



SYMBIOSIS LAW SCHOOL, HYDERABAD

Symbiosis International (Deemed University)

(Established under Section 3 of the UGC Act 1956)

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3rd SYMBIOSIS LAW SCHOOL, HYDERABAD, NATIONAL MOOT COURT COMPETITION-2018

MOOT PROPOSITION

1. Republic of Narnia (“**Narnia**”) is a democratic republic having a stable government (“**Government**”) in power after long. The constitution of Narnia (“**Constitution**”) and all the laws are akin to the Constitution and laws of India.
2. SayPM is a Narnian electronic payment system and digital wallet company that was founded by Mr. Money Bag in January 2009 and is based out of the City of Joy in Narnia. SayPM has international investors, such as Chinese e-commerce giant, **Forty-Thieves**, and Japanese multinational holding conglomerate, **HardBank**. SayPM is available in various Indian languages and offers online payment services such as mobile recharges, utility bill payments, flight tickets, movie tickets, and event bookings, as well as in-store payments at various retail stores, restaurants, parking, tolls, pharmacies and educational institutions. SayPM is now managed by Mr. Money Bag and his wife Mrs. Money Bag. During demonetization in Narnia in November 2016, SayPM’s business increased manifold as e-transactions increased. During the said time, SayPM advertised heavily and its billboards and print adverts contained the Prime Minister’s photograph and read “*SayPM congratulates the Prime Minister of Narnia for taking the boldest financial decision in the history of independent Narnia*”. The usage of the Prime Minister’s photograph for such advertisements was widely criticized and triggered a political debate. It also led to various public interest litigations. The Prime Minister’s proximity with SayPM was debated and one section of the public cried foul alleging that the move for enforcing demonetization was not purely to eradicate black money (as the Prime Minister had claimed), the Prime Minister had certain commercial propaganda as well. However, SayPM refuted the above allegations stating that all these acts were done to promote nationalist feeling and to demonstrate positive effects of the demonetization.

3. To run its business, SayPM collects various sensitive data from its customers, such as their bank account, credit and debit card details and uses the same to allow the customers to access its e-payment services. Further, SayPM tracks customers' usage pattern to make targeted advertisements to them. In this regard, SayPM claims that it follows the highest category of data security measures to protect its customer data and is in compliance with all applicable laws. Customers of SayPM need to agree to a lengthy consent form before they are allowed to use SayPM's services. Very often, consumers do not understand the terms and conditions in the consent form and thus, mechanically press the "I Agree" button to use the services. However, Narnia's data privacy and protection laws are allegedly weak and there is no dedicated law which completely addresses the concerns relating to data protection and data privacy of Narnia's citizens. The Government has time and again maintained that the existing general laws, such as the Narnian Penal Code, Information Technology Act, regulations/guidelines issued by sectoral regulators such as the Reserve Bank of Narnia, Telecom Regulatory Authority of Narnia, etc are all sufficient.
4. AnacondaPole, which was founded in 2003 by Mr. Khabri Lal, is a highly acclaimed Narnian non-profit news website and television production house, famous for its investigative journalism. It has successfully covered several high-profile breaking news including a sting operation that exposed eleven members of Narnia's Parliament ("MPs") and showed them accepting money for putting forward questions in the Parliament. As a consequence of this investigation, those eleven MPs were expelled from the Parliament, the largest expulsion of MPs in the country's history. From political to corporate corruption, AnacondaPole has endeavoured to reveal truth to its audience and attempted to expose corrupt officials, politicians and other social players. It has been tirelessly working towards various social causes, propagating courageous journalism and providing a platform for dissenting voices to emerge out of the mainstream media spectacle.
5. AnacondaPole conducted an investigation titled 'Operation Swachch Narnia' and alleged that during the course of the investigation it found that Mrs. Money Bag, who is a

director of SayPM, has allegedly claimed, during a drunken conversation that the e-wallet company had received a call from the Prime Minister's Office ("PMO") demanding some user data, right before the General Elections in Narnia. To substantiate its claims, AnacondaPole has released the transcripts and video clips of Mrs. Money Bag on its social media profiles in Legbook and MeTube.

6. To conduct the investigation, AnacondaPole's star journalist Mr. Narad Lal posed as a representative of a fictitious organisation by the name of *Jai Narnia Samiti*, and met some of SayPM's top executives. Narad Lal informed them that he is meeting at the behest of the "Samiti" to bolster the prospects of the ruling party in the Parliamentary elections slated to be conducted in 2019. Mrs. Money Bag, during the meeting, revealed that they had some association with the ruling party of Narnia. Mrs. Money Bag said in the sting video: *"By the way, let me show you one more thing ... this is our SayPM App. Nowadays, our Prime Minister is right here. He has written a book Chai Time Tales. We are ... we are actually selling this book on our platform... Also, for the upcoming elections, they wanted our user data regarding the sale and popularity of the book and some other information"*. However, the video did not mention whether or not SayPM complied with the alleged demand and whether it involved demand of information other than the book's sale and popularity.
7. After AnacondaPole released the video and transcript, SayPM, on its official social media profile, posted that *"There is absolutely NO TRUTH in the sensational headlines of a video doing rounds on social media. Our user data is 100% secure and has never been shared with anyone, except law enforcement agencies on request. Thank you for your continued support."* SayPM, however, did not reveal the name of "law enforcement agencies" with whom the company had shared its user data, if any.
8. With more than 10,00,000 registered merchants and more than 1,00,00,000 users of SayPM across the country, SayPM is now a diversified e-commerce company, becoming indispensable for Narnia's shoppers. It has become akin to a necessary public utility in Narnia. While there are other e-payment companies in the market, SayPM occupies the

largest chunk in the relevant market and there is no competitor who comes close. Its boom is closely linked to the ruling party's decision to demonetize and restrict usage of paper currency. Further, while demonetization brought down Narnia's GDP by 2.75%, SayPM witnessed a 1000% increase in overall usage of its services and 1500% growth in the value of money added to SayPM's accounts.

9. Earlier this year, it was alleged that the Prime Minister's own mobile application ("SayMo") transferred user data to a few foreign companies for data analytics. While this was denied by the PMO, general public was quite concerned about the safety of their data. Similar allegations were also levelled against the applications of opposition parties in Narnia. However, no investigation was conducted.

10. In light of the growing controversies around its data sharing practices, SayPM revised its privacy policy and included a new clause stating, "*I understand and permit SayPM, at its sole discretion, to share my data with any third party for any purpose linked to the business of SayPM.*" SayPM ensured that users who did not consent to the said new clause, were blocked from using their application. Thus, large sum of money, which the users had in their SayPM wallet, could neither be transferred to any third party's bank accounts nor be used to conduct other e-transactions. The users of SayPM were highly distressed. SayPM constantly countered the allegation saying that the data was shared as per the contract entered into by the users and only for purposes which are necessary, for it to fulfil its obligations towards the users. Thus, they have already complied with all the existing laws by entering into such contracts with the users of SayPM. SayPM also stated that the money of the users in the wallet was not completely blocked, rather the users have the option to transfer the amount in their wallet back to their own bank account linked with the application by paying a minor fee, if their wallet is blocked.

11. Mr. True Lies, a privacy activist, allegedly inclined towards the opposition party of Narnia, filed a public interest litigation by way of a writ petition in the High Court of City of Joy, having jurisdiction over a state of eastern region of Narnia, **Didiland**, under Article 226 of the Constitution – alleging that "right to privacy" guaranteed under Article

21 of the Constitution to citizens of Narnia had been violated. SayPM was made a party to the said writ petition. In the writ, it has been alleged that the Government had been trying to hush up the matter and demanded that an independent investigating agency be appointed that would investigate into the matter of SayPM sharing the personal information of users. Further, it has been alleged that SayPM and the Government has acted in collusion and have breached the privacy of citizens of Narnia. They have also violated provisions of the Information Technology Act, 2000, as amended, and the rules framed thereunder. The reliefs claimed from the Hon'ble High Court of City of Joy were largely as follows:

- a. Directions to the Government and/ or any other appropriate authority to discharge their executive, statutory and all other obligations in relation to safeguarding of privacy of the data of users of SayPM and other similar mobile applications, including directions to prohibit SayPM from sharing details and data of subscribers/ users of SayPM with any entity/ person (including the Government), without the express written consent of the data subject and in violation of applicable law.
- b. Directions to the Government to frame or amend rules/ regulations/ guidelines for the protection of rights of citizens (including safeguarding and securing the privacy of citizens) from mobile application/ internet based service providers so that such internet based service providers do not compromise, share and/ or exploit the personal data, financial data and such other data or information of users in any manner whatsoever. Further, direct the Government to take all actions including steps towards making Rules under Section 87 of the Information Technology Act 2000 so as to:
 - i. regulate the functioning of such mobile application and/or internet based service providers;
 - ii. direct such mobile application and/or internet based service providers to frame internal privacy policies, for handling/dealing with personal data, financial data and such other data or information of users, by framing appropriate rules; and/or
 - iii. ensure that the privacy rights of the users are not compromised and are duly protected.

- c. Directions to the Central Investigating Agency to investigate any nexus between the Government authorities and SayPM resulting in compromise of any citizen's personal data.

[Note: Maintainability of the writ petition can be challenged.]