

MOOT PROPOSITION

EXORDIUM

1. The Democratic Republic of Latveria is an agglomeration of islands with an unstable political history. The Cay of Verde is the largest of the fourteen islets that cumulatively constitute the quasi-federal Latverian Archipelago. Sixty percent of the resident Latverians identify themselves as members of the Bajoran sect and the residue forty percent constitute the religious minority of Khalas. Even so, Latveria is not a religious oligarchy. *Au contraire*, it's Constitution unequivocally asseverates Latveria to be a Socialist Secular Democratic Republic and *ad rem* guarantees an array of fundamental rights to all its citizens.
2. The incumbent governments in eight out of the fourteen Latverian islands, including the Cay of Verde and the Central Government of the Republic of Latveria are all being run by the right leaning, Latverian People's United Front (LPUF), which has a majority of Bajoran members. In March 2017, the Latverian archipelago witnessed the denouement to almost half a decade of religious bedlam. Acrimony against the members of the Bajoran sect had gradually mushroomed over time amongst the Khalas, who had felt that the primarily Bajoran-led governments had systematically subjected the members of the Khala sect to various forms of political and economic discrimination. Resultantly, there had been frequent non-violent demonstrations and occasional skirmishes between the Khalas and the Bajorans. Despite the official culmination of these sectarian tumults, subtle soupçons of muffled antipathy between the two factions are still extant. It is in this *mise en scène* that the Latverian General Elections were due to be conducted on the 27th of July 2018.

THE SECURITY AND SOLIDARITY ACT OF 2018

3. On the 16th of March 2018, the Government of the Cay of Verde issued a strongly worded press note averring that certain media outlets in the island state were perniciously disseminating fake news reports that fallaciously alleged the complicity of one of its Minister's son, Mr. Dimitri Von Beuren, in inciting communal riots in the year 2016. It solemnly avowed therein that the same was being done with the dishonest intent to malign

18TH AMITY NATIONAL MOOT COURT COMPETITION

the government's image before the 2018 elections. This blatant assertion *ipso facto* stirred up a hornet's nest and enthused a multitude of incandescent ripostes against the LPUF and all the elected governments being run thereby. Finding that the denigratory propaganda had successfully re-engineered a situation of volatility in the Latverian Republic, the Parliament of Latveria felt constrained to enact *The Security and Solidarity Act of 2018* on the 20th of March 2018, which essentially aimed to restore the *status quo* in the Latverian archipelago. The relevant provisions of the said act are extracted as *infra*:

Section 1. *Political demonstrations of more than ten people are not permitted on the public streets of Latveria within 60 days of a general election, where participants in such a demonstration seek to propagate an extremist or seditious message/statement, or seek to incite hatred, violence, or disrupt the democratic process.*

Section 2. *The definition of such extremist or seditious message/statement under this Act includes messages/statements made by "a person" doing any of the following:*

"defaming", "calling for illegal action", "conduct or speech inciting people to rebel against, or conduct or speech insulting of, government authorities or law enforcement officials", "undermining the authority and impartiality of the judiciary", "engaging in or promoting sedition," and "publicly inciting hatred against religious groups"

Section 3. *Any "person" guilty of propagating such extremist or seditious messages/statements under Section 2 of this act shall be punished with imprisonment of a term not less than five years and a fine of 10,000 Kinahs.*

Explanation: It is not necessary to show that the extremist or seditious statement was in fact published to a third party, provided there was an intent to do so.

Section 4. *Any "person" distributing, hosting or caching, or acting as a conduit for, any message/statement that is declared to be illegal under Section*

18TH AMITY NATIONAL MOOT COURT COMPETITION

3 of this Act may be compelled, by an order of the High Court ('Takedown Order'), to remove such illicit content and publish an apology.

Section 5. In order to be convicted of an offence under Section 3 or be made subject to a 'Takedown Order' under Section 4 of this Act, the offending message/statement must be physically distributed or published in Latveria or be addressed to Latverian residents.

Section 6. Attending a public demonstration barred by Section 1 of this Act constitutes an offence punishable by a maximum fine of 5,000 Kinahs.

Section 7. Inciting a public demonstration barred by of Section 1 of this Act constitutes an offence punishable by imprisonment for a term not more than two years or fine of 1,000 Kinahs or both."

RESORTING TO INSTAPOST

4. Subsequent thereto, the general public sentiment in Latveria seemed to insinuate that the proscriptions imposed by the Security and Solidarity Act of 2018 had invariably stifled and gagged the Latverian fourth estate. Consequently, the Latverian gentry and the Khalas in particular, were desperate to find their voices again.
5. Concomitantly, the use of social media had always been popular in the Latverian archipelago. Although the Central Government of the Republic of Latveria possesses the ability to block Latveria-based Internet users' access to specific Internet services, it has never sought to impose such an impediment before. That said, the Latverian government however does not possess the technical capability to block specific posts from any particular social media service. Resultantly, if it blocks, it must block the entire service itself.
6. *InstaPost* is a social media platform that allows users to post *user generated content* and also share or comment on posts they see. Its accounts are free, and all content is publicly visible to anyone who is logged into an account.

7. *InstaPost* displays content to users based upon two factors:

- a) the user's self-selected "*Home Location*" (the most recent and most popular posts receive the most visibility), and
- b) content from accounts that the user has added to the user's "*Gleam More*" list. The platform is accessible worldwide, including Latveria.

8. Feeling that they had been rendered somewhat taciturn, the people of Latveria embraced the *InstaPost* platform as an integral part of their quotidian lives, some even going as far as to dub it the Fifth Estate of Latveria. And although the Latverian population positively thronged to log onto *InstaPost*, it only made up a small fraction of *InstaPost*'s worldwide users. It must be noted that *InstaPost* does not maintain a media operating license in Latveria.

9. It would also be germane to note that *InstaPost* does possess the technical ability to block individual posts in individual countries. For instance, it could make a post invisible in Latveria but let it remain visible to the rest of the world. *InstaPost* also has the ability to block the "*Gleam More*" option in specific countries. For instance, if a certain account contained a speech that was deemed to be illegal in Latveria, *InstaPost* has the technical ability to stop Latveria-based users from adding such an account to their "*Gleam More*" list. However, *InstaPost* has never blocked any posts or accounts in Latveria till date. Furthermore, *InstaPost*'s website lists its publicly available Operating Policies that explicate that *InstaPost* may remove posts from its service "*where required by law or necessary for a person's safety,*" but that it would never "*edit or change the user's content.*"

10. *InstaPost* has its headquarters and hosts all its worldwide data on servers located at The Free Nation of New Wakanda, which is a large, affluent and politically stable demarchy. Geographically speaking, The Free Nation of New Wakanda is located at a distance of more than one thousand nautical miles from The Republic of Latveria. It

18TH AMITY NATIONAL MOOT COURT COMPETITION

has significant influence on international affairs and global markets. It also has a large immigrant population from a number of countries, including Latveria.

11. *InstaPost* also owns a subsidiary company, *videlicet*, “*InstaSell*”, which is headquartered and has its sole office in Latveria. *InstaSell* is independently operated in Latveria and has a total of ten employees, all of whom work to promote the use of *InstaSell* by Latverian businesses, including selling paid advertisements on *InstaPost*.
12. *InstaSell* earned 5 million Kinahs in revenue last year and paid all appropriate taxes to the Latverian Bureau of Taxation. It would be pertinent to note that *InstaPost* has many such subsidiaries around the world, but it does not grant any of them access to the data stored on its servers.

Ms. HELENA MALLAYA

13. Ms. Helena Mallaya is a Non-Resident Latverian who is currently based out of the Capital City of Shan in New Wakanda. She is a famous *InstaPoster*, who regularly blogs about political developments and rumours in Latveria. She is, however quite unpopular with members of the Bajoran sect, who perceive her writings to be superfluously sympathetic toward the Khalas.
14. In April 2018, a Wakandan-based domestic newspaper popular with Latverian immigrants known as “*The Watchdog*”, engaged and paid Ms. Mallaya to author a one-time column as an opinion contributor.
15. The print copy of *The Watchdog* is not distributed outside of New Wakanda, but its website is visible to users wherever they are located. *The Watchdog* also maintains an account on *InstaPost* where it publishes select articles from its website content. As is the case with all *InstaPost* accounts, users may comment on its articles and columns and share them with other users. By contrast, *The Watchdog*’s own website does not allow viewers to comment on articles and columns.

16. Ms. Mallaya's column ("*An Open Letter to the Oppressors*") was published on the 17th of April 2018, in *The Watchdog Print Edition*, on *The Watchdog* website and on *The Watchdog's InstaPost* account. It *inter alia* accused the Prime Minister and other members of the Bajoran-led governments in Latveria of corruption, human rights violations and wanton discrimination against the Khalas, declared the Security and Stability Act of 2018 to be a draconian law enacted with the sole purpose of safeguarding and cementing LPUF's position in the coming general elections and underscored the lack of action taken against Mr. Dimitri Von Beuren apropos to the role he played in instigating the communal riots of 2016. The coda to the column proceeded to echo calls issued by other anti-government Latverians for an active but peaceful Day of Resistance on the 1st of June 2018.

17. Even though the residents of New Wakanda had access to *The Watchdog's* website and to its print edition, the vast majority of Wakandans nevertheless preferred to access the column via *InstaPost*. Resultantly, the column quickly started trending worldwide on *InstaPost* and was *ad rem* viewed by thousands of Latverians. Furthermore, Latverian users also saw the post if they had previously added *The Watchdog's InstaPost* account to their "Gleam More" list.

18. A large number of members of the Khala sect who read the column on *InstaPost* also posted their comments to Ms. Mallaya's column, including some who anonymously asserted that they were prepared to defend themselves and would carry knives or other available weapons in case of persecution by law enforcement agencies or the government on the Day of Resistance.

19. It would also be pertinent to note that at this stage there was no extant First Information Report lodged in any police station in Latveria against Mr. Dimitri Von Beuren anent such accusations. However, it had been frequently alleged that several attempts had been made to try and do so, but invariably none of them had ever fructified into an officially registered complaint.

PROTESTS, PROSECUTION AND PUNISHMENT

20. On the 1st of June 2018, Helena travelled to the Cay of Verde in order to cover what was a largely peaceful public protest, at which participants held signs and chanted in support of the Khala-affiliated candidates. However, in the midst thereof, a fringe coterie of Khala demonstrators abruptly started chanting hard-line political messages, set fire to a Bajoran religious building frequented by leading government officials, and lashed out at law enforcement officers who endeavoured to subdue them. Although there was no evidence that the arsonists had read *The Watchdog's* article, they were reportedly heard chanting some of the set phrases used by Ms. Mallaya in her column.
21. Following the insurrections at the Cay of Verde, Ms. Helena Mallaya was arrested and marked as an organizer of the protests in connection with her column. Consecutively, Mr. Dimitri Von Beuren also lodged a complaint of defamation against her, which was taken cognizance of as S.C. No 11 of 2018. Subsequent thereto, the Police filed a charge sheet qua the said complaint and the matter then proceeded for Trial as *S.C. No 11 of 2018*. It would be pertinent to note here that the Latverian courts are famous for adopting fast track procedures that have streamlined the entire Latverian justice delivery system to help provide expeditious and efficacious remedies to all aggrieved before them.
22. In her defence, Ms. Mallaya earnestly claimed the protection of both the first and the ninth exceptions to Section 499 of the Latverian Penal Code of 1860. After considering the oral and documentary evidence on record, the Ld. Trial Court vide order dated June 14, 2018 convicted Ms. Helena Mallaya u/s 500 of the Latverian Penal Code of 1860 and sentenced her to imprisonment for a period of 2 years. Aggrieved thereby, Ms. Malaya preferred an appeal before the Hon'ble High Court of Judicature at Verde. However, the same was dismissed summarily. Consequently, Ms. Mallaya was constrained to file Special Leave Petition (Crl) No. 89 of 2018 before the Hon'ble Supreme Court of Latveria.
23. Meanwhile, the prevalent print and broadcast media all over Latveria had been reporting this chain of events as their top story. Criticism apropos to the action taken

18TH AMITY NATIONAL MOOT COURT COMPETITION

by Mr. Dimitri Von Beuren against Ms. Mallaya had started trending globally on *InstaPost*, which resulted in widespread discontent against the government of the Cay of Verde.

24. Furthermore, after her arrest on June 01, 2018 the State of Verde had proceeded to charge Ms. Helena Mallaya u/s 124A of the Latverian Penal Code of 1860 and also u/s 3, 6 & 7 of the Security and Solidarity Act of 2018. Vide order dated 16th June 2018, the Ld. Trial Court in S.C. Case No. 17 of 2018, found Ms. Mallaya guilty on all counts and sentenced her to imprisonment for a period of 3 years along with a fine of 2,000 Kinahs u/s 124A of the L.P.C of 1860, 7 years of imprisonment along with a fine of 10,000 Kinahs u/s 3 of the S.S.A of 2018 and 2 years of imprisonment along with a fine of 1,000 Kinahs u/s 7 of the S.S.A of 2018. The Ld. Trial Court also imposed a fine of 5,000 Kinahs as punishment u/s 6 of the S.S.A of 2018. All sentences were to run concurrently. Aggrieved thereby, Ms. Mallaya preferred Criminal Appeal No. 477 of 2018 before the Hon'ble High Court of Judicature at Verde, challenging the constitutional vires of Section 124A of the LPC of 1860 and that of the Security and Solidarity Act of 2018.
25. The State of Verde also filed Crl.M.A No. 59 of 2018 before the Hon'ble High Court of Judicature at Verde, praying for an order u/s 5 of the SSA of 2018 for compelling *InstaPost* to take down Ms. Mallaya's Column from all its servers and post an apology to calm tensions in Latveria. *InstaPost* has vehemently opposed the same and averred that the State of Verde has no jurisdiction to obtain and enforce such an order in Latveria and Wakanda.

CONSTITUTIONAL CHALLENGE

26. In order to prevent any unwarranted backlash, the Parliament of Latveria amended the Security and Solidarity Act of 2018 on the 19th of June 2018, as under:

After Section 7, the following section shall be added to the Security and Solidarity Act of 2018, namely:

“Section 8. Any or all publications, broadcasts whether electronic, visual or oral, or any other form of opinion driven journalism or advertisement

18TH AMITY NATIONAL MOOT COURT COMPETITION

etc., that deal with matters that are sub judice before the High Courts of various States as well as the Supreme Court of Latveria are prohibited.

Explanation: Accurate reporting of proceedings before the said Courts shall not be proscribed hereunder.”

27. Aggrieved thereby, various members of the media and press came together and filed Writ Petition No. 31 of 2018 before the Hon’ble Supreme Court of Latveria contending that the Security and Solidarity Act of 2018 was *ultra vires* the Constitution of Latveria. The writ petitioners further asseverated therein that the act was a flagrant violation of the Freedom of Press, Freedom of Speech and expression, and the Freedom of Profession among other Fundamental rights guaranteed under the Constitution of Latveria.
28. Taking into account the gravity of the situation, the Chief Justice of the Hon’ble Supreme Court of Latveria, constituted a constitutional bench and *suo motu* tagged Writ Petition No. 31 of 2018 along with Criminal Appeal No. 477 of 2018 and CrI.M.A No. 59 of 2018, under Article 139A of the Constitution of Latveria.
29. On the 31st of June 2018, Special Leave Petition (CrI) No. 89 of 2018 came to be mentioned before the Hon’ble Chief Justice of Latveria, who was further pleased to allow the same to be tagged along with Writ Petition No. 31 of 2018.
30. Writ Petition No. 31 of 2018 and all matters tagged therewith are now listed for hearing before the Hon’ble Supreme Court of Latveria.

NOTE:

- The laws of the Republic of Latveria are in *pari materia* with the laws of the Republic of India.
- Use of precedents and authorities from other jurisdictions is encouraged.

APPENDIX – I

The precise role of the respective litigants herein is delineated as infra:

1. As regards **para 22** of the moot proposition, in Special Leave Petition (Crl) No. 89 of 2018, Ms. Helena Mallaya is the Petitioner and Mr. Dimitri Von Beuren is the Respondent.
2. As regards **para 24** of the moot proposition, in Criminal Appeal No. 477 of 2018, Ms. Helena Mallaya is the Appellant and the Republic of Latveria along with the State of Verde have been impleaded as the Respondents therein.
3. As regards **para 25** of the moot proposition, in Crl.M.A No. 59 of 2018, the State of Verde is the Applicant and InstaPost is the Respondent.
4. As regards **para 27** of the moot proposition, Writ Petition No. 31 of 2018 has been filed under the name of “Members of the Media & Press” by such petitioners against the Republic of Latveria.
5. As per **para 28** of the moot proposition, the Chief Justice of the Hon’ble Supreme Court of Latveria, constituted a constitutional bench and suo motu tagged Writ Petition No. 31 of 2018 along with Criminal Appeal No. 477 of 2018 and Crl.M.A No. 59 of 2018, under Article 139A of the Constitution of Latveria.
6. As per **para 29** of the moot proposition, upon mentioning, the Hon’ble Chief Justice of Latveria was further pleased to tag Special Leave Petition (Crl) No. 89 of 2018 along with Writ Petition No. 31 of 2018 and all other matters previously tagged therewith.
7. As per **para 30** of the moot proposition, Writ Petition No. 31 of 2018 and all matters tagged therewith are now listed for hearing before the Hon’ble Supreme Court of Latveria.
8. This is to further clarify, that the contestants shall thus be expected to argue their case by raising issues that have been impugned in the respective matters tagged with Writ Petition No. 31 of 2018. Since the lead matter before the Hon’ble Supreme Court of Latveria is Writ Petition No. 31 of 2018, the contestants arguing on behalf of the Petitioners shall thus represent and advance averments on behalf of “Members of the Media & Press”, Ms. Helena Mallaya and Instapost while the contestants appearing on behalf of the Respondents shall represent and raise contentions on behalf of the Republic of Latveria, the State of Verde and Mr. Dimitri Von Beuren.