[103A]

THE 2019-2020 PRICE MEDIA LAW

MOOT COURT COMPETITION

A, B AND X

(APPLICANTS)

V.

THE STATE OF SURYA

(RESPONDENT)

MEMORIAL FOR THE APPLICANT

Words: 4,952

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACtHPR	African Court of Human and Peoples' Rights
ACHR	American Convention on Human Rights
CCPR	Centre for Civil and Political Rights
CJEU	Court of Justice of the European Union
CoE	Council of Europe
EC	European Commission
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
GDPR	General Data Protection Regulation
HRC	Human Rights Committee
IACommHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
US	United States of America

LIST OF SOURCES/AUTHORITIES

DECLARATIONS, TREATIES, AND CONVENTIONS:

STATUTES:

CASES FROM THE ECtHR:

CASES FROM THE HRC:

CASES FROM THE IACtHR:

CASES FROM THE ACHPR:

CASES FROM OTHER SUPRANATIONAL COURTS AND INTERNATIONAL TRIBUNALS:

CASES FROM NATIONAL COURTS:

BOOKS AND BOOK CHAPTERS:

Green, M. Christian, T. Jeremy Gunn, Mark Hill, '*Religion, Law and Security in Africa'* (African Sun Media 2019)……..……...20

Noorani, A.G., 'Acts of Bad Faith – Anti-Conversion Laws' in A.G. Noorani *Challenges to Civil Rights Guarantees in India* (Oxford University Press 2012)……18

Nowak, Manfred, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed., 2005)……...…9

Schabas, '*The European Convention on Human Rights: A Commentary'* (2nd edn OUP 2017) …..……8, 30

Van Der Hof, Simone, Bert-Jaap Koops, & Ronald Leenes, 'Anonymity and the Law in the Netherlands', in Ian Kerr, Valerie Steeves and Carole Luckock (eds.) *Lessons from the Identity Trail* (2009)…….2

ARTICLES:

Ghanea, Nazila, 'Expression and Hate Speech in the ICCPR: Compatible or Clashing?' Religion and Human Rights 5 (2010) 171……..18, 20, 28, 29

Moreham N., 'Privacy in Public Places', (2006) 65 CLJ 606……...4

Sornarajah, M., 'Reckless Murder in Commonwealth Law' (1975) 24 ICLQ 846……26

SOURCES FROM THE INTERNET:

ARTICLE 19: Freedom of Expression Unfiltered: How blocking and filtering affect free speech' (December 2016) < https://www.article19.org/resources/freedom-of-expression-unfiltered-how-blocking-and-filtering-affect-free-speech/ > ……7

Council of Europe Cybercrime Convention Committee (T-CY) Cloud Evidence Group, 'Criminal justice access to electronic evidence in the cloud: Recommendations for consideration by the T-CY', September 16, 2016, < rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900 0016806a495e > ……..……..……11

DACS, 'Unauthorised use of your work online' < https://www.dacs.org.uk/knowledge-base/factsheets/a-guide-to-notice-and-takedown > ……...……...31

Katitza Rodriguez, 'EFF to the United Nations: Protect Individuals Right to Privacy in The Digital Age' March 10, 2014 < www.eff.org/deeplinks/2014/02/eff-un > ……...11

Zeid Ra'ad Al Hussein (Rabat+5 Symposium on the follow-up to the Rabat Plan of Action, Rabat, 6-7 December 2017) < https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22504&LangID=E > ……..20

NEWS PUBLICATIONS:

Choe Sang-Hun, South Korean Court Rejects Online Name Verification Law, N.Y. TIMES, Aug. 24, 2012……2

UN DOCUMENTS:

EU LEGISLATION:

MISCELLANEOUS:

STATEMENT OF RELEVANT FACTS

Surya

1. Surya is a country of approximately 25 million people. About 90% of Surya's population are ethnically Suryan and around 10,000 people are Tarakan and are adherents of the *andha* faith. About 2% of ethnic Suryans claim to be adherents of the *andha* faith whereas the rest are mostly religiously Suryan.

Hiya!

2. Hiya! is a Suryan online messaging application specially licenced as a public broadcaster under Surya's Communications Act. Over 75% of the population use the Hiya!. A user must register using their phone number. Hiya! has a bilateral chat function for users to chat and share, *inter alia*, video files and links to online material with other users, as well as a broadcast function for users to 'live stream' or stream prerecorded video content to their subscribers.

Campaign against *andha*

3. In January 2019, SuryaFirst launched a campaign requesting that the government introduces laws to ban, *inter alia*, proselytism and conversion of Suryans to the *andha* faith. SuryaFirst had also requested that Tarakans be prohibited from wearing blindfolds in public due to its association with the faith. SuryaFirst maintains a broadcast channel on Hiya! called 'Seeing is Believing' which had over 100,000 subscribers and had gathered over 30,000 signatures in a petition for such a prohibition.

4. On 15 February, the Suryan government amended the Suryan Penal Act to include Section 200, which purportedly regulates proselytism. Importantly, it allows for the voluntarily conversion to the Suryan faith or one's own original faith

5. On 16 February, subscribers of the 'Seeing is Believing' channel were informed by SuryaFirst that a new live broadcast was about to begin. In the broadcast, X, who wore

a mask and called himself the "Sun Prince", encourage followers of the *andha* faith to turn away from their beliefs and encouraged others to convert *andha* followers. The message was followed by a live video where a group of masked individuals approached a blindfolded person and verbally harassed him before the group leader tore off his blindfold. The blindfolded person did not appear to show any resistance.

6. The video amassed 250,00 views and shares in a 24-hour period. From the 18th-28th February, hundreds of similar videos were shared on Hiya! depicting groups of persons accosting blindfolded individuals on the streets of the capita. In at least one case, bright flashlights were shone into the face of the visually impaired.

7. On 28 February, a pre-recorded broadcast was released by SuryaFirst on their channel where the "Sun Prince" thanked these groups for their actions

8. A complaint was submitted under Section 200 of the Suryan Penal Act by S, who claimed to be the victim in the first broadcast on 16 February. S is an ethnic Suryan who had adopted the *andha* faith. He complained that the broadcast humiliated him and subjected him to hostility and exclusion from his ethnic community. He claimed the incident was an attempt to 'forcibly convert him from his belief'.

9. Another complaint was submitted by T under Section 300 which prohibits the advocacy of hatred against any group in a manner that constitutes incitement to discrimination, hostility or violence.

Investigation and conviction

10. In the course of investigation, the prosecution contacted Hiya! to seek assistance in identifying person A, B and X. Hiya!'s legal team stated that it was fully prepared to cooperate with the investigation and would share the personal data of specific users if a formal request to do so was sent to the Head Office. The procedures under the

Criminal Procedure Act, enabling law enforcement authorities to obtain a judicial warrant to instruct data controllers to disclose user data, were not followed.

11. The prosecution thereafter sent a formal letter to the Hiya! Head Office requesting personal data pertaining to the broadcasters of the SuryaFirst channel and the Sun Prince. Hiya's legal team gave them the mobile phone numbers of A and B, who were the broadcasters. During police interrogations, A and B revealed that X was the Sun Prince.

12. X and A and B were charged and convicted under Section 200 and Section 300 respectively. They appealed their convictions before the Appellate Court on the basis that their convictions violated their rights to privacy and freedom of expression under Articles 8 and 10 of the Suryan Constitution. Their appeal was dismissed. X was sentenced to a suspended sentence of two years imprisonment and A and B were fined USD 2,000 each.

STATEMENT OF JURISDICTION

X, A and B, the Applicants, alongside the Surya, the Respondent, hereby submit this dispute to the Honourable Court, the Universal Freedom of Expression Court. The dispute in question relates to rights under Articles 17 and 19 of the ICCPR. All domestic remedies have been exhausted.

The Applicants respectfully request for this Honourable Court to adjudge the dispute in accordance with the rules and principles of international law, including any applicable declarations and treaties.

QUESTIONS PRESENTED

The questions presented, as certified by this Honourable Court, are as follows:

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

Surya's decision to obtain personal data from Hiya! and certain other users violated X's right to privacy under Article 17 of the ICCPR.

A. By obtaining personal data from Hiya! and other users, Surya revealed X's identity which was an interference with his Article 17 rights. First, privacy can encompass the right to conceal one's identity where there is a reasonable expectation of such privacy. Second, given X's precautions to conceal his identity, X had such an expectation. Third, given this reasonable expectation of privacy, the acquisition of data relating to X, as an identifiable individual, and personal data from A and B was an interference with his privacy.

B. The interference with X's Article 17 rights was unlawful. The failure to obtain a judicial warrant for the acquisition of personal data from Hiya! meant the interference was not provided for by law.

C. The interference was also not necessary in the circumstances. First, X's continued use of the channel indicated there was no urgency in identifying him. Second, other methods were available of identifying X and so it was not necessary to interfere with his privacy.

D. The interference failed to meet the requirements of proportionality. First, Hiya! failed to adopt the least restrictive method available where it did not first obtain a judicial warrant. Second, seeing X did not advocate hatred that constituted discrimination,

hostility or violence, nor could he foresee the consequences of the video it was disproportionate to interfere with his rights under Article 17.

E. Surya also breached its positive obligations under Article 17(2). The failure to prevent Hiya! from releasing personal data without a judicial warrant meant the regulatory framework in place failed to protect X's privacy.

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

F. The acquisition and use of A and B's telephone numbers amounted to an interference with their rights under Article 17 because it constitutes personal data relating to an identified individual.

G. The interference with A and B's right to privacy was unlawful because Surya failed to obtain a judicial warrant as per the Criminal Procedure Act.

H. The interference was also unnecessary as A and B were merely the broadcasters of the SuryaFirst Channel and did not actively post content threatening anyone. To this end, there was no pressing social need to acquire their personal data; the measure was merely useful.

I. The interference was disproportional to the end sought. By requesting *all* personal data, the request risked Hiya! returning information with no relevance to the prosecutor's

line of inquiry. Second, given there were only two complaints made about SuryaFirst's broadcast, despite the thousands of views, the interference was disproportionate.

J. The failure to prevent Hiya! communicating A and B's personal data amounted to a failure on the part of Surya to provide a legislative and regulatory framework that protected A and B's Article 17 rights. Therefore, Surya breached its positive obligations under Article 17(2). Moreover, the failure of the Suryan Courts to recognise the interference with their privacy effectively sanctioned the conduct of Hiya! and further indicates a breach of Surya's positive obligation.

Surya's prosecution and conviction of X violated his rights under Article 19.

K. The prosecution of X under Section 220 of the Penal Act violated X's freedom of expression as the restrictions imposed on X were not permissible under Article 19(3). Surya's declaration regarding Article 19 is incompatible with the object and purpose of the ICCPR and is contrary to Article 26 of the Vienna Convention on the Law of Treaties, and thus is invalid.

L. The restriction of X's freedom of speech was not provided for by law. First, Section 220 was insufficiently precise. The term 'force' gives authorities unfettered discretion to accept or reject the legitimacy of religious conversions. Second, the term 'social excommunication' is imprecise as social exclusion is a vague concept and it is unclear in Section 220 where the required threshold for social excommunication lies. Third, the term 'divine displeasure' does not enable individuals to regulate conduct because of the unclear boundaries between threatening divine displeasure and teaching non-believers

about the consequences for non-adherents of a faith. Fourth, the application of Section 220 in the instant case is inconsistent with the wording of Section 220.

M. The restriction with X's Article 19 rights was also not necessary in a democratic society. There was no pressing social need as X did not have the standing or status as a speaker to warrant the restriction. Moreover, his use of flamboyant language and rhetorical devices indicate the message was not intended to be taken literally and thus his expressions did not express incitement of violence nor expectation of immediate serious violence. It is submitted that the Rabat Plan of Action and the Beirut declaration do not apply owing to their status as soft law. However, even if they do apply, X's statements would not constitute advocacy of hatred under the six-part test in the Rabat Plan. Further, there is a weak causal connection between X actions and any hostility to follower of the *andha* faith and there was no pressing social need to preserve public order by prosecuting and convicting X. In addition, X's conduct did not amount to improper proselytism and so there was no pressing need to protect the freedom to adopt a religion.

N. The restrictions were not proportionate to a legitimate aim. First convictions of authors can have a chilling effect on the exercise of journalist expressions. Second, proselytism of adults should not be addressed through criminal sanctions making the suspended sentence was disproportionate. Third, given the prosecution and conviction led to the permanent banning of X from Hiya! the effect of the restriction was a disproportionate interference with X's Article 19 rights.

Surya's prosecution and conviction of A and B violated their rights under Article 19.

O. Surya's prosecution and conviction of A and B violated their rights under article 19 because the restrictions were not provided for by law, imposed for a legitimate aim or necessary and proportionate.

P. The prosecution and conviction were not provided for by law. First, the term 'recklessly' in Section 300(1) is insufficiently precise.

Q. The restrictions of A and B's Article 19 rights did not pursue a legitimate aim. First, the conviction was not necessary for the protection of public order because A and B did not share any videos from the 18-28 February. Secondly, X's video did not amount to incitement of discrimination, hostility or violence and as such the measure was not pursing Surya's Article 20(2) obligations.

R. The restrictions were not necessary in a democratic society as there was no pressing social need to restrict A and B's freedom of expression. Firstly, the causing of advocacy does not constitute advocacy. Secondly, advocacy is too widely construed by Surya in the instant case. Thirdly, Article 20 anticipates intent, and the recklessness demonstrated in the instant case does not suffice. Fourthly, Article 20(2) does not cover incitement of violence against the disabled.

S. The restriction was also disproportionate. The nature and context of the expression was such that it was difficult for A and B to predict what may happen in a live video, and

even the fAIth! filter failed to detect any traces of hate speech in the video. The nature of the impact of the video was such that A and B could not foresee the impact of the initial video as it could only be saved 30 seconds after a broadcast, and they had only announced it 15 minutes before the start of the actual broadcast. Further, they were not the ones who shared the "copycat" videos. The sanctions applied were disproportionate as the prosecution and conviction of A and B were not the least intrusive instrument in the instant case since notices and takedown procedures could have been used. Further, the effect of the restriction was that A and B were permanently banned from a popular messaging application.

ARGUMENTS

I: SURYA'S DECISION TO OBTAIN PERSONAL DATA FROM HIYA! AND FROM CERTAIN OTHER USERS VIOLATED X'S RIGHTS UNDER ARTICLE 17

1. Every person has the right to protection against arbitrary and unlawful interferences with their privacy,[1] irrespective of whether the interference originates from State authorities or from natural or legal persons.[2]

2. Surya violated X's rights under Article 17 by (A) undertaking what amounted to an interference with X's Article 17 rights; (B) in such a way that was both unlawful and arbitrary. In addition to which, or in the alternative, (C) Surya failed to discharge its positive obligation under Article 17.

A. Infringement of X's right to privacy

3. The decision to obtain personal data from Hiya! and certain other users violated X's rights under Article 17 insofar as this extends to protect against the revelation of a person's identity.

I. The relevant principles

[1] International Covenant on Civil and Political Rights (adopted 16 December 1966, *entered into force* 23 March 1976) 999 UNTS 171 ('ICCPR') Article 17

[2] Human Rights Committee, General Comment 16, Art. 16 (Thirty Second Session, 1998), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) ('General Comment 16') [1]

4. General Comment No. 16 expounds upon the applicability of Article 17 to 'personal data'.[3] This has been consistently defined as 'any information relating to an identified or identifiable natural person'.[4]

5. Although the *travaux préparatoires* for Article 17 provides little guidance as to the precise scope of 'privacy', the HRC has acknowledged the importance of being able to conceal one's identity, recognising the extent to which 'measures for encryption and anonymity can be important to ensure the enjoyment of human rights, in particular the right to privacy.'[5] This is consistent with other international human rights bodies,[6] as well as decisions of international[7] and domestic courts.[8]

[3] General Comment 16 [10]

[4] Council Regulation (EC) 2016/679 of 27 April 2016 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 L119/1, art 4(1); Supplementary Act on Data Protection (Abuja, 16 February 2010) A/SA.1/01/10 (2010); Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981), ETS 108 (19810, *entered into force* 1 October 1985

[5] Report of the Human Rights Council, GAOR, 72nd Session Supplement No. 53, at 33 'The right to privacy in the digital age', U.N. A/72/53 (2017); UNHRC, '*Report of the Special Rapporteur on the right to privacy'*, (27 February 2019) U.N. Doc. A/HRC/40/63 [10]; HRC, '*Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*', (17 April 2013) UN Doc. A/HRC/23/40 [23].

[6] African Declaration on Internet Rights and Freedoms, < http://www.oas.org/en/iachr/expression/docs/reports/2014_04_08_Internet_ENG%20_WEB.pdf > accessed 8 November 2019; Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia.

[7] *Delfi AS v* Estonia App no 64569/09 (ECtHR, 16 June 2015 ('*Delfi'*) [147]; *Von Hannover v Germany (No 2)* App no 40660/08 and 60641/08 (ECtHR, 7 February 2012) ('*Von Hannover'*) [95]; *K.U. v. Finland* App no 2872/02 (ECtHR, 2 December 2008) [49].

[8] *R. v. Spencer*, 2014 SCC 43, [2014] S.C.R. 212 ('*Spencer'*); Simone Van Der Hof, Bert-Jaap Koops, & Ronald Leenes, 'Anonymity and the Law in the Netherlands', in Ian Kerr, Valerie Steeves and Carole Luckock (eds.) *Lessons from the Identity Trail* (2009) 504-5; REGERINGSFORMEN [RF] [CONSTITUTION] 2:1-12 (Swed.); Constitutional Court of Korea, 2010 *Homma* 47 (23 August 2012); Choe Sang-Hun, South Korean Court Rejects Online Name Verification Law, N.Y. TIMES, Aug. 24, 2012, at A8.

6. In the context of the analogous right to 'private life' guaranteed by Article 8 of the ECHR, where (as here) activity takes place in or on a publicly accessible forum,[9] the ECtHR has considered whether an applicant has a reasonable expectation of privacy in order to assess the applicability of the right to privacy.[10] This is consistent with other jurisdictions.[11]

II. Application of the above principles to the present case

a. Whether X was identified by the contested measure

7. The fact the personal data obtained from a service provider is that of the subscription holder, and not other individuals using the account, is 'of little significance' where the personal data relates not only to identified but also to identifiable individuals.[12] The prosecutor's office clearly undertook the contested measure, that is obtaining without a judicial warrant the personal data of 'broadcasters' of the SuryaFirst channel, with a view to identifying X. A and B's personal data allowed the prosecutor's office to identify these individuals and subsequently acquire from them the identity of X.

[9] *Perry v United Kingdom* App no 63737/00 (ECtHR, 17 July 2003); *Uzun v Germany* App no 3563/05 (EctHR, 2 September 2010) ('*Uzun'*); *Von Hannover* [95]; *Benedik v Slovenia* App no 62357/14 (ECtHR, 24 April 2018) ('*Benedik'*) [100].

[10] *Benedik* [101]; *Bărbulescu v Romania* App no 61496/08 (ECtHR, 5 September 2017) ('*Bărbulescu*') [73]; *Copland v the United Kingdom* App no 62617/00 (ECtHR, 3 April 2007) ('*Copland'*) [41]-[42]; *Uzun* [44]; *Halford v United Kingdom,* no 20605/92 (ECtHR, 25 June 2017) ('*Halford'*) [45].

[11] *Katz v US* (1967) 389 US 347 ('*Katz*'), [62]; *Spencer*, [17]; *Byrd v. United States* 138 S. Ct. 1518 (2018) ('*Byrd*'); *Campbell v Mirror Group Newspapers Ltd* [2004] UKHL 22 ('*Campbell*'), [21]; *R v Jarvis*, 2019 SCC 10 ('*Jarvis*')

[12] *Benedik* [112] – [113].

b. Whether X had a reasonable expectation of privacy[13]

8. In assessing X's reasonable expectation of privacy, it should be noted that X took several precautions to conceal his identity: (i) using another's account;[14] (ii) masking his face;[15] and (iii) adopting a public persona in the form of the 'Sun Prince'.[16]

9. Using another's account has been considered 'an important factor' in the assessment of the reasonableness of an individual's expectation of privacy.[17] Further, since X's online activity provided him with a 'high degree of anonymity'[18] because the telephone number associated with the account could not be traced to A and B, let alone X, without the assistance of the relevant mobile phone service provider, X clearly had a reasonable expectation of privacy.[19]

10. That X chose to participate in a widely viewed broadcast cannot diminish his reasonable expectation of privacy with regards the protection of his identity.[20]

[13] *Benedik* [101]; *Bărbulescu* [73]; *Copland* [41]- [42]; *Uzun* [44]; *Halford* [45]; *Katz*, [62]; *Spencer*, [17]; *Byrd*; *Campbell*, [21]; *Jarvis*

[14] Fact Pattern [24]

[15] Fact pattern [16]

[16] *Id.*

[17] *Benedik* [116]

[18] *Id.* [117]

[19] Clarifications [60]; *Benedik* [117]

[20] *Von Hannover* [110]; *Petrenco v Moldova* App no 20928/05 (ECtHR, 30 March 2010) [55]; *PG and JH* v. *United Kingdom* App no 44787/98, (ECtHR, 25 September 2001) ('*PG and JH'*) [56]; *Campbell*,[21]*; Jarvis*; N. Moreham 'Privacy in Public Places', (2006) 65 CLJ 606, 613.

11. The ECtHR also recognises the applicable legal and regulatory framework might be relevant in determining the reasonable expectation of privacy.[21] Article 8 of the Suryan Constitution guaranteed no unlawful or arbitrary interference with privacy or correspondence[22] and the Criminal Procedures Act requires law enforcement authorities to obtain a judicial warrant to instruct data controllers to disclose user data.[23] Therefore, from the standpoint of legislation in force at the time, X's expectation of privacy with respect his online activity reasonable and justified.

III. Conclusion

12. For all the above reasons, it is submitted that X's interest in having his identity with respect to his online activity protected falls within the scope of Article 17.

B. The interferences were unlawful and arbitrary

13. Any interference with the right to privacy is permissible only if neither unlawful[24] nor arbitrary.[25] These factors are cumulative.[26]

[21] *Benedik* [118]; *Peev v. Bulgaria* App no. 64209/01 (ECtHR, 26 July 2007) [39]

[22] Fact Pattern [28]

[23] Clarifications [7]

[24] General Comment 16 [8]; Human Rights Committee, *Pinkney v Canada*, (Communication No 27/1977), UN Doc CCPR/C/14/D/27/1977.

[25] Human Rights Committee, *Toonen v Australia* (Communication No 488/1992) UN Doc CCPR/C/46/D/488/1992 [8.3] ('Toonen'); See also Bossuyt *'Guide to the "travaux préparatoires" of the International Covenant on Civil and Political Rights*' (Martinus Nijhoff Publishers, 1987).

[26] Human Rights Committee, *García v Colombia* (Communication 687/1996) UN Doc CCPR/C/71/D/687/1996.

I. The interference was unlawful

14. For an interference to be lawful it must have some basis in domestic law.[27] The law must be accessible to the public[28] and formulated with sufficient precision to enable individuals to regulate their conduct accordingly.[29]

15. The Criminal Procedure Act requires law enforcement authorities to obtain a judicial warrant to instruct data controllers to disclose user data.[30] The prosecutor's office failed to obtain such a warrant on the basis that Hiya! decided to cooperate voluntarily.[31]

16. This failure led to an unlawful interference with X's right to privacy because the acquisition of said personal data did not comply with the requirements of the Criminal

[27] General Comment 16 [3]; Human Rights Committee, *Van Hulst (Antonius) v Netherlands* (Communication No 903/1999,) UN Doc CCPR/C/82/ D/903/1999 [7.3] ('Van Hulst'); I/A Court H.R., *Escher and ors v Brazil case*, judgement of July 6, 2009, Series C No 200, IHRL 4111

[28] *The Sunday Times v The United Kingdom No.1* App no 6538/74 (ECtHR, 26 April 1979) ('*The Sunday Times*') [49]; UN Human Rights Committee (HRC), General comment 34, Art. One Hundred and Second Session, (2011), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. CCPR/C/GC/34 ('General Comment 34') [2]; *Hartford Casualty Insurance Company v Corcino & Associates et al* CV 13-3728 GAF (JCx) 7 October 2013 [7]

[29] *Taylor-Sabori* v. *United Kingdom* App no 47114/99 (ECtHR, 22 October 2002) [18]; *Groppera Radio 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; 7113/75 (ECtHR, 25 March 1983) [88]; *Herczegfalvy v Austria* App no 10533/83 (ECtHR, 24 September 1992) [89]; *Leander v Sweden* App no 9248/81 (ECtHR, 26 March 1987) [51]*; Margaret A. Acara v Bradley C. Banks, M.D.* No. 06-30356 (5th Cir. 2006) p. 2-3; I/A Court H.R., *Kimel v Argentina Case*, judgement of 3 May 2008, Series C, No. 17 ('*Kimel*'), [63]

[30] Clarifications [7]

[31] Fact pattern [24], [32]

Procedure Act,[32] and therefore did not meet the requirements of 'provided for under the law'.[33]

II. The interference was arbitrary

17. An interference will not be considered arbitrary if it is in accordance with the provisions, aims and objectives of the ICCPR and is reasonable in the particular circumstances of the case.[34]

a. In accordance with provisions, aims and objectives of the Covenant

18. It is accepted Surya was acting consistently with the provisions, aims and objectives of the Covenant.

b. Reasonable in the particular circumstances of the case

19. 'Reasonable' means that any interference with privacy must be necessary in the circumstances of any given case and be proportional to the end sought.[35]

[32] Clarification [7]

[33] General Comment No. 16 [3]-[4]; *Toonen,* [8.3]; Article 19: Freedom of Expression Unflitered: How blocking and filtering affect free speech' (December 2016) p. 2, < https://www.article19.org/resources/freedom-of-expression-unfiltered-how-blocking-and-filtering-affect-free-speech/ > accessed 27 December 2019

[34] Official Records of the General Assembly, GAOR, 43rd Session Supplement No. 40 (A/43/40) at [4]: HRC '*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 [21]; Van Hulst [7.3]; General Comment 16 [4]

[35] *Toonen* [8.3]; General Comment 16 [4].

i. Necessary in the circumstances of the given case

20. The interference is necessary only if it fulfils a pressing social need.[36] The term 'necessary' is not synonymous with 'indispensable', nor is it as flexible as the terms, 'useful', 'reasonable' or 'desirable'.[37]

21. It is submitted that contested measure adopted by Surya was merely 'useful' to the identification of X. Firstly, the release of X's second video show he was still using the channel and so there was not a need to urgently identify him. Secondly, other less restrictive means of identifying X could have been pursued before interfering with X's privacy as set out above at [14]-[16].[38]

ii. Proportional to the end sought

21. Proportionality requires that the interference be the least restrictive measure to achieve end sought.[39] The ECtHR has suggested that measures involving judicial oversight are

[36] *Otegi Mondragon v Spain* App no 2034/07 (ECtHR, 15 September 2011) [49]; *Fuentes Bobo v Spain* App no 39293/98 (ECtHR, 29 February 2000) [43]; *Mamere v France* App no 12697/03 (ECtHR, 7 November 2006) [19]; *Steel & Morris v United Kingdom* App no 68416/01 (ECtHR, 15 February 2005) ('*Steel*') [87]; *Lehideux & Isorni v France* App no 55/1997/839/1045 (ECtHR, 23 September 1998) [51]; *Bergens Tidende v Norway* App no 26132/95 (ECtHR, 2 August 2000) [48]; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion* OC-5/85 of November 13, 1985 Series A, No. 5, [46]; I/A Court H.R., *Herrera Ulloa v Costa Rica Case*, judgement of July 2, 2004, Series C, No. 107, [122]; I/A Court H.R., *Ricardo Canese v Paraguay* Case, judgement of August 31, 2004, Series C, No. 111, [96]; I/A Court H.R., *Palamara Iribarne v Chile* Case, judgement of November 22, 2005, Series C, No. 135 ('*Palamara'*), [85]; I/A Court H.R., *Claude Reyes v Chile* Case, judgement of September 19, 2006, Series C, No. 151, [91]

[37] *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [8]-[49] ('*Handyside'*); *Palamara*, [85]; I/A Court H.R., *Chaparro Álvarez and Lapo Íñiguez v. Ecuador Case*, judgement of 21 November 2007, Series C, No. 17 ("*Chapparo*")

[38] Paras [14]-[16] of this Memorial.

[39] (*Ouka v Kenya*) (Afr. Comm'n Hum. & Peoples' Rts. 6 November 2000), [2]; Decision regarding Communication 313/05 (*Kenneth Good v Republic of Botswana*) (Afr. Comm'n Hum. & Peoples' Rts. 26 May

less restrictive than those that involve no supervision.[40] As such Surya failed to adopt the least restrictive measure where it made its request of Hiya! without first obtaining a judicial warrant as enabled by the Criminal Procedure Act.[41]

22. Proportionality also requires a fair balance be struck between the aim and the right.[42] First, as explained at [60]-[67] X's expression did not advocate hatred constituting discrimination, hostility or violence, and he could not foresee the consequences of his video. Thus, it was disproportionate to interfere with his privacy. Second, as X was not present in the live parts of the video,[43] X did not physically threaten anyone and as such it was disproportionate to interfere with his privacy.

C. Surya failed to discharge its positive obligation to protect X's right to privacy

2010), [189]; *Kimel*, [74], [83]; *Smith and Grady v United* Kingdom App no 33985/96 and 33986/96 (ECtHR, 27 December 1999) ('*Smith'*) [102]; *Szuluk v United Kingdom* App no 36936 (ECtHR, 2 September 2009) ('*Szuluk*') [19]; *R v Oakes* [1986] 1 SCR 103 ('*Oakes*') [70]; C 265/87 *Schräder v Hauptzollamt Gronau* [1989] ECR 2237 ('*Schräder*') [21]; *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3 (1995) 3 SA 391 ('*Makwanyane'*) [104]; *Bank Mellat v Her Majesty's Treasury (No.2)* [2013] UKSC 39 ('*Bank Mellat*') [20]; American Association for the International Commission of Jurists 'Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights' (1 July 1984) UN Doc E/CN.4/1984/4 [11]; Conte et al. *Defining Civil and Political Rights: the Jurisprudence of the United Nations Human Rights Committee* (2nd edn Ashgate, 2009) 49; Schabas, *The European Convention on Human Rights: A Commentary* (2nd edn Oxford University Press 2017) 406.

[40] *Klass v* Germany App no 5029/71 (ECtHR, 6 September 1978) [55] ('*Klass'*); *Funke v. France* App no 10828/84 (ECtHR, 25 February 1993) ('*Funke'*) [56]-[57]; *Roemen and Schmit v. Luxembourg* App no 51772/99 (ECtHR, 25 February 2003) ('*Roemen'*) [47]; *Buck v. Germany* App no 41604/98 (ECtHR 28 April 2005) ('*Buck'*)[47]-[52]; *Imakayeva v. Russia* App no 7615/02 (ECtHR, 9 Novemeber 2006) ('*Imakayeva'*) [187]-[189]; *Smirnov v. Russia* App no 71362/01 (ECtHR, 7 June 2007) ('*Smirnov'*)[47]-[48].

[41] Clarifications [7]

[42] HRC*, 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin*' (28 December 2019) UN Doc A/HRC/13/37 [14]-[19]; HRC, '*Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue',* UN Doc. A/HRC/23/40 [28]-[29]; Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed., 2005) at 383; I/A Court H.R, *Tristán Donoso v. Panamá* Case, judgement of January 27, 2009, Series C no 193, [56]

[43] Fact pattern at [17]

23. Under Article 2 of the ICCPR all rights must be 'respect[ed] and ensur[ed]'.[44] Further to which, Article 17(2) expressly guarantees a right to protection of the law against interference with one's privacy[45] and 'requir[es] the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as the protection of this right.'[46] The positive obligation extends to a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights.[47]

24. By releasing personal data without a judicial warrant, Hiya! failed to act in accordance with the Criminal Procedure Act.[48] Therefore, Surya's regulatory framework failed to protect X, and Surya failed in its positive obligation to protect X from unjustified interferences with his privacy.

25. Further to which, the Criminal Procedure Act did not provide a legal framework for the voluntary disclosure of data from a private actor to the public authorities, including conditions and safeguards.[49]

[44] ICCPR, Article 2; United Nations Committee On Economic, Socialand Cultural Rights, General Comment 18, Art. 6 (Thirty Fifth Session 2006) U.N. Doc E/C.12/GC/186 [22]

[45] ICCPR Article 17(2)

[46] General Comment 16 [1]

[47] *Hämäläinen v Finland* App no 37359/09 (ECtHR, 16 July 2014) [63]

[48] Fact pattern [30]

[49] *Malone* v *United Kingdom* App no 8691/79 (ECtHR, 2 August 1984)*; Kruslin* v *France* App no 11801/85 (ECtHR, 24 April 1990) ('*Kruslin'*); *Huvig* v. *France* App no 11105/84 (ECtHR, 24 April 1990) ('*Huvig*')[32]-[35]; *Christie* v *United* Kingdom App no. 28957/95 (ECtHR 11 July 2002); *Kopp* v *Switzerland* App no 23224/94 (ECtHR 25 March 1998) [72]-[73]; *Valenzuela Contreras* v *Spain* App no 27671/95 (ECtHR, 30 July 1998) ('*Valenzuela*')[46]; *Khan* v. *United Kingdom* App no 35394/97 (ECtHR, 12 May 2000) [24]; *PG and JH* [39].

26. Such a state of affairs is contrary to accepted practices in a number of countries,[50] where it has been widely affirmed that access to data retained by communications service providers must be subject to judicial control or dependent on the issuance of a judicial warrant.[51] This includes instances of requests for voluntary disclosure.[52]

27. This reflects requirements of international human rights law that lawful surveillance by public officials must not only be necessary and proportionate but also be attended by independently monitored strict safeguards against abuse.[53] As held by the ECtHR, 'the rule of law implies, *inter alia*, that an interference… should normally be assured by the judiciary, at least in the last resort, judicial control offering the best guarantees of independence, impartiality and a proper procedure.'[54]

28. Moreover, the failure of the Suryan courts to recognise the interference with X's right to privacy as protected by Article 8 of the Constitution was a failure to offer rectification and further indicates a breach under Article 17.

[50] *Riley v California* 573 U.S. 5 (2014) ('*Riley*'); *United States v. Davis*, 785 F. 3d 498 (11th Cir. 2015) ('*Davis*')

[51] *Riley*; *Davis*; Katitza Rodriguez, 'EFF to the United Nations: Protect Individuals Right to Privacy in The Digital Age' March 10, 2014 < www.eff.org/deeplinks/2014/02/eff-un > accessed 31 December 2019; Council of Europe Cybercrime Convention Committee (T-CY) Cloud Evidence Group, 'Criminal justice access to electronic evidence in the cloud: Recommendations for consideration by the T-CY', September 16, 2016, < rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a495e > accessed 31 December 2019.

[52] *Spencer*

[53] *Weber and Saravia v Germany* App no 54934/00 (ECtHR, 29 June 2006) [95]; *Kruslin*; *Huvig* [32]-[35]; *Amann v Switzerland* App no 27798/95 (ECtHR, 16 February 2000)[74]; *Valenzuela* [46].

[54] *Klass* [55]; *Funke* [56]-[57]; *Roemen* [47]; *Buck* [47]-[52]; *Imakayeva* [187]-[189]; *Smirnov* [47]-[48].

II: SURYA'S DECISION TO OBTAIN PERSONAL DATA REGARDING A AND B FROM HIYA! VIOLATED THEIR RIGHTS UNDER ARTICLE 17

29. Surya violated A and B's right under Article 17 where (A) the right to privacy as expressed in Article 17(1) extends to the protection of the type of personal data provided by Hiya!; (B) the means through which Surya obtained said personal data was unlawful and arbitrary; in addition or in the alternative (C) the State failed to discharge its positive obligation under Article 17.

A. The right to privacy extends to the protection of telephone numbers

30. Telephone numbers constitute personal data where they are used to identify individuals[55] and as such acquisition and use of A and B' phone numbers fall within the scope of their right to privacy as protected by Article 17 ICCPR.[56]

B. The interference was unlawful and arbitrary

I. The interference was unlawful[57]

[55] Council Regulation (EC) 2016/679 of 27 April 2016 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 L119/1, art 4(1); Supplementary Act on Data Protection (Abuja, 16 February 2010) A/SA.1/01/10 (2010); Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981), ETS 108 (19810, *entered into force* 1 October 1985.

[56] *Benedik* [107]-[108]

[57] Arguments at [14]

31. As expounded above at [14]-[16][58] where a judicial warrant was not obtained as per the Criminal Procedure Act,[59] Surya's acquisition of A and B's personal data was unlawful.

II. The interference was arbitrary[60]

a. In accordance with the provisions, aims and objectives of the Covenant

32. It is accepted Surya was acting consistently with the provisions, aims and objectives of the Covenant.

b. Reasonable in the particular circumstances of the case

i. Necessary in the circumstances of the given case

33. Seeing A and B were merely the broadcasters of the channel and did not personally threatened anyone there was nothing in the present situation urgent enough to justify bypassing the Criminal Procedure Act. Therefore, Surya's request for all personal data of the broadcasters without judicial oversight may have been 'admissible' or 'useful' but it was not necessary.[61]

[58] Paras [14]-[16] of this Memorial

[59] Fact pattern [24] and [30]; Clarifications [7]

[60] Para [16] of this Memorial.

[61] *Handyside* [48]-[49]; *Palamara* [85]

ii. Proportional to the end sought

34. The prosecutor's office failed to balance the aim of investigating S's complaints under Section 300 with A and B's right to privacy.

35. Firstly, where the prosecutor's office asked via 'formal request' for '*all* personal data pertaining to the 'broadcasters' of the SurayaFirst channel'[62] Surya failed to adopt the least restrictive measure available to them as required.

36. The request should have been made following a judicial warrant for the personal data of A and B insofar as this was consistent with the Criminal Procedure Act.[63]

37. Moreover, such a request ought to have been pursued with a narrower framing than a request for '*all'* personal data.[64] Such an indiscriminate request risked Hiya! returning information with no relevance to the prosecutor's office's line of inquiry. As such the measure was disproportionate to the aim sought.

38. Further, given the number of views of the videos released by the SuryaFirst channel, the fact there were only two complaints made suggest there was not an overwhelming concern created by the videos and that it was thus disproportionate to interfere with A and B's privacy.

[62] Fact Pattern [24] (emphasis added)

[63] Clarification [7]

[64] Fact Pattern [24]

C. In addition, or in the alternative, the State failed to discharge its positive obligation to protect A and B's right to privacy

39. In addition, or in the alternative, it is submitted that the State[65] failed to discharge its positive obligations under Articles 2 and 17 of the ICCPR.[66]

40. Under the well- and widely-accepted principle of information accountability, companies that collect personal data in the course of their business must be accountable for the safe and fair management of that data.[67] If the decision to cooperate taken by Hiya! cannot be regarded as an interference with A and B's rights on the part of the State, Hiya!'s actions were effectively sanctioned where the High Court and Appellate Courts failed to find an interference with A and B's right to privacy as protected by Article 8 of the Suryan Constitution. The Universal Court of Human Rights ought to find that the instant complaint should be examined from the standpoint of the State's positive obligations and its failure to comply therewith.[68]

41. This failure is clear where there exists no law governing the responsibility of intermediaries with regards the *voluntary* sharing of personal data.

[65] Human Rights Committee, General Comment 31 (Eightieth Session, 2004), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc CCPR/C/21/Rev.1/Add.13 ('General Comment 31') [4]

[66] Para [24] of this Memorial; ICCPR Article 2; General Comment 31 [8]; General Comment 16 [1], [9].

[67] James X. Dempsey, Fred H. Cate and Martin Abrams, 'Organisational Accountability, Government Use of Private Sector Data, National Security and Individual Privacy', in Fred H. Cate and James X. Dempsey (eds), *Bulk Collection: Systematic Government Access to Private-Sector Data,* (Oxford University Press, 2017)

[68] *Bărbulescu*

III: SURYA'S PROSECUTION AND CONVICTION OF X VIOLATED HIS RIGHTS UNDER ARTICLE 19

42. The Applicants respectfully submit that Surya violated X's freedom of expression as the restrictions imposed on X were not permissible under Article 19(3).

43. Freedom of expression is fundamental for every free and democratic society.[69] An interference with this right would be permissible if it is: (A) provided for by law; (B) imposed for a legitimate aim under Article 19(3); and (C) necessary in a democratic society.[70]

44. The Applicants' case succeeds if it is shown that any one of the three conditions in [44] are not fulfilled. The Applicants submit that the first and third of these conditions were not so fulfilled.

[69] Human Rights Committee, *Berik Zhagiparov v Kazakhstan* (Communication No. 2441/2014) UN Doc CCPR/C/124/D/2441/2014; Human Rights Committee, *Liubou Pranevich v Belarus* (Communication No. 2251/2013) UN Doc CCPR/C/124/D/2251/2013; Human Rights Committee, *Pavel Levinov v Belarus* (Communication No. 1812/2008) UN Doc CCPR/C/123/D/2239/2013.

[70] General Comment 34; Human Rights Committee, *Vladimir Viktorovich Shchetko and Vladimir Vladimirovich Shchetko v Belarus* (Communication No. 1009/2001) UN Doc CCPR/C/87/D/1009/2001; Human Rights Committee, *Afuson Njaru v Cameroon* (Communication No. 1353/2005) UN Doc CCPR/C/89/D/1353/2005; Human Rights Committee, *Khairullo Saidov v Taijkistan* (Communication No. 2680/2015) UN Doc CCPR/C/122/D/2680/2015; Human Rights Committee, *Tae Hoon Park v Korea* (Communication No. 628/1995) UN Doc CCPR/C/64/D/628/1995; Human Rights Committee, *Robert Faurisson v France* (Communication No. 550/1993) UN Doc CCPR/C/58/D/550/1993 ('*Faurisson*'); Decision Regarding Communications 128/94, 130/94 and 152/96 (*Media Rights Agenda and Constitutional Law Project v Nigeria*) (Afr. Comm'n Hum. & Peoples' Rts., 31 October 1998); Decision Regarding Communication 294/04 (*Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa v Zimbabwe*) (Afr. Comm'n Hum. & Peoples' Rts., 3 April 2009), [74]-[75]; Decision Regarding Communication 250/2002 (*Zegveld v Eritrea*) (Afr. Comm'n Hum. & Peoples' Rts. 6 November 2003), [59]; Decision Regarding Communication 242/2001 (*Interights v Mauritania*) (Afr. Comm'n Hum. & Peoples' Rts 4 June 2004), [78]-[79]; I/A Court H.R., *Francisco Martorell v Chile Case*, judgement of 3 May 1996, Report no 11/96, [55]; I/A Court H.R., *Rios et al v Venezuela Case*, judgment of 28 January 2009, Series C, No 194, [346]

A. Impugned Restriction

45. It is submitted that the impugned restriction refers to the restriction of X's freedom of expression as a result of his prosecution and conviction for only his pre-recorded expressions in the videos on 16 and 28 February.[71]

B. Declaration

46. Surya's declaration regarding Article 19 is invalid. It is incompatible with the object and purpose of the ICCPR and contradicts Article 26 of the Vienna Convention on the Law of Treaties prohibiting states from invoking provisions of its internal law to justify its failure to perform a treaty.[72]

C. The restriction was not provided for by law

47. For an interference to be provided for by law, it must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be accessible to the public.[73] The interference need not be absolutely precise.[74]

[71] *Faurisson* (Judge Rajsoomer Lallah)

[72] Vienna Convention on the Law of Treaties (adopted 23 May 1969, *entered into force* 27 January 1980) 1155 UNTS 331 art 26(1); Office of Legal Affairs, *Multilateral treaties deposited with the Secretary-General: status as at 31 December 1993* UN Doc ST/LEG/SER.E/13 151, no. 4

[73] General Comment 34 [25]; Human Rights Committee, *Toktakunov v Kyrgyzstan* (Communication No 1470/2006) UN Doc CCPR/C/101/D/1470/2006, [7.6]; *Kimel*,[63]

[74] *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) ('*Kokkinakis*') [49]

48. Firstly, the word "force" in Section 220 is not sufficiently precise to enable an individual to regulate their conduct. Reports to the HRC have criticised use of the term 'force' in similar legislation in various Indian states[75] as it gives authorities unfettered discretion to accept or reject the legitimacy of religious conversions.[76]

49. Secondly, the term "social excommunication" is imprecise. It is unclear what the required threshold of exclusion should be before an act would be considered "social excommunication" and the concept is inherently vague.

50. Thirdly, the term "divine displeasure"[77] does not enable an individual to regulate conduct accordingly due to unclear boundaries between threatening divine displeasure and explaining what a religion teaches about non-adherents.[78]

51. Fourthly, the term "voluntarily" is insufficiently precise. The absence of physical resistance could indicate a 'voluntary' conversion, or alternatively an absence of

[75] State of Orissa Freedom of Religion Act 1967, ss 2(b) and 3; *Yulitha Hyde v State of Orissa* AIR 1973 Ori 116; *Rev Stanislaus vs Madhya Pradesh* 1977 SCR (2) 611; The Madhya Pradesh Freedom of Religion Act of 1968; The Madhya Pradesh Dharma Swatantrya Adhiniyam 1986, ss 2(b) and 3; Arunachal Pradesh Freedom of Indigenous Faith Act of 1978 (No. 40 of 1978), ss 2(d), 3; The Chhatisgarh Dharma Swatantrya (Sanahodhan) Vidheyak, 2006, ss 2(c) and 3; The Gujarat Freedom of Religion Act 2003, ss 2(c) and 3

[76] HRC '*Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir'* (6 January 2009) UN Doc A/HRC/10/8; HRC '*Report of the Special Rapporteur on freedom of religion or belief (Addendum*)' (2009) UN Doc A/HRC/10/8/Add.3; Tehmina Arora and Ewelina Ochab 'Submission to the 27th session of the Human Rights Council's Universal Periodic Review Working Group' (Universal Periodic Review, Geneva, April-May 2017); Heiner Bielefeldt, Nazila Ghanea-Hercock, Michael Wiener, '*Freedom of Religion or Belief: An International Law Commentary*' (Oxford University Press 2016) 203

[77] Fact pattern, [14]

[78] South Asia Human Rights Documentation Centre, 'Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights' (2008) 43(2) Economic and Political Weekly 63; South Asia Human Rights Documentation Centre, 'Annexure 1 to the Submission to the 27th UPR Working Group session on India' (Universal Periodic Review, Geneva, 22 September 2016); A.G. Noorani, 'Acts of Bad Faith – Anti-Conversion Laws' in A.G. Noorani *Challenges to Civil Rights Guarantees in India* (Oxford University Press 2012) 207

verbal attempts to persuade could indicate a 'voluntary' conversion. Section 220 offers no such clarification. Further, the degree of voluntariness is difficult to measure meaning individuals cannot regulate their conduct accordingly.

52. The lack of precision is also evidenced by the fact the fAIth! filter, trained to accommodate the special position of Suryan faith pursuant to Section 220(3),[79] had not flagged the video as containing 'hate speech'.

D. The restriction was not necessary in a democratic society

53. For an interference to be necessary in a democratic society, it must 1) correspond to a pressing social need and 2) be proportionate to the legitimate aims pursued.[80] This means the restriction must be applied only for the purposes for which they were prescribed and must be directly related and proportionate to the specific aim.[81] The

[79] Fact Pattern, [18]

[80] General Comment 34, [22], [33], [34]; *Balsytė-Lideikienė v Lithuania* App no 72596/01 (ECtHR, 4 November 2008) ('*Balsytė-Lideikienė'*); *Pastörs v Germany* App no 55225/14 (ECtHR, 3 October 2019) ('*Pastörs*')[48]; *Ibragim Ibragimov and Others v Russia* App nos. 1413/08 and 28621/11 (ECtHR, 28 August 2018) [94]; *Gündüz v Turkey* no. 35071/97 (ECtHR, 4 December 2003) [37], [40]; *Soulas and Others v France* App no 15948/03 (ECtHR, 10 July 2008); *Erbakan v Turkey* App no 59405/00 (ECtHR, 6 July 2006); *Perinçek v Switzerlad* App no 27510/08 (ECtHR, 15 October 2015) ('*Perinçek*')*; Karácsony and Others v Hungary* App nos. 42461/13 and 44357/13 (ECtHR, 17 May 2016) ('*Karácsony*')[56]; *Mouvement raëlien suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012) ('*Mouvement raëlien suisse*') [48]; *Animal Defenders International v The United Kingdom* App no 48876/08 (ECtHR, 22 May 2013) ('*Animal Defenders International*') [100]; *Delfi*, [131]; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 'Joint Declaration on Freedom of Expression and the Internet' (2011) < https://www.osce.org/fom/78309?download=true > accessed 2 January 2020; *Observer and Guardian v United Kingdom* App no 13585/55 (ECtHR, 26 November 1991) ('*Observer and Guardian*')[59]; *Chapparo*

[81] General Comment 34, [22], [33], [34]; *Balsytė-Lideikienė,* [76]; *Pastörs,* [48]*; Perencik,* [98]; *Karácsony,* [54]*; Mouvement raëlien Suisse,* [48]*; Animal Defenders International,* [100]

burden of proof is particularly high to ensure that the restriction does not curb the enjoyment of the rights enshrined in the ICCPR.

I. There was no pressing social need as X's expressions did not incite discrimination, hostility or violence

54. The Rabat Plan and the Beirut Declaration are soft law[82] and are not legally binding on the instant court.

55. The existing test for establishing a pressing social need is four-fold: regard will be had to X's status as a speaker, the nature of X's expressions, the context in which they were published, and the approach taken by the Suryan courts.[83]

a. X's status as a speaker

56. Prosecution of an author is justified only if the author has standing and influence.[84] X was not known prior to the first video and his alias was only made publicly known at

[82] Paul Behrens, Olaf Jensen, Nicholas Terry, '*Holocaust and Genocide Denial: A Contextual Perspective'* (1 ed, Routledge, 2017) 2.3.4; M Christian Green, T Jeremy Gunn, Mark Hill, 'Religion, Law and Security in Africa' (African Sun Media 2019) 66; Zeid Ra'ad Al Hussein (Rabat+5 Symposium on the follow-up to the Rabat Plan of Action, Rabat, 6-7 December 2017) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22504&LangID=E> accessed 17 December 2019; Heiner Bielefeldt, Nazila Ghanea-Hercock, Michael Wiener, '*Freedom of Religion or Belief: An International Law Commentary*' (Oxford University Press 2016) 203

[83] *Perinçek*,[205]-[208]; *Dmitriyevskiy v Russia* App no 42168/06 (ECtHR, 3 October 2017) ('*Dmitriyevskiy*'), [102]

[84] *Karataş v Turkey* App no 23168/94 (ECtHR, 8 July 1999) [52]

the time of posting.[85] There was thus no pressing social need to prosecute and convict him.

b. Nature of X's expression

57. The freedom of speech is protected unless it is obvious from the expression that 'immediate serious violence was expected or advocated',[86] and had expressly incited violence, which raises an immediate threat of harm.

58. Firstly, X's pre-recorded statements used several rhetorical devices. A reasonable person, cognisant of the rhetorical devices employed, will know not to take the entire message literally. There was thus neither express incitement of violence nor expectation of immediate serious violence.

59. Secondly, X was merely expressing his opinion that the *andha* 'faith' was regressive and that it encouraged insulation from the real world.[87] The overwhelmingly successful 'fAIth!' filter did not identify X's expressions as hate speech.[88] Further, the HRC has emphasised that restrictions cannot be used to punish criticism or commentary on religious doctrine and tenets of faith.[89] Since X was merely expressing his opinion on

[85] Fact pattern,[16]

[86] *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Hess v. Indiana*, 414 U.S. 105 (1973)

[87] Fact pattern [29]

[88] Fact pattern [18]

[89] General Comment 34 [48]

matters of religious doctrine, it is submitted that there is a countervailing need to ensure that X was not punished for his expressions.

c. Context of X's statements

60. Since there was no severe religious strife within Surya at the time when X's statements were first made, there was no pressing social need to prosecute and convict X based on his expressions at that time.

61. In the alternative, even if the Rabat Plan applies, there is still no pressing social need. The Rabat Plan proposes that the court considers: the context in which the expression was made, the speaker, the intent to incite hatred, the content and form of the speech, the extent of the speech act and the likelihood of incitement.[90] As submitted above, X's status as the speaker; the content and form of the speech and the context in which the expression was made, do not easily lend to the conclusion there was a pressing social need. The remaining limbs of the Rabat Plan will presently be considered.

i. Intent to incite hatred

62. Under the Rabat Plan, 'advocacy' requires an 'intent to promote hate'.[91] X's use of florid rhetorical devices suggests his statements do not actually advocate literal

[90] Human Rights Committee, '*Promotion and protection of the right to freedom of opinion and expression*' (7 September 2012) UN Doc A/67/357; *Faurisson* (Judges Elizabeth Evatt, David Kretzmer, and Eckart Klein)*; Perinçek; Norwood v The United Kingdom* App no 23131/03 (ECtHR, 16 November 2004)

[91] HRC, '*Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'* (5 October 2012) UN Doc A/HRC/22/17/Add.4 at § 29(c)

violence and that he did not intend a reaction from followers. Further, as mentioned, X only intended to comment on matters of religious doctrine. On this alone, the X's prosecution and conviction would fall foul of the Rabat Plan.

ii. Extent of speech act

63. X's statements only reached 1% of the Suryan population.[92] Given the limited reach, there was no pressing social need to prosecute and convict X.

iii. Likelihood of incitement

64. The 'Sun Prince' was an unknown figure prior to the broadcast on the 16th February and was unlikely to have sufficient influence to incite violence.

II. In addition, there was no pressing social need to prosecute and convict X as it would not protect public order

65. Public order is synonymous with the maintenance of public peace, safety and tranquillity.[93] Given that X had neither shared any of the copycat videos nor assaulted S, and that the causal link between X's speech and the violence is weak, the prosecution and conviction of X would not protect public order.

[92] Fact pattern [19]

[93] *Ramburn v Stock Exchange Commission* [1991] LRC (Const) 272; *Re Munhumeso* [1994] 1 LRC 282; *Elliott v Commissioner of Police* [1997] 3 LRC 15; Decision Regarding Communication 297/2005 (*Scanlen and Holderness v Zimbabwe Communication*) (Afr. Comm'n Hum. & Peoples' Rts., 3 April 2009) (*"Scanlen"*), [19]

III. There was no pressing social need to prosecute and convict X to protect the freedom to adopt a religion

66. While the freedom to adopt a religion is an absolute right,[94] states can only impose restrictions on 'improper' proselytism, which requires the victim to feel obliged to listen to the applicant or the applicant to behave improperly *towards* the victim.[95] In the instant case, the complainant, S, did not feel obliged to listen to X's statements nor did X personally behave improperly towards him. It is noted that the freedom of religion entails accepting proselytism, even where it is 'not respectable'.[96]

IV. The restrictions were disproportionate

67. For the restriction to be considered proportionate, it must be the least intrusive measure that might achieve the relevant protective function.[97] The nature and severity of the penalties imposed are among the factors to be considered when assessing the proportionality of an interference with the freedom of expression.[98]

[94] General Comment 22;

[95] *Larissis and others v Greece* App no 23372/94 (ECtHR, 24 February 1998) [59]

[96] *Kokkinakis* (Judge Pettiti); *Kimel*, [88]

[97] Human Rights Committee, *Adelaida Kim v Uzbekistan* (Communication No 2175/2012) UN Doc CCPR/C/122/D/2175/2012; *Kimel*, [74], [83]

[98] *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [37]; *Tammer v Estonia* App no 41205/98 (ECtHR, 6 February 2001) [69]; *Skałka v Poland* App no 43425/98 (ECtHR, 27 May 2003) [41]-[42].

68. Firstly, the restriction was disproportionate because of its wider effect. Convictions of authors can have a chilling effect on the exercise of journalistic freedom of expression and dissuade discussion of matters of public concern and are thus disproportionate.[99]

69. Secondly, proselytism of adults should not be addressed through criminal prosecution but rather through 'fiscal and welfare legislation and by the ordinary law on misrepresentation…and intentional or negligent injury'.[100]

70. Thirdly, the nature of the suspended sentence is inherently disproportionate. Since Section 220 itself is not formulated with precision, X may unknowingly make a minor breach of Section 220 and still attract a hefty penalty of two years in jail. This is a disproportionate response to a mere expression of opinion and is not the least intrusive measure.[101]

71. Moreover, the conviction had the secondary effect of X being permanently banned from Hiya!. Given 75% of Suryans use Hiya! to communicate,[102] this has a disproportionate effect on X's freedom of speech.

[99] *Dmitriyevskiy* [94]; *Sürek v Turkey (no. 4)* App no 24762/94 (ECtHR, 8 July 1999) [54]; *Erdoğdu and Ince v Turkey* App nos. 25067/94 and 25068/94 (ECtHR, 8 July 1999) [59].

[100] *Kokkinakis;* Decisions regarding Communication 004/2013 (*Lohé Issa Konaté v The Republic of Burkina Faso*) (Afr. Comm'n Hum. & Peoples' Rts. 27 May 2002); *Kimel,* [76]

[101] General Comment 34 [34]

[102] Fact pattern [3]

IV: SURYA'S PROSECUTION AND CONVICTION OF A AND B VIOLATED THEIR RIGHTS UNDER ARTICLE 19

72. Freedom of expression is enshrined in Article 19.[103] Any restriction to said freedom must be meet the criteria laid out above at [44].

73. The Applicants submit that none of the conditions referred to in [44] above have been fulfilled and as such Surya violated A and B's freedom of expression under Article 19(2)

A. Impugned restriction

74. The restriction in question refers to the prosecution and conviction of A and B under Section 300. Both parties were fined USD 2,000.

B. Surya's conviction and prosecution of A and B were not provided for by law

[103] ICCPR Article 19

75. Law must be sufficiently precise such that an individual can regulate their conduct accordingly.[104] In particular, an individual must be able to foresee the consequences of their actions.[105]

76. Section 300 is insufficiently precise. The term 'recklessly' in Section 300(1) is not sufficiently precise. Recklessness is a notoriously contested mental state and there is not a uniform approach to it across jurisdictions.[106] Thus, when left undefined, individuals are unable to regulate their conduct accordingly.

C. Surya's conviction and prosecution of A and B were not in pursuant of a legitimate aim

77. Freedom of expression can be restricted for the respect of the rights and reputation of others, or the protection of national security, public order, public health or morals. The right to freedom of expression extends to the imparting of "information" or "ideas" that "offend, shock or disturb."[107]

[104] *Kokkinakis,* [40]; *Kartar Singh v State of Punjab* 1994 3 SCC 569 (India); Human Rights Committee, *Leonardus Johannes Maria de Groot v. The Netherlands* (Communication No. 578/1994) UN Doc CCPR/C/54/D/578/1994 [4.3]; *City of Chicago v Morales* 527 U.S. 41 (1999); *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43]; *Kimel,* [63]; *Lindon, Otchakovsky-Laurens and July v France* App no 36448/02 (ECtHR, 22 October 2007) [41]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [56]-[57]; *Vördur Ólafsson v Iceland* App no 20161/06 (ECtHR, 27 July 2010) [36]; *Shreya Singhal v Union of India* AIR 2015 SC 1523 (India); American Association for the International Commission of Jurists 'Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights' (1 July 1984) UN Doc E/CN.4/1984/4 [17]; HRC, '*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 [8]; General Comment 34 (n 54) [25].

[105] *Observer and Guardian* [53]; *Sunday Times* (n 89) [49].

[106] Chisea, Luis, 'Comparative Criminal Law' in Markus D. Dubber and Tatjana Hörnle (eds), *The Oxford Handbook of Criminal Law* (Oxford University Press 2014); M. Sornarajah,'Reckless Murder in Commonwealth Law' (1975) 24 ICLQ 846

[107] *Handyside* [49]

78. Firstly, the restriction was not necessary for the protection of public order. Neither A nor B shared any of the videos made from the 18-28 February.[108] Insofar as these copycat videos amounted to a disturbance of public order, the prosecution of conviction of A and B was not a logical, necessary or effective response.

79. Secondly, as explained at [55]-[65],[109] X's video did not amount to incitement of discrimination, hostility or violence and as such the measure was not pursuing Surya's Article 20(2) obligations.

D. Surya's conviction and prosecution were not necessary in a democratic society

80. For an interference to be necessary in a democratic society, it must 1) correspond to a pressing social need and 2) be proportionate to the legitimate aims pursued.[110]

I. The interference did not meet a pressing social need

[108] Fact pattern, [17]

[109] Para [55] – [65] of this memorial.

[110] General Comment 34, [22], [33], [34]; *Balsytė-Lideikienė v Lithuania* App no 72596/01 (ECtHR, 4 November 2008) ('*Balsytė-Lideikienė'*) [76]; *Pastörs v Germany App no 55225/14 (ECtHR, 3 October 2019) ('Pastörs*') [48]*; Perinçek v Switzerlad App no 27510/08 (ECtHR, 15 October 2015)* ('*Perencik'*) [98]; Karácsony and Others v Hungary App nos. 42461/13 and 44357/13 (ECtHR, 17 May 2016) ('*Karácsony'*) [54]*; Mouvement raëlien suisse v Switzerland App no 16354/06 (ECtHR, 13 July 2012)* ('*Mouvement raëlien Suisse*') [48]*; Animal Defenders International v The United Kingdom App no 48876/08 (ECtHR, 22 May 2013)* ('*Animal Defenders International*') [100]; *Delfi*, [131]; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 'Joint Declaration on Freedom of Expression and the Internet' (2011) < https://www.osce.org/fom/78309?download=true > accessed 2 January 2020; *Observer and Guardian v United Kingdom* App no 13585/55 (ECtHR, 26 November 1991) [59]

81. To show there was a pressing social need, the reasons advanced by the State should be relevant and sufficient.[111] Sufficiency depends on the public interest involved[112] and the correlation between the expression and protected interest.[113]

82. For the reasons stated in [55] – [67],[114] there was no pressing social need to restrict X's freedom of speech and as such there was no corresponding need to restrict A nor B's.

83. The prosecution and convictions of A and B were not pursuant to Surya's obligations under Article 20 (2). The application of Article 20(2) of the ICCPR requires a 'high threshold' as limitation to the freedom of expression has to be the exception.[115] Section 300 of the Penal Act and its application goes further than Article 20(2) requires.

84. First, the 'causing of advocacy' is not advocacy as required by Article 20(2).[116] Given freedom of expression is fundamental for a democratic society,[117] any watering down of restrictions supposedly pursuant to Article 20(2) cannot be accepted.

[111] *Tønsberg Blad and Haukom v Norway* App No 510/04 (ECtHR, 1 March 2007) [54]; *Handyside* [50]

[112] *Sunday Times*) [62]; *Handyside* [22] – [24]

[113] *Perinçek* [71]; Human Rights Committee, *Hak—Chul Shin v Republic of Korea*, Communication no 926/2000, UN Doc. CCPR/C/80/D/926/2000 (HRC)

[114] Paras [55]-[67] of this Memorial.

[115] Nazila Ghanea, 'Expression and Hate Speech in the ICCPR: Compatible or Clashing?' Religion and Human Rights 5 (2010) 171, 183; Article 19, Prohibiting incitement to discrimination, hostility or violence, December 2012, < www.refworld.org/docid/50bf56ee2.html > accessed 31 December 2019

[116] ICCPR Article 20(2)

[117] General Comment 34 [2]

85. Secondly, 'advocacy' in Article 20(2) is left undefined. Given the importance of freedom of expression, 'advocacy' within Article 20(2) must be construed narrowly to prevent abuse of power.[118] In this context, the meaning of 'advocacy' in Article 20(2) must be narrower than the 'sharing of photographs, audio or video files and hyperlinks to content on the internet'.

86. Thirdly, the Rabat Plan also prescribes that Article 20(2) 'anticipates intent' and thus recklessness is not sufficient for an act to be an offence under Article 20(2).[119] This is consistent with multiple jurisdictions.[120] Section 300 goes further than Article 20(2) by setting the standard of culpability at recklessness.

87. Fourthly, Article 20(2) also only relates to prohibitions of advocacy relating to 'national, racial or religious hatred'. Therefore, the extent to which A and B's prosecution and conviction related to complaints by those who were disabled these measures cannot be pursuant to Article 20(2).

[118] Nazila Ghanea, 'Expression and Hate Speech in the ICCPR: Compatible or Clashing?' Religion and Human Rights 5 (2010) 171

[119] HRC, '*Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'* (5 October 2012) UN Doc A/HRC/22/17/Add.4 at § 29(c); Recommendation 3, Article 19, Prohibiting incitement to discrimination, hostility or violence, December 2012, < www.refworld.org/docid/50bf56ee2.html > accessed 31 December 2019; ARTICLE 19 'Hate Speech – Explained: A Tool Kit', 23 December 2015, < www.article19.org/resources/hate-speech-explained-a-toolkit/ > accesed 31 December 2019; Barbora Bukovska, Agnes Callamard and Sejal Parrmer, "Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition of incitement to hatred" (Regional Expert Meeting on Article 20, Vienna, February 8-9 2010) 11

[120] UK Criminal Justice Act 1967, Section 8; Section 47.2 of the Criminal Code (Cyprus); Section 2 of the Prohibition of Incitement Act 1989 (Ireland); Paragraph 82A.1 Criminal Code (Malta); Article 240 of the Criminal Code (Portugal); Article 19, Prohibiting incitement to discrimination, hostility or violence, December 2012, < www.refworld.org/docid/50bf56ee2.html > accessed 31 December 2019

a. The interference was not proportional to a legitimate aim

88. In assessing the proportionality of the interference, the Court has to consider the nature and context of the expression in relation to the legitimate aim sought to be protected, the nature of the impact of the impugned expression, the process applied and the sanctions imposed.[121] Proportionality also requires that the restriction be the least restrictive measure to achieve the legitimate aim pursued.[122]

b. Nature and context of the expression in the context of the legitimate aim

89. First, significant parts of the video on the 16th February were broadcast 'live'.[123] The content was hence unpredictable and not within the control of A and B. Thus, restrictions on A and B's Article 19 rights based on the initial broadcast are disproportionate as they could not have known what would occur in the video.

90. Second, the fAIth! Filter, which has an 87% accuracy rate,[124] failed to flag the video released on the 16th February as hate speech.[125] Thus, indicating the impugned expression did not amount to hate speech and any restriction is disproportionate.

[121] *Karácsony*, [85]; *Szél* v *Hungary* App no 44357/13 (ECtHR 17 May 2016) [85]; *Delfi* [142]

[122] *Oakes*, [70]; *Schräder*, [21]; *Makwanyane*, [104]; *Smith* [102]; *Szuluk*, [19]; *Bank Mellat*, [20]; Schabas, '*The European Convention on Human Rights: A Commentary*' (2nd edn OUP 2017) 406; *Amnesty International and Others v Sudan* (2000) AHRLR 297 (ACHPR 1999)

[123] Fact pattern, [17]

[124] Fact pattern, [9]

[125] Fact pattern, [18]

c. Nature of the impact of the impugned expression

91. First, restrictions based on any videos made from the 18th-28th February are disproportionate because A and B cannot have been able to foresee the impact of the initial video. Given a video can only be saved for a 30 second period following a broadcast, it was unlikely the video would amass such a large viewing. Further, they had only announced a new broadcast 15 minutes before the start of the impugned broadcast; it was unforeseeable that so many people will be able to drop what they were doing at such a short notice to tune into the broadcast. On the balance of probabilities, it was also not foreseeable that Suryans would take the video so literally since the florid rhetorical devices used by X suggests his statements do not actually advocate literal violence.

92. Second, none of the videos made in response to the one released on the 16th February were shared by SuryaFirst. A and B were thus passive in response to the videos posted on Hiya! from the 18-28th February.[126]

d. Process applied and sanctions imposed

93. First, proportionality requires that any laws which restrict the freedom of expression are 'the least intrusive instrument amongst those which might achieve the desired result'.[127] Rather than prosecution and conviction, notice and take down procedures

[126] *Delfi* [146]

[127] HRC, '*Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue',* (17 April 2013) UN Doc. A/HRC/23/40

would have been less restrictive;[128] they could have been targeted at the specific actions which allegedly constituted advocacy of hatred or caused such advocacy.

94. Second, the court will consider the effects of the restriction on the applicants.[129] Given the conviction had the secondary effect of A and B being permanently banned from Hiya!, and 75% of Suryans use Hiya! to communicate,[130] the restriction has a disproportionate effect on A and B's freedom of speech.

95. Third, since the A and B operate an important public platform to publicly discussed political issues, to prosecute and convict A and B for statements made on this platform would cause serious chilling effect.

[128] DACS, 'Unauthorised use of your work online' < https://www.dacs.org.uk/knowledge-base/factsheets/a-guide-to-notice-and-takedown > accessed 2 January 2020

[129] *Delfi* [160]

[130] Fact pattern [3]

PRAYER/ RELIEF SOUGHT

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

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

Respectfully submitted 03 January 2020

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