

BEFORE

THE HON'BLE SUPREME COURT

AT KILMONACK

FLAVIA

*(Under Article 32 and Article 136 of the Constitution of Flavia read with
Rule 47 of Flavian Supreme Court Rules)*

IN THE CASE OF

MR. DOLFOPA SORIAL AND OTHERS

(PETITIONER)

v.

THE STATE OF FLAVIA

(RESPONDENT)

MEMORIAL *filed on behalf of* **RESPONDENT**

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LIST OF ABBREVIATIONS

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| ¶ | Paragraph |
| AIR | All India Reporter |
| Afr. Ct. H. P. R. | African Court on Human and People's Rights |
| App. | Application |
| Art. | Article |
| Co. | Company |
| Const. | Constitution |
| Doc. | Document |
| E. C. H. R. | European Convention on Human Rights |
| ECOSOC | United Nations Economic and Social Council |
| ed. | Edition |
| EHRR | Essex Human Rights Review |
| Eur. Ct. H.R. | European Court of Human Rights |
| FPC | Flavian Penal Code |
| G.A. | General Assembly |
| Govt. | Government |
| G.R. | General Registered Case |
| H.R.C. | Human Rights Commission |
| HRLJ | Human Rights Law Journal |
| Inter-Am Comm'n H.R. | Inter-American Commission on Human Rights |

MEMORIAL *for* RESPONDENT

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|--------------|--|
| ICCPR | International Covenant on Civil and Political Rights |
| Ltd. | Limited |
| No. | Number |
| OEA | Office of Enforcement Analysis |
| O.J. | Official Journal |
| p. | Page |
| Phil. S. Ct. | Philippine Supreme Court |
| Rep. | Report |
| Res | Resolution |
| ResOr | Restraintment Order |
| SC | Supreme Court |
| SCC | Supreme Court Cases |
| SCR | Supreme Court Reports |
| UDHR | Universal Declaration on Human Rights |
| U.N. | United Nations |
| U.N. H.R.C. | United Nations Human Rights Commission |
| UNTS | United Nations Treaty Series |
| US | United States |
| Vol. | Volume |

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STATEMENT OF JURISDICTION

Mr. Dolfopa Sorial and other editors of the Flavian Express has approached the Supreme Court of Flavia by filing a Review Petition in accordance with the Rule 47 of Flavian Supreme Court Rules. The Supreme Court has the jurisdiction to hear the Criminal Appeals against the petitioner under Article 136 of the Flavian Constitution. The Writ Petition filed by the Petitioner is maintainable with the Supreme Court under Article 32 of the Flavian Constitution.

STATEMENT OF FACTS

INTRODUCTION:

The Democratic Republic of Flavia recognises the Freedom of Press as a fundamental right under freedom of speech and expression guaranteed by the Flavian Constitution but this right is subject to the restrictions of public order, morality, national security, defamation and incitement to an offence. Kazalia, the northernmost region of Flavia, has been granted ‘Special Category Status’ on account of its longstanding territorial dispute with the Federation of Rastow. Moreover, Kazalia has witnessed the turmoil between the secessionist forces and the Army leading to Kazalia being, the most important internal security issue of Flavia.

ABOLITION OF SPECIAL CATEGORY STATUS OF KAZALIA:

Mr. Mosante won the Presidential Elections of 2017 in Flavia. Earlier, Mr. Mosante was a real estate tycoon and his AZM Group was engaged in the building and renovation of luxury hotels, golf courses as well as modernisation of heritage sites and buildings. In July 2019, section 500-A was introduced in the Flavian Penal Code making the defamation of the President a punishable offence. On 1st December 2019, Mr. Mosante announced the decision to abolish the ‘Special Category Status’ of Kazalia in order to ensure full integration of Kazalia to Flavia. Prior to this decision, mobile and internet services in Kazalia were disconnected and a ban was imposed on all form of protests. Majority of the print and electronic media showed that the situation in Kazalia was under control.

PUBLICATION OF THE ANONYMOUS ARTICLE:

Mr. Dolfopa Sorial, the Editor in chief of the ‘Flavian Express’, is a very reputed journalist known for his honest coverage of issues. The Flavian Express introduced a page called ‘Open Book’ where anyone could publish anonymous articles criticising the actions of the government. An anonymous article appeared in the Open Book page titled ‘Family First: The Great Kazalia Land Scam’ on 15th December 2019 criticising the decision of abolition of Special Category Status of Kazalia as being a fraud committed in the furtherance of the interests of the President’s family. The publication of the article was followed by massive demonstrations in Kilmonack, the capital of Flavia leading to a fight between the supporters of Mosante and the opposition. It also resulted in violent protests in Kazalia where the Army had to deal with the protestors leading to the death of 25 people and detention of many protestors.

GOVERNMENT’S RESPONSE:

The Flavian Government sought an order of restraintment on the publication of news on the situation of Kazalia till normalcy is restored. The High Court of Kilmonack passed a judgement restraining the media from publishing any such kind of information till restoration of normalcy in Kazalia in the interests of national security and public order. The President strongly denied the allegations of the article and framed the Flavian Express and Mr. Sorial under the offence of Defamation and Sediton. The Criminal Court of Kilmonack ordered the Flavian Express and Mr. Sorial to reveal the author(s) of the anonymous article but Mr. Sorial refused to communicate. Mr. Sorial requested access to certain official documents to justify the allegations in the article but the Government refused access to the official documents. He also challenged the constitutional validity of Sections 124-A and 500-A of the Flavian Penal Code.

PUBLICATION OF SECOND ARTICLE

Another news article titled ‘The Never-Ending Troubles for Kazalia’ was published in the Flavian Express revealing the escalation of tense environment in Kazalia with the increase in deployment of the armed forces and the denial of basic rights to Kazalian natives. The Flavian Government approached the Supreme Court of Flavia for prosecuting Mr. Sorial and the Flavian Express for committing a breach of the Supreme Court Order. Mr. Sorial and the editors filed a petition against the indefinite continuance of the order in violation of the constitutional guarantee of free speech.

PRELIMINARY HEARING BY THE SUPREME COURT

The Supreme Court constituted a Special Bench comprising of all its nine Judges to reconsider the validity of the restraintment order. In a preliminary hearing, the Judges asked the Government the time within which it expects to restore normalcy in Kazalia. The Attorney General, on instructions, submitted that the Government expects it by end of March or by mid- April. The Special Bench agreed to consider the Criminal Appeals and Writ Petition filed by Mr. Sorial. The Supreme Court observed that Flavia is a signatory to the International Convention on Civil and Political Rights [‘ICCPR’] and has ratified the same so it is bound by the provisions of the ICCPR. The Supreme Court has posted the matters for final hearing on 25th February 2020.

STATEMENT OF ISSUES

- I. WHETHER THE ORDER OF RESTRAINTMENT SOUGHT BY THE GOVERNMENT ON PUBLICATION OF NEWS FROM KAZALIA IS VALID AND ENFORCEABLE?

- II. WHETHER THE COURT ORDER DIRECTING MR. DOLFOPA SORIAL TO REVEAL THE IDENTITY OF THE AUTHOR(S) WHO POSTED THE ANONYMOUS ARTICLE AND PUNISHMENT FOR REFUSAL TO COMMUNICATE THE REQUESTED INFORMATION IS ILLEGAL AND VIOLATIVE OF THE FREEDOM OF PRESS?

- III. WHETHER THE REFUSAL BY THE GOVERNMENT TO GRANT ACCESS TO THE REQUESTED OFFICIAL DOCUMENTS IS VALID?

- IV. WHETHER SECTIONS 124-A AND 500-A OF THE FLAVIAN PENAL CODE ARE VIOLATIVE OF THE FUNDAMENTAL RIGHT TO FREEDOM OF SPEECH AND EXPRESSION?

- V. WHETHER THE PROSECUTION AGAINST ‘THE FLAVIAN EXPRESS’ AND MR. DOLFOPA SORIAL IS LIABLE TO BE QUASHED?

SUMMARY OF ARGUMENTS

I. The order of restraintment sought by the Flavian Govt on publication of news from Kazalia is valid.

The restraintment order sought by the Flavian Govt to prohibit the print and electronic media on publication of the news regarding Kazalia is valid as per the provisions of the ICCPR to which Flavia is a party. It satisfies the three-part test prescribed under art. 19(3) of the ICCPR thereby making it a valid restriction on the freedom of speech and expression. Further, it is in accordance with the provisions of art. 20.

II. The Court order directing Mr. Dolfopa Sorial to reveal the identity of the author(s) who posted the anonymous article is not violative of the freedom of the press.

The court order to reveal the identity of the author(s) of the anonymous article is valid under the ICCPR. For a reservation to be valid under the ICCPR, it has to be compatible with the object and purpose of the treaty. The court order satisfies this requirement, as it is specific and does not abrogate the rights accorded under Articles 17 and Article 19 under the ICCPR. Further, the court orders is a valid restriction imposed on the rights under Article 17 and 19 of the ICCPR as they are ‘prescribed by law’ and are ‘necessary in a democratic society’ for the protection of the public interest and to maintain public order in Flavia. Lastly, they are necessary to protect the democratic structure of Flavia and maintain public order in light of the recent unrest in the country.

III. The refusal of the government to grant access to the requested official documents is valid.

The refusal of the government to grant access to the requested official documents is valid as it is in consonance with the right to privacy and the right of third parties involved. The records of government deliberations cannot be made public if they pose a threat to the national security of the nation and are prejudicial to the sovereignty and integrity of the nation. In light of the widespread unrest in Flavia, it is not rational to release such documents at the moment. The disclosure of the documents may also have an adverse impact on the third party concerned here. Hence, the disclosure of such documents is not justified and rational in the present conditions and is hence valid.

IV. Sections 124-A and 500-A of the Flavian Penal Code are not in violation of the Fundamental Right to Freedom of Speech and Expression.

The Fundamental Right to Freedom of Speech and Expression cannot be construed to be absolute, and any provision that has a reasonable and rational nexus with the restrictions to this right would be valid. Section 124-A of the Flavian Penal Code is valid since it comes within the saving clause of Article 19 of the Constitution in the interests of public order, national security and to discourage incitement to offences. Section 500-A is valid under Article 19 and does not violate the right of speech and expression. Further, both the Sections stand in consonance with the requirements laid in the ICCPR and are legal, legitimate and proportionate.

V. The prosecution against the Flavian Express and Mr. Dolfopa Sorial is valid and cannot be quashed.

The prosecution against the Flavian Express and Mr. Sorial is prescribed by law. The anonymous article published in The Flavian Express violates Section 124-A of the Flavian Penal Code since it was intended to cause public disorder. Further, it defames the President of the Republic and its publication by The Flavian Express and Mr. Sorial is punishable under Section 500-A of the Flavian Penal Code. Further, their prosecution is necessary since the Article was published in utter disregard to the context and extent of its publication. Hence, their prosecution cannot be quashed and stands valid.

ARGUMENTS ADVANCED

I. THE ORDER OF RESTRAINTMENT SOUGHT BY THE FLAVIAN GOVT ON PUBLICATION OF NEWS FROM KAZALIA IS VALID.

¶ 1. The Restraintment Order [“ResOr”] sought by the Flavian Government [“Govt”] to prohibit the print and electronic media on publication of the news regarding Kazalia is valid as per the provisions of the ICCPR to which Flavia is a party. The ResOr satisfies the three-part test prescribed under art. 19(3) of the ICCPR [A] and is in accordance with provisions of art. 20. [B]

A. The restrictions satisfy the three-part test prescribed under art. 19(3) of the ICCPR.

¶ 2. State Parties must guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds.¹ However, these rights are not absolute in nature and are subject to certain restrictions under the ICCPR and the UDHR.² A three-part test has been provided under art. 19 of the ICCPR to assess the validity of any restriction imposed on the freedom of speech and expression.³ This test has been widely accepted and used in multiple judgments across jurisdictions.⁴

i. The restrictions are provided by the law.

¶ 3. The first limb of the test requires that the restriction must be provided for by law. A norm is ‘prescribed by law’ if it is formulated with sufficient precision so as to enable citizens to reasonably foresee the consequences which a given action may entail.⁵ The term

¹ Universal Declaration of Human Rights art. 19, Dec. 10, 1948, G.A. Res. 217 (III) A; International Covenant on Civil and Political Rights art. 19(2), Dec. 16, 1966, 999 U.N.T.S. 171; African Charter on Human and People’s Rights art. 9, June 27, 1981, 1520 UNTS 217; American Convention of Human Rights art. 13(1), Nov. 22, 1969, 1144 UNTS 123; INDIA CONST. art. 19, § 2; *Handyside v. United Kingdom*, App. No. 5493/72 Eur. Ct. H.R. (1976) [hereinafter *Handyside*].

² Toby Mendel, *Restricting Freedom of Expression: Standards and Principles*, Centre for Law and Democracy (Mar. 7, 2010, 10:03 PM), <http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-onFOE.pdf>.

³ Commission Regulation 2016/679, General Data Protection Regulation, art. 17(1)(c), 2016 O.J. (L 119); *Gaweda v. Poland*, App. No. 26229/95 Eur. Ct. H.R. ¶ 39 (2002); *Feldek v. Slovakia*, App. No. 29032/95 Eur. Ct. H.R. (2001); *Lohe Issa Konate v. Burkina Faso*, App. No. 004/2013 Afr. Ct. H.P.R. ¶ 125 (Dec. 5, 2014).

⁴ *Sunday Times v. United Kingdom*, App No. 6538/74 30 Eur. Ct. H. R. (1979) [hereinafter *Sunday Times*]; *Lingens v. Austria*, App. No. 9815/82 Eur. Ct. H.R. ¶¶ 39-40 (1986); *Thorgeirson v. Iceland*, App. No. 13778/88 Eur. Ct. H.R. ¶ 63, (1992).

⁵ *Sunday Times*, *Id* at ¶ 49; *Kokkinakis v. Greece*, App. No. 14307/88 Eur. Ct. H.R. (1993); *Malone v. The United Kingdom*, (1984) 7 EHRR 1; *Mueller v. Switzerland*, (1988) 13 EHRR 212; *Connally v. General*

‘law’ must be flexibly interpreted to encompass administrative,⁶ civil and criminal laws, as well as a Const.⁷ It is also clear that in common law systems, legal norms developed through the case law meet the requisite standard.⁸ The restrictions imposed by the ResOr are in accordance with art. 19 of the Flavian Const. [“Const”]

¶ 4. Accordingly, the provisions of art. 19 provide for reasonable restrictions of public order, morality, national security, defamation and incitement to an offence on the exercise of freedom of expression.⁹ The anonymous article published by the Flavian Express qualified not just as a criticism of the gov’t’s actions but also, as an attack on the reputation of the Flavian President, his family and the gov’t. False allegations and charges of corruption, fraud and nepotism were framed against them without any proof of authenticity.¹⁰ The publication of this article also incited violent protests in the region of Kazalia which has been regarded as the most significant internal security issue of Flavia.¹¹

¶ 5. Therefore, the restrictions sought by the gov’t are justified under art. 19 of the Const. Consequently, the ResOr has been upheld by the HC of Kilmonack in the interest of national security and maintenance of public order till normalcy is restored in the region.¹²

ii. The restrictions are in pursuance of serving a legitimate aim.

¶ 6. The second part of the test requires that the restrictions must be for the protection of legitimate and overriding interests of respect for the rights and reputations of others, protection of national security, public order, public health or morals.¹³ This list of interests is exclusive in terms of a restriction on freedom of expression.¹⁴ Both purpose and effect of restrictions are relevant in assessing the legitimacy of the aim to be pursued by the restrictions.¹⁵ The rights and freedoms of others may act as a limitation upon art. 19 of the ICCPR.¹⁶ This includes the right to reputation of public officials, who must be protected

Construction Co., 269 U.S. 385, 391 (1926); Coates v. Cincinnati, 402 U.S. 611 (1971); Kartar Singh v. State of Punjab, (1994) 3 SCC 569 (India).

⁶ Gooding v. Wilson, 405 U.S. 518 (1972), p. 522.

⁷ Refah Partisi (The Welfare Party) and Others v. Turkey, App Nos. 41340/98, 41342/98, 41343/98 and 41344/98 Eur. Ct. H.R. ¶ 58 (2003).

⁸ Observer and Guardian v. United Kingdom, App. No. 13585/88 Eur. Ct. H.R. ¶ 50-53(1991).

⁹ The Case, ¶ 1.

¹⁰ The Case, ¶ 7.

¹¹ Id.

¹² The Case, ¶ 10.

¹³ supra note 2.

¹⁴ Mukong v. Cameroon, Comm. No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (Aug. 10, 1994).

¹⁵ R. v. Big M Drug Mart Ltd., [1985] 1 SCR 295 (Can.).

¹⁶ Siracusa Principles, U.N. Doc. E/CN.4/1985/4 (Aug. 24, 1985); Ross v. Canada, Comm. No. 736/1997, U.N. Doc. CCPR/C/70/D/736/1997 (Oct. 26, 2000) [hereinafter Ross]; Otto-Preminger-Institut v. Austria, App. No. 13470/87 Eur. Ct. H.R. ¶ 48 (1995).

against unwarranted verbal attacks and abuse concerning their work.¹⁷ The position of the victim and the circumstances in which the offensive remarks had been made by the applicant are taken into consideration while assessing the damage to the reputation of the public officials.¹⁸ Under certain situations, the journalists are directed to remove the articles that criticize public officials in order to protect their reputation.¹⁹

¶ 7. In the case at hand, the publication of the anonymous article titled ‘Family First: The Great Kazalia Land Scam’ resulted in the defamation of the President and his family. It also accused the govt of involvement in large scale fraud giving way to corruption and nepotism.²⁰ These allegations were made without support from authentic sources causing harm to the reputation of the President when in a function he was called a fraud, a liar, a national disgrace.²¹ There was also widespread violence post the publication of the article in Kazalia requiring intervention by the Flavian Army to control the situation.²² The seriousness of the situation and possible danger by the secessionist forces being aided by the Federation of Rastow was also affirmed by the warnings issued by the Flavian Intelligence Agencies.²³

¶ 8. Therefore, restrictions imposed were valid as they serve a legitimate aim of protecting the rights and reputation of the President, his family and the Govt as well as maintaining public interest and peace in Kazalia.

iii. The restrictions are necessary for a democratic society.

¶ 9. The necessity element of the test presents a high standard to be overcome by the State seeking to justify the interference.²⁴ For a norm to be ‘necessary in a democratic society’, it must correspond to a pressing social need.²⁵ The restrictions imposed must be proportionate

¹⁷ Prager and Oberschlick v. Austria, App. No. 15974/90 Eur. Ct. H.R. (1995).

¹⁸ G. Hirman v. Austria, App. No. 20571/92 Eur. Ct. H.R. (1995); GF v. Switzerland, App. No. 25063/94 Eur. Ct. H.R. (1995); H. Trieflinger v. Germany, App. No. 29364/95 Eur. Ct. H.R. (1995); DP v. Romania, App. No. 31477/96 Eur. Ct. H.R. (1996); JR Lopez-Fando Raynaud and E Pardo Unanua v. Spain, App. No. 26601/95 Eur. Ct. H.R. (1997); H Mahler v. Germany, App. No. 18902/91 Eur. Ct. H.R. (1998); Middleburg and others v. the Netherlands, App. No. 34328/96 Eur. Ct. H.R. (1998); Kubli v. Switzerland, App. No. 50364/99 Eur. Ct. H.R. (2002); Ferragut Pallach v. Spain, App. No. 1182/03 Eur. Ct. H.R. (2004); Annual Rep. of the Inter-Am. Comm’n on H.R., Rep. of the Office of the Special Rapporteur for Freedom of Expression OEA/Ser.L/Vol.II.131 (Mar. 8, 2008).

¹⁹ Grillo v. Auler, Case No. 0016778-07.2016.8.16.0182, ¶40 (2016).

²⁰ *The Case*, ¶ 7.

²¹ *The Case*, ¶ 8.

²² *Id*

²³ *Id*

²⁴ *supra* note 2, pg. 3.

²⁵ Sunday Times, *supra* note 4, ¶ 62; Klass v. Germany, App. 5029/71 Eur. Ct. H.R. ¶ 59 (1978); Handyside, *supra* note 1; Merits, Reparations and Costs, Palamara Iribarne v. Chile, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 135, ¶ 126 (Nov. 22, 2005); Preliminary Objections, Merits, Reparations and Costs, Usón Ramirez v. Venezuela, Judgment, (ser. C) No. 207, ¶ 55 (Nov. 20, 2009); Waldock, H, *The Effectiveness of the System set*

to the legitimate aims being pursued.²⁶ The proportionality is assessed on the grounds of the negative impact caused by the limiting measure upon the enjoyment of the right and the ameliorating effects of the limiting measure.²⁷

¶ 10. The right to freedom of speech and expression includes the right to seek and receive information.²⁸ But this right is subject to limitations under international law.²⁹ While the publication of true and impartial news is an established duty of journalists, govts have the right to restrict information when it is provided by law and the disclosure threatens to cause substantial harm or the harm to the public is greater than the public interest in having the information.³⁰ The restrictions should be limited to matters including law enforcement, national security, public or individual safety, and the effectiveness and integrity of govt decision-making processes.³¹

¶ 11. The anonymous article in the Flavian Express and other news articles publish opinions which lacks evidence and proof for its authenticity. The Flavian Interior Ministry believes that the circulation of fake news would further aggravate the already tense atmosphere in Kazalia.³² These being the circumstances, there is a substantial need to prevent the circulation of fake news as it could incite the general public to resort to violence and hostility which violates the art. 20(2) of ICCPR.

B. The restrictions are in accordance with the provisions of art. 20 of the ICCPR.

¶ 12. The State Parties can legally prohibit the freedom of speech and expression with regard to the specific forms of expression indicated in art. 20 of the ICCPR.³³ The circumstances under which exercise of free speech and expression can be restricted and prohibited by law, include any propaganda of war; or any advocacy of national, racial or

up by the European Convention on Human Rights, (1980) 1 HRLJ 1, p.9; *Virginia v. Black*, 538 U.S. 343 (2003); *Ramji Lal Modi v. State of Uttar Pradesh*, AIR 1957 SC 620 (India).

²⁶ *Velichkin v. Belarus*, Comm. No. 1022/2001, U.N. Doc. CCPR/C/85/D/1022/2001 (Nov. 3, 2005) [hereinafter *Velichkin*].

²⁷ *Burgess v. Australia*, Comm. No. 1012/2001, U.N. Doc. CCPR/C/85/D/1012/2001 (Oct. 21, 2005).

²⁸ *Martin v. Struthers*, 319 U.S. 141, ¶ 65 (1943); *Tinker v. Des Moines School District*, 393 U.S. 503, ¶45 (1969); *Lovell v. City of Griffin*, 303 U.S. 444, ¶ 56 (1938); *European Convention on Human Rights art. 10*, Nov. 4, 1950, 213 U.N.T.S. 22; *International Covenant on Civil and Political Rights art. 19*, Dec. 16, 1966, 999 U.N.T.S. 171.

²⁹ *Sereno v. Committee on Trade and Related Matters*, Phil. S. Ct. 144, G.R. No. 175210, 53 (2016); *Chavez v. Public Estates Authority*, 384 SCRA 152, ¶ 32 (2002).

³⁰ Art. 19, *The public's right to know principles on freedom of information legislation*, (1999), available at <https://www.art19.org/data/files/pdfs/standards/righttoknow.pdf>.

³¹ *Id.*

³² *The Case*, ¶17.

³³ Art. 19: Freedoms of opinion and expression, H.R.C. General comment No. 34, U.N. Doc. CCPR/C/GC/34, ¶ 52 (July 29, 2011).

religious hatred that constitutes incitement to discrimination, hostility or violence. There is a strong coherence between art. 19 and art. 20 of the ICCPR.³⁴ The restrictions on expression falling within the scope of art. 20 must also be permissible under art. 19(3) which lays down requirements for determining whether restrictions on expression are permissible.³⁵ Further, these restrictions must conform to the strict tests of necessity and proportionality.³⁶

¶ 13. Kazalia is an area affected with insurgency and the rise of secessionist movements.³⁷ This has also been affirmed by the Flavian Intelligence Agencies.³⁸ In such grave circumstances, the publication of the article by the Flavian Express instigated and aggravated violent protests in Kazalia. The publication was followed by massive demonstrations in Kilmonack, the capital of Flavia and in many other places along with the false allegations on the govt, as well as the President, defaming them.³⁹ Mr. Sorial and other journalists have tended to incite violence and hostility among the public against the govt and have led to violent protests in Kazalia.⁴⁰ Given the threat to national security from the neighbouring country and the danger to public order due to the violent protest, the ResOr was a necessary and proportionate measure justified under the art. 20(2) of the ICCPR.

II. THE COURT ORDER DIRECTING MR. DOLFOPA SORIAL TO REVEAL THE IDENTITY OF THE AUTHOR(S) WHO POSTED THE ANONYMOUS ARTICLE IS NOT VIOLATIVE OF THE FREEDOM OF THE PRESS.

¶ 14. The Court order directing Mr. Sorial to reveal the identity of the author(s) who posted the anonymous article, and sanctioning punishment for refusal to communicate the same, is not violative of the author's right to privacy under art. 17 of the ICCPR [A], and does not create a 'chilling effect' in contravention of art. 19 [B]. Further, it falls under the legitimate restrictions [C].

³⁴ Ross, *supra* note 15, ¶ 6.3.

³⁵ *Id.*

³⁶ Velichkin, *supra* note 25, ¶ 7.3.

³⁷ *The Case*, ¶ 2.

³⁸ *The Case*, ¶ 9.

³⁹ *The Case*, ¶ 8.

⁴⁰ *Id.*

A. The Court order is not violative of Mr. Sorial and the author(s)' right to privacy under art. 17 of the ICCPR.

¶ 15. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.⁴¹ The right to privacy will only be violated if the information demanded is sufficient to cause offence to an ordinary person.⁴² Art. 10 of the ECHR⁴³ that provides for the freedom of expression also mentions certain restrictions that are necessary in the interests of national security, public safety or protection of public order.

¶ 16. In *K.U. v. Finland*,⁴⁴ the Eur. Ct. H.R. held that everyone must have a guarantee that their own privacy and freedom of expression will be respected but such guarantee cannot be absolute and is subject to restrictions on account of prevention of disorder or crime or the protection of the rights and freedoms of others. In *Delfi AS v. Estonia*⁴⁵ an Internet news portal provided a platform, for user-generated comments on previously published articles. In such cases, users – whether identified or anonymous – could post comments which infringe the personality rights of others. The Court held that the operator of an Internet news portal may be held accountable for offensive comments posted on the portal by users. In *Branzburg v. Hayes*⁴⁶ the reporter was asked to reveal his source of information in some articles he wrote about drug use in Kentucky. The court held that the reporters had to respond to a grand jury subpoena about questions relating to the commission of a crime.

¶ 17. In the present matter, the article had created widespread unrest and harm to the personality of the president without substantial proof. If the article had only stated facts, then there shall be no hesitation in revealing the identity of the author. Also, according to § 500-A of the Flavian Penal Code, the defamation of the president is a crime, and questions relating to the commission of a crime fall outside the journalist's privilege.

⁴¹ International Covenant on Civil and Political Rights, art. 17, Dec. 16, 1966, 999 U.N.T.S. 171.

⁴² Roger Toulson, Freedom of Expression and Privacy, 41 Law Tchr. 139 (2007).

⁴³ European Convention for the Protection of Human Rights and Fundamental Freedom, as amended by Protocols Nos 11 and 14, art. 10, Nov. 4, 1950, 213 U.N.T.S. 221.

⁴⁴ App. No. 25702/94, Eur. Ct. H.R. (2001)

⁴⁵ App. No. 64669/09 Eur. Ct. H.R (2015)

⁴⁶ 408 U.S. 665 (1972).

B. The Court order does not create a chilling effect in contravention of art. 19 of the ICCPR

¶ 18. Art. 19 of the ICCPR⁴⁷ provides for the freedom of expression but is subject to certain restrictions under art. 19(3) such as the right and reputation of others⁴⁸ and the protection of national security and public order⁴⁹. The question of cause and effect envisages that there has to be a rational connection between the cause (court subpoena) and the effect (deterrence of press).⁵⁰ One court order will not have a significant impact on the willingness of sources to divulge information.⁵¹

¶ 19. In the present case, the reputation of the president is in jeopardy, and hence it becomes vital for Mr. Sorial to divulge the identity of the anonymous author and check the credibility of the source. The widespread unrest in Flavia that threatens national security and the reputation of the president in jeopardy, provides sufficient ground to curb the freedom of expression.

C. The Court Order falls under legitimate restrictions.

¶ 20. The Court order qualifies as a legitimate restriction as it is prescribed by law [i], serves a legitimate aim [ii], and is necessary for a democratic society [iii].

i. The court order is 'prescribed by law'.

¶ 21. The Eur. Ct. H.R. has observed that 'prescribed by law' includes both written law and unwritten law.⁵² It includes statutes as well as judge-made law.⁵³ The court order is 'prescribed by law' as in cases of incitement of violence, authorities have a wider margin of interference with rights. The anonymous article is devoid of authenticity and has led to violent protests all over the nation.

⁴⁷ International Covenant on Civil and Political Rights, art. 19, Dec. 16, 1966, 999 U.N.T.S. 171.

⁴⁸ *Id.*, art. 19(3)(a).

⁴⁹ *Id.*, art. 19(3)(b), Dec. 16, 1966, 999 U.N.T.S. 171

⁵⁰ *supra* note 6.

⁵¹ Donna M. Murasky, *Journalist's Privilege: Branzburg and Its Aftermath*, 52 *Tex. L. Rev.* 829 (1974).

⁵² App. No. 38224/03 Eur. Ct. H.R (2010)

⁵³ *Id.*

ii. The court order serves a legitimate purpose.

¶ 22. Every restriction on the freedom of speech and expression must have a legitimate aim.⁵⁴ Any interference that is disproportionate to the legitimate aim pursued will not be “necessary in a democratic society” and will thus contravene art. 10 of the ECHR.⁵⁵

¶ 23. In the *Perna* case⁵⁶ a journalist had been convicted for defaming a senior judge and the court, accordingly, held that the conviction of the journalist was not disproportionate to the legitimate aim pursued. In the *Pederson and Baadsgaard* case,⁵⁷ two journalists had been convicted of defamation after suggesting in a television programme that a chief superintendent might have been responsible for concealing evidence during a criminal investigation. A Grand Chamber of the Eur. Ct. H.R. found that the right to freedom of expression had not been violated as the programme had damaged public confidence in that person. The Court held that the domestic courts had appropriately convicted the applicants and imposed a sentence which the Court found to be proportionate to the legitimate aim pursued. In *Jääskeläinen and others v. Finland*,⁵⁸ the Eur. Ct. H.R. reviewed the applicants’ defamation conviction for public accusations against several public officials. It was pointed out that in order to do their job properly they required the public’s trust. It was thus necessary to protect them against attacks concerning their work. The interference with the applicants’ rights was therefore proportionate to the legitimate aims pursued.

¶ 24. In the present case, the publishing of the anonymous article led to unrest throughout the country and damaged the public confidence enjoyed by the president, Mr. Mosante. Such attacks on the President, without actual proof of the truth of the allegations, is irrational. Hence, disclosing the identity of the anonymous author is only fair in order to examine the credibility of the source.

iii. The court order is a restriction that is necessary for a democratic society.

¶ 25. Any restriction on freedom of expression must be “necessary in a democratic society”.⁵⁹ Under the Court’s case law, the adjective “necessary” implies “a pressing social need”.⁶⁰ In *Prager and Oberschlick* judgment⁶¹ the court observed that despite the pre-

⁵⁴ *supra* note 2.

⁵⁵ *supra* note 3.

⁵⁶ *Perna v. Italy* [GC], App. No. 48898/99, Eur. Ct. H.R (2003), Reports 2003-V.

⁵⁷ *Pedersen and Baadsgaard v. Denmark* [GC], App. No. 49017/99, Eur. Ct. H.R. (2004), Reports 2004-XI.

⁵⁸ No. 32051/96, 4 May 2000.

⁵⁹ *supra* note 2.

⁶⁰ Freedom of expression in Europe, Human rights files, no. 18, page 9, [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf)

eminent role of the media in a state governed by the rule of law, it must stay within certain limits. The applicants' harsh criticism of the judge's personal and professional integrity was lacking good faith and not within the rules of journalistic ethics. In *Nordisk Film & TV A/S v. Denmark*,⁶² the court order demanded material about a person under investigation. The applicant pleaded confidentiality of journalists' sources. The Court held that the order was interference with freedom of expression but that its case-law on the protection of journalists' sources did not apply because of the nature of the material. The order was necessary for a democratic society.

¶ 26. In the present case, the nature of the article is such that it requires the disclosure of the identity of the author as it has widespread implications on the security and public order of Flavia. The right to freedom of expression is not unfettered and is subject to restrictions. Hence, the interference, namely the conviction of the journalist, is necessary for a democratic society.

III. THE REFUSAL OF THE GOVERNMENT TO GRANT ACCESS TO THE REQUESTED OFFICIAL DOCUMENTS IS VALID.

¶ 27. The govt's refusal to grant access to its deliberations preceding the abolishment of the Special Category Status of Kazalia [A] and the subsequent allocation of Kazalian land [B] to Mr. Sorial is valid. Further, obtaining details of the president and his family members' assets violates their right to privacy [C].

A. The govt's refusal to grant access to its deliberations preceding the abolishment of the special category status of Kazalia is valid on account of national security.

¶ 28. There must be no obligation to give any citizen information that would prejudicially influence the sovereignty and integrity of India or incite any offence.⁶³ At times, the public interest lies in the non-disclosure of documents.⁶⁴ Some documents by their very nature fall into a class which requires protection which includes cabinet papers.⁶⁵ The disclosure of such information is not obligatory for the govt and such disclosure may lead to widespread unrest

⁶¹ *Prager and Oberschlick v. Austria*, App. No. 15974/90, Eur. Ct. H.R (1995), Series A No. 313

⁶² App. No. 40485/02, Eur. Ct. H.R (2005).

⁶³ Right to Information Act (2005) sec.8(1)(a); sec.22 Freedom of Information and Protection of Individual Privacy Act S.O. 1987, c. 25; Grant A. Huscroft, *The Freedom of Information and Protection of Privacy Act: A Roadmap for Requesters*, 11 *Advoc. Q.* 436 (1990); *Duncan*, 1942 A.C. at 642; *NRLB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-52 (1975).

⁶⁴ *Duncan v. Cammell Laird & Company* 1942 A.C. 624; Patti Goldman, *Combatting the Opposition: English and United States Restrictions on the Public Right of Access to Governmental Information*, 8 *Hastings Int'l & Comp. L. Rev.* 249 (1985); *Conway v. Rimmer* 1968 A.C. at 952.

⁶⁵ *Conway v. Rimmer* 1968 A.C. 910.

throughout the country, which may result in a threat to national security. Hence, it remains in the best interests of national security and sovereignty not to disclose these govt deliberations.

B. The govt's refusal to grant access to its deliberations leading to the allotment of land in Kazalia and the contract of renovation is valid.

¶ 29. Any information that relates to third parties in the proceedings is not obligatory for the govt to provide.⁶⁶ The term 'third party' includes anyone other than the citizen making the request for information⁶⁷, it hence includes private companies. Merely because a public authority holds information that is personal to a third party, a person does not become entitled to access it.⁶⁸ The disclosure of such information may also result in material financial loss or gain, prejudice the competitive position of a third party or interfere with contractual or other negotiations.⁶⁹ It may also subject a company to reputational damage based on internal matters.⁷⁰ This is a valuable right of the third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of such information.⁷¹ Here, AZM owned by Mr. Mosante is a third party and on the refusal by such third party, the access to such documents should be denied.

C. Obtaining details of the president and his family members' assets violate their right to privacy.

¶ 30. Art. 17 of the ICCPR provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. The right to privacy has been described as the right to be free from unwarranted evaluations in public.⁷² The president and his family have a right to privacy and the disclosure of their assets will, in turn, violate their right. So, the law does not envisage such invasion to the president's privacy.

IV. SECTIONS 124-A AND 500-A OF THE FLAVIAN PENAL CODE ARE NOT IN VIOLATION OF THE FUNDAMENTAL RIGHT TO FREEDOM OF SPEECH AND EXPRESSION.

¶ 31. § 124-A and § 500-A of the Flavian Penal Code ["FPC"] do not violate the fundamental right to freedom of speech and expression since this right is not absolute [A.].

⁶⁶ Right to Information Act (2005) Sec.11

⁶⁷ Right to Information Act (2005) Sec.2(n)

⁶⁸ Union of India v Hardev Singh W.P.(C) 3444/2012 (2013)

⁶⁹ Access to Information Act sec. 20(1)

⁷⁰ Chrysler Corp. v. Brown, 441 U.S. 281 (1979).

⁷¹ Arvind Kejriwal v Central Public Information Officer LPA No. 719/2010 (2011)

⁷² See Huff, Thinking Clearly About Privacy, 55 WASH. L. REV. 777, 778-82 (1980).

Further, § 124-A [B.] and § 500-A are valid since they have reasonable and rational nexus with the restrictions on this right [C.].

A. The fundamental right to freedom of speech and expression is not absolute.

¶ 32. The right to free speech and expression under art. 19 of the Flavian Const is subject to reasonable restrictions on grounds of public order, morality, national security, defamation and incitement to an offence, as set out in art. 19 itself.⁷³ These restrictions in art. 19 are part and parcel thereof and such grounds provide the legislature with necessary leeway to curtail free speech and expression in the national interest or in the interest of society.⁷⁴

¶ 33. The validity of a provision or a law, thus, has to be judged from the perspective of restrictions set out in art. 19 itself and if such provision of law has reasonable and rational nexus with these restrictions, its validity would be sustained.⁷⁵

B. § 124-A of the FPC is valid and does not violate the fundamental right to freedom of speech and expression.

¶ 34. § 124-A of the FPC that penalizes Sedition is valid since it comes within the saving clause of art. 19 of the Const [i] and it is legal, legitimate and proportionate under the ICCPR [ii].

i. § 124-A comes within the saving clause of art. 19 of the Flavian Const.

¶ 35. § 124-A falls in at least three of the restrictions set out in art. 19, that of public order, national security and incitement to an offence. With its intention to excite dissatisfaction or discontent, sedition is closely associated with the offence of treason, that it frequently proceeds treason by a slight duration.⁷⁶ Furthermore, when there is a prevalence of dissatisfaction, disloyalty or enmity to the govt, a presumption to cause public disorder exists.⁷⁷ Actions that cause public disorder or disturb the prevailing public tranquillity undermine national security.⁷⁸

¶ 36. The gist of the offence is incitement to disorder or likelihood of public disorder or reasonable apprehension thereof.⁷⁹ Thus, § 124-A that penalizes hatred, contempt or

⁷³The Case, ¶ 1.

⁷⁴ V.K. Javali v. State of Mysore AIR 1966 SC 1387 (India).

⁷⁵ Id.

⁷⁶ Reg v. Alexander Martin Sullivan (1868) 11 CCLC 44 (Eng) [hereinafter *Reg*].

⁷⁷ Kedar Nath Singh v. State of Bihar, AIR (1962) SC 955 (India) [hereinafter *Kedar*].

⁷⁸ Brij Bhushan and Ors. v. The State of Delhi, (1950) SCR 245 (India).

⁷⁹ Kedar, *supra* note 5; Dalbir Singh v. State of Punjab AIR 1962 SC 1106.

disaffection towards the govt seeks to prevent an act against the society itself⁸⁰ and is Constantly valid.

ii. § 124-A is legal, legitimate and proportionate under the ICCPR.

¶ 37. The right to freedom of expression under art. 19(2) of the ICCPR is not absolute.⁸¹ Under the ICCPR, a restriction to such a right would be lawful if it is prescribed by law [a.]; it pursues a legitimate aim [b.] and it meets the test of proportionality. [c.]

a. § 124-A is prescribed by law.

¶ 38. § 124-A is prescribed by law since it 1) is founded in domestic law, 2) is duly published, 3) does not suffer from vagueness and 4) meets the test of foreseeability.⁸² *First*, § 124-A is valid legislation, incorporated as a part of the Flavian Penal Code by the Flavian Legislature. There is a presumption about Centrality of a statute.⁸³ *Second*, the FPC is duly accessible to the general public and by the virtue of this, the general public has sufficient indication as to how § 124-A would apply to a given case.⁸⁴ *Third*, the section defines the commission of sedition in simple language and leaves no scope for vagueness by even explaining a term like “disaffection”⁸⁵ that could be open to more than one interpretation. The exceptions carved out within the Section accommodate comments that express disapprobation of Governmental measures or administrative or other action without exciting or attempting to excite hatred, contempt or disaffection.⁸⁶ *Fourth*, the Section is foreseeable to its effect and operation⁸⁷ so that a citizen can fairly forecast the consequences of his actions.⁸⁸ The gist of

⁸⁰ Reg, *supra* note 4.

⁸¹ Article 19: Freedoms of opinion and expression, H.R.C. General Comment No. 34, U.N. Doc. CCPR/C/GC/34, ¶ 2 (Sept. 12, 2011) [hereinafter *GC 34*]; *Handyside v. United Kingdom* App. No. 5493/72 Eur. Ct. HR (1976); *Tae-Hoon Park v. Republic of Korea* Comm. 628/1995 U.N. Doc CCPR/C/57/D/628/1995 (1998); *Perna v Italy* App. No. 48898/99 Eur. Ct. HR (2003).

⁸² *Delfi AS v Estonia* [GC] App no. 64569/09 Eur. Ct. HR (2015); *VgT Vereingegen Tierfabriken v Switzerland* App. no. 24699/94 Eur. Ct. HR (2001); *Rotaru v Romania* App. no. 28341/95 Eur. Ct. HR (2000); *Gawęda v. Poland* App. no. 26229/95 Eur. Ct. HR (2002) p.39.

⁸³ *State of Bombay v. F.N. Balsara* AIR 1951 SC 318 (India); *Humdard Dawakhana v. Union of India* AIR 1960 SC 554 (India).

⁸⁴ *Sunday Times v. United Kingdom*, App. No. 6538/74 Eur. Ct. HR ¶ 49 (1979); *Groppeara Rodio AG and Others v. Switzerland*, App no. 10890/84 Eur. Ct. HR ¶ 68 (1990).

⁸⁵ The Case, Annexure-I, Sec 124-A (Explanation 1.).

⁸⁶ The Case, Annexure-I, Sec 124-A (Explanation 2.).

⁸⁷ *Kokkinakis v. Greece*, App. No. 14307/88 Eur. Ct. HR ¶ 40 (1993); *Wingrove v. UK* App. No. 17419/90 Eur. Ct. HR ¶ 40 (1996); *Lindon and others v. France* App no 21279/02, 36448/02 Eur. Ct. HR ¶ 41 (2007); Editorial Board of *Pravoye Delo and Shtekel v. Ukraine* App. No. 33014/05 Eur. Ct. HR ¶ 52 (2011); UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Syracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN 4/1984/4, principle 17.

⁸⁸ *Sunday Times v. United Kingdom*, App. No. 6538/74 Eur. Ct. HR ¶ 49 (1979); *Couderc and Hachette Filipacchi Associés v. France* App. No. 40454/07 Eur. Ct. HR ¶ 31 (2015); *Malone v. The United Kingdom*

the offence is incitement to disorder or tendency of the likelihood of public disorder.⁸⁹ Thus, Section 124-A is prescribed by law.

b. Section pursues a legitimate aim.

¶ 39. The Section pursues a legitimate aim that of in as much as it is for protection of national security and public order which are considered as legitimate restrictions under art. 19(3) of ICCPR. The very existence and stability of the State will be endangered if ‘Govt established by Law’ is undermined because the Govt that is instituted by law stands as the visible manifestation of the State.⁹⁰

c. § 124-A meets the test of proportionality.

¶ 40. It meets the test of proportionality in as much as mere criticism of govt action is no offence. However, words intended to create public disorder have been made penal in the interest of public order. Further, the punishment provides range from fine to imprisonment, which may extend to three years, depending on the gravity and consequence of the acts constituting the offence which meet the test of proportionality in application of penal law.⁹¹ Thus, § 124-A of the FPC does not violate the ICCPR, which has been signed and ratified by Flavia.

C. § 500-A of the FPC does not violate freedom of speech and expression.

¶ 41. § 500-A does not violate this right as the Section is saved by art. 19 of the Const [i] and stands in consonance with the requirements laid under the ICCPR [ii].

i. The Section is valid under art. 19 of the Flavian Const.

¶ 42. Defamation is one of the grounds for limiting the freedom of speech and expression, recognized by the Flavian Const under art. 19.⁹² The term defamation is construed to include criminal defamation as there is nothing to suggest its exclusion.⁹³ Hence, penalizing defamation of the President does not violate the right to free speech and expression.

App. No. 8691/79 Eur. Ct. HR (1984); Miller v Switzerland, App. No. 10737/84 Eur. Ct. HR (1988); Liberty and Others v. The United Kingdom App. no. 58243/00 Eur. Ct. HR ¶ 59 (2008).

⁸⁹ Kedar Nath v. State of Bihar, AIR (1962) SC 955 (India).

⁹⁰ *Id.*

⁹¹ GC 34, *supra* note 9.

⁹² The Case, ¶1.

⁹³ Subramanian Swamy v. Union of India (2016) 7 SCC 221 (India).

ii. The Section is in consonance with the requirements of the ICCPR.

¶ 43. § 500-A fulfils the three-part test of legality, [a.] legitimacy, [b.] and proportionality [c.] under the ICCPR.

a. § 500-A is provided by law.

¶ 44. Mutatis mutandis, the Section is prescribed by law since it is found in domestic law and is duly published.⁹⁴ The Section is further couched in a language that is neither vague nor arbitrary. Adequate emphasis has been given on the penalization of ‘public’ defamation of the President, the forms of media through which such an offence can take place and the punishment that such offence may entail.⁹⁵ It does not allow any third-party to authorise the offence for the prosecution of the offender.⁹⁶ Liability under the Section is foreseeable for it penalizes only untrue, intentional and unintentional defamation and the truth is an absolute defence⁹⁷. Hence, the Section is provided by law.

b. Section pursues a legitimate aim.

¶ 45. Freedom of expression, according to art. 19(3) of the ICCPR, can be subjected to permissible restrictions, *inter alia*, in the interests of respect to the rights and reputation of others. The Section pursues a legitimate aim that of in as much as it is for respect to the rights and reputation of the President and protection of the presidency as a symbol.⁹⁸

c. § 500-A is proportionate.

¶ 46. While proportionality dictates that restrictions must adopt the least intrusive measure,⁹⁹ § 500-A is the only viable way to provide affirmative protection to the head of the govt, considering factors of close public scrutiny¹⁰⁰ in the age of misinformation and falsehoods¹⁰¹ and a stable govt and State¹⁰².

⁹⁴ Argument IV, ii), a).

⁹⁵ The Case, Annexure-I, Sec 500-A.

⁹⁶ *Id.*

⁹⁷ Bennett Coleman and Co. Ltd. and Ors. v. K. Sarat Chandra and Ors. 2016(5) ALT174 (India); Amorim Giestas and Jesus Costa Bordalo v. Portugal App. No. 37840/10 Eur. Ct. HR (2014).

⁹⁸ Case of “El Universo”, 0840-2011.

⁹⁹ GC 34, *supra* note 9.

¹⁰⁰ Lingens v. Austria, App. no 9815/82 Eur. Ct. HR ¶ 42 (1986).

¹⁰¹ Caitlin Dickerson, ‘How Fake News Turned a Small Town Upside Down’ The New York Times Magazine (Sept, 2017) <<https://www.nytimes.com/2017/09/26/magazine/how-fake-news-turned-a-small-town-upside-down.html>>; Francis Chan, ‘Indonesian Police Uncover “Fake News Factory”’ The Straits Times (Sept, 2017) <<http://www.straitstimes.com/asia/se-asia/indonesian-police-uncover-fake-news-factory>>; Naja Bentzen, “‘Fake News’ and the EU’s Response” (EP Think Tank, April, 2017) <<https://epthinktank.eu/2017/04/02/fake-news-and-the-eus-response/>>.

¹⁰² *Supra*, note 73.

¶ 47. In the backdrop of Kazalian secessionist movements being the gravest internal security issue¹⁰³ and the event of recent abolition of its ‘Special Category Status’ coupled with the publication of a scarcely credible, anonymous article¹⁰⁴ that provoked disruptions across Flavia,¹⁰⁵ the Section curbs the threat of falsehoods by directly or indirectly preventing State and non-State actors from spreading so.¹⁰⁶ It is proportionate because indeed, a criminal sanction can be used to prevent falsehoods.¹⁰⁷

V. THE PROSECUTION AGAINST THE FLAVIAN EXPRESS AND MR. DOLFOPA SORIAL IS VALID AND CANNOT BE QUASHED.

¶ 48. The prosecution against the Flavian Express and Mr. Sorial under § 124-A and § 500-A of the Flavian Penal Code [“FPC”] is valid and cannot be quashed since their prosecution is prescribed by law [A.] and it is necessary [B.].

A. The prosecution against the Flavian Express and Mr. Sorial is prescribed by law.

¶ 49. The prosecution against the Flavian Express and Mr. Sorial is prescribed by law since the article violates § 124-A [i] and § 500-A of the FPC [ii].

i. The Article violates § 124-A of the FPC.

¶ 50. The Article violates § 124-A for three reasons. *First*, the question of whether any particular statement is calculated to excite disaffection or hatred or contempt towards the govt has to be seen with respect to the surrounding circumstances and the manner and occasion for publication.¹⁰⁸ The Article attributed the decision to abolish the Special Category Status of Kazalia to the personal interest of Mr. Mosante and his family members. It has further called the decision a large-scale organized fraud. This article was published in not only online edition but also in the daily newspaper at a time when the situation was extremely tense in Kazalia as well as in Flavia. *Second*, The intention must be judged primarily from the Article itself which exhorts citizens to protest against the so-called corruption and nepotism of the President.¹⁰⁹ *Third*, the ingredients of § 124-A were completely met as the Article was

¹⁰³The Case, ¶ 2.

¹⁰⁴The Case, ¶ 7.

¹⁰⁵The Case, ¶ 8.

¹⁰⁶ *Deliberate Online Falsehoods: Challenges and Implications*, Singapore Ministry of Communications and Information and the Ministry of Law, ¶ 59-60 (2018).

¹⁰⁷Lindon, Otchakovsky-Laurens and July v. France [GC] App. nos. 21279/02 and 36448/02 Eur. Ct. HR ¶ 59 (2007); Długołęcki v. Poland App. no. 23806/03 Eur. Ct. HR ¶ 47 (2009); Saaristo and Others v. Finland App. No. 184/06 Eur. Ct. HR ¶ 69 (2010); Pedersen and Baadsgaard v. Denmark [GC] App no. 49017/99 Eur. Ct. HR ¶ 93 (2004); Bozhkov v. Bulgaria App. no. 3316/04 Eur. Ct. HR ¶ 53 (2011).

¹⁰⁸ P. Hemalatha v. Andhra Pradesh, AIR 1976 AP 375 (India).

¹⁰⁹ Sagolsem Indramani Singh v. Manipur, AIR 1955 Manipur 9 (India).

intended to create a disturbance of law and order and public disorder.¹¹⁰ The timing of the Article and the setting in which it was published was bound to result in public disorder in Kazalia as well as in Flavia. As a direct result of this Article, violent protests took place in Kazalia, resulting in the death of 25 persons.¹¹¹ The negative effect of this Article in the public sphere was objectively established because following this publication, the President had to suffer public jeers that termed him “a fraud, a liar, a national disgrace”.¹¹²

ii. The Article violates § 500-A of the FPC.

¶ 51. § 500-A of the FPC penalizes the defamation of the President of the Republic in the public sphere *inter alia* through the dissemination of written material.¹¹³ The Article published in print, as well as online edition of Open Book page, defames Mr. Mosante, the President and its publication are punishable under § 500-A of FPC. A newspaper has no exceptional right to make comments that are unfair¹¹⁴ and has to be cautious while dealing with news provided to it.¹¹⁵ The press has great power in impressing the minds of people and therefore, persons responsible for publishing are required to take caution before publishing anything which may tend to harm the reputation of a person.¹¹⁶ Further, it is the editor’s responsibility to examine the record of information supplied before its publishing in his paper particularly when the content might be defamatory.¹¹⁷ The editor cannot escape his liability by merely saying that he acted on the information given by a certain person or some other person has published the information¹¹⁸ or in public interest, cannot allege facts that are inaccurate or false.¹¹⁹

¶ 52. Without disclosing any source of the authenticity of the assertions made in the article, it was irresponsible to term the revocation a “large scale organized fraud” at the hands of the President and his family. Since the Flavian Express and Mr. Sorial played an active part in the publication of the anonymous article, their charges under §124-A and § 500-A were foreseeable.

¹¹⁰ Kedarnath v. State of Bihar AIR 1962 SC 955 (India).

¹¹¹ The Case, ¶7.

¹¹² The Case, ¶ 8.

¹¹³ The Case, Annexure-I, 500-A.

¹¹⁴ Mitha Rustomji Murzban v. Nusserwanji, AIR (1941) Bombay 278 (India).

¹¹⁵ Rajendra Sail v. MP High Court Bar Association 2005(6) SCC 109 (India).

¹¹⁶ Sahib Singh Verma v. State of UP AIR 1965 SC 1451 (India).

¹¹⁷ Rustom K. Karanjia v. Krishnaraja M.D. Thakersey AIR 1970 Bombay 424 (India); K.M. Mathew v. K.A. Abraham AIR 2002 SC 2989 (India), K.D. Ghouri v. Nanakram K. Israni, 1973 RAJ LW 20 (India).

¹¹⁸ Bandopat Satyappa Sangle v. Raghunath Ramchandra Bide, 1980 Bombay CR 567 (India).

¹¹⁹ Mitha Rustomji Murzban v. Nusserwanji, AIR 1941 Bombay 278 (India).

B. The prosecution against the Flavian Express and Mr. Sorial is necessary.

¶ 53. The prosecution against the Flavian Express and Mr. Sorial is necessary because the Article was published in blatant disregard to the context in which it was published [i] and without considering the extent of its publication [ii]. Additionally, The Flavian Express and Mr. Sorial failed to expeditiously remove the Article [iii].

i. The article was published in blatant disregard to the context in which it was published.

¶ 54. The term ‘context’ encompasses sensitive or volatile political and social background, strained security conditions, or an atmosphere of antagonism and hostility.¹²⁰ While publishing an article, the context of publication is a relevant factor to prevent a publication from aggravating the already tense surroundings.¹²¹

¶ 55. The region of Kazalia has posed serious threats to the sovereignty of Flavia because of constant interference in its governance by the Federation of Rastow coupled with demands of secession.¹²² In this belligerent backdrop, the govt ensured that all requisite measures were in place to ensure stability in Kazalia before the announcement of the abolition of its ‘Special Category Status’.¹²³ Such exigencies coupled with the assertion that only meagre percentage of about 50-55 of the anonymous news published in Open Book has been accurate¹²⁴ called for greater oversight by The Flavian Express and its Editor-in-Chief, Mr. Sorial.

ii. The article was published without considering the extent of its publication.

¶ 56. A publication through mainstream or highly followed media has more pervasive reach as compared to the ones that have a minimal readership.¹²⁵ A medium of publication must not become a channel for the promotion of violence and hate speech, especially when the

¹²⁰ Toby Mendel, *Hate Speech Rules Under International Law*, Centre for Law and Democracy (Feb. 2010), <<http://www.law-democracy.org/wp-content/uploads/2010/07/10.02.hate-speech.Macedonia-book.pdf>>; Savva Terentyev v. Russia App no. 10692/09 Eur. Ct. H.R. ¶ 78 (2018); Zana v. Turkey App no. 18954/91 Eur. Ct. H.R. ¶ 60 (1997); Incal v. Turkey, App. No. 41/1997/825/1031 Eur. Ct. H.R. ¶ 58 (1998); Soulas v. France App. no. 15948/03 Eur. Ct. H.R. ¶ 37-39 (2009).

¹²¹ Annual Report of the U.N. High Commissioner of Human Rights, *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, A/HRC/22/17/Add.4, (11 January 2013) [hereinafter *Rabat*].

¹²² The Case, ¶ 2.

¹²³ *Id.*, ¶ 5.

¹²⁴ *Id.*, ¶ 6.

¹²⁵ Savva Terentyev v. Russia, App no. 10692/09 Eur. Ct. H.R. ¶ 79 (2018).

environment is fraught with conflict and tension.¹²⁶ The harm is even more severe when content can spread widely and is persistently online.¹²⁷

¶ 57. Since the anonymous article appeared in the print as well as the online edition of the Open Book page,¹²⁸ the spread of its dissemination was alarming as it provoked major demonstrations in Kilmonack and Flavia,¹²⁹ and violent protests and casualties in Kazalia.¹³⁰ The honourable President was subjected to unmerited disregard by being called “a fraud, a liar, a national disgrace.”¹³¹ Thus, The Flavian Express and Mr. Sorial were expected to be cautious in not promoting violence and hate speech in a volatile backdrop.

iii. The Flavian Express and Mr. Sorial failed to expeditiously remove the Article.

¶ 58. A medium of publication must remove the content on its platform expeditiously where it is manifestly unlawful.¹³² Additionally, it should be circumspect in its publication when there are conflict and tension in the surroundings.¹³³

¶ 59. In the instant case, the Article violated § 124-A and § 500-A of the FPC and delegitimised the whole purpose of the abolition of the Special Category Status. In the already volatile context in Kazalia where mobile and internet services were disconnected and protests were banned and the rest of Flavia, where the reaction to this measure was mixed, the Article called forth the citizens to protest, terming the whole measure to be one of “corruption and nepotism”.

¶ 60. The massive demonstrations and violence that struck Flavia are a testament to the negligence of The Flavian Express and its Editor-in-Chief, Mr. Sorial to be circumspect with respect to what is published through their medium in the strained situation as mentioned and be expeditious to remove such unlawful, unreliable anonymous content.¹³⁴ Thus, the prosecution against The Flavian Express and Mr. Sorial is not liable to be quashed.

¹²⁶ Sürek v. Turkey (no. 1), App. No. 26682/95 Eur. Ct. H.R. ¶¶ 60, 62-63 (1999); Erdogdu & Ince v. Turkey App. no. 25067/94, 25068/94 Eur. Ct. H.R. ¶ 54 (1999).

¹²⁷ Delfi AS v. Estonia [GC], App. no. 64569/09 Eur. Ct. H.R. ¶ 110 (2015) [Hereinafter *Delfi*].

¹²⁸ The Case, ¶ 7.

¹²⁹ *Id.*, ¶ 8.

¹³⁰ *Id.*, ¶ 9.

¹³¹ *Id.*, ¶ 8.

¹³² Delfi, *supra* note 19, ¶¶ 115, 117.

¹³³ Rabat, *supra* note 13.

¹³⁴ Erdogdu & Ince v. Turkey, App. No. 25067/94, 25068/94 Eur. Ct. H.R. ¶ 54 (1999).

PRAYER

Wherefore in light of the facts stated, issues raised, arguments advanced and authorities cited, the Respondent most humbly and respectfully request the Hon'ble Supreme Court to adjudge and declare that:

- A. The Order of Restraintment sought by the Government of Flavia on publication of news from Kazalia is valid and enforceable.
- B. Mr. Dolfopa Sorial is required to reveal the identity of the author(s) who posted the anonymous article for defaming the President, his family and the government.
- C. The Government's refusal to grant access to the requested official documents is valid under the Right to Information, Act.
- D. The Sections 124-A and 500-A of the Flavian Penal Code do not violate the Fundamental Right to Freedom of Speech and Expression and therefore, should be held constitutional.
- E. The Flavian Express and Mr. Dolfopa Sorial should be prosecuted and punished for committing the offences of sedition and defamation.

Respectfully submitted,

AGENTS FOR RESPONDENT