

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. No. of 2020

In

WRIT PETITION (CIVIL) No. 956 of 2020

IN THE MATTER OF:

FIROZ IQBAL KHAN

... Petitioner

Versus

THE UNION OF INDIA AND ORS.

...Respondent

AND IN THE MATTER OF:

1. Amitabhā Pande S/o Sh. Amba Dutt Pande
office at Flat G3, Tower 5,
Parsvnath Prestige-2, Sector 93A,
Noida, Uttar Pradesh 201304 ..Applicant No.1
2. Navrekha Sharma, D/o Late Gen. Amreek Singh
R/o A 109, New Friends Colony (First Floor)
New Delhi 110025 ...Applicant No.2
3. Deb Mukharji, Late Abhayapada Mukharji
S/o C-71 IFS Apartments,
Mayur Vihar, Delhi 110091 ..Applicant No.3
4. Somasundar Burra, S/o Late B.Venkatappiah
Address: F 17 Hauz Khas Enclave
New Delhi 110016 ...Applicant No.4

5. Meena Gupta, D/o Late Sudhindra Nath Gupta
R/o 44 Prakruthik Vihar,
Yapral, Secunderabad,
Hyderabad 500087, Telangana.Applicant No. 5
6. Pradeep K. Deb S/o Dr. Suresh Deb (Late)
R/o 301, Shivleela Raj Apartments,
Sardar Patel Marg, C Scheme,
Jaipur, RAJASTHAN : 302001Applicant No.6
7. Ardhendu Sen S/o Santosh Kumar Sen
R/o J1229 Palam Vihar
Gurgaon 122017 ...Applicant No.7

AN APPLICATION FOR INTERVENTION

To,
The Hon'ble Chief Justice of India and
His Companion Justices of the Supreme
Court of India

The Humble Application
of the Applicants
abovenamed

Most Respectfully Submits:

1. The Applicants are retired civil servants, citizens of India, and with a long-standing interest in, and record of work around, constitutionalism and the freedom of speech. The Applicants belong to an informal collective known as the Constitutional Conduct Group ["the CCG"], and respectfully seek to intervene in the captioned petition in order to assist this Hon'ble Court in arriving at a just balance between the freedom of speech and the right of all citizens to equal concern and respect under the Indian Constitution.
2. Applicant No. 1, Mr. Amitabha Pande, is a former member of the Punjab Cadre of the Indian Administrative Service. He retired in 2008 as the Secretary of the Inter State Council of the Government of India, constitutional machinery for federal policy coordination, diversity management and consensus building between the Union of India and the States, and among the States. The Council is chaired by the Prime Minister of India and has all the Chief Ministers of the States as its members. The Council also represents India in the Forum of Federations - an international organization for the promotion of federalism with headquarters in Ottawa, Canada. Previously, the Petitioner has also had long stints in the Ministry of Science and Technology, the Ministry of Defence and in various positions in the Government of Punjab including a term as Secretary Information and Public Relations involving close relations with the Media and matters relating to Freedom of Speech especially in the context of the troubled security

situation in Punjab. In the Seventies at the time of the Emergency, the petitioner (who was then the Deputy Secretary in-charge of the Press Branch of the Department of Home) dealt with issues relating to Press Censorship in Punjab as a part of the Censorship imposed nationally by Prime Minister Indira Gandhi. This gave him early in his career a direct insight into the complexity of issues relating to Freedom Speech. After his retirement, the Petitioner is a frequent contributor to opinion pieces for leading newspapers, online magazines and journals on issues of public policy and governance. Among other articles he has written on the issue of Freedom of Speech in the aftermath of incidents of violence in JNU in 2016 and before that when Salman Rushdie was denied entry to India to participate in the Jaipur Literary Festival in 2013. In his articles he has been an ardent advocate of Freedom of Speech as a defining and determining feature of India's constitutional democracy.

3. Applicant No. 2, Ms Navrekha Sharma, joined the Indian Foreign Service in 1971 and retired in 2008. She served as Ambassador in the Phillipines (2002-6) and Indonesia (2006-8). After her retirement, she wrote a book on India's diplomatic relations with Indonesia, at the behest of ISAS (Singapore), which was published.
4. Applicant No. 3, Mr. Deb Mukharji, was a member of the Indian Foreign Service (1964-2001) and served in various capacities in the Ministry of External Affairs and missions

abroad. He has served as High Commissioner to Nigeria and Bangladesh and retired as ambassador to Nepal. He has been an active member of the Constitutional Conduct Group since its inception in June 2017. His plea before this Hon'ble Court to declare the Constitution Amendment Act (2019) to be unconstitutional is pending.

5. Applicant No. 4, Mr. Sundar Burra, is a retired IAS officer from the 1974 batch and was allotted the Maharashtra cadre. After serving for 20 odd years in the IAS, he joined an NGO based in Mumbai to work on issues of urban poverty and did so for another 20 years. During his stint in the IAS, he served as District Magistrate in a communally sensitive district and came face to face with communal prejudice when faced with disturbances to public harmony. His career in the NGO focused upon securing rights for pavement dwellers and slum dwellers. As a member of the Constitutional Conduct Group (CCG) - a group of retired civil servants concerned with Constitutional values - he has been involved along with other members in furthering the causes of communal harmony and equality.
6. Applicant No. 5, Ms. Meena Gupta, is a retired civil servant, having worked in the Indian Administrative Service, from 1971 to 2008. She retired in 2008 as Secretary to the Government of India in the Ministry of Environment and Forests. Approximately half of her service life has been spent in Odisha, working for the

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state government of Odisha, and half in Delhi, for the government of India. She has worked mainly in the sectors of environment, forests, tribal affairs, labour and health. She has also worked for 4 years with the ILO Office in Delhi, on secondment from the government.

7. Applicant No. 6, Mr. Pradeep K. Deb, joined the Indian Administrative Service in 1977. He was allocated Rajasthan Cadre and has served in various capacities in the State and in the Centre and also in the Asian Development Bank in Manila. He has served in the Departments of Personnel both in the State and Centre, (dealing with the UPSC) and in the Department of Economic Affairs in Government of India. Among his more recent postings, he was the Additional Chief Secretary, Home Affairs, Rajasthan State before retiring from service from the post of Secretary, Sports, Government of India. Post his retirement, he has been in the interview panel of UPSC for the Civil Services examination.
8. Applicant No. 7, Mr. Ardhendu Sen, Joined the IAS in 1976 and was allotted West Bengal cadre. Served in several capacities in the State as also in the Ministry of Petroleum and Natural Gas. Retired as Chief Secretary, Govt of West Bengal in 2010. He has been a member of CCG since 2017.

9. The brief background to the filing of this Intervention Application is that Respondent No. 5 channel was scheduled to broadcast an episode of a show called "Bindaas Bol" at 8 PM on 28th August, 2020. Advance clips of the show revealed that its core theme revolved around allegations that Muslims (especially students of Jamia Milia Islamia University) were "infiltrating" the Indian Civil Services, and that this was a method of "jihad." Following the airing of this clipping, separate and independent legal proceedings were initiated before the Hon'ble High Court of Delhi and this Hon'ble Court, on the 29th of August, 2020.
10. Before the Hon'ble High Court, verified clippings of the programme were played, and various violations of the Programme Code were highlighted. The Hon'ble High Court was pleased, by an order dated 28th August 2020, to order a stay on the broadcast until the next date of hearing.
11. On the same day, this Hon'ble Court issued notice on the captioned writ petition, and passed an order stating, *inter alia*, that:
- "5. During the course of the hearing, it has been highlighted that the expression of views derogatory to a particular community has a divisive potential. Prima facie, the petition raises significant issues bearing on the protection of constitutional rights."*

Consistent with the fundamental right to free speech and expression, the Court will need to foster a considered a debate on the setting up of standards of self-regulation. Together with free speech, there are other constitutional values which need to be balanced and preserved including the fundamental right to equality and fair treatment for every segment of citizens...

8. At this stage, we have desisted from imposing a pre-broadcast interlocutory injunction on the basis of an unverified transcript of a forty nine second clip. The Court has to be circumspect in imposing a prior restraint on publication or the airing of views. We note that under statutory provisions, competent authorities are vested with powers to ensure compliance with law, including provisions of the criminal law intended to ensure social harmony and the peaceful coexistence of all communities."

12. Consequently, this Hon'ble Court expressed an intention to consider the balance between free speech and other constitutional values, that were raised in the instant case.

13. On the 1st of September 2020, the members of the Constitutional Conduct Group – numbering 91 in total, and including the present applicants – submitted a representation to the Home Minister and the Minister for Information and Broadcasting, pointing out that the said program would "generate hatred towards the largest minority community of the country", was based on demonstrable falsehoods about the supposed "growth" of Muslim representation in the Civil Services, and had the potential to divide the civil administration of the country

on religious lines. The representation called for action to be taken in accordance with law. A true copy of the said representation is annexed as **Annexure A1** to this application.

14. Following from this Hon'ble Court's order of the 28th of August, wherein (as indicated above), this Hon'ble Court indicated that it would consider the larger questions dealing with the balance between the freedom of speech and the right of every citizen to fair and equal treatment, the applicants seek leave to intervene in these proceedings, and respectfully assist this Hon'ble Court in arriving at a just solution.

15. It is respectfully submitted that this is an important and urgent judicial task. There exist several legal provisions that prohibit, criminalise, or otherwise penalize what is colloquially known as "hate speech." These include Sections 153A and 153B of the Indian Penal Code, Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Section 5 of the Cinematograph Act, and the "Programme Code" that is passed under the authority of the Cable Network Regulation Act, and which is at issue in the present case. However – and in no small part due to the wide and vague wording of those provisions – their application has been inconsistent and uneven. It is therefore important that this Hon'ble Court – as it has done in the case of Section 124A of the Indian Penal Code – issue an

authoritative ruling setting out the scope and meaning of "hate speech", so citizens, implementing authorities, and courts of the first instance receive clarity on speech that is protected, and speech that falls outside the scope of protection.

16. The Constitution of India guarantees the freedom of speech and expression to all citizens under Article 19(1)(a). Free speech is a cornerstone of modern democracy. It is central to seeking out truth in the marketplace of ideas, to individual self-determination, and to ensuring democratic accountability by keeping channels of communication open between the government and the governed.
17. The freedom of speech and expression is not limited to what the ruling dispensation may find palatable, or what public consensus may permit, but includes the freedom to dissent, to question received wisdom and established social mores, and to "offend, shock, or disturb."
18. The freedom of speech and expression is not absolute. The State may impose reasonable restrictions upon this right, under the conditions set out by Article 19(2) of the Constitution. A heavy burden lies upon the State to justify restrictions upon the freedom of speech, and any such restrictions must strictly hew to the eight sub-clauses set out under Article 19(2).

19. Penal provisions such as Articles 153A and B of the Indian Penal Code address the issue of hate speech. However, as submitted above, their application has been uneven, and in many cases, these provisions are applied in a manner that is inconsistent with the guarantees under Article 19(1)(a). The interpretive task before this Hon'ble Court, therefore, is to distinguish between speech that is merely offensive, indecorous, or in bad taste (and therefore covered by Article 19(1)(a)), and *hate speech*, that is rightly penalized by Articles 153A and B, and the other provisions pointed out above.
20. It is respectfully submitted that the key to this distinction lies in the "decency or morality" sub-clause of Article 19(2) of the Constitution. It is established that the phrase "morality", for the purposes of Article 19(2), does not refer to public morality, but to *constitutional morality* (that is, the values and principles set out in the Constitution). Indeed, any other interpretation of "morality" – one that subordinated the freedom of speech to the dominant *public* sense of morals at any given time, and therefore to majoritarian sentiment – would only render Article 19(1)(a) illusory.
21. At the heart of constitutional morality is the principle of equality: the Constitution requires that every individual be treated with equal respect and concern, have an equal opportunity to shape the political and cultural environment in which they live, and be considered equal

moral members of the national polity. The “harm in hate speech” lies in how it systematically undermines the equal standing of individuals, or groups of individuals, in society, and creates an environment in which they are rendered specially vulnerable to discrimination, persecution, and violence.

22. In *Pravasi Bhalai Sangathan vs Union of India* (**AIR 2014 SC 1591**), while declining to issue guidelines in the context of hate speech, this Hon’ble Court made the following observations:

Hate speech is an effort to *marginalise individuals based on their membership in a group*. Using expression that exposes the group to hatred, hate speech seeks to *delegitimise group members* in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech, therefore, *risks beyond causing distress to individual group members*. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on [the] vulnerable that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide. *Hate speech also impacts a protected group’s ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy.*

23. It is respectfully submitted that this is an entirely correct articulation of the underlying principles governing the definition and regulation of hate speech. The offence of hate speech lies not in the *distress* that it may cause to individuals, but in targeting their *social standing* by virtue of their membership of certain groups, in a manner that leaves them specially vulnerable to hostility, discrimination and violence.

24. In a landmark treatise titled *The Harm in Hate Speech*, the legal scholar Jeremy Waldron argues that modern constitutional democracies are underpinned by the twin values of *inclusiveness* and *dignity*. "Inclusiveness" refers to a promise to all members of a plural and diverse polity, that regardless of their group affiliations (cultural, religious, or political), they can lead their lives without the threat of "hostility, violence, discrimination, or exclusion ... [with] a sense of security in [the public spaces] that we all inhabit." "Dignity", in turn, is an affirmation of everyone's "basic social standing ... as a proper object of society's protection and concern." Waldron argues that hate speech is defined as such when it attacks "the basic elements of each person's status, dignity, and reputation as a citizen or member of society in good standing, [and] particularly against attacks predicated upon the characteristic of some particular social groups."

25. Consequently, hate speech is best understood as not *merely* a set of words or sentences, but as expression that is bound up with a set of *social practices* of discrimination, exclusion, and violence (for example, a "Whites Only" sign in an apartheid State, that affirms the unequal value placed upon the lives of white and black people, based upon their race).
26. This understand of hate speech was articulated by this Hon'ble Court in **Babu Rao Patel vs State, AIR 1980 SC 763**. The Appellant was penalized under Article 153A because he called Muslims "a basically violent race" with a "radical tradition of rape, loot, violence, and murder." This Hon'ble Court held that while drawing a link between minorities and communalism was permitted under Article 19(1)(a), "vilification" was not. The word "vilification", it is respectfully submitted, ought to be understood in the context supplied above: it refers not to causing offence or distress, but to undermining an individual or community's *social standing* in society, in a manner, that renders them vulnerable to hostility, discrimination, and violence.
27. It is therefore respectfully submitted that hate speech, by its very nature, accords *asymmetrical protection*: vulnerable minorities, and groups with a history of suffering discrimination and harm, are to be specifically protected against hate speech, as opposed to dominant social groups, who are not at risk of discrimination,

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persecution, or violence. It is submitted that this distinction is already recognised in Indian laws, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which recognises caste-based hate speech, but *only* if it is directed “down” the caste hierarchy, against the groups protected by the Act, and not the other way.

28. There exists an emerging, trans-national consensus that is united around the articulation of hate speech advanced above. Under international human rights law, the International Covenant on Civil and Political Rights [“ICCPR”] prohibits “any advocacy of national, racial or religious, hatred that constitutes incitement to discrimination, hostility, or violence.” Hatred, therefore, is defined in terms of “discrimination, hostility, or violence.” In **Faurisson vs France (Communication No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993 (1996))**, the United Nations Human Rights Committee rejected a challenge to France’s Holocaust Denial laws on these grounds, and upheld the Jewish community’s right to “live in an atmosphere free of anti-semitism.”
29. In **R v Keegstra, [1990] 3 S.C.R. 697**, the Supreme Court of Canada considered the conviction of a schoolteacher for anti-semitic statements. The Respondent had been prosecuted for “willfully promoting hatred” against an identifiable group. The Supreme Court of Canada defined hatred as an “emotion that, if

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exercised against members of an identifiable group, implied that those individuals are to be *despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.*" In 2013, in **Saskatchewan v Whatcott**, [2013] 1 S.C.R. 467., which was relied upon by this Hon'ble Court in **Pravasi Bhalai Sangathan, supra**, the Canadian Supreme Court defined hate speech as speech that caused "abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects." The Canadian Supreme Court drew a categorical distinction between "repugnant ideas" (constitutionally permitted) and "discrimination" (not permitted), whose result was undermining the constitutional "commitment to equality and respect for group identity and the inherent dignity owed to all human beings."

30. The European Court of Human Rights has drawn similar distinctions between "offence" on the one hand, and "abuse" or "insult" on the other. Thus, "caustic commentary" about Islam – which can and would cause offence – cannot be constitutionally prohibited (**Tatlav v Turkey** (no. 5062/99), 2 May 2006), but speech that undermines the "tolerance and respect for equal dignity of all human beings" can (**Gunduz v Turkey**, (2005) 41 EHRR 5).

31. Because of its long and painful history of apartheid and racial discrimination and violence, South African judicial

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bodies have had ample scope to consider and develop a constitutional jurisprudence on hate speech. The South African Constitutional Court has clarified that the gravamen of hate speech lies in "group-based hostility and discrimination" (**Islamic Unity Convention vs The Independent Broadcasting Authority, (2002) 5 BCLR 433 (CC)**). The South African Human Rights Commission went on to note that speech that communicated a message that certain groups were "less deserving of respect and dignity" constituted hate speech (**Freedom Front vs South African Human Rights Commission, 2003 (11) BCLR 283 (SAHRC)**).

32. Indeed, specific prohibition of hate speech in South African law is consciously located within its "Equality Act." This legal provision proscribes speech that can be reasonably construed to be intentionally hurtful, harmful, or advocating hatred, on the basis of certain 'prohibited grounds', that have been the historic sites of discrimination and oppression: race, sex, ethnic origin, sexual orientation, and so on. 'Prohibited grounds' are specifically understood to be where discrimination perpetuates 'systemic disadvantage', 'undermines dignity', or 'adversely affects...the equal enjoyment of rights and freedoms.' The connections with dignity and equality, and the ability to exercise one's rights and freedoms on parity with everyone else, are therefore expressly set out in the legislation itself. In **Afriforum v. Malema, 2011 (6) SA 240 (EqC)**, the question was

whether the song '*Shoot the farmer, shoot the Boer*', which had been a Black liberation song during the time of apartheid, constituted hate speech within the meaning of the Equality Act. The song in question had been sung by a political leader during a rally. After a detailed analysis into the history of the song, its present meaning in society, the intended and actual audience, and the impression it would convey to the targeted group, the Equality Court held that 'the entirety of the message *dehumanizes* the enemy by referring to it as dogs and describing its conduct in unsavoury terms...those words are *derogatory, dehumanizing* and hurtful'.

33. Therefore, a survey of Indian constitutional provisions, precedent, and international and comparative constitutional law, reveals the following propositions for the consideration of this Hon'ble Court:

- a. Offensive speech is distinct from hate speech.
- b. The Constitution protects offensive speech, but does not protect hate speech. Penal provisions such as Sections 153A and 153B of the IPC must be interpreted in a manner that keeps the distinction between the two intact.
- c. Offensive speech is, simply, speech that causes (subjective) feelings of offence, or outrage, and

nothing more. Such speech may be ill-considered, unwise, and improper, but it is not illegal.

- d. Hate speech goes beyond subjective feelings of offence, and objectively has the effect of undermining constitutional equality, sending a message that a person or a group of people are not worthy of equal concern of respect, are not equal members of society, or are fair game for discrimination, hostility, or violence.
- e. Determining hate speech, therefore, requires a contextual enquiry by judicial and other State bodies, looking into (a) the actual words used, (b) the meanings that they carry for their intended recipients, (c) any history of similar language, (d) and the likely consequences.
- f. Hate speech can be direct (calls to violence and discrimination), but it can also be indirect, through implication, insinuation, and what is popularly known as dog-whistling. This, therefore, requires judicial bodies to be sensitive to the nuances and specific histories of the speech in question.
- g. The distinction between offensive speech and hate speech may be parsed with the help of the following examples:

- i. Criticism, mockery, and ridicule of respected and revered religious or cultural figures may be offensive, but it is not hate speech. Calling for a boycott of the *members* of a religious or cultural community, or implying that they are “violent by nature”, or “unpatriotic” by virtue of their community affiliation, is hate speech.
- ii. Mockery of religious beliefs or traditions may be offensive, but it is not hate speech (this application does not address the question of whether it may or may not be punishable under Section 295A of the IPC). Accusations of dual loyalties towards *members* of any faith – and suggestions of treachery by virtue of belonging to that faith – constitutes hate speech.
- iii. Speech that has historically been inseparable from practices of oppression and subordination is hate speech (see, e.g., this Hon’ble Court’s examination of the use of the word “*chamar*”, under the Prevention of Atrocities Act, in **Swaran Singh vs State, 2008 8 SCC 435.**).

34. It is respectfully submitted that there is no bright line between hate speech and offensive speech. Each case requires the application of judicial mind, and a nuanced weighing of the facts and circumstances involved.

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U.A. No. of 2020

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IN THE MATTER OF:

FIROZ IQBAL KHAN

... Petitioner

Versus

THE UNION OF INDIA AND ORS.

... Respondents

AND IN THE MATTER OF:

AMITABHA PANDE AND ORS.

... Applicants

AFFIDAVIT

I, Amitabha Pande, S/o late Amba Dutt Pande, Aged 72 office at Flat G3, Tower 5, Parsvnath Prestige-2, Sector 93A, Noida, Uttar Pradesh 201304 presently at New Delhi do hereby solemnly affirm and state as under: -

1. That I am the Applicant No.1 in the present Interlocutory Application and such I am well conversant with the facts and circumstances of the case and competent to swear the present affidavit on behalf of the Applicants.
2. That I have gone through a copy of the application and state that the contents thereof are true and correct to my knowledge.
3. That the annexures attached to the present Applications are true and correct copy of their respective originals.

DEPONENT

Verified at New Delhi on this the _____ day of September 2020 that the contents of the above affidavit are correct and true to the best of my knowledge and nothing material has been concealed therefrom

DEPONENT

LETTER SEEKING ACTION AGAINST SUDARSHAN TV FOR ITS
MALICIOUS CAMPAIGN TO PROMOTE HATRED AND
DIVISIVENESS IN SOCIETY

ON SEPTEMBER 1,

2020 BY CONSTITUTIONAL CONDUCT IN PUBLIC AFFAIRS

1 September 2020

Honourable Home Minister of India

Honourable Minister for Information & Broadcasting, India

Chairman, National Human Rights Commission

Chairman, Minorities Commission

Chairman, Union Public Service Commission

Chairman, News Broadcasting Standards Authority

Honourable Lt Governor, Delhi

Honourable Chief Minister, Delhi

Secretary, Ministry of Home Affairs, Govt. of India

Secretary, Ministry of Information & Broadcasting, Govt. of India

The Commissioner of Police, Delhi

We are a group of former civil servants belonging to the All India and
Central Services who have worked with the Central Government as

well as different State Governments of India. As a group, we have no affiliation with any political party but believe in being neutral, impartial and committed to the Constitution of India.

We are raising, through this letter, an urgent issue regarding the proposed telecast of a communally charged, divisive and sensational series by Sudarshan News TV channel. This series claims to be an expose of a conspiracy in the recruitment process that has resulted in a sudden increase in the number of Muslim officers selected for the two most prestigious services in the country, the IAS and the IPS. Jamia Millia Islamia has been singled out in this context. We understand that the Delhi High Court has granted an interim stay on the telecast. However, we feel stronger legal and administrative action is warranted.

It is completely perverse to allege that there is a conspiracy to infiltrate Muslim officers into the services, or to use terms like UPSC Jihad or Civil Services Jihad in this connection. These communal and irresponsible statements amount to hate speech and are defamatory of an entire community.

The telecast of the programme, if allowed, will have the following effects:

- It will generate hatred towards the largest minority community in the country, viz. Muslims, without having any basis in fact. The country is already smouldering with hate speech against Muslims, including allegations of Corona Jihad and Love Jihad, which various courts have found to be false. This telecast will add further fuel to that fire.
- It will tar the impeccable reputation of the Union Public Service Commission (UPSC), the premier organisation for civil service

recruitment, by claiming that it is biased in its recruitment processes. UPSC's recruitment processes are widely recognised as being entirely fair, above board and without any bias towards any language, region, religious or other community. The UPSC is one of the few institutions in the country which still enjoys an unblemished reputation for integrity and has enormous credibility both with the government and with the people of India. The telecast will destroy people's faith in this highly regarded institution.

- It will spread a false belief about a disproportionate increase in the number of Muslims being selected for government services, especially for the IAS and IPS. A recent report in the Indian Express said that "Muslims make up 3.46 per cent of the country's 8,417 IAS and IPS officers. Of 292 Muslim officers, 160 are among the 5,862 who had been selected through the Civil Services examinations conducted by the UPSC, while the remaining 132 are among 2,555 who were promoted to the IAS or IPS from the state civil services on the basis of seniority and performance, which is also assessed by the UPSC. (<https://indianexpress.com/article/india/india-others/muslims-add-up-to-3-in-ias-ips-list/>) It should be noted that this 3.46% is far short of the percentage of Muslims in the population, which is 14.2%. Over the last forty years, the number of Muslim candidates has been going up and down. In fact, there have been years when not a single Muslim candidate was selected in the IAS, and, therefore, allegations such as these are totally unfounded. Such a telecast may also persuade other caste, linguistic and regional groups to look at their rate of success in the civil services examination, an examination which should be, and is, based on merit. In the process, the credibility of UPSC will be compromised.
- It will malign the reputation of Jamia Millia Islamia, which has recently been rated as the top central university in India. Jamia Millia

Islamia has, in fact, been fulfilling a major social obligation to the country by offering free coaching services to disadvantaged candidates (Muslims, SCs, STs and women) to help them succeed in the UPSC examinations. The telecast will discourage Jamia Millia Islamia and others like them from offering services to socially disadvantaged groups.

- The use of terms like "UPSC jihad" and "Civil Services jihad" are an attempt to divide the civil administration of the country along religious lines and undermines the excellent contributions made by administrators across the board to the development of India.

In a case filed before the High Court of Delhi a few days ago, the petitioners have urged that offences have been committed under "Sections 153A(1) Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony, 153B(1) Imputations, assertions prejudicial to national-integration, 295A Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs and Section 499 Defamation, of the Indian Penal Code". These alleged offences need to be investigated thoroughly.

In a recent judgement on the same matter, the Supreme Court, while not granting a stay on the telecast of the programme, has stated "We note that under statutory provisions, competent authorities are vested with powers to ensure compliance with law, including provisions of the criminal law intended to ensure social harmony and the peaceful co-existence of all communities."

We, therefore, urge the Union Home Ministry, the Lieutenant-Governor of Delhi, the Chief Minister, Delhi and the Commissioner of Police,

Delhi to order the lodging of FIRs under the relevant legal provisions. We also request the Ministry of Information and Broadcasting and the News Broadcasting Standards Authority of India to investigate whether or not the show would run afoul of the Cable Television Networks (Regulation) Act, read with the Cable Television Networks Rules 1994, and the Code of Ethics and Broadcasting Standards and take suitable action. The National Human Rights Commission, the Minorities Commission, and the Union Public Service Commission are also requested to take notice of this vicious hate campaign to malign a particular religion and community through the propagation of slanted news that will not stand scrutiny by any objective criterion.

(91 signatories, as below)

True Copy

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Applicants

To,

Hon'ble the Chief Justice And his
Companion Justices of the Hon'ble
Supreme Court Of India

Humble application on
behalf of the Applicant

**APPLICATION FOR EXEMPTION FROM FILING A DULY AFFIRMED
AFFIDAVIT, WELFARE**

MOST RESPECTFULLY SHOWETH:

1. That the applicant has preferred the above captioned application seeking intervention to allow the applicant to intervene in the captioned matter.

2. The facts and circumstances leading to the filing of the Petition have been stated in detail therein and are not repeated for sake of brevity.
3. That the affidavits therein are not affirmed or attested due to the lockdown and restriction due to the Pandemic.
4. In the circumstances, it is most humbly prayed that the Applicant may be exempted from filing a duly affirmed affidavit, welfare and court fees in the interest of Justice.

PRAYER

Under the given facts and circumstances the Petitioner humbly prays that in the interest of Justice this Hon'ble Court may be pleased to;

- (i) Exempt the Petitioner from filing a duly affirmed affidavit, welfare; AND
- (ii) Pass any or further orders as this Hon'ble Court may deem fit and proper

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL DUTY BOUND FOREVER PRAY;

Filed By:

Anas Tanwir
Advocate for the Applicant.

Filed On:

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. No. of 2020

In

WRIT PETITION (CIVIL) No. 956 of 2020

IN THE MATTER OF:

FIROZ IQBAL KHAN

... Petitioner

Versus

THE UNION OF INDIA AND ORS.

...Respondent

AND IN THE MATTER OF:

1. Amitabhā Pande S/o Sh. Amba Dutt Pande
office at Flat G3, Tower 5,
Parsvnath Prestige-2, Sector 93A,
Noida, Uttar Pradesh 201304 ..Applicant No.1
2. Navrekha Sharma, D/o Late Gen. Amreek Singh
R/o A 109, New Friends Colony (First Floor)
New Delhi 110025 ...Applicant No.2
3. Deb Mukharji, Late Abhayapada Mukharji
S/o C-71 IFS Apartments,
Mayur Vihar, Delhi 110091 ..Applicant No.3
4. Somasundar Burra, S/o Late B.Venkatappiah
Address: F 17 Hauz Khas Enclave
New Delhi 110016 ...Applicant No.4

5. Meena Gupta, D/o Late Sudhindra Nath Gupta
R/o 44 Prakruthik Vihar,
Yapral, Secunderabad,
Hyderabad 500087, Telangana.Applicant No. 5
6. Pradeep K. Deb S/o Dr. Suresh Deb (Late)
R/o 301, Shivleela Raj Apartments,
Sardar Patel Marg, C Scheme,
Jaipur, RAJASTHAN : 302001Applicant No.6
7. Ardhendu Sen S/o Santosh Kumar Sen
R/o J1229 Palam Vihar
Gurgaon 122017 ...Applicant No.7

AN APPLICATION FOR INTERVENTION

To,
The Hon'ble Chief Justice of India and
His Companion Justices of the Supreme
Court of India

The Humble Application
of the Applicants
abovenamed

Most Respectfully Submits:

1. The Applicants are retired civil servants, citizens of India, and with a long-standing interest in, and record of work around, constitutionalism and the freedom of speech. The Applicants belong to an informal collective known as the Constitutional Conduct Group ["the CCG"], and respectfully seek to intervene in the captioned petition in order to assist this Hon'ble Court in arriving at a just balance between the freedom of speech and the right of all citizens to equal concern and respect under the Indian Constitution.
2. Applicant No. 1, Mr. Amitabha Pande, is a former member of the Punjab Cadre of the Indian Administrative Service. He retired in 2008 as the Secretary of the Inter State Council of the Government of India, constitutional machinery for federal policy coordination, diversity management and consensus building between the Union of India and the States, and among the States. The Council is chaired by the Prime Minister of India and has all the Chief Ministers of the States as its members. The Council also represents India in the Forum of Federations - an international organization for the promotion of federalism with headquarters in Ottawa, Canada. Previously, the Petitioner has also had long stints in the Ministry of Science and Technology, the Ministry of Defence and in various positions in the Government of Punjab including a term as Secretary Information and Public Relations involving close relations with the Media and matters relating to Freedom of Speech especially in the context of the troubled security

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situation in Punjab. In the Seventies at the time of the Emergency, the petitioner (who was then the Deputy Secretary in-charge of the Press Branch of the Department of Home) dealt with issues relating to Press Censorship in Punjab as a part of the Censorship imposed nationally by Prime Minister Indira Gandhi. This gave him early in his career a direct insight into the complexity of issues relating to Freedom Speech. After his retirement, the Petitioner is a frequent contributor to opinion pieces for leading newspapers, online magazines and journals on issues of public policy and governance. Among other articles he has written on the issue of Freedom of Speech in the aftermath of incidents of violence in JNU in 2016 and before that when Salman Rushdie was denied entry to India to participate in the Jaipur Literary Festival in 2013. In his articles he has been an ardent advocate of Freedom of Speech as a defining and determining feature of India's constitutional democracy.

3. Applicant No. 2, Ms Navrekha Sharma, joined the Indian Foreign Service in 1971 and retired in 2008. She served as Ambassador in the Phillipines (2002-6) and Indonesia (2006-8). After her retirement, she wrote a book on India's diplomatic relations with Indonesia, at the behest of ISAS (Singapore), which was published.
4. Applicant No. 3, Mr. Deb Mukharji, was a member of the Indian Foreign Service (1964-2001) and served in various capacities in the Ministry of External Affairs and missions

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abroad. He has served as High Commissioner to Nigeria and Bangladesh and retired as ambassador to Nepal. He has been an active member of the Constitutional Conduct Group since its inception in June 2017. His plea before this Hon'ble Court to declare the Constitution Amendment Act (2019) to be unconstitutional is pending.

5. Applicant No. 4, Mr. Sundar Burra, is a retired IAS officer from the 1974 batch and was allotted the Maharashtra cadre. After serving for 20 odd years in the IAS, he joined an NGO based in Mumbai to work on issues of urban poverty and did so for another 20 years. During his stint in the IAS, he served as District Magistrate in a communally sensitive district and came face to face with communal prejudice when faced with disturbances to public harmony. His career in the NGO focused upon securing rights for pavement dwellers and slum dwellers. As a member of the Constitutional Conduct Group (CCG) - a group of retired civil servants concerned with Constitutional values - he has been involved along with other members in furthering the causes of communal harmony and equality.
6. Applicant No. 5, Ms. Meena Gupta, is a retired civil servant, having worked in the Indian Administrative Service, from 1971 to 2008. She retired in 2008 as Secretary to the Government of India in the Ministry of Environment and Forests. Approximately half of her service life has been spent in Odisha, working for the

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state government of Odisha, and half in Delhi, for the government of India. She has worked mainly in the sectors of environment, forests, tribal affairs, labour and health. She has also worked for 4 years with the ILO Office in Delhi, on secondment from the government.

7. Applicant No. 6, Mr. Pradeep K. Deb, joined the Indian Administrative Service in 1977. He was allocated Rajasthan Cadre and has served in various capacities in the State and in the Centre and also in the Asian Development Bank in Manila. He has served in the Departments of Personnel both in the State and Centre, (dealing with the UPSC) and in the Department of Economic Affairs in Government of India. Among his more recent postings, he was the Additional Chief Secretary, Home Affairs, Rajasthan State before retiring from service from the post of Secretary, Sports, Government of India. Post his retirement, he has been in the interview panel of UPSC for the Civil Services examination.

8. Applicant No. 7, Mr. Ardhendu Sen, Joined the IAS in 1976 and was allotted West Bengal cadre. Served in several capacities in the State as also in the Ministry of Petroleum and Natural Gas. Retired as Chief Secretary, Govt of West Bengal in 2010. He has been a member of CCG since 2017.

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9. The brief background to the filing of this Intervention Application is that Respondent No. 5 channel was scheduled to broadcast an episode of a show called "Bindaas Bol" at 8 PM on 28th August, 2020. Advance clips of the show revealed that its core theme revolved around allegations that Muslims (especially students of Jamia Milia Islamia University) were "infiltrating" the Indian Civil Services, and that this was a method of "jihad." Following the airing of this clipping, separate and independent legal proceedings were initiated before the Hon'ble High Court of Delhi and this Hon'ble Court, on the 29th of August, 2020.

10. Before the Hon'ble High Court, verified clippings of the programme were played, and various violations of the Programme Code were highlighted. The Hon'ble High Court was pleased, by an order dated 28th August 2020, to order a stay on the broadcast until the next date of hearing.

11. On the same day, this Hon'ble Court issued notice on the captioned writ petition, and passed an order stating, *inter alia*, that:

"5. During the course of the hearing, it has been highlighted that the expression of views derogatory to a particular community has a divisive potential. Prima facie, the petition raises significant issues bearing on the protection of constitutional rights."

Consistent with the fundamental right to free speech and expression, the Court will need to foster a considered a debate on the setting up of standards of self-regulation. Together with free speech, there are other constitutional values which need to be balanced and preserved including the fundamental right to equality and fair treatment for every segment of citizens...

8. At this stage, we have desisted from imposing a pre-broadcast interlocutory injunction on the basis of an unverified transcript of a forty nine second clip. The Court has to be circumspect in imposing a prior restraint on publication or the airing of views. We note that under statutory provisions, competent authorities are vested with powers to ensure compliance with law, including provisions of the criminal law intended to ensure social harmony and the peaceful coexistence of all communities."

12. Consequently, this Hon'ble Court expressed an intention to consider the balance between free speech and other constitutional values, that were raised in the instant case.

13. On the 1st of September 2020, the members of the Constitutional Conduct Group – numbering 91 in total, and including the present applicants – submitted a representation to the Home Minister and the Minister for Information and Broadcasting, pointing out that the said program would "generate hatred towards the largest minority community of the country", was based on demonstrable falsehoods about the supposed "growth" of Muslim representation in the Civil Services, and had the potential to divide the civil administration of the country

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on religious lines. The representation called for action to be taken in accordance with law. A true copy of the said representation is annexed as **Annexure A1** to this application.

14. Following from this Hon'ble Court's order of the 28th of August, wherein (as indicated above), this Hon'ble Court indicated that it would consider the larger questions dealing with the balance between the freedom of speech and the right of every citizen to fair and equal treatment, the applicants seek leave to intervene in these proceedings, and respectfully assist this Hon'ble Court in arriving at a just solution.

15. It is respectfully submitted that this is an important and urgent judicial task. There exist several legal provisions that prohibit, criminalise, or otherwise penalize what is colloquially known as "hate speech." These include Sections 153A and 153B of the Indian Penal Code, Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Section 5 of the Cinematograph Act, and the "Programme Code" that is passed under the authority of the Cable Network Regulation Act, and which is at issue in the present case. However – and in no small part due to the wide and vague wording of those provisions – their application has been inconsistent and uneven. It is therefore important that this Hon'ble Court – as it has done in the case of Section 124A of the Indian Penal Code – issue an

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authoritative ruling setting out the scope and meaning of "hate speech", so citizens, implementing authorities, and courts of the first instance receive clarity on speech that is protected, and speech that falls outside the scope of protection.

16. The Constitution of India guarantees the freedom of speech and expression to all citizens under Article 19(1)(a). Free speech is a cornerstone of modern democracy. It is central to seeking out truth in the marketplace of ideas, to individual self-determination, and to ensuring democratic accountability by keeping channels of communication open between the government and the governed.
17. The freedom of speech and expression is not limited to what the ruling dispensation may find palatable, or what public consensus may permit, but includes the freedom to dissent, to question received wisdom and established social mores, and to "offend, shock, or disturb."
18. The freedom of speech and expression is not absolute. The State may impose reasonable restrictions upon this right, under the conditions set out by Article 19(2) of the Constitution. A heavy burden lies upon the State to justify restrictions upon the freedom of speech, and any such restrictions must strictly hew to the eight sub-clauses set out under Article 19(2).

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19. Penal provisions such as Articles 153A and B of the Indian Penal Code address the issue of hate speech. However, as submitted above, their application has been uneven, and in many cases, these provisions are applied in a manner that is inconsistent with the guarantees under Article 19(1)(a). The interpretive task before this Hon'ble Court, therefore, is to distinguish between speech that is merely offensive, indecorous, or in bad taste (and therefore covered by Article 19(1)(a)), and *hate speech*, that is rightly penalized by Articles 153A and B, and the other provisions pointed out above.

20. It is respectfully submitted that the key to this distinction lies in the "decency or morality" sub-clause of Article 19(2) of the Constitution. It is established that the phrase "morality", for the purposes of Article 19(2), does not refer to public morality, but to *constitutional morality* (that is, the values and principles set out in the Constitution). Indeed, any other interpretation of "morality" – one that subordinated the freedom of speech to the dominant *public* sense of morals at any given time, and therefore to majoritarian sentiment – would only render Article 19(1)(a) illusory.

21. At the heart of constitutional morality is the principle of equality: the Constitution requires that every individual be treated with equal respect and concern, have an equal opportunity to shape the political and cultural environment in which they live, and be considered equal

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moral members of the national polity. The "harm in hate speech" lies in how it systematically undermines the equal standing of individuals, or groups of individuals, in society, and creates an environment in which they are rendered specially vulnerable to discrimination, persecution, and violence.

22. In *Pravasi Bhalai Sangathan vs Union of India* (AIR 2014 SC 1591), while declining to issue guidelines in the context of hate speech, this Hon'ble Court made the following observations:

Hate speech is an effort to *marginalise individuals based on their membership in a group*. Using expression that exposes the group to hatred, hate speech seeks to *delegitimise group members* in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech, therefore, *risks beyond causing distress to individual group members*. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on [the] vulnerable that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide. *Hate speech also impacts a protected group's ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy.*

23. It is respectfully submitted that this is an entirely correct articulation of the underlying principles governing the definition and regulation of hate speech. The offence of hate speech lies not in the *distress* that it may cause to individuals, but in targeting their *social standing* by virtue of their membership of certain groups, in a manner that leaves them specially vulnerable to hostility, discrimination and violence.
24. In a landmark treatise titled *The Harm in Hate Speech*, the legal scholar Jeremy Waldron argues that modern constitutional democracies are underpinned by the twin values of *inclusiveness* and *dignity*. "Inclusiveness" refers to a promise to all members of a plural and diverse polity, that regardless of their group affiliations (cultural, religious, or political), they can lead their lives without the threat of "hostility, violence, discrimination, or exclusion ... [with] a sense of security in [the public spaces] that we all inhabit." "Dignity", in turn, is an affirmation of everyone's "basic social standing ... as a proper object of society's protection and concern." Waldron argues that hate speech is defined as such when it attacks "the basic elements of each person's status, dignity, and reputation as a citizen or member of society in good standing, [and] particularly against attacks predicated upon the characteristic of some particular social groups."

25. Consequently, hate speech is best understood as not merely a set of words or sentences, but as expression that is bound up with a set of *social practices* of discrimination, exclusion, and violence (for example, a "Whites Only" sign in an apartheid State, that affirms the unequal value placed upon the lives of white and black people, based upon their race).
26. This understanding of hate speech was articulated by this Hon'ble Court in **Babu Rao Patel vs State, AIR 1980 SC 763**. The Appellant was penalized under Article 153A because he called Muslims "a basically violent race" with a "radical tradition of rape, loot, violence, and murder." This Hon'ble Court held that while drawing a link between minorities and communalism was permitted under Article 19(1)(a), "vilification" was not. The word "vilification", it is respectfully submitted, ought to be understood in the context supplied above: it refers not to causing offence or distress, but to undermining an individual or community's *social standing* in society, in a manner that renders them vulnerable to hostility, discrimination, and violence.
27. It is therefore respectfully submitted that hate speech, by its very nature, accords *asymmetrical protection*: vulnerable minorities, and groups with a history of suffering discrimination and harm, are to be specifically protected against hate speech, as opposed to dominant social groups, who are not at risk of discrimination,

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persecution, or violence. It is submitted that this distinction is already recognised in Indian laws, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which recognises caste-based hate speech, but *only* if it is directed "down" the caste hierarchy, against the groups protected by the Act, and not the other way.

28. There exists an emerging, trans-national consensus that is united around the articulation of hate speech advanced above. Under international human rights law, the International Covenant on Civil and Political Rights ["ICCPR"] prohibits "any advocacy of national, racial or religious, hatred that constitutes incitement to discrimination, hostility, or violence." Hatred, therefore, is defined in terms of "discrimination, hostility, or violence." In **Faurisson vs France (Communication No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993 (1996))**, the United Nations Human Rights Committee rejected a challenge to France's Holocaust Denial laws on these grounds, and upheld the Jewish community's right to "live in an atmosphere free of anti-semitism."

29. In **R v Keegstra, [1990] 3 S.C.R. 697**, the Supreme Court of Canada considered the conviction of a schoolteacher for anti-semitic statements. The Respondent had been prosecuted for "willfully promoting hatred" against an identifiable group. The Supreme Court of Canada defined hatred as an "emotion that, if

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exercised against members of an identifiable group, implied that those individuals are to be *despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.*" In 2013, in **Saskatchewan v Whatcott, [2013] 1 S.C.R. 467.**, which was relied upon by this Hon'ble Court in **Pravasi Bhalai Sangathan, supra**, the Canadian Supreme Court defined hate speech as speech that caused "abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects." The Canadian Supreme Court drew a categorical distinction between "repugnant ideas" (constitutionally permitted) and "discrimination" (not permitted), whose result was undermining the constitutional "commitment to equality and respect for group identity and the inherent dignity owed to all human beings."

30. The European Court of Human Rights has drawn similar distinctions between "offence" on the one hand, and "abuse" or "insult" on the other. Thus, "caustic commentary" about Islam – which can and would cause offence – cannot be constitutionally prohibited (**Tatlav v Turkey (no. 5062/99), 2 May 2006**), but speech that undermines the "tolerance and respect for equal dignity of all human beings" can (**Gunduz v Turkey, (2005) 41 EHRR 5**).

31. Because of its long and painful history of apartheid and racial discrimination and violence, South African judicial

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bodies have had ample scope to consider and develop a constitutional jurisprudence on hate speech. The South African Constitutional Court has clarified that the gravamen of hate speech lies in "group-based hostility and discrimination" (**Islamic Unity Convention vs The Independent Broadcasting Authority, (2002) 5 BCLR 433 (CC)**). The South African Human Rights Commission went on to note that speech that communicated a message that certain groups were "less deserving of respect and dignity" constituted hate speech (**Freedom Front vs South African Human Rights Commission, 2003 (11) BCLR 283 (SAHRC)**).

32. Indeed, specific prohibition of hate speech in South African law is consciously located within its "Equality Act." This legal provision proscribes speech that can be reasonably construed to be intentionally hurtful, harmful, or advocating hatred, on the basis of certain 'prohibited grounds', that have been the historic sites of discrimination and oppression: race, sex, ethnic origin, sexual orientation, and so on. 'Prohibited grounds' are specifically understood to be where discrimination perpetuates 'systemic disadvantage', 'undermines dignity', or 'adversely affects...the equal enjoyment of rights and freedoms.' The connections with dignity and equality, and the ability to exercise one's rights and freedoms on parity with everyone else, are therefore expressly set out in the legislation itself. In **Afriforum v. Malema, 2011 (6) SA 240 (EqC)**, the question was

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whether the song 'Shoot the farmer, shoot the Boer!', which had been a Black liberation song during the time of apartheid, constituted hate speech within the meaning of the Equality Act. The song in question had been sung by a political leader during a rally. After a detailed analysis into the history of the song, its present meaning in society, the intended and actual audience, and the impression it would convey to the targeted group, the Equality Court held that 'the entirety of the message *dehumanizes* the enemy by referring to it as dogs and describing its conduct in unsavoury terms...those words are *derogatory, dehumanizing* and hurtful'.

33. Therefore, a survey of Indian constitutional provisions, precedent, and international and comparative constitutional law, reveals the following propositions for the consideration of this Hon'ble Court:

- a. Offensive speech is distinct from hate speech.
- b. The Constitution protects offensive speech, but does not protect hate speech. Penal provisions such as Sections 153A and 153B of the IPC must be interpreted in a manner that keeps the distinction between the two intact.
- c. Offensive speech is, simply, speech that causes (subjective) feelings of offence, or outrage, and

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nothing more. Such speech may be ill-considered, unwise, and improper, but it is not illegal.

- d. Hate speech goes beyond subjective feelings of offence, and objectively has the effect of undermining constitutional equality, sending a message that a person or a group of people are not worthy of equal concern of respect, are not equal members of society, or are fair game for discrimination, hostility, or violence.
- e. Determining hate speech, therefore, requires a contextual enquiry by judicial and other State bodies, looking into (a) the actual words used, (b) the meanings that they carry for their intended recipients, (c) any history of similar language, (d) and the likely consequences.
- f. Hate speech can be direct (calls to violence and discrimination), but it can also be indirect, through implication, insinuation, and what is popularly known as dog-whistling. This, therefore, requires judicial bodies to be sensitive to the nuances and specific histories of the speech in question.
- g. The distinction between offensive speech and hate speech may be parsed with the help of the following examples:

- i. Criticism, mockery, and ridicule of respected and revered religious or cultural figures may be offensive, but it is not hate speech. Calling for a boycott of the *members* of a religious or cultural community, or implying that they are "violent by nature", or "unpatriotic" by virtue of their community affiliation, is hate speech.
- ii. Mockery of religious beliefs or traditions may be offensive, but it is not hate speech (this application does not address the question of whether it may or may not be punishable under Section 295A of the IPC). Accusations of dual loyalties towards *members* of any faith – and suggestions of treachery by virtue of belonging to that faith – constitutes hate speech.
- iii. Speech that has historically been inseparable from practices of oppression and subordination is hate speech (see, e.g., this Hon'ble Court's examination of the use of the word "*chamar*", under the Prevention of Atrocities Act, in **Swaran Singh vs State, 2008 8 SCC 435.**).

34. It is respectfully submitted that there is no bright line between hate speech and offensive speech. Each case requires the application of judicial mind, and a nuanced weighing of the facts and circumstances involved.

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However, the fundamental principles – as articulated in this application – remain the same.

PRAYER

The Applicant therefore most humbly prays from this Hon'ble Court: -

- a. Allow the applicant to intervene in the Writ Petition (C) 956 of 2020 titled Firoz Iqbal Khan versus Union of India and Ors; and/or
- a. pass any such further Order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS
THE APPLICANT SHALL EVER
PRAY

Drawn By:

Gautam Bhatia, Adv

Filed By:

Anas Tanwir
Advocate for the Applicant

New Delhi,
Dated: 13.09.2020

In

WRIT PETITION (CIVIL) No. 956 of 2020

IN THE MATTER OF:

FIROZ IQBAL KHAN

... Petitioner

Versus

THE UNION OF INDIA AND ORS.

... Respondents

AND IN THE MATTER OF:

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... Applicants

AFFIDAVIT

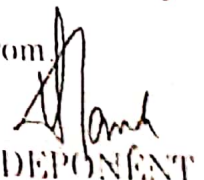
I, Amitabha Pande, S/o late Amba Dutt Pande, Aged 72 office at Flat G3, Tower 5, Parsvnath Prestige-2, Sector 93A, Noida, Uttar Pradesh 201304 presently at New Delhi do hereby solemnly affirm and state as under: -

1. That I am the Applicant No.1 in the present Interlocutory Application and such I am well conversant with the facts and circumstances of the case and competent to swear the present affidavit on behalf of the Applicants.
2. That I have gone through a copy of the application and state that the contents thereof are true and correct to my knowledge.
3. That the annexures attached to the present Applications are true and correct copy of their respective originals.



DEPONENT

Verified at New Delhi on this the day of September 2020 that the contents of the above affidavit are correct and true to the best of my knowledge and nothing material has been concealed therefrom.



DEPONENT

Annexure A-1
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LETTER SEEKING ACTION AGAINST SUDARSHAN TV FOR ITS
MALICIOUS CAMPAIGN TO PROMOTE HATRED AND
DIVISIVENESS IN SOCIETY
ON SEPTEMBER
2020 BY CONSTITUTIONAL CONDUCT IN PUBLIC AFFAIRS 1,
1 September 2020

Honourable Home Minister of India

Honourable Minister for Information & Broadcasting, India

Chairman, National Human Rights Commission

Chairman, Minorities Commission

Chairman, Union Public Service Commission

Chairman, News Broadcasting Standards Authority

Honourable Lt Governor, Delhi

Honourable Chief Minister, Delhi

Secretary, Ministry of Home Affairs, Govt. of India

Secretary, Ministry of Information & Broadcasting, Govt. of India

The Commissioner of Police, Delhi

We are a group of former civil servants belonging to the All India and
Central Services who have worked with the Central Government as

well as different State Governments of India. As a group, we have no affiliation with any political party but believe in being neutral, impartial and committed to the Constitution of India.

We are raising, through this letter, an urgent issue regarding the proposed telecast of a communally charged, divisive and sensational series by Sudarshan News TV channel. This series claims to be an expose of a conspiracy in the recruitment process that has resulted in a sudden increase in the number of Muslim officers selected for the two most prestigious services in the country, the IAS and the IPS. Jamia Millia Islamia has been singled out in this context. We understand that the Delhi High Court has granted an interim stay on the telecast. However, we feel stronger legal and administrative action is warranted.

It is completely perverse to allege that there is a conspiracy to infiltrate Muslim officers into the services, or to use terms like UPSC Jihad or Civil Services Jihad in this connection. These communal and irresponsible statements amount to hate speech and are defamatory of an entire community.

The telecast of the programme, if allowed, will have the following effects:

- It will generate hatred towards the largest minority community in the country, viz. Muslims, without having any basis in fact. The country is already smouldering with hate speech against Muslims, including allegations of Corona Jihad and Love Jihad, which various courts have found to be false. This telecast will add further fuel to that fire.
- It will tar the impeccable reputation of the Union Public Service Commission (UPSC), the premier organisation for civil service

recruitment, by claiming that it is biased in its recruitment processes. UPSC's recruitment processes are widely recognised as being entirely fair, above board and without any bias towards any language, region, religious or other community. The UPSC is one of the few institutions in the country which still enjoys an unblemished reputation for integrity and has enormous credibility both with the government and with the people of India. The telecast will destroy people's faith in this highly regarded institution.

- It will spread a false belief about a disproportionate increase in the number of Muslims being selected for government services, especially for the IAS and IPS. A recent report in the Indian Express said that "Muslims make up 3.46 per cent of the country's 8,417 IAS and IPS officers. Of 292 Muslim officers, 160 are among the 5,862 who had been selected through the Civil Services examinations conducted by the UPSC, while the remaining 132 are among 2,555 who were promoted to the IAS or IPS from the state civil services on the basis of seniority and performance, which is also assessed by the UPSC. (<https://indianexpress.com/article/india/india-others/muslims-add-up-to-3-in-ias-ips-list/>) It should be noted that this 3.46% is far short of the percentage of Muslims in the population, which is 14.2%. Over the last forty years, the number of Muslim candidates has been going up and down. In fact, there have been years when not a single Muslim candidate was selected in the IAS, and, therefore, allegations such as these are totally unfounded. Such a telecast may also persuade other caste, linguistic and regional groups to look at their rate of success in the civil services examination, an examination which should be, and is, based on merit. In the process, the credibility of UPSC will be compromised.
- It will malign the reputation of Jamia Millia Islamia, which has recently been rated as the top central university in India. Jamia Millia

Islamia has, in fact, been fulfilling a major social obligation to the country by offering free coaching services to disadvantaged candidates (Muslims, SCs, STs and women) to help them succeed in the UPSC examinations. The telecast will discourage Jamia Millia Islamia and others like them from offering services to socially disadvantaged groups.

- The use of terms like "UPSC jihad" and "Civil Services jihad" are an attempt to divide the civil administration of the country along religious lines and undermines the excellent contributions made by administrators across the board to the development of India.

In a case filed before the High Court of Delhi a few days ago, the petitioners have urged that offences have been committed under "Sections 153A(1) Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony, 153B(1) Imputations, assertions prejudicial to national-integration, 295A Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs and Section 499 Defamation, of the Indian Penal Code". These alleged offences need to be investigated thoroughly.

In a recent judgement on the same matter, the Supreme Court, while not granting a stay on the telecast of the programme, has stated "We note that under statutory provisions, competent authorities are vested with powers to ensure compliance with law, including provisions of the criminal law intended to ensure social harmony and the peaceful co-existence of all communities."

We, therefore, urge the Union Home Ministry, the Lieutenant-Governor of Delhi, the Chief Minister, Delhi and the Commissioner of Police,

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Delhi to order the lodging of FIRs under the relevant legal provisions. We also request the Ministry of Information and Broadcasting and the News Broadcasting Standards Authority of India to investigate whether or not the show would run afoul of the Cable Television Networks (Regulation) Act, read with the Cable Television Networks Rules 1994, and the Code of Ethics and Broadcasting Standards and take suitable action. The National Human Rights Commission, the Minorities Commission, and the Union Public Service Commission are also requested to take notice of this vicious hate campaign to malign a particular religion and community through the propagation of slanted news that will not stand scrutiny by any objective criterion.

(91 signatories, as below)

Tu Cph

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. No. of 2020

In

WRIT PETITION (CIVIL) No. 956 of 2020

IN THE MATTER OF:

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... Petitioner

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Amitabha Pande & ors.

Applicants

To,

Hon'ble the Chief Justice And his
Companion Justices of the Hon'ble
Supreme Court Of India

Humble application on
behalf of the Applicant

**APPLICATION FOR EXEMPTION FROM FILING A DULY AFFIRMED
AFFIDAVIT, WELFARE**

MOST RESPECTFULLY SHOWETH:

1. That the applicant has preferred the above captioned application seeking intervention to allow the applicant to intervene in the captioned matter.

2. The facts and circumstances leading to the filing of the Petition have been stated in detail therein and are not repeated for sake of brevity.
3. That the affidavits therein are not affirmed or attested due to the lockdown and restriction due to the Pandemic.
4. In the circumstances, it is most humbly prayed that the Applicant may be exempted from filing a duly affirmed affidavit, welfare and court fees in the interest of Justice.

PRAYER

Under the given facts and circumstances the Petitioner humbly prays that in the interest of Justice this Hon'ble Court may be pleased to;

- (i) Exempt the Petitioner from filing a duly affirmed affidavit, welfare; AND
- (ii) Pass any or further orders as this Hon'ble Court may deem fit and proper

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL DUTY BOUND FOREVER PRAY;

Filed By:

Anas Tanwir
Advocate for the Applicant.

Filed On: