *Strand Lobben and Others v Norway* [GC] App no. 37283/13 (ECtHR, 10 September 2019) [207].

¹⁰⁰ *K.U. v Finland* (n 10) [48]; *Rekvényi v Hungary* [GC] App no. 25390/94 (ECtHR, 20 May 1999) [30]; *Trade Union of the Police in the Slovak Republic and Others v Slovakia* App no. 11828/08 (ECtHR, 25 September 2012) [56]; *Mozer v The Republic of Moldova and Russia* [GC] App no. 11138/10 (ECtHR, 23 February 2016) [93].

¹⁰¹ Record, [30]

¹⁰² Clarifications, [60].

¹⁰³ *K.U. v Finland* (n 10) [46]; *X and Y v the Netherlands* (n 15) [23]-[24], [27]; *August v the United Kingdom* App no. 36505/02 (ECtHR, 21 January 2003); *M.C. v Bulgaria* App no. 39272/98 (ECtHR, 4 December 2003) [150]; *Stubbings and Others v The United Kingdom* App no. 36-37/1995/542-543/628-629 (ECtHR, 22 October 1996) [64].

¹⁰⁴ *K.U. v Finland* (n 10) [47]; *Benedik v Slovenia* (n 25) [99].

as terrorism,¹⁰⁵ threats to national security,¹⁰⁶ money laundering¹⁰⁷, drug trafficking¹⁰⁸ and child pornography.¹⁰⁹

31. The broadcast of X's message on SuryaFirst's channel on 16 February was not sufficiently grave to entitle Surya to use whatever measures they deem appropriate.¹¹⁰

32. *First*, neither complainants were direct victims of X's actions – S was assaulted by a mob on the streets,¹¹¹ whilst T's assault occurred on a separate day and recorded in a separate video by unknown users (not broadcasted on SuryaFirst's channel).¹¹² There were no reasonable grounds to suspect¹¹³ that X was the 'mastermind' behind such attacks, what more posed a 'real, present or imminent' threat to society.¹¹⁴

¹⁰⁵ UN Security Council, 'Implementation of Security Council Resolution 2178 (2014) by States affected by foreign terrorist fighters (2 September 2015) S/2015/683; Office of the United Nations High Commissioner for Human Rights (OHCHR), Twenty-Seventh Session 'Annual report of the United Nations High Commissioner for Human Rights on The Right to Privacy in the Digital Age' (30 June 2014) A/HRC/27/37; UN, OSCE, OAS, ACHPR 'Joint Declaration on Freedom of Expression and the Internet' 1 June 2011); *Klass and Others v Germany* (n 95) [36], [48].

¹⁰⁶ *Weber and Saravia v Germany* (n 97) [104]; *Klass and Others v Germany* (n 95) [49]; *Leander v Sweden* (n 22) [59].

¹⁰⁷ Federal Law 12683/2012 art 17(b) (Brazil); 2. Article 17-B. Available at: Mapping Laws on Government Access to Citizens' Data: Brazil' < <https://www.eff.org/es/node/72806?page=7>> accessed 2 November 2019.

¹⁰⁸ United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (17 April 2013) A/HRC/23/40 [59].

¹⁰⁹ *Benedik v Slovenia* (n 25) [126]; *K.U. v Finland* (n 10) [46]; *Stubbings and Others v the United Kingdom*, 6-37/1995/542-543/628-629 (ECtHR, 22 October 1996) [64]; Convention on Cybercrime (n 96), art 9.

¹¹⁰ *Weber and Saravia v Germany* (n 97) [95]; *Copland v the United Kingdom* (n 25) [41].

¹¹¹ Record, [17], [21].

¹¹² Record, [19], [23].

¹¹³ United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (17 April 2013) A/HRC/23/40 [56],[59]; Police and Criminal Evidence Act, 1983 s 24 (United Kingdom); Police and Criminal Evidence Act (PACE) Code G, 1984 (United Kingdom) [2].

¹¹⁴ European Data Protection Supervisor, 'Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit' (11 April 2017), 15; *Zana v Turkey* App no. 69/1996/688/880 (ECtHR, 25 November 1997) [102]; Stefan Sottiaux, 'The "Clear and Present Danger" Test in the Case Law of the European

33. *Second*, the complaint against X was for ‘forcible conversion’ pursuant to a new criminal provision in the PA, which provided an exception for “*voluntarily returning to the forefather’s original faith or one’s own original faith*”.¹¹⁵ In light of uncertainties as to the scope of Section 220,¹¹⁶ X’s plea to re-convert former Suryans “*who have adopted the andha blindness*”¹¹⁷ should be treated with prosecutorial restraint.

34. Hence, there was no pressing social need¹¹⁸ to bypass procedural safeguards to identify and apprehend X.

II. SURYA’S DECISION TO OBTAIN PERSONAL DATA REGARDING A AND B FROM HIYA! VIOLATED THEIR RIGHTS UNDER ARTICLE 17 OF THE ICCPR

35. Surya’s acquisition of personal data regarding A and B from Hiya! [A] amounts to an interference with their right to privacy under Article 17; and [B] such interference was unlawful and arbitrary.

36. Generally, the arguments in Issue I above¹¹⁹ similarly apply *mutatis mutandis* in establishing the violation of A and B’s right to privacy. Nevertheless, there are certain

Court of Human Rights’ 2003, < https://www.zaoerv.de/63_2003/63_2003_3_a_653_680.pdf > accessed 5 November 2019.

¹¹⁵ Record, [14].

¹¹⁶ Arguments, [62]-[65].

¹¹⁷ Record, [16]-[17].

¹¹⁸ European Data Protection Supervisor, Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit (11 April 2017), 15; *Bédat v Switzerland* [GC] App no. 56925/08 (ECtHR, 29 March 2016) [48]; *Stoll v Switzerland* [GC] App no. 69698/01 (ECtHR, 10 December 2007) [101]; *Morice v France* [GC] App no. 29369/10 (ECtHR, 23 April 2015) [124]; *Pentikäinen v Finland* [GC] App no. 11882/10 (ECtHR, 20 October 2015) [87]; *Kokkinakis v Greece* (n 61) [49]; *Olsson v Sweden* App no. 10465/83 (ECtHR, 24 March 1988) [67].

¹¹⁹ Arguments, [1]-[34].

nuances distinguishing the latter’s involvement in the SuryaFirst broadcast that merit additional considerations, which will be expounded below.

37. At the outset, it must be noted that A and B should be treated as *Internet publishers*,¹²⁰ rather than *authors*, of the content appearing on the SuryaFirst channel:

(a) Control:¹²¹ As administrators,¹²² A and B have the ability to post live or pre-recorded audiovisual content to subscribers,¹²³ ‘ping’ to alert them on upcoming broadcasts,¹²⁴ share links with them via bilateral chat,¹²⁵ and edit content.¹²⁶ In short, their channel functions like a traditional radio or television channel.¹²⁷

(b) Liability:¹²⁸ The criminal charge against A and B under Section 300 of PA was grounded on their “*maintenance of the SuryaFirst broadcast channel*” and ‘advocacy’ through the “*shar[ing] of links to their broadcast*”.¹²⁹

A. Surya Interfered with A and B’s Right to Privacy

38. As submitted, privacy is an all-encompassing concept intertwined with (i) personal data

¹²⁰ *Delfi v Estonia* (n 53) [110]-[113].

¹²¹ *Id* [140]-[144].

¹²² Record, [25]; Clarifications, [29].

¹²³ Record, [5].

¹²⁴ Record, [8].

¹²⁵ Record, [4], [7]-[8].

¹²⁶ Clarifications, [44].

¹²⁷ Record, [6].

¹²⁸ *Delfi v Estonia* (n 53) [140]-[144].

¹²⁹ Record, [31].

protection; (ii) freedom of expression; and (iii) freedom of religion.¹³⁰

1. There was an interference to A and B's right to personal data protection

39. Personal data includes telephone numbers.¹³¹ User registration and verification on Hiya! requires a valid phone number.¹³² It is within A and B's reasonable expectation of privacy¹³³ that such information cannot be published without their consent.¹³⁴

40. Hence, the disclosure of A and B's mobile numbers by Hiya! to the Suryan prosecutor without their prior consent¹³⁵ infringes upon their right to informational privacy.

2. There was an interference to A and B's right to anonymous communication

41. The right to anonymous expression of opinions is imbued in each person.¹³⁶ Such right is especially critical for 'public watchdogs' in their role of imparting information and ideas on political or public interest issues to the public (who have a corollary right to receive

¹³⁰ Arguments, [3]-[5].

¹³¹ *Copland v the United Kingdom* (n 25) [41]-[43]; *P.G. and J.H. v the United Kingdom* App no. 44787/98 (ECtHR, 15 September 2001) [42]; *Benedik v Slovenia* (n 25) [104].

¹³² Record, [3].

¹³³ *Copland v the United Kingdom* (n 25) [42]; *Halford v the United Kingdom* (n 95) [45]; *Benedik v Slovenia* (n 25) [115]; *Bărbulescu v Romania* [GC] App no. 61496/08 (ECtHR, 5 September 2017) [73]; *Uzun v Germany* (n 96) [49]-[52].

¹³⁴ *Axel Springer* (n 93) [83]; Data Protection Act 2018 (n 21) s 2(1)(a); GDPR (n 21), art 6(1)(a).

¹³⁵ Record, [24], [30].

¹³⁶ Arguments, [9-14].

them), which includes the media,¹³⁷ NGOs,¹³⁸ and even popular bloggers or social media users.¹³⁹

42. Hence, disclosure of A and B's identity as *publishers* of SuryaFirst not only infringes upon their right to engage in public discourse anonymously,¹⁴⁰ but also the public's right to receive information from anonymous sources.¹⁴¹

3. There was an interference to A and B's right to manifest their religion

43. Similar to X, the disclosure of A and B's identity as pro-Suryan adherents infringes their right to *not* disclose the extent of their religious beliefs.¹⁴²

B. Surya's Interference with A and B's Right to Privacy was Unlawful and Arbitrary

44. Surya's interference of A and B's right to privacy failed to meet the three-part test *i.e.* (i) legality; (ii) necessity; and (iii) proportionality.¹⁴³

1. The disclosure of A and B's identities was not provided by law

45. As submitted, Surya lacked any domestic legislation to enable Suryans to foresee the

¹³⁷ *Magyar Helsinki v Hungary* (n 11) [143]; *Mavlonov and Sa'di v Uzbekistan* (19 March 2009), Communication No. 1334/2004 CCPR/C/95/D/1334/2004 [8.4]; *Lingens v Austria* App no. 9815/82 (ECtHR, 8 July 1986) [41]; *Bladet Tromsø and Stensaas v Norway*, App no. 21980/93 (ECtHR, 20 May 1999) [62]; *Jersild v Denmark* App no. 298, (ECtHR 23 September 1994) [31].

¹³⁸ *Magyar Helsinki v Hungary* (n 11) [166]; *Animal Defenders International v the United Kingdom* [GC] App no. 48876/08 (ECtHR, 22 April 2013) [103].

¹³⁹ *Magyar Helsinki v Hungary* (n 11) [168]; *Delfi v Estonia* (n 53) [133].

¹⁴⁰ United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 16 May 2011, A/HRC/17/27 [53].

¹⁴¹ *Goodwin v the United Kingdom* [GC] App no. 17488/90 (ECtHR, 27 March 1996) [39].

¹⁴² Arguments, [15]-[18].

¹⁴³ Arguments, [19].

circumstances in which their online anonymity can be pierced pursuant to criminal investigations.¹⁴⁴ Hence, such disclosure was not provided by law.

2. The disclosure of A and B's identities did not pursue a legitimate aim

46. As submitted, Surya failed to furnish sufficient justifications to identify the broadcasters behind SuryaFirst.¹⁴⁵ Hence, such disclosure did not pursue any legitimate aim.

3. The disclosure of A and B's identities was not reasonable in the circumstances

47. Assuming *arguendo* the disclosure of A and B's identities pursued a legitimate aim, such disclosure was not the least-intrusive measure to achieving such desired aim.¹⁴⁶

a) *The disclosure was made without judicial authorisation*

48. As submitted, judicial authorization must be obtained to enable disclosure of personal data without its owner's consent.¹⁴⁷ However, the Suryan prosecutor failed to seek authorization from the courts before requesting Hiya! to disclose the identities of SuryaFirst's broadcasters.

b) *A and B did not commit a serious crime*

49. Unlike X being charged of 'forcible conversion' under Section 220 of PA,¹⁴⁸ A and B were

¹⁴⁴ Arguments, [20]-[22].

¹⁴⁵ Arguments, [23]-[25].

¹⁴⁶ Arguments, [26].

¹⁴⁷ Arguments, [27]-[29].

¹⁴⁸ Record, [14], [26].

instead charged for the more serious offence of ‘advocacy of hatred’ under Section 300.¹⁴⁹

Nevertheless, there was no pressing social need to acquire the personal data of SuryaFirst’s broadcasters from Hiya! given the circumstances and alternative measures available.¹⁵⁰

50. *First*, only S’s assault was caught live on SuryaFirst’s broadcast,¹⁵¹ whilst the video capturing T’s assault and over 100 other similar videos were shared on Hiya! by unknown users in February 2019.¹⁵² Hence, there are no reasonable grounds to suspect SuryaFirst as being the ‘puppet master’ orchestrating such unruly acts on the streets.

51. *Second*, the actual threat to public safety stems from the mobs roaming the streets and assaulting *andha* worshippers. Criminal action against accessories of crime should only be resorted to if steps to identify, investigate and prosecute the actual perpetrators have been exhausted or proven to be futile or unduly burdensome.¹⁵³

52. *Third*, Hiya’s ‘fAIth!’ filter did not block SuryaFirst’s broadcast as illicit content,¹⁵⁴ despite being programmed to screen for ‘hate speech’ with 87% accuracy.¹⁵⁵ This is indicative of artistic expression appealing to only a minority of audience with low risk of inciting

¹⁴⁹ Record, [22], [26].

¹⁵⁰ A Global Civil Society Initiative, ‘Manila Principles on Intermediary Liability: Best Practices Guidelines for Limiting Intermediary Liability for Content to Promote Freedom of Expression and Innovation’ 24 March 2015, <https://www.eff.org/files/2015/10/31/manila_principles_1.0.pdf> accessed 4 November 2019; *Soltsyak v Russia* App no. 466/05 (ECtHR, 10 February 2011) [52]-[53]; Francis D. Wormuth and Harris G. Mirkin, ‘The Doctrine of The Reasonable Alternative’ *UTAH Law Review* (Vol. 9 1964), Vol.9, 254- 255; Guy Miller Struve, ‘The Less-Restrictive-Alternative Principle and Economic Due Process’ *Havard Law Review* (1967), Vol.80, No.7, 1487.

¹⁵¹ Record, [17], [21].

¹⁵² Record, [19].

¹⁵³ *Delfi v Estonia* (n 53) [148]-[151]; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v Hungary* App no. 22947/13 (ECtHR, 2 February 2016) [79].

¹⁵⁴ Record, [29].

¹⁵⁵ Record, [9].

violence.¹⁵⁶ In any event, Hiya! immediately shut down the channel upon being alerted by Surya,¹⁵⁷ effectively nullifying any threat posed by SuryaFirst.

53. Hence, the disclosure of A and B's identities was disproportionate.

III. SURYA'S PROSECUTION AND CONVICTION OF X VIOLATED HIS RIGHTS UNDER ARTICLE 19 OF THE ICCPR

54. Freedom of expression forms the bedrock of every free and democratic society.¹⁵⁸ Such freedom is enshrined under Article 19 of the ICCPR,¹⁵⁹ and in the three regional human rights conventions encompassing Europe,¹⁶⁰ America,¹⁶¹ and Africa.¹⁶²

55. Any restrictions to the freedom of expression must strictly fulfil the universal three-part test of legality, necessity and proportionality as affirmed by the HRC,¹⁶³ ECtHR,¹⁶⁴

¹⁵⁶ *Karataş v Turkey* [GC] App no. 23168/94 (ECtHR, 8 July 1999) [49]-[52]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) [207].

¹⁵⁷ Record, [24].

¹⁵⁸ General comment No. 34 (n 68) [2]; *Tae-Hoon Park v Republic of Korea* Communication No. 628/1995 UN Doc CCPR/C/57/D/628/1995 (HRC, 20 October 1998) [10.3]; *Stephen Benhadj v Algeria* Communication No. 1173/2003 UN Doc. CCPR/C/90/D/1173/2003 (HRC, 20 July 2007) [8.10]; *Perna v Italy* App no. 48898/99 (ECtHR, 6 May 2003) [38]; *Steel & Morris v UK* App no. 68416/01 (ECtHR, 16 February 2005) [87]; *Stoll v Switzerland* (n 118) [101]; *Hachette Filipacchi Associes v France* App no. 71111/01 (ECtHR, 12 November 2007) [40]; *Mouvement Ralien Suisse v Switzerland* App no. 16354/06 (ECtHR, 13 July 2012) [48]; *Medžlis Islamske Zajednice Brčko And Others v Bosnia And Herzegovina* App no. 17224/11 (ECtHR, 13 October 2015) [75]; *Bédat v Switzerland* (n 118) [48].

¹⁵⁹ ICCPR (n 1), art 19.

¹⁶⁰ ECHR (n 4), art 10.

¹⁶¹ ACHR (n 5), art 13.

¹⁶² African Charter on Human and Peoples Rights (adopted 27 June 1981, entered into force 21 October 1986), art. 9.

¹⁶³ *Womah Mukong v Cameroon* (10 August 1994) Comm No 458/1991 UN Doc CCPR/C/51/D/458/1991 [9.7]; *Sohn v Republic of Korea* (19 July 1995) Comm No 518/1992 UN Doc CCPR/C/54/D/518/1992 [10.4]; *Malcolm Ross v Canada* (18 October 2000) Comm No 736/1997 UN Doc CCPR/C/70/D/736/1997 [11.2]; *Velichkin v Belarus* Communication No. 1022/2001, U.N. Doc. A/61/40, Vol. II, at 90 (12 September 2011) [7.3]; General Comment No. 34 (n 68) [22], [33]-[35].

¹⁶⁴ *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Sunday Times* (n 68) [45]; *Ceylan v Turkey* App no. 23556/94 (ECtHR, 8 July 1999) [24]; *Murat Vural v Turkey* App no 9540/07 (ECtHR,

IACtHR,¹⁶⁵ and ACtHPR/ACommHPR.¹⁶⁶

56. Applying such test, the prosecution and conviction of X was *not* (a) provided by law;¹⁶⁷ (b) in pursuance of a legitimate aim;¹⁶⁸ nor (c) proportionate to achieve such aim.¹⁶⁹

A. The Prosecution and Conviction of X was Not Provided by Law

57. An interference is provided by law only if the law is accessible to the public,¹⁷⁰ and formulated with sufficient precision to enable individuals to know the consequences of their conduct¹⁷¹ and the “*formalities, conditions, restrictions or penalties*” attached to such conduct if found to be in breach.¹⁷²

21 January 2015) [59]; *Perinçek v Switzerland* (n 156) [124]; *Delfi v Estonia* (n 53) [119]; *Magyar Helsinki v Hungary* (n 11) [46].

¹⁶⁵ *Carvajal Carvajal v Colombia* IACtHR Serie C No. 352, (13 March 2018), [176]; *Gomes Lund v Brazil* IACtHR C No. 219, (4 November 2010) [197]; *Francisco Martorell v Chile* IACtHR OEA/Ser L/V/II.95 Doc 7 rev 234 (3 May 1996), [55]; *Herrera-Ulloa v Costa Rica* IACtHR Series C No 107 (2 July 2004) [120]; IACtHR ‘Report of the Special Rapporteur for Freedom of Expression’ (30 December 2009) OEA/Ser L/V/II Doc 51 [58-64].

¹⁶⁶ *Konate v Burkina Faso* (n 94) [125]; *Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinabe Human and Peoples’ Rights Movement v The Republic of Burkina Faso* App. No. 013/2011 (ACtHR, 28 March 2014); *Interights v Mauritania* No 242/2001, (2004) AHRLR 87 (ACmHPR) [78]-[79]; *Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa and Zimbabwe Comm no 294/04*, (2004) AHRLR 268 (AcommHPR) [80].

¹⁶⁷ General Comment No. 34 (n 68) [24]-[27].

¹⁶⁸ *Id* [28]-[32].

¹⁶⁹ *Id* [33]-[35].

¹⁷⁰ *Muller v Switzerland* App no. 10737/82 (ECtHR, 24 May 1988) [29]; *Kokkinakis v Greece* (n 61) [40]; *Sunday Times* (n 68) [49]; *Wingrove v The United Kingdom* App no. 17419/90 (ECtHR, 25 November 1996) [40]; *Lindon, Otchakovsky-Laurens and July v France* App no. 21275/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no. 33014/05 (ECtHR, 5 May 2011) [52].

¹⁷¹ General Comment No.34 [25]; United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (20 April 2010) UN Doc A/HRC/14/23, [78]; *Olafsson v Iceland* App no. 58493/13 (ECtHR, 16 March 2017) [36]; *Chauvy v France* App No 64915/01 (ECtHR, 29 June 2004) [43]; *Lindon, Otchakovsky-Laurens and July v France* App No 21279/02 and 36448/02 (ECtHR, 22 October 2007) [41]; *Kokkinakis v Greece* (n 61) [40]; ; *Usón Ramírez v Venezuela* IACtHR Series C No. 207 (Merits, Reparations and Costs) (20 November 2009) [56]-[57].

¹⁷² *Editorial Board of Pravoye Dalo and Shtekel v Ukraine* (n 170) [52]; *Kafkaris v Cyprus* [GC] App no. 21906/04 (ECtHR, 12 February 2008) [140].

58. Strict observance to the principle of legality is especially critical for criminal codification.¹⁷³ This is in view of the age-old maxim ‘*nullum crimen sine lege*’ which dictates that criminal statutes must not be extensively construed to an accused’s detriment, nor by analogy.¹⁷⁴ The elements of criminality must be set forth expressly, exhaustively, precisely, and clearly in legislation.¹⁷⁵

59. Section 220(1) of PA criminalises the conversion of “*any person from one faith to another faith by the use of force*”.¹⁷⁶

60. Such provision is closely identical to anti-conversion laws found in the South-Asia region¹⁷⁷ including India,¹⁷⁸ Nepal,¹⁷⁹ Bhutan,¹⁸⁰ Myanmar,¹⁸¹ Pakistan (Sindh province)¹⁸² and Sri Lanka (bill proposed but not passed).¹⁸³ Such laws have gained prominence in India,

¹⁷³ *Kimel v Argentina* IACtHR Series C No. 177 (Merits, Reparations and Costs) (2 May 2008) [63]; *Usón Ramírez v Venezuela* (n 171) [55].

¹⁷⁴ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), art. 22(1); *Kokkinakis v Greece* (n 61) [52]; *Larissis and Others v Greece* App nos. 23372/94, 26377/94 and 26378/94 (24 February 1998) [32]-[34],[40]-[41].

¹⁷⁵ *Kimel v Argentina* (n 173) [63]; *Usón Ramírez v Venezuela* (n 171) [55]; *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts 13 and 29 American Convention on Human Rights)* IACHR Series A No 5 (International court decisions) (13 November 1985) [39]-[40]; *Palamara-Iribarne v Chile* IACtHR Series C No. 135, (Merits, Reparations and Costs) (22 November 2005) [79]; *Herrera-Ulloa v Costa Rica* (n 165) [117]; *Ricardo Canese v Paraguay* IACtHR Series C No. 111 (Merits, Reparations and Costs) (31 August 2004) [72.a].

¹⁷⁶ Record, [14].

¹⁷⁷ United States Commission on International Religious Freedom (USCIRF), ‘Limitations on Minorities’ Religious Freedom in South Asia’ (November 2018), 1-3.

¹⁷⁸ USCIRF (n 177), 4-5.

¹⁷⁹ Nepal Constitution, art. 26(3); The Muluki Ain (General Code), Part 4, Chapter 19, Number 1. 512 (Nepal).

¹⁸⁰ Bhutan Constitution, art. 2.2; Penal Code (Amendment) Act of Bhutan 2011, s 463A, 463B; Religious Organizations Act of Bhutan 2007, art. 5(g).

¹⁸¹ Religious Conversion Bill 2015, art. 14-20 (Myanmar).

¹⁸² USCIRF (n 177), 5; Meghan G. Fischer, *Anti-Conversion Laws and the International Response*, 6 Penn. St. J.L. & Int’l Aff. 1 (2018), 45-46.

¹⁸³ USCIRF (n 177), 5.

whereby specific statutes have been enacted in 7 states: Orissa,¹⁸⁴ Madhya Pradesh,¹⁸⁵ Arunachal Pradesh,¹⁸⁶ Chhattisgarh,¹⁸⁷ Gujarat,¹⁸⁸ Himachal Pradesh,¹⁸⁹ Jharkhand,¹⁹⁰ and Uttarakhand.¹⁹¹

61. However, such general and vaguely circumscribed laws prohibiting conversions have been condemned by UN Special Rapporteurs Asma Jahangir¹⁹² and Heiner Bielefeldt.¹⁹³

62. Section 220 lacked sufficient precision to meet the threshold of legality for criminal codification.¹⁹⁴

63. *First*, the definition of ‘force’ in subsection (2) which includes “*threat of divine displeasure or social excommunication*”¹⁹⁵ is overly broad and covers a wide range of speech employed by people innocently sharing their beliefs without intent to convert the listener.¹⁹⁶

64. *Second*, the exception in subsection (3) which excludes “*voluntarily returning to the*

¹⁸⁴ Orissa Freedom of Religion Act, Act 2 of 1967 (India).

¹⁸⁵ Madhya Pradesh Freedom of Religion Act, Act 27 of 1968 (India).

¹⁸⁶ Arunachal Pradesh Freedom of Religion Act, Act 4 of 1978 (India).

¹⁸⁷ Chhattisgarh Freedom of Religion (Amendment) Act, Act 18 of 2006 (India).

¹⁸⁸ Gujarat Freedom of Religion Act, Act 24 of 2003 (India).

¹⁸⁹ Himachal Pradesh Freedom of Religion Act, Act 31 of 2006 (India).

¹⁹⁰ Jharkhand Freedom of Religion Act, Act 17 of 2017 (India).

¹⁹¹ Uttarakhand Freedom of Religion Act, Act 14 of 2018 (India).

¹⁹² United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur of the Commission of Human Rights on freedom of religion or belief’ U.N. Doc. A/60/399 (30 September 2005) [52].

¹⁹³ United Nations Human Rights Council (UNHRC), ‘Special Rapporteur on freedom of religion or belief’ *Interim report of the Special Rapporteur on freedom of religion or belief* U.N. Doc. A/67/303 (Aug. 13, 2012) [28].

¹⁹⁴ *Usón Ramírez v Venezuela* (n 171) [56].

¹⁹⁵ Record, [14].

¹⁹⁶ Meghan G. Fischer (n 182), 20.

forefathers' original faith"¹⁹⁷ is prone to generate confusion amongst layman and professionals.¹⁹⁸

65. *Third*, the novelty of such penal law without a body of settled case-law as guidance renders it difficult for Suryans to regulate their religious expression.¹⁹⁹

B. The Prosecution and Conviction of X Did Not Pursue a Legitimate Aim

66. The test of necessity is two-fold:²⁰⁰ (i) compliance with the strict requirements of Article 19(3) *i.e.* respect of the rights or reputation of others,²⁰¹ or protection of national security, public order, public health of morals;²⁰² and (ii) compatibility with the objectives of the ICCPR, such as the principle of non-discrimination.²⁰³ Such test is not met here.

67. *First*, although Article 10(1) of the Suryan Constitution recognises the freedom of expression, Article 10(2) merely stipulates that such freedom "*may be subject to limitations that are provided by law*".²⁰⁴ Such unfettered discretion to impose limitations beyond the permissible restrictions under Article 19(3) is untenable.²⁰⁵

68. *Second*, the inclusion of Section 220 is motivated by nationalists' calls for anti-blasphemy

¹⁹⁷ Record, [14].

¹⁹⁸ Clarifications, [54].

¹⁹⁹ *Kokkinakis v Greece* (n 61) [40].

²⁰⁰ General Comment No. 34 (n 68)[26].

²⁰¹ ICCPR (n 1), art. 19(3)(a); *Vukota-Bojić v Switzerland* App no. 61838/10 (ECtHR, 18 October 2016) [76].

²⁰² ICCPR (n 1), art. 19(3)(b); *Irina Fedatova v Russian Federation* Communication No. 1932/2010 (31 October 2012) [5.10]; *Jong-Choel v The Republic of Korea* CCPR Communication No. 968/2001 U.N. Doc. A/60/40 vol. II (27 July 2005) [8.3]; *Marques v Angola* CCPR Communication No. 1128/2002 U.N. Doc. A/60/40 vol. II (29 March 2005) [6.8].

²⁰³ ICCPR (n 1), art. 2(1).

²⁰⁴ Record, [28].

²⁰⁵ General Comment No. 34 (n 68) [22], [25].

laws to “prevent proselytism and conversion of Suryans into andha”.²⁰⁶ As governments are the ultimate guarantor of religious pluralism, they must not adopt measures preferring one religion over another, nor force different religious communities to come together under a single umbrella.²⁰⁷ Hence, Section 220’s discriminatory effect²⁰⁸ against the andha faith undermines the Suryan government’s duty of neutrality and impartiality.²⁰⁹

69. *Third*, States must produce relevant and sufficient reasons to justify restrictions to human rights.²¹⁰ However, the Suryan prosecutor provided no justification for prosecuting X.²¹¹ Even if the complainant S genuinely felt pressured to convert during the live broadcast on 16 February,²¹² such use of force emanated from the mob, and not X’s video message.²¹³

70. Hence, the enforcement of Section 220 does not conform with the permissible restrictions of Article 19(3) nor the objectives of the ICCPR.²¹⁴

²⁰⁶ Record, [10], [12].

²⁰⁷ *Sinan Işık v Turkey* (n 61) [45]; *Serif v Greece* App no. 38178/97 (ECtHR, 14 December 1999) [53].

²⁰⁸ General Comment No. 34 (n 68) [26]; United Nations Human Rights Council (UNHRC), ‘Special Rapporteur on freedom of religion or belief’ *Interim report of the Special Rapporteur on freedom of religion or belief* U.N. Doc. A/67/303 (Aug. 13, 2012) [21], [28]; *Sinan Işık v Turkey* (n 61) [45]; *Serif v Greece* App no. 38178/97 (ECtHR, 14 December 1999) [53].

²⁰⁹ *Sinan Işık v Turkey* (n 61) [45]; *Manoussakis and Others v Greece* App no. 18748/91 (ECtHR, 26 September 1996) [47]; *Metropolitan Church of Bessarabia and Others v Moldova* App no. 45701/99 (ECtHR, 13 December 2001) [123].

²¹⁰ *Tønsbergs Blad AS and Haukom v Norway* App no. 510/04 (ECtHR, 1 March 2007) [54]; *Handyside v United Kingdom* (n 164) [50]; *Pedersen v Denmark* App nos. 5095/71, 5920/72, 5926/72 (ECtHR, 7 December 1976) [63]; *Chauvy v France* (n 171) [65]; *Cumpana and Mazare v Romania* App no. 33348/06 (ECtHR, 17 December 2004) [90].

²¹¹ Record, [26].

²¹² Record, [21].

²¹³ Record, [17].

²¹⁴ UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4, principle 15.

C. The Prosecution and Conviction of X was Disproportionate

71. In a democratic society, restrictions to freedom of expression must be kept to a minimum.²¹⁵

States must only take such measures as are proportionate to the pursuance of their legitimate aims.²¹⁶ Their necessity must be established by convincing evidence.²¹⁷

72. The test of proportionality was not met due to several factors: (i) right of religious expression (*mens rea*); (ii) absence of force (*actus reus*); (iii) re-conversion of Suryans to their original faith (exception); and (iv) disproportionality of penalty (sentencing).

1. X validly exercised his right of religious expression

73. Freedom of expression and religion are closely intertwined.²¹⁸ Freedom of religion includes the freedom to manifest one's religion in external acts, such as "*worship, observance, practice and teaching*".²¹⁹ The term "*teaching*" includes the right to convert others by means of non-coercive persuasion,²²⁰ or in colloquial terms, 'evangelism' or

²¹⁵ United Nations Human Rights Council (UNHRC) Human Rights Council. Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/HRC/14/23, 20 April 2010, [77].

²¹⁶ CCPR, General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, [6]; *Sunday Times* (n 68) [62]; *Ojala v Finland* App no. 69939/10 (ECtHR, 2 June 2014) [43]; *Ruokanen And Others v Finland* App no. 45130/06 (ECtHR, 6 April 2010) [38]; *Kasabova v Bulgaria* App no. 22385/03 (ECtHR, 19 April 2011) [54]; *Herrera-Ulloa v Costa Rica* IACtHR Series C No. 107 (Merits, Reparations and Costs) (2 July 2004).

²¹⁷ 'Siracusa Principles (n 214), Principle 3; *Ruokanen v Finland* App No 45130/06 (ECtHR, 6 April 2010) [35]; *Chauvy v France* (n 171) [63].

²¹⁸ Office of the High Commissioner for Human Rights (OHCHR), Beirut Declaration on "Faith for Rights" [20]; United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/31/18 (23 December 2015) [6], [21]-[24].

²¹⁹ ICCPR (n 1), art 18(1).

²²⁰ United Nations Human Rights Council (UNHRC), 'Special Rapporteur on freedom of religion or belief' *Interim report of the Special Rapporteur on freedom of religion or belief* U.N. Doc. A/67/303 (Aug. 13, 2012) [26].

‘proselytism’.²²¹ Such right is consistent with the “*freedom to impart information and ideas of all kinds*”.²²²

74. X’s statements are couched in ambiguous allegorical terms.²²³ The terms “*light*” and “*dark*”²²⁴ are rather common expressions used in religious propagation.²²⁵ In essence, X was merely exhorting Suryan believers to convince their fellow neighbours against going astray from the Suryan faith.²²⁶

75. Hence, such statements are legitimate religious expressions protected under both Articles 18 and 19 of the ICCPR.²²⁷

2. X’s statement lacked any element of force

76. Freedom of religion includes the right *not* to be forced to convert.²²⁸ Governments must ensure that individuals are not coerced into convert by immoral and deceitful means²²⁹ or

²²¹ *Kokkinakis v Greece* (n 61) [31], [48]; *Larissis and Others v Greece* (n 174) [45].

²²² ICCPR (n 1), art 19(2); United Nations Human Rights Council (UNHRC), ‘Special Rapporteur on freedom of religion or belief’ *Interim report of the Special Rapporteur on freedom of religion or belief* U.N. Doc. A/67/303 (Aug. 13, 2012) [26].

²²³ *Karataş v Turkey* (n 156) [49]-[52].

²²⁴ Record, [16], [19].

²²⁵ Lori L. Tharps, ‘The Difference between Racism and Colourism’ 6 October 2016, < <https://time.com/4512430/colorism-in-america/>> accessed 29 October 2019.; ‘Ethnic violence threatens to tear Ethiopia apart’ 2 November 2019, < <https://www.economist.com/middle-east-and-africa/2019/11/02/ethnic-violence-threatens-to-tear-ethiopia-apart?frsc=dg%7Ce>> accessed 5 November 2019

²²⁶ *Kokkinakis v Greece* (n 61) [31]; *Larissis and Others v Greece* (n 174) [45].

²²⁷ Meghan G. Fischer (n 182), 21.

²²⁸ United Nations Human Rights Council (UNHRC), ‘Special Rapporteur on freedom of religion or belief’, *Interim report of the Special Rapporteur on freedom of religion or belief*, U.N. Doc. A/67/303 (Aug. 13, 2012) [16].

²²⁹ *Kokkinakis v Greece* (n 61) [42], [44]; *Larissis and Others v Greece* (n 174) [44].

exploitation of one's vulnerability.²³⁰ In short, forced conversion infringes upon the freedom to adopt a religion of one's choice.²³¹

77. Coercion must be distinguished from mere persuasion. In *Larissis v Greece*, the ECtHR affirmed the conviction of a military officer for converting his subordinates through “*the application of undue pressure in abuse of power*”,²³² but not for separately converting a family of civilians during house visits.²³³

78. X made two generic statements on SuryaFirst's channel to the public at large without targeting any specific individual.²³⁴ X did not personally confront anyone on the streets. Further, by going under a mask and pseudonym, X could not have abused his authority (if any) over anyone. Hence, in the absence of the requisite *actus reus* element of ‘force’, the prosecution and conviction of X under Section 220(1) was flawed.

3. Re-conversion to the Suryan faith is not a crime

79. Any restriction to the freedom of expression must fulfil a pressing social need.²³⁵ The need for Section 220(1) can be gleaned from its legislative intent²³⁶ *i.e.* “*regulate proselytism*”

²³⁰ United Nations Human Rights Council (UNHRC), ‘Special Rapporteur on freedom of religion or belief’, *Interim report of the Special Rapporteur on freedom of religion or belief*, U.N. Doc. A/67/303 (13 August 2012), [22]-[24].

²³¹ ICCPR (n 1), art 18(1).

²³² *Larissis and Others v Greece* (n 174) [51].

²³³ *Id* [59].

²³⁴ Record, [16], [19].

²³⁵ *Cumpana and Mazare v Romania* (n 210) [88]; *MGN Ltd v UK* App no. 39401/04 (ECtHR, 18 January 2011) [139]; *Standard Verlags GmbH v Austria (no. 2)* App no. 21277/05 (ECtHR, 4 June 2009) [29]; *Sunday Times* (n 68) [62]; *Pedersen and Baadsgaard v Denmark* App No 49017/99 (ECtHR, 19 June 2003) [63]; *Chauvy v France* (n 171) [64]; *Herrera v Costa Rica* (n 165) [122].

²³⁶ Shanoor Seervai, ‘The Arguments for and Against a National Anti-Conversion Law’ WALL ST. J. 9 January 2015, <<http://blogs.wsj.com/indiarealtime/2015/01/09/the-arguments-for-and-against-a-national-anti-conversion-law/>> accessed 5 November 2019. South Asia Human Rights Documentation Centre, ‘Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights’ *Economic and Political Weekly* (2008), Vol. 43, No. 2, 64.

and “protect the ‘forefathers of the original faith’”.²³⁷

80. Section 220(3) exempts criminal liability where the converted person is “voluntarily returning to the forefather’s original faith or to own one’s faith”.²³⁸ The Suryan faith is the official religion of Surya.²³⁹ As correctly interpreted by Hiya! AI trainers,²⁴⁰ the term “forefathers’ original faith” refers specifically to the Suryan religion.

81. Any exhortation for former Suryan believers to abandon the *andha* philosophy and return to the Suryan faith is in line with the Suryan government’s intent to protect the Suryan faith.²⁴¹ Hence, X’s attempt of re-conversion is not a criminal act.

4. Alternatively, the conviction and sentencing of X was disproportionate

82. Criminal liability is a hindrance to the freedom of expression, and must only be imposed in exceptional circumstances.²⁴²

83. X was convicted and handed a suspended sentence of two-years imprisonment.²⁴³ There are several mitigating factors which justify non-conviction.

²³⁷ Record, [12].

²³⁸ Record, [14].

²³⁹ Record, [1].

²⁴⁰ Clarifications, [54].

²⁴¹ Record, [29].

²⁴² CoE, ‘Recommendation of the Committee of Ministers to Member States on “Hate Speech”’ (Recommendation 97(20), 1997) (‘CoE on Hate Speech’) principles 2 and 5; Council of Europe, ‘Ethical Journalism and Human Rights’ (CommDH/IssuePaper1, 2011) 22; General Comment 34 (n 2); *Kimel v Argentina* (n 173) [76-78]; *Konate v Burkina Fasso* (n 94) [165]; *Perinçek v Switzerland* (n 156) [272]-[273].

²⁴³ Record, [26].

84. *First*, Section 220(1) is a new penal provision which requires case-law precedents to elucidate obscure points and dispel any doubts.²⁴⁴ It is unfair to punish X for crossing over the fine line between ‘innocent evangelism’ and ‘improper proselytism’.²⁴⁵

85. *Second*, criminal conviction is only warranted where the incriminating speech is tainted by malice, which is absent here.²⁴⁶

86. *Third*, such conviction would cast a chilling effect in Surya that limits interfaith discourse,²⁴⁷ and ultimately inimical to the development of a “*cohesive, peaceful and respectful*” society of common values.²⁴⁸

IV. SURYA’S PROSECUTION AND CONVICTION OF A AND B VIOLATED THEIR RIGHTS UNDER ARTICLE 19 OF THE ICCPR

87. The rising prevalence of ‘hate speech’ has led many governments worldwide to enact legislations criminalising the “*advocacy of hatred*”,²⁴⁹ much like Section 300(1) of PA.²⁵⁰

²⁴⁴ *Öztiirk v Turkey* App no. 22479/93 (ECtHR, 28 September 1999), [55]; *Jorgic v Germany* App no. 74613/01 (ECtHR, 12 July 2007) [101]; *Savva Terentyev v Russia*, App no. 10692/09 (ECtHR, 28 August 2018) [56]; *Kokkinakis v Greece* (n 61) [40].

²⁴⁵ *Kokkinakis v Greece* (n 61) [48]; *Larissis and Others v Greece* (n 174) [45].

²⁴⁶ *Kimel v Argentina* (n 173) [78]; *Perinçek v Switzerland* (n 156) [280]; Criminal Justice Act 2003, s. 145-146 (United Kingdom); *New York Times Co. v. Sullivan* 1964 376 U.S. 254 [376]; *Garrison v Louisiana* 1964 379 U.S. 64 [2].

²⁴⁷ United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/31/18 (23 December 2015), [45]-[49].

²⁴⁸ OHCHR (n 218) [7].

²⁴⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence’ (11 January 2013) UN Doc A/HRC/22/17/Add 4, [11]; CERD, General Recommendation No. 35 (Combating racist hate speech), CERD/C/GC/35 (26 September 2013) [13], [46]-[47]; United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on freedom of religion or belief’ U.N. Doc. A/HRC/40/58 (5 March 2019) [29]; United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on freedom of religion or belief’ U.N. Doc. A/HRC/31/18 (23 December 2015) [55]-[56].

²⁵⁰ Record, [22].

Indeed, Article 20(2) of the ICCPR provides basis for such laws.²⁵¹

88. Nevertheless, any restriction enacted pursuant to Article 20(2) must still comply with the strict requirements of Article 19(3).²⁵² Hence, the lawfulness of the prosecution and conviction of A and B under Section 300(1)²⁵³ must be assessed through the three-part test of legality, necessity and proportionality.²⁵⁴

A. The Prosecution and Conviction of A and B was not Provided by Law

89. As submitted, the test of legality requires criminal statutes to be construed restrictively and provide the elements of crime with sufficient precision.²⁵⁵ Further, criminalisation of any form of expression should be reserved for serious cases only.²⁵⁶

90. Here, Section 300 of PA is excessively broad and vague, hence subject to arbitrariness and abuse.²⁵⁷

91. *First*, the definition of ‘advocacy of hatred’ under Article 20(2) must meet a high threshold, and refer to the most severe and deeply felt form of opprobrium.²⁵⁸ The *mens rea* elements

²⁵¹ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, art 4.

²⁵² General Comment No. 34 (n 68) [48]; Rabat Plan of Action (n 249), [14]; United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on freedom of religion or belief’ U.N. Doc. A/HRC/31/18 (23 December 2015) [57].

²⁵³ Record, [26].

²⁵⁴ Rabat Plan of Action (n 249), [18]; CERD, General Recommendation No. 35 (Combating racist hate speech), CERD/C/GC/35 (26 September 2013) [12].

²⁵⁵ Arguments, [57]-[58].

²⁵⁶ General Comment No. 34 (n 68) [22]; Rabat Plan of Action (n 249), [18]; CERD, General Recommendation No. 35 (Combating racist hate speech) CERD/C/GC/35 (26 September 2013) [12].

²⁵⁷ Rabat Plan of Action (n 249), [7], [11].

²⁵⁸ Rabat Plan of Action (n 249), [18], [29]; United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on freedom of religion or belief’ U.N. Doc. A/HRC/40/58 (5 March 2019) [34].

of negligence and recklessness are not sufficient to meet such threshold, as the act of “advocacy” requires more than the mere distribution or circulation of materials.²⁵⁹ Hence, the alternative limb of “*recklessly cause the advocacy of hatred*” in Section 300(1) is defective.

92. *Second*, Article 20(2) is limited to “*national, racial or religious hatred*”. However, Section 300(1) contains no similar qualifiers and covers all forms of “*hatred against any group*”.²⁶⁰ For instance, full-blooded rivalries between corporations, families or even sporting fans may fall afoul of such criminal provision. Clearly, such overbreadth is contrary to the *raison d'être* of Article 20(2) in protecting vulnerable minorities.²⁶¹

B. The Prosecution and Conviction of A and B did not Pursue a Legitimate Aim

93. Interference to freedom of expression is only permissible for the respect of the rights and reputation of others, or the protection of national security, public order, public health or morals.²⁶² Not only must a real risk of harm be demonstrated, but also a close causal link between such risk and impugned expression.²⁶³

94. Despite there being over 100 incidents of mobs harassing blindfolded persons on the streets

²⁵⁹ Rabat Plan of Action (n 249), [29(c)]; United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on freedom of religion or belief’ U.N. Doc. A/HRC/40/58 (5 March 2019) [34].

²⁶⁰ Record, [22].

²⁶¹ Rabat Plan of Action (n 249), [32]; CERD, General Recommendation No. 35 (Combating racist hate speech), CERD/C/GC/35 (26 September 2013) [6]; United Nations Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on freedom of religion or belief’ U.N. Doc. A/HRC/40/58 (5 March 2019) [33]; *Perinçek v Switzerland* (n 156) [206]; *Savva Terentyev v Russia* (n 244) [76]; *Soulas v France* App no. 15948/03 (ECtHR, 10 July 2009), [36]-[41]; *Féret v Belgium* App no. 15615/07 (ECtHR, 16 July 2009) [69]-[73] & [78]; *Balsytė-Lideikienė v Lithuania* App no. 72596/01 (ECtHR, 4 November 2008) [78].

²⁶² ICCPR (n 1), art 19(3); *Malcolm Ross* (n 163) [11.6].

²⁶³ *Mac TV S.R.O. v Slovakia*, App no. 13466/12 (ECtHR, 28 November 2017) [39]; *Ungváry and Irodalom Kft v Hungary*, App no. 64520/10, (ECtHR, 3 December 2013) [37-48].

of Sun City throughout February 2019,²⁶⁴ only 2 complaints were filed.²⁶⁵ Only T specifically lodged the complaint under Section 300. However, she did not even appear on SuryaFirst's broadcast,²⁶⁶ nor accuse them of any involvement or wrongdoing.²⁶⁷

95. Since the risk of harm to *andha* believers and the visually impaired (if any)²⁶⁸ cannot be closely traced back to A and B, their prosecution and conviction was unjustified.

C. The Prosecution and Conviction of A and B was Disproportionate

96. The prosecution and conviction of A and B were unnecessary because: (i) A and B did not advocate hatred; or alternatively, (ii) criminal sanction is disproportionate.

1. A and B did not advocate hatred

97. The elements of 'hate speech' prohibited under Article 20(2) should follow the test in the *Rabat Plan of Action*²⁶⁹ as recognised by the CERD,²⁷⁰ UN Special Rapporteurs²⁷¹ and ECtHR.²⁷²

²⁶⁴ Record, [19].

²⁶⁵ Record, [20].

²⁶⁶ Record, [19].

²⁶⁷ Record, [23].

²⁶⁸ Record, [31].

²⁶⁹ Rabat Plan of Action (n 249), [29(a)-(e)].

²⁷⁰ CERD, General Recommendation No. 35 (Combatting racist hate speech), [15].

²⁷¹ United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc. A/HRC/31/18 (23 December 2015), [57]; United Nations Human Rights Council (UNHRC), Interim Report of the Special Rapporteur on freedom of religion or belief, A/72/365, 28 August 2017, [58].

²⁷² *Perinçek v Switzerland* (n 156) [204]-[208]; *Stomakhin v Russia* App no. 52273/07 (ECtHR, 9 May 2018) [90]; *Savva Terentyev v Russia* (n 244) [66]; *Axel Springer* (n 93) [89]; *Von Hannover v Germany* App nos. 40660/08 and 60641/08 (ECtHR 24 June 2004) [60]; *Leempoel & S.A. ED. Ciné Revue v Belgium* App no. 64772/01 (ECtHR, 9 November 2006) [68]; *Standard Verlags GmbH v Austria (no. 2)* App no. 21277/05 (ECtHR, 4 June 2009) [46].

a) *Content and form of broadcast*

98. Freedom of expression relates not only the substance of ideas, but the form and style in which ideas are conveyed.²⁷³ Even information or ideas that offend, shock and disturb fall within the protective umbrella of Article 19.²⁷⁴

99. X's message merely contained prosaic words such as “*bring gloom*” and “*see the light*”,²⁷⁵ instead of vulgar or derogatory terms evincing a clear intent to insult and humiliate amounting to wanton denigration of the *andha* believers.²⁷⁶

100. Further, although the broadcast depicts the street assaults,²⁷⁷ such disturbing imagery is not excessively violent to the extent of calling for terrorism or bloody revenge.²⁷⁸

b) *Context of broadcast*

101. Social and political context prevalent at the time the expression was made and disseminated is another critical factor.²⁷⁹

²⁷³ Rabat Plan of Action (n 249), [29(c)]; *Savva Terentyev v Russia* (n 244) [68], [74]; *Gül and Others v Turkey* App no. 4870/02 (ECtHR, 8 June 2010) [41]; *Grebneva and Alisimchik v Russia* App no. 8918/05 (ECtHR, 22 November 2016) [52].

²⁷⁴ *Stoll v Switzerland* (n 118) [101]; *Morice v France* (n 118) [124]; *Pentikäinen v Finland* (n 118) [87]; *Bédat v Switzerland* (n 118) [48].

²⁷⁵ Record, [16].

²⁷⁶ *Savva Terentyev v Russia* (n 244) [68]; *Magyar v Hungary* (n 153) [76]; *Skalka v Poland* App no. 43425/98 (ECtHR, 27 May 2003) [34].

²⁷⁷ Record, [17].

²⁷⁸ *Mariya Alekhina And Others v Russia* App no. 38004/12 (ECtHR, 17 July 2018) [260]; *Dilipak v Turkey* App no. 29680/05 (ECtHR, 15 September 2015) [62]; *Sürek v Turkey (no. 4)* App no. 24762/94 (ECtHR, 8 July 1999) [60]; *Fatullayev v Azerbaijan* App no. 40984/07 (ECtHR, 22 April 2010) [116]; *Gözel and Özer v Turkey* App no. 43453/04 and 31098/05 (ECtHR, 6 July 2010) [56]; *Nedim Şener v Turkey* App no. 38270/11 (ECtHR, 8 July 2014) [116]; *Şık v. Turkey* App no. 53413/11 (ECtHR 8 July 2014) [105]; *Dilipak v Turkey* App no. 29680/05 (ECtHR, 15 September 2015) [62].

²⁷⁹ Rabat Plan of Action (n 249), [29(a)]; *Perinçek v Switzerland* (n 156) [249]-[250]; *Zana v Turkey* [GC] App no. 69/1996/688/880 (ECtHR, 25 November 1997) [50], [56], [60]; *E.S. v Austria* App no. 38450/12 (ECtHR, 18 March 2019) [50]; *Gündüz v Turkey* App no. 35071/97 (ECtHR, 14 June 2004) [48]-[49]; *İ.A. v Turkey* App no.

102. SuryaFirst is a prominent nationalist group strongly vocal against the *andha* philosophy²⁸⁰ and attracts a legion of loyal subscribers and viewers on their Hiya! broadcast channel.²⁸¹ Nevertheless, they have no history of engaging or promoting acts of terrorism and violence.²⁸² Only 2 complaints were filed²⁸³ arising from over 100 mob attacks which did not result to any serious injury or threat of life.²⁸⁴

103. Hence, A and B’s videos were not broadcasted against a volatile security situation, nor atmosphere of intense hostility and hatred.²⁸⁵

c) *Imminence of harm*

104. Although incitement is an inchoate crime, some degree of risk of harm must be demonstrated.²⁸⁶ The threshold is “*imminent lawless action*”.²⁸⁷

105. The context of A and B’s broadcast is to be understood in light of its timing. In January 2019, SuryaFirst campaigned hard for the enactment of anti-conversion laws to protect the

42571/98 (ECtHR, 13 September 2005) [29]-[30]; *Mehdi Zana v Turkey (No. 2)* App no. 26982/95 (ECtHR, 6 April 2004) [31].

²⁸⁰ Record, [10].

²⁸¹ Record, [13].

²⁸² *Zana v Turkey* App no. 18954/91 (ECtHR, 25 November 1997) [60]; *Incal v Turkey* App no 41/1997/825/1031 (ECtHR, 9 June 1998) [58]; *Soulas v France* (n 261) [37]–[39]; *Süreker v Turkey (No. 1)* [GC] Application 26682/95 (ECtHR, 8 July 1999) [62].

²⁸³ Record, [20].

²⁸⁴ Record, [19].

²⁸⁵ *Savva Terentyev v Russia* (n 244) [78]; *Ozturk v Turkey* [GC] App no. 22479/93 (ECtHR, 28 September 1999) [66]; *Dmitriyevskiy v Russia* App no. 42168/06 (ECtHR 3 October 2017) [97]; *Erdoğan v Turkey* App no. 25723/94 (ECtHR, 15 June 2000) [62]; *Caruana Galizia v The Planning Authority*, Constitutional Application no. 79/2018/LSO, 16 July 2019 (Malta) [56].

²⁸⁶ Rabat Plan of Action (n 249), [29(e)].

²⁸⁷ *Brandenburg v Ohio* 395 US 1969 444; *Texas v Johnson* 1989 491 US 397 410]; *United States v Alvarez*, 2012 132 S. Ct. 2537 (US), 5; *Bible Believers v Wayne County*, 2015 805 F.3d 228 (US) [19]; *NAACP v Claiborne Hardware Co.* 1982 458 U.S. 886 [928]; *Singhal v Union of India*, Writ Petition No. 167 of 2012 (India) [20].

Suryan faith.²⁸⁸ In response, the Suryan government held public consultations.²⁸⁹ On 15 February, the PA was amended to include Section 220.²⁹⁰ The next day, SuryaFirst broadcasted X’s message and ‘live’ scenes of the mob assaulting S.²⁹¹

106. Objectively, such broadcast is more likely to be perceived as a ‘celebration’ to the passing of Section 220, rather than a call for action or ‘*fighting words*’.²⁹² Hence, the ensuing copycat assaults and videos were unforeseeable.²⁹³

2. Alternatively, criminal sanctions are disproportionate

107. Criminal sanctions on unlawful forms of expression should be a measure of last resort, and applied only in strictly justifiable situations.²⁹⁴

108. Indeed, the *andha* believers suffered from mob violence. However, primary blame does *not* lie with A and B.

109. *First*, the actual harm emanated from the unruly masked groups roaming on the streets of Sun City.²⁹⁵ The Suryan law enforcement authorities should channel resources into apprehending and prosecuting the direct perpetrators, increase street patrols at *andha*-

²⁸⁸ Record, [10].

²⁸⁹ Record, [12].

²⁹⁰ Record, [14].

²⁹¹ Record, [15]-[17].

²⁹² *Chaplinsky v New Hampshire*, 1942315 US 568 [572]; *NAACP v Claiborne Hardware Co.* (n 287) [927]; *R.A.V. v City of St. Paul* 1992 505 US 377 [382]; *Coleman v Power*, 220 CLR 1 (2004) (Australia) [13]; Canada Criminal Code 1985, s 319.

²⁹³ Record, [29].

²⁹⁴ Rabat Plan of Action (n 249), [34]; *Malcolm Ross* (n 163) [11.6]; Siracusa Principles (n 214), Principle 11; United Nations Human Rights Committee (HRC), ‘General Comment 22’: Article 18 (Freedom of Thought, Conscience or Religion)’ (30 July 1993) UN Doc CCPR/C/21/Rev 1/Add 4 [8]; General Comment 34 (n 171) [34].

²⁹⁵ Record, [19].

centric neighbourhoods, or impose emergency security measures (e.g. security checkpoints,²⁹⁶ crowd dispersals,²⁹⁷ and banning of masks²⁹⁸).

110. *Second*, the Internet allows ‘hate speech’ to be disseminated rapidly and widely, and persistently remain online, far superseding the reach of traditional press.²⁹⁹ Hence, social media platforms are no mere conduits,³⁰⁰ but active intermediaries having the technical means and legal responsibility to filter user-generated content.³⁰¹

111. Hiya! is equipped with an algorithm capable of excluding offensive contents violating their ‘Standards on Hate Speech’³⁰² supported by a complaints portal.³⁰³ Nevertheless, throughout February 2019, over 100 videos by other unknown users depicting random mob attacks were widely shared.³⁰⁴ This is due to Hiya!'s registration policy which does not

²⁹⁶ *Frumkin v Russia* App no. 74568/12 (ECtHR 5 January 2016) [102].

²⁹⁷ *Primov and Others v Russia* App no. 17391/06 (ECtHR 12 June 2014) [137].

²⁹⁸ ‘Hong Kong: Anger as face masks banned after months of protests’ (*BBC News* 4 October 2019) <<https://www.bbc.com/news/world-asia-china-49931598> > accessed 28 October 2019; ‘Extinction Rebellion protest ban was ‘abuse of power’, court hears’ (*The Guardian* 24 October 2019) <<https://www.theguardian.com/uk-news/2019/oct/24/extinction-rebellion-begins-legal-challenge-against-protest-ban> > accessed 28 October 2019.

²⁹⁹ *Delfi v Estonia* (n 53) [110]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* (n 270) [63]; *Magyar v Hungary* (n 153) [62].

³⁰⁰ Council Directive 2000/31/EC of European Parliament and Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market [2000] OJ L 178/1 [43], art. 12; Joined Cases C-236/08, C-237/08 and C-238/08 *Google France and Google v Louis Vuitton* [2010] [113]; Joint Declaration on Freedom of Expression and the Internet (UN, OSCE, OAS, ACHPR) (OSCE, 1 June 2011); [2(a)]; A Global Civil Society Initiative, ‘Manila Principles on Intermediary Liability’ <https://www.eff.org/files/2015/10/31/manila_principles_1.0.pdf > accessed 3 November 2018, Principle I(b).

³⁰¹ *Delfi v Estonia* (n 53) [144]; *L’oreal SA v eBay* [GC] C-324/09 (ECtHR, 12 July 2011) [46]; Working Party 29, Opinion 5/2009 on online social networking, WP 163, 12 June 2009; BBC News, ‘Why India wants to track WhatsApp messages’ (30 October 2019) <<https://www.bbc.com/news/world-asia-india-50167569>> accessed 2 November 2019; BBC News, ‘Ethiopia violence: Facebook to blame, says runner Gebrselassie’ (2 November 2019), <<https://www.bbc.com/news/world-africa-50276603>> accessed 3 November 2019.

³⁰² Record, [9].

³⁰³ Clarifications, [37]-[38].

³⁰⁴ Record, [19].

require real names (unlike Facebook,³⁰⁵ LinkedIn,³⁰⁶ and Quora³⁰⁷), and lackadaisical response in blocking illicit content.³⁰⁸ Hence, instead of making A and B as scapegoats, Surya should take enforcement measures against Hiya! for allowing such videos go viral unhindered.³⁰⁹

³⁰⁵ ‘What Names are Allowed on Facebook?’ (Facebook) <www.facebook.com/help/112146705538576> accessed 4 November 2019.

³⁰⁶ ‘LinkedIn User Agreement’ (*LinkedIn*, 8 May 2018) <<https://www.linkedin.com/legal/user-agreement>> accessed 4 November 2019, s 8.1(c).

³⁰⁷ ‘Terms of Service’ (*Quora*, 23 October 2018) <<https://www.quora.com/about/tos>> accessed 4 November 2019, s 2(b).

³⁰⁸ Record, [18].

³⁰⁹ *Delfi v Estonia* (n 53) [146]-[151].

PRAYER

For the foregoing reasons, the Applicants respectfully request this Court to adjudge and to declare that:

1. Surya's decision to obtain personal data from Hiya! and from certain other users violated X's rights under Article 17 of the ICCPR.
2. Surya's decision to obtain personal data regarding A and B from Hiya! violated their rights under Article 17 of the ICCPR.
3. Surya's prosecution and conviction of X violated his rights under Article 19 of the ICCPR.
4. Surya's prosecution and conviction of A and B violated their rights under Article 19 of the ICCPR.

Respectfully submitted 6 November 2019,

709A,

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