



ASSIGNMENT 1

CERTIFICATE COURSE ON MOOTING

Distinguishing between material and immaterial facts

Indigo

1. Indigo is a country with a population of approximately 25 million people. 90% of Indigo's population identify as 'Indigon', which is an identity strand that has both ethnic and religious connotations. A majority of Indigons adhere to the 'Indigon' faith, which is considered the official religion in Indigo, and involves the worship of the sun. Census statistics in 2019 confirm that around 8-10% of Indigo's population comprises of economic migrants from neighbouring countries.
2. Shankra is a small island nation approximately 200 miles from the coast of Indigo. The island has been plagued by an ethno-religious civil war for decades, and has prompted many families to travel on makeshift boats to Indigo to seek asylum. A majority of asylum seekers are 'Mexican', which is a belief minority in Shankra who fight for an independent homeland, as they claim that they are being persecuted by the adherents of the majority Shankrean religion. By 2019, Indigo had a population of approximately 10,000 registered Mexican asylum seekers. The laws of Indigo permits registered asylum seekers to obtain employment and to access social services.

Zooya!

3. Zooya! is an online messaging application ('app') popular in Indigo. It is a registered company in Indigo, and is specially licensed as a public broadcaster under Indigo's Communications Act. Over 75% of the population use the app on their mobile phones and other devices. The app can be downloaded free of charge. A user must have a valid mobile phone number to use the app. Once the app is downloaded onto a device, a user may register using their phone number. A text message with a code is sent to the user via a mobile service provider's regular Short Message Service. The user may then enter the code and begin using Zooya!. The application

has two basic functions that correspond to two 'tabs' at the bottom of the application screen.

4. First, a 'bilateral chat' function permits users to chat with other users on a one-to-one basis. These conversations are visible only to the two users in the conversation. A user can correspond with any user on their 'contact list'. This list comprises the mobile phone numbers of other users. A user can send a message to any other user who uses the app. Knowing the mobile phone number of the user is adequate to add the user to a contact list and begin messaging them. Users can share photographs, audio and video files, and links to online material on bilateral chats.
5. Second, a 'broadcast' function permits users to 'live stream' or stream pre-recorded audio and video content to any user that 'subscribes' to their 'broadcast channel'. A live stream involves conveying an audio or video usually through the camera function on a user's device. For example, a 'broadcaster', i.e. the user who owns a broadcast channel, can turn on their camera and convey an audio-visual stream in real-time to all their subscribers. A broadcaster also has the option of pre-recording audio or video content and 'scheduling' a broadcast to their subscribers. The words 'live' will appear if a broadcast is being conveyed in real-time. Pre-recorded broadcasts display the words 'pre-recorded'.
6. Any user can subscribe to another user's broadcast channel by searching for and clicking on a channel appearing on the 'broadcast' tab, and selecting the option 'subscribe'. The broadcast tab has a search bar to enable a user to search for channels. It also displays the channels that a particular subscriber has subscribed to. The subscriber can then listen to or view the material that any channel is broadcasting at the time. The function has been compared to switching between channels on a radio or television. Many users subscribe to the broadcasts of celebrities and political actors. Organisations also use this function to broadcast their messages.

7. Each broadcast channel also has a unique ‘link’. A subscriber can share this link with others either by copying and pasting the link, or by clicking on the ‘share’ icon that appears alongside any broadcast channel. The ‘share’ icon enables a subscriber to share the link with other Zooya! users as a bilateral chat. Any user with the link to a broadcast can view the broadcast even without subscribing to the channel.
8. A broadcaster can also use the ‘ping’ function to proactively alert their subscribers whenever a broadcast is about to begin within the next few minutes, or has begun. When a broadcaster selects the ‘ping’ icon, a ‘star’ appears over the broadcast tab on each subscriber’s Zooya! app interface. The subscriber is then alerted to the fact that one of their subscribed broadcast channels is about to launch a new broadcast, or has already launched one. Once a broadcast ends, the star disappears. A broadcaster can use the bilateral chat function to communicate with any of its subscribers. It also has the option of sending a mass message to all its subscribers using this function. For example, it can send the link to the broadcast channel, and any other information about a particular broadcast, to all its subscribers.
9. A subscriber can save and download a broadcast as a separate audio-visual file, which can be re-shared. However, the option to save and download a broadcast is only available for 30 seconds after a broadcast ends. This is the default option for all broadcasts. A broadcaster can choose not to make their broadcasts downloadable by selecting the ‘protected’ icon prior to launching a broadcast. Zooya! has also developed an upload filter called ‘first Artificially Intelligent test of hatred!’(fAIth!), which automatically screens any broadcasts and blocks them – even in live feeds – if they contain content considered to be ‘hate speech’ as per Zooya!’s ‘Standards on Hate Speech’. The Zooya! Standards define the following content as ‘hate speech’:

‘Content promoting violence or hatred against individuals or groups based on age, disability, ethnicity, gender, nationality, race, immigration status, religion, belief, sex, sexual orientation, or veteran status.’

The algorithm of ‘fAIth!’ requires specific training for the detection of such content. In January 2019, an independent university study found that, if properly trained, the upload filter could detect 87% of ‘hate speech’ content correctly.

Campaign against *andha*

10. In January 2019, a campaign was launched by Indigon nationalist groups demanding that the government introduce laws to ban any blasphemy in relation to the Indigon faith (and the ‘Sun’), and prevent proselytism and conversion of Indigons into *andha*, a Mexican philosophy. One prominent group with a high standing in Indigon society, called ‘IndigoFirst’, claimed that Mexicans were corrupting the social fabric in Indigo as they were ‘insular’ and possessed an ‘irrational’ culture that was antithetical to the Indigon faith. Specific emphasis was placed on the Mexican philosophy of *andha* which had come to be associated with the symbolic wearing of blindfolds. The practice of wearing blindfolds is based on the belief that ‘sight was the principal means of temptation’. Many Mexicans believed that *andha* is a way of life that involves ‘turning a blind eye to temptation’. Only a handful of Mexicans have adopted the practice of literally wearing blindfolds in public, and even when such blindfolds are worn, it is in the context of public meditation or during processions. Indigo First nevertheless demanded that Mexicans be prohibited from wearing blindfolds in public, as it was ‘promoting the *andha* faith’ and was ‘tempting’ Indigons to adopt this ‘faith’.

11. Meanwhile, some ethnic Indigons have begun to adopt the philosophy of *andha*. According to 2019 census statistics, around 2% of those who identified as ‘Indigon’ by ethnicity claimed to be adherents of the *andha* philosophy. This statistic is in

sharp contrast to the 2015 figure where less than 0.2% of Indigons claimed to be adherents of *andha*.

12. On 20 January 2019, the Indigon government announced that it was holding public consultations during the next week on the costs and benefits of a new law to regulate proselytism and ‘forced conversion from one faith to another’. The government did not refer in its announcement to any planned anti-blasphemy provisions, but specifically mentioned its intention to protect the ‘forefathers of the original faith’.
13. IndigoFirst maintains a broadcast channel on Zooya! called ‘Seeing is Believing’. The channel had over 100,000 subscribers in Indigo. Indigo First launched a series of broadcasts during this period advocating for a new law and urged subscribers to demand that the government enact such a law. By 27 January, the link to an online petition with over 30,000 signatures was being circulated over Zooya!.
14. On 15 February, the government amended Indigo’s Penal Act to include the following new provisions:

Section 220(1): No person shall convert or attempt to convert, either directly or otherwise, any person from one faith to another faith by the use of force.

Section 220(2): The term ‘force’ in the law includes a show of force or a threat of injury of any kind including threat of divine displeasure or social excommunication.

Section 220(3): Voluntarily returning to the forefathers’ original faith or to one’s own original faith shall not be construed as conversion under this Act.

Section 220(4): A person found guilty of an offence under subsection 1 of this section shall be liable to serve a term of imprisonment of no more than five years, or a fine of no more than USD 1,500, or both.

15. At 4pm on 16 February, Indigo First pinged its subscribers notifying them that a new live broadcast was about to begin. It also sent out the link of the broadcast channel to all its subscribers informing them that an important broadcast on the situation in Indigo would begin at 4.15pm. A number of subscribers began to share the link with other users on Zooya! through bilateral chats. By 4.15pm approximately 30,000 subscribers and a further 5,000 viewers were tuned into the broadcast.
16. The broadcast began with a video message by a masked individual who identified himself as the 'Sun Prince'. He made the following short statement:

Indigo is under a dark cloud. Those from beyond the seas have come to this bright land to bring gloom. The Divine Sun is under threat since many who see the light are now turning away to darkness. Today, the true Sons of Indigo must rise against the unlawful actions of the sightless. We shall strip them of their blindfolds, and force them to see the light. And if they refuse to abandon their ways, they will incur the wrath of the Sun.

17. The message was followed by a video featuring a well-known street in Indigo's capital, Sun City. The word 'live' appeared at the top of the screen. The video depicted a group of masked individuals walking up to a male person who was wearing a blindfold and walking towards the entrance of a building. The masked individuals began to shout at the blindfolded person demanding that he remove the blindfold as it was 'against the law'. Some within the group also began to chant 'seeing is believing'. The exchange lasted for approximately three minutes after which the blindfolded person gestured to the group to stop shouting. The group leader then walked over to the blindfolded person and tore off the blindfold. There

did not appear to be any resistance from the blindfolded person. The video then returned to the ‘Sun Prince’ who ended the broadcast with the words: ‘Immediately go shine a light on Indigons who have adopted the *andha* blindness. Seeing is believing’.

18. The IndigoFirst broadcast was downloaded and saved by around 3,000 Zooya! users (both subscribers and viewers), and was shared with other users. The upload filter ‘fAIth!’ did not identify the Indigo First broadcast as ‘hate speech’ because it had been trained by Zooya! staff to accommodate the special position of Indigon faith pursuant to section 220(3) of the Penal Code.

19. By 17 February, over 250,000 users had viewed the video and sharing continued over the next few days. From 18-28 February, similar videos were shared on Zooya! depicting groups of persons – some masked, some without masks – accosting blindfolded individuals on the streets of the capital. Over a hundred such videos were shared on the app during this week. In one broadcast that had been saved and shared as a video file, a group of persons were seen pushing a blindfolded individual to the ground and forcibly removing the person’s blindfold. In another video, a group of men were seen shining bright flashlights into the face of a young woman, who appeared to be visually impaired. The men jeered ‘seeing is believing’. None of these videos featured on the IndigoFirst broadcast channel. However, on 28 February, a short ‘pre-recorded’ broadcast was launched on the IndigoFirst channel in which the Sun Prince thanked ‘faithful followers for taking the message of light to the dark streets of Indigo’.

Complaints and investigations

20. On 1 March 2019, two separate complaints were filed under sections 220 and 300 of Indigo’s Penal Act respectively.

21. The first complainant, S, claims to be the person depicted in the IndigoFirst live broadcast of 16 February. He explained that he is an ethnic Indigon who had adopted the *andha* philosophy. He further explained that he was on his way to attend an ‘*andha* meditation’ when the masked group depicted in the video confronted him. Moments before the confrontation took place outside the building that hosted the meditation, he had put on a blindfold in preparation for the ritual meditation. He then complained that the broadcast of 16 February 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’. He further complained that the ‘live streaming’ function of the broadcast prevented him from complaining against his attackers in time to prevent the broadcasting of the video.
22. Meanwhile, the second complainant, T, submitted a complaint under section 300, which provides:

Section 300(1): No one shall advocate or recklessly cause the advocacy of hatred against any group in a manner that constitutes incitement to discrimination, hostility or violence.

Section 300(2): A person found guilty of an offence under subsection 1 of this section shall be liable to serve a term of imprisonment of no more than ten years, or a fine of no more than USD 3,000, or both.

Section 300(3): The term ‘advocacy’ shall include the sharing of photographs, audio and video files, and hyperlinks to content on the Internet.

23. T explained that she was a person of Mexican origin who was visually impaired since birth. She had experienced ‘intended and unintended discrimination’ throughout her life, and claimed that such discrimination had increased since

February 2019. She claimed that since mid-February 2019, she had been experiencing a high level of anxiety over what she described as an environment that was ‘hostile and demeaning’ towards persons with visual impairments. She explained that although the rhetoric and propaganda was mainly directed at a ‘faith group’ it had adverse effects on her dignity – both as a Mexican and as a ‘person with disabilities’. She then stated that she had experienced verbal insults from strangers on more than one occasion in public and has preferred to minimise her public travel as a result. She also furnished an affidavit from a witness who claimed that on one occasion a group of persons shone flashlights at T’s face as she was travelling in public with the aid of a guide dog.

24. The government prosecutor’s office decided to launch investigations into both complaints. It contacted Zooya! to seek assistance in the investigation. Zooya!’s legal team responded by stating 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 prosecutor’s office thereafter sent a formal letter to the Zooya! Head Office requesting all personal data pertaining to the ‘broadcasters’ of the Indigo First broadcast channel, and the user identifying himself as the ‘Sun Prince’, who had featured in a broadcast that was streamed at 4.15pm on 16 February 2019. The legal team responded 24 hours later with the mobile phone numbers of the two broadcasters associated with the Indigo First broadcast channel. Zooya! also immediately blocked the Indigo First broadcast channel without notifying the broadcasters or subscribers. The legal team advised this course of action, as it was concerned that any notification of the reasons for blocking the channel would alert potential criminal offenders of the existence of an investigation and enable them to abscond.

25. The prosecutor’s office, with the aid of police investigators, managed to track down the broadcasters of the Indigo First channel: A and B. Both A and B were then taken into custody. During police interrogations, A and B revealed that X was in fact the masked individual who had described himself as the ‘Sun Prince’. A lawyer

representing A and B was present during the interrogations. There was no complaint was made with respect to any coercion during the interrogations. A and B were subsequently released on bail.

Criminal proceedings

26. On 1 May 2019, the prosecutor's office indicted X under section 220 of the Penal Act and A and B under section 300 of the Act. The Criminal High Court of Sun City heard evidence on the case and convicted X. It sentenced X to two years imprisonment but suspended the sentence for two years on the condition that no repeat offences are committed during such time. It also convicted A and B under section 300 of the Act, and directed each of them to pay a fine of USD 2,000.

27. A, B and X appealed their convictions before the Appellate Court of Indigo, where final criminal appeals are heard. According to Indigo's Criminal Procedure Act, any person convicted of an offence may challenge the conviction before the Appellate Court on the basis that the conviction violated one of the rights guaranteed under the Indigon Constitution.

28. In their submissions, A, B and X claimed that the convictions were unlawful as they violated their rights to privacy and freedom of expression respectively guaranteed by articles 8 and 10 of the Indigon Constitution. Articles 8 and 10 provide:

Article 8: No one shall be subjected to unlawful or arbitrary interference with his privacy or correspondence.

Article 10(1): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.

Article 10(2): The exercise of the freedom of expression may be subject to limitations that are provided by law.

29. X argued that his statement was not intended to forcibly convert any person and was merely an expression of an opinion. He explained that he was a strong believer that the *andha* ‘faith’ was regressive and that it encouraged insulation from the real world. He said that his message was meant to encourage victims of this ‘faith’ to turn away from it. He also asserted that domestic law specifically protected the Indigon faith. He claimed, however, that provisions of the Rabat Plan of Action and of the Beirut Declaration on ‘Faith for Rights’ had no legal bearing on his case. A and B meanwhile argued that they did not intend to advocate hatred against any particular group through their broadcasts. They stressed that the upload filter ‘fAIth!’ had not blocked the IndigoFirst broadcast as illicit content on Zooya!. Furthermore, they claimed that they ran the broadcast channel as a commercial enterprise to generate advertising revenue. They argued that any attacks on ‘persons with disabilities’ or any other group were unforeseeable.
30. X argued that the collusion between the government and the service provider led to the discovery of his identity, and that his anonymity was protected under the Indigon Constitution. A and B stated that the government had colluded with the service provider Zooya! to obtain personal data from the service provider, which was protected under the Constitution. They argued that there was no law in the country requiring a service provider to provide personal data to the government, and that the appropriate standard would have been to obtain a judicial warrant to that effect.
31. The prosecutor assigned to the cases argued that X’s actions contravened section 220 of the Penal Act, as it was an attempt to convert persons from the *andha* faith to the Indigon faith through threats that constituted the ‘use of force’. She also argued that the complaint made by S confirmed that persons actually faced social excommunication as a result of X’s widely viewed statements, and felt pressured

to change their faith. She then argued that A and B's maintenance of the IndigoFirst broadcast channel created a hostile and demeaning environment that targeted persons who subscribed to the *andha* faith, and persons who actually suffered from visual impairment. She also contended that they deliberately shared links to their broadcasts, which constituted 'advocacy' under the Act. She contended that the complaints of S and T confirmed that persons actually faced hostility and violence as a result of the 'toxic material' that was being transmitted over the broadcast channel.

32. On the question of privacy, the prosecutor contended that Zooya! is a privately-owned service provider and chose on its own volition to share personal data with the prosecutor's office. She argued that the question of obtaining a judicial warrant did not arise as the service provider decided to cooperate with the prosecutor's office. She further argued that A and B voluntarily provided information about the identity of X and that his right to privacy did not extend to a right to remain anonymous in the context of a criminal offence.
33. The Appellate Court decided to uphold the convictions of A, B and X and confirmed the sentences issued by the High Court.
34. Upon learning of the convictions, Zooya! decided to permanently ban A, B and X from the app, and terminated the IndigoFirst broadcast channel.

Universal Court of Human Rights

35. The Universal Court of Human Rights exercises exclusive jurisdiction to receive and consider applications from persons alleging the violation of rights recognised in the International Covenant on Civil and Political Rights (ICCPR). Indigo ratified the ICCPR in 2001. At the time of ratification, it deposited the following declaration:

The provisions of subparagraphs 2 and 3 of article 19 are interpreted as guaranteeing to every person the right to express and disseminate opinions within the laws of Indigo.

36. A, B and X have exhausted all domestic remedies. They filed applications before the Universal Court of Human Rights alleging violations of article 17 and article 19 of the ICCPR.

37. The Court decided to hear the applications together and certified the applications on four discrete issues:

Issue A: Whether Indigo's decision to obtain personal data from Zooya! and from certain other users violated X's rights under article 17 of the ICCPR.

Issue B: Whether Indigo's decision to obtain personal data regarding A and B from Zooya! violated their rights under article 17 of the ICCPR.

Issue C: Whether Indigo's prosecution and conviction of X violated his rights under article 19 of the ICCPR.

Issue D: Whether Indigo's prosecution and conviction of A and B violated their rights under article 19 of the ICCPR.

38. A, B and X sought from the Universal Court of Human Rights: (1) declarations that their rights under the ICCPR have been violated, and (2) directions to Indigo to take immediate measures to fulfill its obligations under the ICCPR.

Question for Week 1:

Analyse the above problem and categorize the facts according to the following parameters:

1. Legal Material and Immaterial facts
2. Non-Legal Material and Immaterial facts

FOR LAW ESSENTIALS



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