

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

(Under Article 32 of the Constitution)

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

PEOPLE'S CHARIOTEER ORGANIZATION (PCO)

& ANOTHER

.....Petitioners

Versus

UNION OF INDIA & OTHERS

...Respondents

WITH

I. A. No. _____ OF 2020

(APPLICATION FOR URGENT HEARING AND EXEMPTION FROM
FILING DULY AFFIRMED AFFIDAVIT)

AND

I. A. No. _____ OF 2020

(APPLICATION FOR SEEKING PERMISSION TO APPEAR AND
ARGUE IN PERSON)

P A P E R - B O O K

(FOR INDEX KINDLY SEE INSIDE)

DRAWN BY:

SHASHWAT ANAND
(ADVOCATE)

FILED BY:



DEVESH SAXENA
(ADVOCATE)
(Petitioner No. 2 In-Person)

FILED ON- 07.07.2020

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PROFORMA FOR FIRST LISTINGSection – Article 32 of the Constitution

The Case pertains to (Please tick/check the correct box):			
<input checked="" type="checkbox"/>	Central Act: (Title)	The Constitution of India, 1949	
<input checked="" type="checkbox"/>	Section:	Article 32 r/w Article 14, 21.	
<input type="checkbox"/>	Central Rule: (Title)	N/A	
<input type="checkbox"/>	Rule No(s):	N/A	
<input type="checkbox"/>	State Act: (Title)	N/A	
<input type="checkbox"/>	Section:	N/A	
<input type="checkbox"/>	State Rule: (Title)	N/A	
<input type="checkbox"/>	Rule No(s):	N/A	
<input type="checkbox"/>	Impugned Interim Order: (Date)	N/A	
<input type="checkbox"/>	Impugned Final Order: (Date)	N/A	
<input type="checkbox"/>	High Court: (Name)	N/A	
<input type="checkbox"/>	Name of Judges:	N/A	
<input type="checkbox"/>	Tribunal/Authority: (Name)	N/A	
1.	Nature of Matter:	<input checked="" type="checkbox"/> Civil	<input type="checkbox"/> Criminal
2.	a. Petitioner/Appellant No. 1:	People's Charioteer Organization	
	b. E-mail ID:	peoplescharioteerorganization@gmail.com	
	c. Mobile Number:	N/A	
3.	a. Respondent No. 1:	Union of India	
	b. E-mail ID:	N/A	
	c. Mobile Number:	N/A	
4.	a. Main Category Classification:	Writ Petition (Civil)	
	b. Sub-Classification:	Public Interest Litigation (PIL)	
5.	Not to be listed before:	N/A	
6.	a. Similar Disposed	N/A	
	b. Similar Pending	N/A	
7.	Criminal Matters:	N/A	

	a. Whether accused/convict has surrendered:	N/A	
	b. FIR No.: Date:	N/A	
	c. Police Station:	N/A	
	d. Sentence Awarded:	N/A	
	e. Period of Sentence Undergone:	N/A	
8.	Land Acquisition Matters:	N/A	
	a. Date of Section 4 Notification:	N/A	
	b. Date of Section 6 Notification:	N/A	
	c. Date of Section 17 Notification:	N/A	
9.	Tax Matters: State the tax effect:	N/A	
10.	Special Category (First Petitioner /Appellant only):	N/A	
	Senior Citizen>65 years:	N/A	Disabled: N/A
	Woman/Child:	N/A	Legal Aid Case: N/A
	SC/ST:	N/A	In custody: N/A
11,	Vehicle Number (in case of Motor Accident Claim Matters):	N/A	

DRAWN BY:**SHASHWAT ANAND
(ADVOCATE)****FILED BY:**

**DEVESH SAXENA
(ADVOCATE)
(Petitioner No. 2 In-Person)****FILED ON- 07.07.2020**

SYNOPSIS AND LIST OF DATES

The murderous police assault, unending beatings and brutal torture which caused the death of two innocent traders, a father and a son, Jayaraj, aged 62 years and Bennix, aged 32 years, at Sathankulam Police Station, near Thoothukudi in Tamil Nadu, has brought the issue of custodial deaths to the limelight and it is an acute demonstration of a broken criminal justice system and failure to effectively uphold legal protection against police abuse. Accusations have been made against the police officers involved in two F.I.Rs filed on 24.06.2020, and thereafter news coverage regarding the incident gained traction. Due to huge outcry, 4 policemen, two sub inspectors and two constables working at the Sathankulam Police Station were suspended, and the Inspector In-charge was transferred.

This incident, *inter alia*, has traumatized all those who respect the rule of law and personal liberty in the country and it **underlines afresh the urgent need for institutional correctives within the policing system in this country and the acute need for India to enact a strong law to prohibit and prosecute cases of torture and custodial deaths, in fulfilment of its legal obligations, both national and international, to guarantee protection to right to life.**

At a time when demands for police reforms are sweeping the world in the context of the “Black/All Lives Matter” movement, the killings of Jayaraj and Bennix are a chilling reminder of how the excessive use of force has become a routine in India, resulting in tragic loss of lives. It sends an unfortunate chilling message about how broken the system is and the failure of police and political leaders to establish accountability measures for those who are found guilty of custodial crimes. It also lays bare brutally what happens to ordinary people who do not know their rights or that custodial violence is not normal behaviour but criminal conduct.

Indian police is well known for gratuitous beatings, custodial torture, custodial deaths, fake encounters and other blatant state violence. Paradoxically, Indian police system under Indian Police Act, 1861 continues to have colonial coercive machinery which was modelled on Irish colonial paramilitary police. We had a historic break from dreadful past when we drafted our Constitution which guaranteed a set of fundamental rights including the most precious right of life and liberty. But, **we failed to eliminate the colonial attitude of our police and allowed it to continue with the same archaic law such as The Police Act, 1861.**

India's track record with regards to incidents of custodial violence is dismal. The **NHRC**, in its annual report of 2017-2018 received 1,636 intimations concerning death in judicial custody and 148 intimations of death in police custody. Most of these cases witness considerable delays in proceedings and absolutely ZERO conviction rates. What is more bizarre is that there is absolutely no record, whatsoever, of those who were subjected to custodial violence but remained alive and the data only talks about "Custodial Deaths". The **Law Commission** took note of the abysmal state of affairs in its 152nd&273rd report. Yet, majority of the recommendations have not been promulgated yet.

Anti-Torture Bills, such as **Prevention of Torture Bill, 2010**, subsequently amended further by **The Prevention of Torture Bill, 2017** were subjected to deliberations in the past, however neither bill came to fruition.

This Hon'ble Court has kept individual dignity as a focal point in plethora of judgments and has always been very sensitive to the issues of police brutalities. In **Prakash Kadam v. Ramprasad Vishwanath Gupta** (2011 6 SCC 189), the Hon'ble Supreme Court observed that "*Policemen are persons who are supposed to uphold the law. In our opinion, if crimes are committed by ordinary people, ordinary punishment should be*

given, but if the offence is committed by policemen, much harsher punishment should be given to them because they do an act totally contrary to their duties."

In Re Inhuman Conditions in 1382 Prisons v. State of Assam (AIR 2016 SC 993), the Hon'ble Supreme Court observed as follows: "*There are several such cases – documented and undocumented - all over the country but in spite of repeated decisions delivered by this Court and perhaps every High Court there seems to be no let-up in custodial deaths. This is not a sad but a tragic state of affairs indicating the apparent disdain of the State to the life and liberty of individuals, particularly those in custody. The time to remedy the situation is long past and yet, there seems to be no will and therefore no solution in sight.*"

In Prakash Singh v. Union of India (2006 8 SCC 1), this Hon'ble Court issued six major guidelines regarding implementation of the police reforms based on the recommendations of the NPC and directed the Central and State Governments to implement them. **This Hon'ble Court further asked the governments to implement the police reforms by separating the investigation wing from the law and order branch.** It also directed to establish a complaints authority to look into the human rights violations including custodial deaths and

abuse of authority by the police people. Sadly, the state governments do not seem to be serious to implement any of these police reforms.

Independent investigation in a case of custodial death/torture, is a big challenge, owing to the obvious fact that the police are called upon to probe against themselves. The Hon'ble Supreme Court vide its judgment in the case of **State of M.P. v. Shyamsunder Trivedi** (1995 4 SCC 262) had commented about the 'ties of brotherhood' within police, which stall fruitful investigation in cases of custodial violence, as follows:

"...rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available. Generally speaking, it would be police officials alone who can only explain the circumstance in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not pervert the truth to save their colleagues"

To take care of this problem, the law has envisaged a process of parallel Magisterial Inquiry. **Section 176(1A) of the Code of Criminal Procedure, inserted after the amendment of 2005, is a special provision to deal with cases of death, disappearance or rape in police custody.** The provision says that

in such cases, the Judicial Magistrate or the Metropolitan Magistrate, within whose local jurisdiction the offence has been committed, *shall* hold an inquiry in addition to the inquiry or investigation held by the police. **However, compliance with the abovesaid ‘mandatory provision’ is rare and a longstanding issue, which is yet to be addressed, as a result of which this provision has become redundant in nature.**

An unreformed Indian police system has also shown itself to be pliable and amenable to political manipulation. The police power becomes a tool in the hands of the state to demonstrate their political authority particularly against their rivals. Police while discharging its duties such as arrest, search, and interrogation routinely indulges in arbitrary exercise of powers. The Magistrates also grant remands routinely which is not a good signal for liberty jurisprudence.

Several Supreme Court Judgments have expressly stated that police have no right to exercise the power to arrest and interrogate arbitrarily & capriciously. Detailed guidelines regarding the powers and procedure for arrest were laid down by the Hon’ble Supreme Court in **Joginder Singh v. State of U. P.** (1994) 4 SCC 260 & **D. K. Basu v. State of West Bengal** (1997) 1 SCC 416.

Justice A.S. Anand famously stated in the case of D.K. Basu (*Supra*) that, "*Custodial torture is a naked violation of human dignity and degradation which destroys, to a large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward- flag of humanity must on each such occasion fly half-mast.*"

It was further observed in the case of D.K. Basu (*Supra*) that, "*Custodial death is one of the worst crimes in a civilised society governed by Rule of Law. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? The answer, indeed, has to be an emphatic "No".*"

In **K.S.R. Dev v. State of Rajasthan** (1981) 1 SCC 503, Justice Krishna Iyer rightfully stated that, "*This Country has no totalitarian territory even within the walled world we call prison. Articles 14, 19 and 21 operate within the prisons*" - "*....the state must re-educate the constabulary out of their sadistic arts and inculcate a respect for the human person –a process which must begin more by example than by percept if the lower rungs are really to emulate, then "....nothing inflicts a deeper wound on our*"

constitutional culture than a state official running berserk regardless of human rights.

Even in the International context, India falls behind when it comes to falling in line with major International declarations and treaties. The Executive Committee of Commonwealth Human Rights Initiative (CHRI) issued a statement on the deaths of Jayaraj and Bennix, stating that the said incident is an acute demonstration of a broken criminal justice system, also urging the Government of India to ratify the **United Nations Convention Against Torture, 1985** to which India is already a signatory since 1997. Further, India is not a signatory to the **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2002**. The officials from the Office of the High Commissioner for United Nations Human Rights (OHCHR) recently stated that they were "**extremely concerned**" about an epidemic of extrajudicial killings by Uttar Pradesh police, known locally as "encounters," in the name of self-defence.

Further, despite being a signatory, India has time and again failed to comply with *Article 5* of the **Universal Declaration of Human Rights, 1948** and *Article 7* of the **International Covenant on Civil and Political Rights, 1966** which state that no

one shall be subjected to cruel, inhuman or degrading punishments. The **United Nations Standard Minimum Rules for Treatment of Prisoners, 2015** were formulated and promulgated by the United Nations for ensuring basic humane treatment to prisoners, however, India does not comply with the standards laid down.

Article 14 and 21 of the Constitution of India has a wider aura and the menace of custodial violence and other police brutality negates it. Custodial Violence casts serious doubts about the transparency, accountability and functioning of the police hierarchy and goes against the basics of ethics, culture, and human rights jurisprudence. Custodial deaths violate not only democratic fabric and human rights aura but badly undermines the rule of law and constitutionalism as envisaged in our supreme law of the land. There is no place for these inhumane practices in our country. **Time has come when we should have zero tolerance for custodial violence. What is required is not just reforms in the organisational structures of centralised police and paramilitary forces but some rethinking to modernise laws such as the Police Act.** Only this can ensure protection of the human rights of the people at the bottom who often become victims of lawless police violence and misdemeanour. The police

officials found indulged in human rights violations, particularly the custodial deaths should be promptly and severely punished so that others could not dare to repeat such violations.

Thus, it is picturesque, that there are gaping legal lacunae in the legal, legislative and statutory framework of India, owing to which the we're witnessing a prevailing epidemic of Custodial Violence, Deaths, Rapes and Torture, at the hands of certain of our men in uniforms, which equates to nothing but a blatant violation and mockery of Human Rights, legitimized, facilitated and perpetrated by the State Machinery.

Hence, there is a emergent and compelling need for intervention by this Hon'ble Court and it is indispensable and imperative for this Court to frame guidelines, so as to fill the legal lacunae that have occasioned on account of legislative laxity, for ensuring an effective and purposeful framework and its enforcement to fulfil the constitutional obligation of ensuring and securing human dignity and prevention of custodial torture/deaths/rapes, in exercise of the inherent and plenary power of this Hon'ble Court under Article 142 of the Constitution of India, 1949.

LIST OF DATES AND EVENTS

Dates	Particulars of Event
1971-93	The Gore Committee on Police Training made recommendations.
1994	The Law Commission of India in its 152 nd Report of Law Commission Of India (1994) had foreseen this problem of police delaying lodging of FIR in cases of custodial deaths, and had suggested for the insertion of a new provision, Section 154A in the CrPC, to enable any person to approach a judicial authority on the failure of police to register FIR
1998	The Ribeiro Committee on Police Reforms made recommendations in order to ensure transparency and accountability in police functioning, and in order to ensure public confidence in the functioning of the police.
2000	The Padmanabhaiah Committee on Police Reforms made recommendations.
2001-03	The Malimath Committee on Reforms on Criminal Justice System recommended the overhaul of the Indian Police Act, 1861, on the ground that the act has become outdated.
26.04.2010	The Prevention of Torture Bill, 2010 was introduced in the Lok Sabha on April 26, 2010. While Lok Sabha passed the bill, Rajya Sabha referred it to a Select Committee. The Select committee had proposed to amend the bill to make it more compliant with the torture convention. The bill then

lapsed and government also did not show any urgency to enact a revised torture bill.

2017 That the Law Commission went into the existing legal provisions made recommendations in its 273rd Report which included the draft Prevention of Torture Bill, 2017.

08.07.2019 A shocking incident of police brutality took place under Bichhwan Police Station, District– Mainpuri, Uttar Pradesh, where a man was allegedly given third-degree torture by the cops in Uttar Pradesh's Mainpuri after he approached them to file a complaint against the kidnapping and rape of his wife

11.08.2019 Seven policemen in District- Gwalior, Madhya Pradesh were suspended in connection with a case of Custodial Death of a farmer identified as Suresh Rawat. The police had booked Rawat under Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. Later, he was detained at the police station and a few hours later he was found hanging through the grill of the lock-up.

13.08.2019 A shocking incident of four police personnel torturing five tribal men and allegedly forcing them to drink urine when the asked for water came to light in Madhya Pradesh's Alirajpur District. The four police personnel including the station in-charge were suspended and a departmental inquiry was ordered into the matter. All five tribal men who were admitted in the Alirajpur district hospital had accused the police personnel of assault and torture.

08.09.2019 A horrific incident, which took place in District- Darrang, Assam, where a pregnant Muslim woman and her two sisters were allegedly stripped and tortured inside a police station. After the alleged torture, the pregnant woman was

admitted to a hospital where she lost the baby due to miscarriage. According to reports, three sisters - Minuwara Begum, Sanuwara and Rumela were picked from Sixmile area in Guwahati in connection with a kidnapping case and were taken to Burha police outpost where they were subjected to torture by the police team.

13.10.2019 A 35-year-old Security Guard, namely, Pradeep Tomar had allegedly died in police custody in District- Hapur, Uttar Pradesh. He was called in the police station for questioning in relation to a case where he died hours later after the policemen brutally assaulted him. His 11-year-old son who accompanied him to the police station claimed that his father was repeatedly kicked, punched, hit with planks of wood, given electric shocks and pierced with screwdriver.

Dec, 2019 Many activists who were part of the protest over the new citizenship bill were systematically and illegally targeted, –
Feb, 2020 rounded up and detained by police, with several tortured and most kept in prison on fabricated charges, without ever being presented to a magistrate.

13.01.2020 Tripura government had ordered a twin probe, including a magisterial inquiry, into the death of a 38-year-old youth in police custody who was arrested from his house in connection with an ATM-theft case.

11.02.2020 Case was filed against three police personnel, including two Sub-Inspectors, in connection with the death of a businessman during interrogation at custody, over an incident of theft in a north Kolkata police station, amid allegations that he was subjected to torture and administered electric shocks.

22.06.2020 Murderous police assault, unending beatings and brutal
& torture which caused the death of two innocent traders, a

23.06.2020 father and a son, Jayaraj, aged 62 years and Bennix, aged
32 years, at Sathankulam Police Station, near Thoothukudi
in Tamil Nadu

26.07.2020 An Inspector-In-Charge (IIC) of the Birmitrapur Police
Station, Sudargarh, Orrisa was suspended over alleged
involvement in the gang rape and subsequent abortion of a
13-year-old girl over a period of four months. Reportedly,
the girl had come to witness a fair at Biramitrapur area on
25.03.2020 but it was cancelled at the last moment due to
the lockdown. The girl failed to return home and was
roaming near the bus stand when a police patrolling team
saw her and brought her to the police station. Inspector
allegedly raped her at the police station, after which she
was dropped at her home the next day. However, she was
called to the police station regularly and raped by the
inspector and other police officials. The girl later got
pregnant following which the accused Inspector tried to
abort her foetus.

-- All these incidents, *inter alia*, have traumatized all those
who respect the rule of law and personal liberty in the
country and it underlines afresh the urgent need for
institutional correctives within the policing system in this
country and the acute need for India to enact a strong law
to prohibit and prosecute cases of torture and custodial
deaths, in fulfilment of its legal obligations, both national
and international, to guarantee protect right to life.

-- At a time when demands for police reforms are sweeping
the world in the context of the “Black/All Lives Matter”

movement, the killings of Jayaraj and Bennix are a chilling reminder of how the excessive use of force has become a routine in India, resulting in tragic loss of lives. It sends an unfortunate chilling message about how broken the system is and the failure of police and political leaders to establish accountability measures for those who are found guilty of custodial crimes. It also lays bare brutally what happens to ordinary people who do not know their rights or that custodial violence is not normal behaviour but criminal conduct.

07.07.2020 Hence, this writ petition in public interest under Article 32 of the Constitution of India, 1950.

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

(Under Article 32 of the Constitution)

(PUBLIC INTEREST LITIGATION)**IN THE MATTER OF:**

1. PEOPLE'S CHARIOTEER ORGANIZATION

...Petitioner No. 1

2. MR. DEVESH SAXENA,

...Petitioner No. 2

VERSUS

1. UNION OF INDIA,

Through its Secretary, Ministry of Law and Justice, 4th
Floor, A-Wing, Shashtri Bhawan, New Delhi –
110001.**...Respondent No. 1**

2. MINISTRY OF HOME AFFAIRS,

Through its Chief Secretary (Home), North Block,
Central Secretariat, New Delhi – 110001.**...Respondent No. 2**3. NATIONAL HUMAN RIGHTS COMMISSION
OF INDIA (NHRC),Through its Secretary General, Faridkot House,
Copernicus Marg, New Delhi – 110001.**...Respondent No. 3****(All are contesting
respondents)**

WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT, ORDER OR DIRECTION ISSUING GUIDELINES FOR ENSURING AN EFFECTIVE AND PURPOSEFUL FRAMEWORK AND ITS IMPLEMENTATION TO FULFILL THE CONSTITUTIONAL OBLIGATION OF RIGHT TO LIFE AND HUMAN DIGNITY AND PREVENTION OF CUSTODIAL TORTURE/DEATHS/RAPES; AND FOR A FURTHER WRIT, ORDER OR DIRECTION, IN THE NATURE OF MANDAMUS DIRECTING THE CENTRAL GOVERNMENT TO FORM AN INDEPENDENT COMMITTEE MONITORED BY THIS HON'BLE COURT CONSISTING OF MEMBERS FROM ALL THE RELEVANT DEPARTMENTS/MINISTRIES WHICH CAN REVIEW THE ENTIRE LEGAL FRAMEWORK AND FIND PITFALLS IN THE EXISTING LEGAL FRAMEWORK IN ORDER TO CURB THE MENACE OF CUSTODIAL TORTURE/DEATHS/RAPES, SO AS TO ENABLE REHAULING OF THE LEGISLATIVE MECHANISMS IN CONSONANCE WITH THE GUIDELINES LAID DOWN BY THIS HON'BLE COURT WITH DUE REGARD TO THE RECOMMENDATIONS OF THE LAW COMMISSION(S) AND THE INTERNATIONAL LEGAL REGIME.

TO,
THE HON'BLE THE CHIEF JUSTICE OF
INDIA AND HIS LORDSHIP'S
COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That the present petition has been filed by the petitioners in public interest, under Article 32 of the Constitution of India, *inter alia*, seeking:

An appropriate writ, order or direction issuing and laying down guidelines to fill the gaping legal lacunae, and

for ensuring an effective and purposeful framework and its enforcement to fulfill the constitutional obligation of ensuring and securing the right to life and to live with human dignity and the prevention of custodial torture/deaths/rapes, in exercise of its inherent power under Article 142 of the Constitution, in the interest of justice and fairness;

Along with, for a further writ, order or direction, in the nature of Mandamus directing the Central Government to form an Independent Committee monitored by this Hon'ble Court consisting of members from all the relevant departments/ministries which can review the entire legal framework and find pitfalls in the existing legal framework in order to curb the menace of custodial torture/deaths/rapes, so as to enable rehauling of the legislative mechanisms in consonance with the guidelines laid down by this Hon'ble Court with due regard to the recommendations of the Law Commission(s) and the International Legal Regime.

ARRAY OF PARTIES:

2. That the Petitioner No. 1 is the People's Charioteer Organization (PCO) (Hindi Equivalent: 'Jan Saarthi

Mahasangh'; formerly known as 'Jan Saarthi Sangathan') an unregistered public Trust/NGO having its office at Ground Floor, 1464, Kidwai Nagar, Allahpur, Allahabad – 211006. The NGO has been engaged in various social welfare activities apart from creating social awareness in society, primarily focusing on civil rights, health, environmental issues, air pollution, et al, and has often been featured in daily and vernacular newspapers for its multifarious contributions to social and public causes.

3. That the Petitioner No. 2 is a citizen of India and a practising Advocate of the High Court of Allahabad, and is the Secretary, Legal Cell of the organization (petitioner no.1) aforesaid, and is authorised by Petitioner No. 1 to file this petition on its behalf. The email address of the petitioner no. 2 is saxena.devesh09@gmail.com and the mobile number is +91-8181932240. The Permanent Account Number (PAN) of the petitioner no. 2 is . The annual income of the Petitioner No. 2 is Rs. (approx.). The postal address of the petitioner no. 2 is 19/27/1A, M.G. Marg, Civil Lines, Allahabad- 211001.
4. That the instant petition being a Public Interest Litigation, the true copies of the Adhaar Card and the PAN Card of the

Petitioner No. 2 is being annexed herewith and marked as **ANNEXURE P1 (at Page 56)**.

5. That petitioners have no personal interest, or any private/oblique motive in filing the instant petition.
6. That there is no civil, criminal, revenue or any litigation involving the petitioners, which has or could have a legal nexus with the issues involved in the instant PIL.
7. That the petitioners are filing the instant Petition on their own volition and shall be liable to pay costs as ordered by this Hon'ble Court in the event, if it is found that this petition is filed for any personal gain or with an oblique motive.
8. That the instant petition is based upon the information/documents which are well within the public domain and it is in the pleasure of this Hon'ble Court to take a judicial notice thereof.
9. That the Respondent No. 1 is the Union of India, through the office of Secretary, Ministry of Law and Justice, being the concerned authority dealing with the management of the legal affairs, legislative activities and administration of justice in India.
10. That the Respondent No. 2 is the Ministry of Home Affairs, through the office of its Chief Secretary, being the

concerned authority responsible for domestic policy in India.

11. That the Respondent No. 3 is the National Human Rights Commission of India, constituted under Protection of Human Rights Act (PHRA), 1993, through the office of its Secretary General, being the embodiment of India's concern for the promotion and protection of human rights.

ACKNOWLEDGEMENTS:

12. That, the enormous and tireless amounts of research work, which greatly enabled the completion of this petition has been undertaken by 8 hardworking and dedicated Law Students, which deserve countless praise and appreciation, namely:

- i.) Mr. Archit Mishra, 5th Year, Symbiosis Law School, Pune.
- ii.) Ms. Tamanna Gupta, 3rd Year, RGNUL, Punjab.
- iii.) Ms. Nayan Saini, 3rd Year (LL.B.), Department of Law, Bharati Vidyapeeth Deemed University, Delhi.
- iv.) Ms. Aparna Tripathi, 5th Year, Amity Law School, Delhi.
- v.) Ms. Soubhagya Hegde, 5th Year, ILS Law College, Pune.
- vi.) Mr. OshinMalpani, 2nd Year, NALSAR, Hyderabad.

- vii.) Ms. Arunima Jadaun, 5th Year, CNLU, Patna.
- viii.) Ms. Sohini Banerjee, 5th Year, NarseeMonjee's Kirit P. Mehta School of Law, Mumbai.

FACTS OF THE CASE:

13. That the murderous police assault, unending beatings and brutal torture which caused the death of two innocent traders, a father and a son, Jayaraj, aged 62 years (on **22.06.2020**) and Bennix, aged 32 years (on **23.06.2020**), at Sathankulam Police Station, near Thoothukudi in Tamil Nadu, has again sparked the debate of custodial torture and custodial deaths and has opened the flood gates of introspection of current legal framework which has completely failed and proved to be inefficient in upholding the constitutional obligation of right to life and human dignity vis-a-vis persons in custody. It is further alleged reportedly that the father-son duo was subjected to severe beatings by administering third degree torture, and were even sexually assaulted by lathis during the period of police custody.
14. That it is our callousness towards the inviolable right called 'liberty' and our ignorance about how liberty is eroded that

lead to a George Floyd moment in Minnesota, US, or a Jayaraj and Bennix moment in Tamil Nadu, India.

15. That Jayaraj and Bennix's is not the first and the last case of alleged custodial torture in India. For the purposes of highlighting the "epidemic" of Custodial Torture/Deaths/Rapes, several reported incidents that took place recently are stated hereinbelow which cast a light upon the police brutality in India:

- i. On **26.07.2020**, an Inspector-In-Charge (IIC) of the Birmitrapur Police Station, Sudargarh, Orrisa was suspended over alleged involvement in the gang rape and subsequent abortion of a 13-year-old girl over a period of four months. Reportedly, the girl had come to witness a fair at Biramitrapur area on 25.03.2020 but it was cancelled at the last moment due to the lockdown. The girl failed to return home and was roaming near the bus stand when a police patrolling team saw her and brought her to the police station. Inspector allegedly raped her at the police station, after which she was dropped at her home the next day. However, she was called to the police station regularly and raped by the inspector and other police officials. The girl

later got pregnant following which the accused Inspector tried to abort her foetus.

- ii.** On **11.02.2020**, a case was filed against three police personnel, including two Sub-Inspectors, in connection with the death of a businessman during interrogation at custody, over an incident of theft in a north Kolkata police station, amid allegations that he was subjected to torture and administered electric shocks.
- iii.** On **13.01.2020**, the Tripura government had ordered a twin probe, including a magisterial inquiry, into the death of a 38-year-old youth in police custody who was arrested from his house in connection with an ATM-theft case.
- iv.** It has also been reported earlier that during **December, 2019 – February, 2020** several activists who were part of the protest over the new citizenship bill were systematically and illegally targeted, rounded up and detained by police, with several tortured and most kept in prison on fabricated charges, without ever being presented to a magistrate.

- v. On **13.10.2019**, a 35-year-old Security Guard, namely, Pradeep Tomar had allegedly died in police custody in District- Hapur, Uttar Pradesh. He was called in the police station for questioning in relation to a case where he died hours later after the policemen brutally assaulted him. His 11-year-old son who accompanied him to the police station claimed that his father was repeatedly kicked, punched, hit with planks of wood, given electric shocks and pierced with screwdriver.
- vi. In a horrific incident, which took place in District- Darrang, Assam, on **08.09.2019**, where a pregnant Muslim woman and her two sisters were allegedly stripped and tortured inside a police station. After the alleged torture, the pregnant woman was admitted to a hospital where she lost the baby due to miscarriage. According to reports, three sisters - Minuwara Begum, Sanuwara and Rumela were picked from Sixmile area in Guwahati in connection with a kidnapping case and were taken to Burha police outpost where they were subjected to torture by the police team.

- vii.** On **13.08.2019**, a shocking incident of four police personnel torturing five tribal men and allegedly forcing them to drink urine when they were asked for water came to light in Madhya Pradesh's Alirajpur District. The four police personnel including the station in-charge were suspended and a departmental inquiry was ordered into the matter. All five tribal men who were admitted in the Alirajpur district hospital had accused the police personnel of assault and torture.
- viii.** On **11.08.2019**, seven policemen in District-Gwalior, Madhya Pradesh were suspended in connection with a case of Custodial Death of a farmer identified as Suresh Rawat. The police had booked Rawat under Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. Later, he was detained at the police station and a few hours later he was found hanging through the grill of the lock-up.
- ix.** On **08.07.2019**, a shocking incident of police brutality took place under Bichhwan Police Station, District- Mainpuri, Uttar Pradesh, where a man was allegedly given third-degree torture by

the cops in Uttar Pradesh's Mainpuri after he approached them to file a complaint against the kidnapping and rape of his wife.

16. That these cases only go on to illustrate the prevailing epidemic of custodial torture/violence/deaths/rape in India and constitute merely a tip of the iceberg, and it will not be wrong to state that this is the plight of those cases which could be reported and gained traction from various sections of media, however, there are innumerable instances of those cases which do not even get reported anywhere.
17. That it is humbly submitted here that all these incidents, *inter alia*, has traumatized all those who respect the rule of law and personal liberty in the country and it **underlines afresh the urgent need for institutional correctives within the policing system in this country and the acute need for India to enact a strong law to prohibit and prosecute cases of torture and custodial deaths, in fulfilment of its legal obligations, both national and international, to guarantee protect right to life.**

YEAR – WISE DATA AS REPORTED BY NCRB AND**NHRC:**

18. That the “*Crime in India*” Annual Reports published by the National Crime Records Bureau from 2005 to 2018 (latest) under the Ministry of Home Affairs recorded death of 1,373 persons in police custody i.e. 873 persons not remanded to police custody by court and 500 persons remanded to police custody by courts, as per **TABLE 1** given below:

TABLE 1: Number of death of persons in police custody from 2005 to 2018

Year	Death of persons in police custody without court remand	Death of persons in police custody with court remand	TOTAL
2005	61	67	128
2006	51	38	89
2007	61	57	118
2008	61	40	101
2009	59	25	84
2010	45	25	70
2011	75	29	104
2012	71	38	109
2013	97	21	118
2014	61	32	93
2015	67	30	97
2016	60	32	92
2017	58	42	100

2018	46	24	70
TOTAL	873	500	1373

19. That “*Crime in India*” Annual Reports of the NCRB for 2005-2018 further state that out of the total 873 cases of “death of persons in police custody **without** court remand”, **judicial inquiry was ordered only in 187 cases i.e. 21% of the total cases.** Despite **mandatory** requirement under Section 176(1A) CrPC, judicial inquiry was not ordered in 686 cases or 79% of the cases, as given in **TABLE 2** below.

TABLE 2: Number of death of persons in police custody without court remand during 2005 to 2018 as per the NCRB

Year	Death of persons in police custody without court remand	Judicial Enquiry ordered or conducted
2005	61	4
2006	51	2
2007	61	10
2008	61	9
2009	59	18
2010	45	9
2011	75	22
2012	71	21
2013	97	30
2014	61	14

2015	67	19
2016	60	0
2017	58	8
2018	46	21
TOTAL	873	187

20. That Death of persons not remanded to police custody by court is nothing but murder/killing of the defenceless citizens/persons who have appeared after being summoned by the police or already taken into custody. The death or disappearance of these defenceless citizens/persons expose the abysmal failure of the laws relating to arrest and detention, and contempt for the guidelines issued by this Hon'ble Court in case of **D.K. Basu v. State of West Bengal** (1997) 1 SCC 416.

21. That the "***Crime in India***" Annual Reports of the NCRB for 2005-2018 also state that out of the total of 500 cases of "death of persons in police custody **with** court remand", **judicial inquiry was ordered only in 111 cases i.e. 22% of the total cases**. In the remaining 489 cases i.e. 78% of the cases judicial inquiry was not ordered in clear violation of Section 176(1A) CrPC as provided in **TABLE 3** below.

TABLE 3: Number of death of persons in police custody with court remand during 2005 to 2018 as per the NCRB

Year	Death of persons in police custody with court remand	Judicial Enquiry ordered or conducted
2005	67	1
2006	38	0
2007	57	2
2008	40	9
2009	25	7
2010	25	7
2011	29	10
2012	38	6
2013	21	6
2014	32	11
2015	30	12
2016	32	28
2017	42	5
2018	24	7
TOTAL	500	111

22. That it is stated with due respect that the death or disappearance of persons in police custody after court grants remand and the failure to order judicial inquiry as per Section 176(1A) CrPC is a colossal and unconscionable failure of the lower judiciary.
23. That the NCRB's *Crime in India* from 2005 to 2018 further provide that with respect to 500 cases of "death of persons remanded to police custody by court", **281 cases**

were registered, 54 policemen were charge-sheeted but, surprisingly, NOT A SINGLE policeman was convicted as on date as given in TABLE 4 below.

TABLE 4: Number of cases registered, police men charge sheeted and policemen convicted in cases of death of persons in police custody on court remand during 2005 – 2018

Year	Death of persons in police custody with court remand	Cases Registered	Policemen Charge-sheeted	Policemen Convicted
2005	67	48	0	0
2006	38	24	1	0
2007	57	33	7	0
2008	40	22	3	0
2009	25	22	0	0
2010	25	15	1	0
2011	29	20	5	0
2012	38	26	1	0
2013	21	13	0	0
2014	32	5	15	0
2015	30	9	4	0
2016	32	6	14	0
2017	42	23	3	0
2018	24	15	0	0
TOTAL	500	281	54	0

24. That the above data revealing ‘**Zero Conviction**’ rates in cases of Custodial Deaths during 2005-2018 shows how ineffective and abysmal our legal framework is vis-a`-vis

the cases of Custodial Torture/Deaths and highlights the need of a complete overhaul.

25. That further the “*Crime in India*” Annual Reports of the NCRB for 2005-2018 also recorded a total of 488 cases of Custodial Rapes in India, as shown in TABLE 5 below:

TABLE 5: Number of Custodial Rapes during 2005 to 2018 as per the NCRB

Year	Custodial Rapes
2005	7
2006	2
2007	1
2008	0
2009	2
2010	6
2011	1
2012	1
2013	1
2014	197
2015	95
2016	26
2017	89
2018	60
TOTAL	488

26. That a parallel comparison of the above NCRB data can be drawn with the Annual Reports of NHRC during 1994-95 to 2017-18. The NHRC received complaints/reports of total 33,621 custodial deaths/rapes from 1994-1995 to 2017-2018, as given in TABLE 6 below:

TABLE 6: Number of custodial deaths and custodial rapes registered by the NHRC during 1994-1995 to 2017-2018

Year	Deaths/Rapes in Police Custody	Deaths/Rapes in Judicial Custody	TOTAL
1994-95	114	51	165
1995-96	136	308	444
1996-97	191	700	891
1997-98	194	819	1013
1998-99	183	1114	1297
1999-00	177	916	1093
2000-01	128	910	1038
2001-02	160	1117	1277
2002-03	185	1157	1342
2003-04	162	1300	1462
2004-05	140	1357	1497
2005-06	144	1591	1735
2006-07	129	1477	1606
2007-08	206	1789	1995
2008-09	127	1527	1654
2009-10	126	1473	1599
2010-11	146	1426	1572
2011-12	129	1302	1431
2012-13	146	1557	1703
2013-14	140	1577	1717
2014-15	133	1589	1722
2015-16	152	1670	1822
2016-17	146	1616	1762
2017-18	148	1636	1784
TOTAL	3642	29979	33621

27. That while deaths in judicial custody can take place for a number of reasons ranging from natural death to torture to

death, death in police custody takes place mainly as a result of torture and violence inflicted by the police personals.

28. That it is further submitted that at a time when demands for police reforms are sweeping the world in the context of the “Black/All Lives Matter” movement, the killings of Jayaraj and Bennix are a chilling reminder of how the excessive use of force has become a routine in India, resulting in tragic loss of lives. It sends an unfortunate chilling message about how broken the system is and the failure of police and political leaders to establish accountability measures for those who are found guilty of custodial crimes. It also lays bare brutally what happens to ordinary people who do not know their rights or that custodial violence is not normal behaviour but criminal conduct.
29. That it is noteworthy to mention here that Indian police are well known for gratuitous beatings, custodial torture, custodial deaths, fake encounters and other blatant state violence. Paradoxically, Indian police system under Indian Police Act, 1861 continues to have colonial coercive machinery which was modelled on Irish colonial paramilitary police. We had a historic break from dreadful past when we drafted our Constitution which guaranteed a set of fundamental rights including the most precious right

of life and liberty. But **we failed to eliminate the colonial attitude of our police and allowed it to continue with same archaic law such as The Police Act, 1861.**

30. That it is humbly submitted that “**Right to Human Dignity**”, “**Right to Life & Liberty**” & “**Right to inviolability of his or her body**” are some of the basic inalienable rights which a person is entitled to irrespective of any other qualification. The act of committing custodial violence is a brazen violation of the constitutional principles and the safeguards bestowed upon the citizens by the Constitution. The act of accruing such torture is not limited to inflicting physical harm or pain rather the mental torture is also encompassed under the ambit of custodial violence. There is no gainsaying in this fact that this practice of custodial torture is prevalent in our country since a long time and it has been grossly ignored by those who are in position of power and making it worse for those who are detained on a mere suspicion and have to face the wrath of the same by losing their lives.
31. That, importantly, prior to the stage of conviction of any accused there are two types of custody as mentioned in the Code of Criminal Procedure (CrPC) i.e., Police Custody and Judicial Custody. On a bare perusal of **Section 167 CrPC**,

it becomes clear that police custody cannot exceed 24 hours and the police have to put their best endeavours to complete the investigation within such time frame. Any further detention of the arrested person can only be authorised by the Magistrate and the time limit of such detention cannot exceed 15 days in *toto*. Further, **Section 167(2)(b) CrPC**, further mandates that no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him.

32. That therefore, when an individual is taken under custody it means that he/ she becomes the legal property of the state which also means the state and its missionaries become their legal guardians and all its institutions are at their disposal to reprimand them as well as guard them. But the idea of state custody has become so alarming that the society fears co-operation and even the notion of police and police stations.
33. That it is assumed that courts will ensure the rule of law to protect the lives and liberties and therefore, production of any person arrested or detained before the courts within 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate is guaranteed under Article 22 of the Constitution of India. Once a person is brought before the Court and the court

orders remand, judiciary also becomes a party for protection of the right of the life of the person.

34. That this Hon'ble Court has kept individual dignity as a focal point in plethora of judgments and has always been very sensitive to the issues of police brutalities.
35. That in the case of **Prakash Kadam v. Ramprasad Vishwanath Gupta** (2011 6 SCC 189), the Hon'ble Supreme Court observed that "*Policemen are persons who are supposed to uphold the law. In our opinion, if crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen, much harsher punishment should be given to them because they do an act totally contrary to their duties.*"
36. That in the case of **Re Inhuman Conditions in 1382 Prisons v. State of Assam** (AIR 2016 SC 993), this Hon'ble Court observed as follows: "*There are several such cases – documented and undocumented - all over the country but in spite of repeated decisions delivered by this Court and perhaps every High Court there seems to be no let-up in custodial deaths. This is not a sad but a tragic state of affairs indicating the apparent disdain of the State to the life and liberty of individuals, particularly those in custody.*"

The time to remedy the situation is long past and yet, there seems to be no will and therefore no solution in sight”.

37. That in the case of **Prakash Singh v. Union of India** (2006 8 SCC 1), this Hon’ble Court issued six major guidelines regarding implementation of the police reforms based on the recommendations of the NPC and directed the Central and State Governments to implement them. **This Hon’ble Court further asked the governments to implement the police reforms by separating the investigation wing from the law and order branch.** It also directed to establish a complaints authority to look into the human rights violations including custodial deaths and abuse of authority by the police people. Sadly, the state governments do not seem to be serious to implement any of these police reforms.
38. That it is pertinent to mention here that independent investigation in a case of custodial death/torture, at least in the initial stages, is a big problem, owing to the obvious fact that the police are called upon to probe against themselves. The Hon’ble Supreme Court vide its judgment in the case of **State of M.P. v. Shyamsunder Trivedi** (1995 4 SCC 262) had commented about the 'ties of brotherhood' within police, which stall fruitful investigation in cases of custodial violence, as follows:

"...rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available. Generally speaking, it would be police officials alone who can only explain the circumstance in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not pervert the truth to save their colleagues".

39. That to somehow take care of this problem, the law has envisaged a process of parallel Magisterial Inquiry. **Section 176(1A) of the Code of Criminal Procedure, inserted after the amendment of 2005, is a special provision to deal with cases of death, disappearance or rape in police custody.** The provision lays down that in such cases, the Judicial Magistrate or the Metropolitan Magistrate, within whose local jurisdiction the offence has been committed, *shall* hold an inquiry in addition to the inquiry or investigation held by the police. **However, compliance with the abovesaid ‘mandatory provision’ is rare and a longstanding issue, which is yet to be addressed.**
40. That it is humbly submitted that provision under **Section 176(1A) of CrPC** has been seen as a redundant provision. Though, the system of checks and balances has been envisaged under the CrPC but the problem arises when the

Police has to investigate the crime committed by police themselves. **It is the settled law of the land that the reasonable belief of bias is enough and the actual bias is anathema to the basic principles of the Administrative law i.e., to ensure fairness a reasonable belief of bias is sufficient.**

41. That notably, several judgments of this Hon'ble Court have expressly stated that police have no right to exercise the power to arrest and interrogate arbitrarily & capriciously. Detailed guidelines regarding the powers and procedures for arrest were laid down by the Hon'ble Supreme Court in **Joginder Singh v. State of U. P.** (1994) 4 SCC 260 & **D. K. Basu v. State of West Bengal** (1997) 1 SCC 416.
42. That Justice A.S. Anand famously stated in the case of D.K. Basu (*Supra*) that, "*Custodial torture is a naked violation of human dignity and degradation which destroys, to a large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward- flag of humanity must on each such occasion fly half-mast*".
43. That it was further observed in the case of D.K. Basu (*Supra*) that, "*Custodial death is one of the worst crimes in a civilised society governed by Rule of Law. Does a citizen*

shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? The answer, indeed, has to be an emphatic "No".

44. That in **K.S.R. Dev v. State of Rajasthan** (1981) 1 SCC 503, Justice Krishna Iyer rightfully stated that *"This Country has no totalitarian territory even within the walled world we call prison. Articles 14, 19 and 21 operate within the prisons...." - "...the state must re-educate the constabulary out of their sadistic arts and inculcate a respect for the human person –a process which must begin more by example than by percept if the lower rungs are really to emulate, then "....nothing inflicts a deeper wound on our constitutional culture than a state official running berserk regardless of human rights.*

INDIA'S UNSUCCESSFUL ATTEMPTS TOWARDS A LEGISLATIVE MECHANISM:

45. That it is worth mentioning here that, although India had signed the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** on 14.10.1997, however, even after 23 long years it is yet to make a domestic law in order to ratify the same.

46. That notably, Anti-Torture Bills, such as **Prevention of Torture Bill, 2010**, subsequently amended further by **The Prevention of Torture Bill, 2017** were subjected to deliberations in the past, however neither bill came to fruition.
47. That the **Prevention of Torture Bill, 2010** was introduced in the Lok Sabha on **26.04.2010**. While Lok Sabha passed the bill, Rajya Sabha referred it to a Select Committee. The Select committee had proposed to amend the bill to make it more compliant with the torture convention. The bill then lapsed and government also did not show any urgency to enact a revised torture bill.
48. That subsequently in **November, 2017**, the **Law Commission of India in its 273rd report** had recommended that Government should ratify the aforesaid Convention. The report also presented a draft of new Prevention of Torture Bill, 2017 to the government. The key features of the Bill of 2017 are as follows:
- i. This Bill makes provisions for punishment (including life term) to officials for any kind of torture and inhuman treatment.
 - ii. It makes provisions for compensation to victims of torture. The courts will decide upon the justifiable

compensation after taking into account the various facets of case.

- iii. The courts will bear in mind the socio-economic background of the victim and ensure that the compensation helps the victim to bear the expenses on medical treatment and rehabilitation.

Since then this Bill has not been even introduced in the any House of Parliament.

49. That various recommendations were given by different Committees in past which were rarely considered by any government and were ignored blatantly without a justifiable cause:

i) Gore Committee on Police Training (1971-93):

The Gore Committee made a recommendation that stated that all complaints against police, with regards to misbehaviour, torture etc. should be promptly inquired into by a gazette officer, and appropriate disciplinary action must be taken in case the complaint is found substantiated.

(Pg. 19-20)

ii) Ribeiro Committee on Police Reforms (1998):

The Ribeiro Committee recommended the formulation of a “State Security Commission” in order to ensure transparency and accountability in police functioning, and in order to ensure public confidence in the

functioning of the police. The nature of the state security commission was recommended to be “non statutory, advisory and recommendatory”. (Para 1)

More importantly, the committee also made a recommendation for a “Police Complaints Board”, which provides for the establishment of a non-statutory body for examining police excesses, arbitrary arrests and detentions, custodial violence, false implications etc. (Para 2)

iii) Padmanabhaiah Committee on Police Reforms, 2000:

The Padmanabhaiah Committee made a recommendation for ensuring autonomy of investigations and to reduce political interference in police investigation. (Pg. 101-102)

The committee also recommended for the formation of a Human Rights Cell, which must be created at every state police headquarters. (Pg. 123)

iv) Malimath Committee on Reforms of Criminal Justice System (2001-2003):

The Malimath Committee recommended the overhaul of the Indian Police Act, 1861, on the ground that the act has become outdated.

50. The further in **1994, Law Commission of India in its 152nd Report** had foreseen this problem of police delaying

lodging of FIR in cases of custodial deaths, and had suggested for the insertion of a new provision, **Section 154A in the CrPC**, to enable any person to approach a judicial authority on the failure of police to register FIR, which read as follows:

"Section 154A. Notwithstanding anything contained in Section 154:

(1) Any person (including Legal Aid Centre, or NGO, or any friend or relative) aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) of that section in cases relating to custodial offences, may file a petition giving substance of such information:

(a) before the Chief Judicial Magistrate, in case of custodial offences other than those involving death of the victim, or.

(b) before the Sessions Judge, in cases of custodial offences involving death of the victim.

(2) The Chief Judicial Magistrate or the Sessions Judge, if satisfied, on a preliminary enquiry that there is a prima facie case, may himself hold enquiry into the complaint or direct some other Judicial Magistrate or Additional Sessions Judge, as the case may be, to hold enquiry and thereupon direct the ministerial officer of the Court to make a complaint to the competent court in

respect of the offence that may appear to have been committed.

(3) Notwithstanding anything contained in Section 190 of the Code of Criminal Procedure on a complaint made under sub-section (2), the competent court shall take cognizance of the offence and try the same.

(4) The Chief Judicial Magistrate or the Sessions Judge may obtain the assistance of any public servant or authority as they may deem fit in holding the enquiry under sub-section (2)."

The incorporation of this provision, following the recommendations of the Law Commission of India, would have addressed the problem of delay in lodging FIR by setting off the criminal investigation process through judicial intervention at the instance of aggrieved persons or public-spirited parties.

51. That the Law Commission went into the existing legal provisions and concluded the following recommendations in its **273rd Report**:

i) Ratification of Convention against Torture-

The Commission recommended the Central Government for consideration of the Convention Against Torture for ratification and in case it decided to go for

ratification, then, the Prevention of Torture Bill, 2017 as formulated by the Law Commission may be considered.

ii) Amendment to Existing Statutes-

The Commission came to the conclusion that the Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 require amendments to accommodate provisions regarding compensation and burden of proof, respectively.

a. Criminal Procedure Code, 1973: The Commission recommended amendment to Section 357B to incorporate payment of compensation, in addition to payment of fine, as provided under section 326A or section 376D of the Indian Penal Code, 1860.

b. Indian Evidence Act, 1872: The Commission endorses the recommendation made by the Law Commission of India that the Indian Evidence Act, 1872 requires insertion of Section 114B as insertion of this section must ensure that in case a person in police custody sustains injuries, it is presumed that those injuries have been inflicted by the police, and the burden of proof shall lie on the authority concerned to explain such injury.

INTERNATIONAL LEGAL REGIMES AND STATUTORY MECHANISMS OF VARIOUS COUNTRIES TO DEAL WITH THE MENACE OF CUSTODIAL TORTURES/DEATHS/RAPES:

52. That in **UNITED KINGDOM** the most important legislative change which UK government has enacted is the incorporation of United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (hereinafter referred as ‘UNCAT’) in their domestic legislation. Further, **United Kingdom has an Independent Police Complaints Commission (IPCC)** for when a custodial death is referred to the IPCC it is assessed by a dedicated unit before a final decision on the mode of investigation is made by a commissioner. In the vast majority of cases, deaths in police custody will be investigated independently of the police by the IPCC.
53. That in the **UNITED STATES OF AMERICA**, one of the most significant legislations which has been passed to deal with the menace of custodial violence is **Death in Custody Reporting Act of 2013** (hereinafter referred as ‘Act of 2013’), which went into effect on December, 2014. The aim and objective of this Act of 2013 as laid down is to prevent the mishandling of the detained or arrested person at any

cost. Under this legislation, it has been made mandatory to report any death if happened during the custody in any financial year. Moreover, the most important part of this act is related to the powers conferred upon Department of Justice to levy penalty on non-compliant states.

That apart from the above, the USA there is another Convention named **Inter-American Convention to Prevent and Punish Torture, 1985** in which all American states are signatory to it. This is a convention which prevents torture and punishes torture.

That it is humbly submitted that, on the lines of aforesaid Act of 2013, India lacks a proper legislation where the onus is on the State to report who died in the Police custody and the reasons for such incident. As stated earlier, in India Section 176(1A) has become quite redundant and allowing Police to investigate against the wrongs committed by themselves is grossly ignoring the “*Wednesbury Principles*” as well. Thus, it is the need of the hour to enact a legislation which can shift the entire burden on states to report such deaths.

54. That in **CANADA**, apart from constitutional provisions and safeguards, there is also an independent agency operating at the Federal Level known as the **Commission for Public**

Complaints Against the RCMP (CPC) which is certainly free from any interference from Royal Canadian Mounted Police i.e., RCMP. The main task assigned to such commission is to supervise the role of the Police and to give a pragmatic solution to the idea of checks and balances. This system is novel and is effective as well and it also envisages a situation where *suo motu* powers have been assigned to the commission and they can freely initiate the complaints and investigation into the conduct of the police officials when it is in the public interest.

In India we have National Human Rights Commission (NHRC) and though various powers have been granted to this commission but the overall performance of this commission is grim and needs an overhaul.

55. That **AUSTRALIA** has ratified the **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)** which aims to improve how people's human rights are protected when they are detained by providing for a rigorous process of independent inspections of all places of detention in a country's jurisdiction. In so doing, OPCAT enables transparency of the conditions experienced by people in detention.

56. That in **GERMANY**, the legislation governing laws related to custody explicitly states that there should be a **reasonable ground for formal indictment of the arrested person**. In India, under Section 167 CrPC, the remand orders are passed in a very mechanical manner without considering any streamlined parameters. Generally, in most of the cases the provisions are strictly applied and bail is not allowed to be furnished by the accused and the arrested person has to undergo police custody or judicial custody for the period mentioned under CrPC.

The reasonable criteria of indictment has been formally incorporated under German Laws and a similar provision should also be inserted in CrPC to keep a check on the fact that the person who is arrested on the basis of mere suspicion is actually required to be prosecuted and if not then the important rights like right to life and liberty should be upheld and he should be released at the outset.

57. That in **FRANCE**, under the French Code of Criminal Procedure (CCP) **prompt and meaningful access to a lawyer during police custody** is a fundamental safeguard against torture and prohibited ill-treatment. The presence of a lawyer from the very outset of detention and during all questioning is a far more effective protection. French law

also provides for another safeguard i.e. **medical examinations of detainees in police custody** wherein detainees may request a medical exam at any time, and judicial officials may order it on their own authority (Article 63-3). If detention is extended beyond 96 hours, the exam becomes automatic and obligatory (Article 706-88).

58. That even in **NIGERIA**, in the year 2017, **Anti Torture Act** was passed. This said act makes comprehensive provisions for penalising the acts of torture and other cruel inhuman and degrading treatment or punishment and prescribes penalties for omission of such acts. This said act casts stringent punishment for contravening provisions of the act. Section 2(1) and 2(2) of the said Act explains more about torture which should not be indulged by the officers also Section 9 deals with penalties for contravening Section 2 by the authorities. Even imprisonment for not less than 25 years is mentioned in the act in case any authority uses torture to make prisoners confess.
59. That in **MEXICO**, the **general law for the prevention, investigation and punishment of torture and other cruel, inhuman, or degrading treatment or punishment had entered into force in 2017** which was made applicable throughout the country. It defined the crimes of torture and

ill-treatment, general rules for their investigation, prosecution and sanction, as well as the **responsibility of hierarchical superiors** who knew or participated in the commission of such crimes.

60. That in **SRI LANKA, Article 11 of the Constitution** of Sri Lanka specifically prohibits torture by stating that “no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. This prohibition is made absolute by **Article 15, which prohibits any limitation on Article 11 under any circumstance, even for reasons of national security and public order.**

To give effect to the country’s obligations under the UNCAT, due to its dualist legal system, the Government had enacted the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 (CAT Act)**. This Act criminalized torture. Under Section 2 of the CAT Act, acts of torture, as well as participation, complicity, aiding and abetting, incitement and attempt to torture are criminal offences punishable with 7-10 years in prison and a fine of 10,000-50,000 rupees.

61. That is pertinent to mention here that one’s heads hangs in shame to discover that India is part of a unique

list of nine countries along with Sudan, Brunei, Bahamas, Sao Tome and Principe, Angola, Comoros, Gambia and Palau. These countries have the inglorious distinction of not having **ratified** the **UN Convention Against Torture (UNCAT)**.

INTERNATIONAL CONVENTIONS AND LEGAL FRAMEWORK DEALING WITH AND ADDRESSING THE ISSUE OF TORTURE

62. That the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (commonly known as the **United Nations Convention against Torture (UNCAT)**) adopted in the year 1984 and in force since 1987, is an international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. The Convention requires states to take effective measures to prevent torture in any territory under their jurisdiction, and forbids states to transport people to any country where there is reason to believe they will be tortured.

That notably, India had signed this convention on 14.10.1997, however, even after 23 long years it is yet to make a domestic law in order to ratify the same.

63. That the **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**, adopted by the General Assembly on 18.12.2002 and in force since 22.06.2006, provides for the establishment of "a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment," to be overseen by a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Notably, Indian has neither signed OPCAT nor ratified it.
64. That **Article 7 of the International Covenant on Civil and Political Rights (ICCPR)** lays down that-
- "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."*
65. That **Article 31 of United Nations Standard Minimum Rules for the Treatment of Prisoners** lays down that-
- "Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall*

be completely prohibited as punishments for disciplinary offences.”

66. That **Article 5 of Universal Declaration of Human Rights (UDHR), 1948** lays down that-

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

67. That **Article 3 of the European Convention on Human Rights** provides that *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"*. This article inspired formation of the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987**. This Convention provides non-judicial preventive machinery to protect detainees. It also provides for the setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. The committee, composed of independent experts, may make recommendations and suggest improvements in order to strengthen, if necessary, the protection of persons visited from torture and from inhuman or degrading treatment or punishment.

THE COMPELLING NEED FOR GUIDELINES AND SUGGESTIONS THAT MAY BE CONSIDERED BY THIS HON'BLE COURT IN FORMULATING THE SAME:

68. That, as is picturesque from the above, there are gaping legal lacunae in the legal, legislative and statutory framework of India, owing to which the we're witnessing a prevailing epidemic of Custodial Violence/Rapes/Torture, at the hands of certain our men in uniforms, which equates to nothing but a blatant violation and mockery of Human Rights, legitimized, facilitated and perpetrated by the State Machinery.
69. That thus, there is a emergent and compelling need for intervention by this Hon'ble Court and it is indispensable and imperative for this Court to frame guidelines, so as to fill the legal lacunae that have occasioned on account of legislative laxity, in exercise of the inherent and plenary power of this Hon'ble Court under Article 142 of the Constitution of India, 1949.
70. That the following suggestions may be taken into account by this Hon'ble Court in formulating guidelines:
- a. The Central Government should enforce and ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

in its true letter and spirit by give an exhaustive and streamlined definition to the term “torture” to include “any Physical or Mental pain and suffering”.

- b.** The Central as well as the State Governments should formulate a Compensation Policy for the benefit of victims of custodial violence throughout the Indian territory under Section 357A of CrPC (Victim Compensation Scheme) for the benefit of victims of custodial violence which is one of the gravest crimes throughout the Indian territory.
- c.** If at any time any complaint is raised by any arrested person or any suspect or any witness with respect to any threat or torture by the investigating agency during the stage of examination or during the stage of custody then an independent commission shall review and investigate the defence raised by the Police to justify the torture faced by that person.
- d.** Recommendation as given by the Law Commission in its 113th Report and 273rd Report should be enforced which had suggested the insertion of Section 114B in the Evidence Act, which provided that the court may presume that an injury to the deceased in custody was caused by the police officer having custody of that

person during that period. The burden of proof has to be shifted in a manner that the police or the investigating agency has to prove that the death has not been caused by the violence or torture caused by the police. It is needless to mention that this Hon'ble Court has already given its assent to consider this recommendation in the case of **D.K. Basu v. State of West Bengal**, (1997) 1 SCC 416.

- e. The **responsibility of hierarchical superiors** must also be fixed along with the lower rank officials who knew or participated in the commission of such crimes and only the lower rank officials should not be prosecuted.
- f. Presence of an advocate throughout the investigation must be made mandatory throughout the Investigation.
- g. The Police Act, 1861 and Jail Manuals of each state shall be revised and its rules should be institutionalized again in such a manner that there should be no scope left for the use of third degree or any form of coercion or violence against inmates.
- h. CCTV cameras must be installed at all the Police Stations and lock ups wherein all the interrogation conducted by the officials shall be video recorded and in

turn should be accessible and monitored by the central control room in each district.

- i. Video recording of all the post-mortem examinations should be made compulsory in respect of deaths in police custody and the reports must be sent to the NHRC and the State Human Rights Commission and an independent panel set up by the respective Hon'ble High Court of the concerned state to review the entire process and ensure that no police officials should be present during post mortems of detainees.
- j. The members of the Child Protection Unit constituted as under the Juvenile Justice Care and Protection Act 2015 need special training and skills to understand, appreciate and handle actual or potential delinquents and to devise schemes to help them become law-abiding citizens instead of recidivists or anti-social elements in society. Moreover, such units should be given additional powers if the authorities inflict cruelty or torture to juveniles to refer that matter to the magistrate to conduct inquiry in such cases and if prima facie the case is related to custodial violence then the magistrate can direct an independent commission to investigate such cases.

- k.** The mental pressure on the police officials also leads to the violence committed by them on undertrials and it is also the duty of the state to recognize mental health of the officials who are working at the lower level and to take care of their mental health so that they don't succumb under pressure and start doing these violent acts. In furtherance of the same, each state government should to establish a mental health care unit which only focuses on maintaining the mental equilibrium of the police officials.
71. That it is humbly submitted here that Article 14 and 21 of the Constitution of India has a wider aura and the custodial violence and other police brutality negates it. Custodial Violence casts serious doubts about the transparency, accountability and functioning of the police hierarchy and goes against the basics of ethics, culture, and human rights jurisprudence. Custodial deaths violate not only democratic fabric and human rights aura but badly undermines the rule of law and constitutionalism as envisaged in our supreme law of the land.
72. That there is no place for these inhumane practices in our country. Time has come when we should have zero tolerance for custodial violence. What is required is not just

reforms in the organisational structures of centralised police and paramilitary forces but some rethinking to modernise laws such as the Police Act. Only this can ensure protection of the human rights of the people at the bottom who often become victims of lawless police violence and misdemeanour. The police officials found indulged in human rights violations, particularly the custodial deaths should be promptly and severely punished so that others could not dare to repeat such violations.

73. There therefore it is submitted that there is a pressing need for urgent reforms in the entire legislative set-up and therefore, guidelines need to be laid down to fill the gaping legal lacunae, for laying down an effective and purposeful framework and its enforcement to fulfil the constitutional obligation of ensuring and securing human dignity and prevention of custodial torture/deaths/rapes.
74. That Petitioners have not filed any other or similar petition in this Court or any other Court praying for same or similar relief.
75. That Petitioners have filed the instant petition in public interest and have no other equally efficacious or alternative remedy, except to invoke the jurisdiction of this Hon'ble

Court under Article 32 of the Constitution of India, *inter alia*, on the following grounds: -

GROUNDS

- A. FOR THAT**, Article 14 and 21 of the Constitution of India has a wider aura and the custodial violence and other police brutality negates it. Custodial Violence casts serious doubts about the transparency, accountability and functioning of the police hierarchy and goes against the basics of ethics, culture, and human rights jurisprudence. Custodial deaths violate not only democratic fabric and human rights aura but badly undermines the rule of law and constitutionalism as envisaged in our supreme law of the land.
- B. FOR THAT**, “Right to Human Dignity”, “Right to Life & Liberty” & “Right to inviolability of his or her body” are some of the basic inalienable rights which a person is entitled to irrespective of any other qualification. The act of committing custodial torture/deaths/rapes is a brazen violation of the constitutional principles and the safeguards bestowed upon the citizens by the Constitution under Article 21 and 14.

- C. FOR THAT,** the recent incidents of Custodial Torture/Deaths/Rapes have traumatized all those who respect the rule of law and personal liberty in the country and it underlines afresh the urgent need for institutional correctives within the policing system in this country and the acute need for Government of India to enact a strong law to prohibit and prosecute cases of torture and custodial deaths, in fulfilment of its legal obligations, both national and international, to guarantee protection to right to life.
- D. FOR THAT,** the case of Custodial Torture/Deaths/Rapes are a chilling reminder of how the excessive use of force has become a routine in India, resulting in tragic loss of lives. It sends an unfortunate chilling message about how broken the system is and the failure of police and political leaders to establish accountability measures for those who are found guilty of custodial crimes. It also lays bare brutally what happens to ordinary people who do not know their rights or that custodial violence is not normal behaviour but criminal conduct.
- E. FOR THAT,** none of the recommendation as given by the previous committees or the recommendations given by the various Reports of the Law Commission have been considered or taken seriously by the Central Government,

despite the fact that cases of custodial torture/deaths/rapes have increased manifolds and it is required to uphold the constitutional obligations as envisaged under right to life and human dignity.

F. FOR THAT, there has been a lack of implementation of the guidelines as passed by this Hon'ble Court in case of **Prakash Singh v. Union of India** (2006 8 SCC 1) and **D. K. Basu v. State of West Bengal** (1997) 1 SCC 416.

76. **FOR THAT**, there are gaping legal lacunae in the legal, legislative and statutory framework of India, owing to which the we're witnessing a prevailing epidemic of Custodial Violence/Rapes/Torture, at the hands of certain our men in uniforms, which equates to nothing but a blatant violation and mockery of Human Rights, legitimized, facilitated and perpetrated by the State Machinery.

G. FOR THAT, there is a emergent and compelling need for intervention by this Hon'ble Court and it is indispensable and imperative for this Court to frame guidelines, so as to fill the legal lacunae that have occasioned on account of legislative laxity, in exercise of the inherent and plenary power of this Hon'ble Court under Article 142 of the Constitution of India, 1949.

PRAYER

In view of the above and in the interests of justice, it is Most Respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Issue an appropriate writ, order or direction issuing and laying down guidelines to fill the gaping legal lacunae, and for ensuring an effective and purposeful framework and its enforcement to fulfil the constitutional obligation of ensuring and securing the right to life and to live with human dignity and the prevention of custodial torture/deaths/rapes, in exercise of its inherent power under Article 142 of the Constitution, in the interest of justice and fairness; AND/OR
- b) Issue a writ, order or direction, in the nature of Mandamus directing the Central Government to form an Independent Committee monitored by this Hon'ble Court consisting of members from all the relevant departments/ministries which can review the entire legal framework and find pitfalls in the existing legal framework in order to curb the menace of custodial torture/deaths/rapes, so as to enable rehauling of the legislative mechanisms in consonance with the guidelines laid down by this Hon'ble Court with due regard

to the recommendations of the Law Commission(s) and the International Legal Regime; AND/OR

- c) Issue any such other and further order(s) in addition to or in substitution for the above prayer(s), as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**FOR WHICH ACT OF KINDNESS, THE
PETITIONERS SHALL AS INDUTY BOUND,
EVER PRAY.**

DRAWN BY:

**SHASHWAT ANAND
(ADVOCATE)**

FILED BY:



**DEVESH SAXENA
(ADVOCATE)
(Petitioner No. 2 In-Person)**

DRAWN ON- 06.07.2020

FILED ON- 07.07.2020

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2020
(Under Article 32 of the Constitution)
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

**PEOPLE'S CHARIOTEER ORGANIZATION (PCO) &
ANR.**

.....Petitioners

Versus

UNION OF INDIA & ORS.

...Respondents

AFFIDAVIT

I, Devesh Saxena, aged about 25 years, S/o, Shri Bhagwati Prasad Saxena, R/o. 19/27/1A, M.G. Marg, Civil Lines, Allahabad- 211001, do hereby solemnly affirm and state on oath under:

1. That, I am the Petitioner No. 2 in the aforesaid matter and as such am fully conversant with the facts and circumstances of the case deposed below, and am competent to swear this affidavit. I have been authorised by the Petitioner No. 1 to swear this affidavit on its behalf as well.
2. That, I have read and understood the contents of the Synopsis and List of Dates (Page C to Q), Writ

Petition (Page 1 to 53), and accompanying Application(s). I state that the facts therein are true to the best of my knowledge, belief and nothing material has been concealed therefrom.

3. That, the Annexures filed herewith are true copies of their respective originals.
4. That, the source of the information in the instant petition is government data, media report and other information/documents which are available in the public domain.
5. That, this petition is only motivated by public interest. I affirm that I or any of the petitioners have no personal interest in this matter.
6. That, I have done all enquiry that was possible and I state that no relevant facts in my knowledge have been withheld.


DEPONENT

VERIFICATION

I, the deponent, above named, do hereby verify that the contents of Para 1 to 6 of this affidavit are true to the best of my personal knowledge, all of which I verily believe to be true and that no part of it is false and nothing material has been concealed therefrom.

Verified at Prayagraj (Allahabad), Uttar Pradesh (U.P.), on this 7th day of July, 2020.


DEPONENT

ANNEXURE P-1

1. TRUE COPY OF AADHAR CARD:

2. TRUE COPY OF PAN CARD:

IN THE SUPREME COURT OF INDIA**(CIVIL ORIGINAL JURISDICTION)****I. A. NO. _____ OF 2020****IN****WRIT PETITION (CIVIL) NO. _____ OF 2020****(Under Article 32 of the Constitution of India)****(PUBLIC INTEREST LITIGATION)****IN THE MATTER OF:****PEOPLE'S CHARIOTEER ORGANIZATION (PCO) &
ANR.****...Petitioners/Applicants**

Versus

UNION OF INDIA & ORS.**...Respondents****APPLICATION FOR URGENT HEARING AND
EXEMPTION FROM FILING DULY AFFIRMED
AFFIDAVIT****TO,
THE HON'BLE THE CHIEF JUSTICE OF
INDIA AND HIS LORDSHIP'S
COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA.****THE HUMBLE PETITION OF THE
PETITIONERS ABOVE-NAMED****MOST RESPECTFULLY SHOWETH:**

1. That the present petition has been filed by the petitioners in public interest, under Article 32 of the Constitution of India praying for:

An appropriate writ, order or direction issuing and laying down guidelines to fill the gaping legal lacunae, and for ensuring an effective and purposeful framework and its enforcement to fulfil the constitutional obligation of ensuring and securing the right to life and to live with human dignity and the prevention of custodial torture/deaths/rapes, in exercise of its inherent power under Article 142 of the Constitution, in the interest of justice and fairness;

Along with, for a further or alternative writ, order or direction, in the nature of Mandamus directing the Central Government to form an Independent Committee monitored by this Hon'ble Court consisting of members from all the relevant departments/ministries which can review the entire legal framework and find pitfalls in the existing legal framework in order to curb the menace of custodial torture/deaths/rapes, so as to enable rehauling of the legislative mechanisms in consonance with the guidelines laid down by this Hon'ble Court with due regard to the recommendations of the Law Commission(s) and the International Legal Regime.

2. That the Applicants/Petitioners submit that the grounds, facts and circumstances of the case and the questions raised

in accompanying petition, may be taken into consideration as part of the instant application and the same may also be considered as grounds of urgency which are not being reproduced herein for the sake of brevity.

3. That **“Right to Human Dignity”, “Right to Life & Liberty” & “Right to inviolability of his or her body”** are some of the basic inalienable rights which a person is entitled to irrespective of any other qualification. The act of committing custodial violence is a brazen violation of the constitutional principles and the safeguards bestowed upon the citizens by the Constitution.
4. That at a time when demands for police reforms are sweeping the world in the context of the “Black/All Lives Matter” movement, the killings of Jayaraj and Bennix are a chilling reminder of how the excessive use of force has become a routine in India, resulting in tragic loss of lives. It sends an unfortunate chilling message about how broken the system is and the failure of police and political leaders to establish accountability measures for those who are found guilty of custodial crimes. It also lays bare brutally what happens to ordinary people who do not know their rights or that custodial violence is not normal behaviour but criminal conduct.

5. That therefore, the matter(s) contemplated in this writ petition are very urgent as the various recently reported as well as un-reported incidents of Custodial Torture/Deaths/Rapes have traumatized all those who respect the rule of law and personal liberty in the country and it underlines afresh the urgent need for institutional correctives within the policing system in this country and the acute need for India to enact a strong law to prohibit and prosecute cases of torture and custodial deaths, in fulfilment of its legal obligations, both national and international, to guarantee protect right to life.
6. That in the light of facts and circumstances stated hereinabove, it is imperative in the interest of justice that the writ petition may be taken up for hearing by this Hon'ble Court urgently.

**DETAILS OF PETITIONER-IN-PERSON, CONSENT FOR
VIDEO CONFERENCING AND UNDERTAKING TO PAY
DEFICIT COURT FEES**

7. That, the contact details of the Petitioner No. 2 In-Person, are as follows:

DEVESH SAXENA

Advocate-On-Roll in Allahabad High Court

A/R No.: A/D0757/2018

Address: 19/27/1A, M.G. Marg, Civil Lines,
Allahabad- 211001.

Police Station: Civil Lines

Mobile No.: +91-8181932240

Email: saxena.devesh09@gmail.com

8. That the petitioners/applicants give their consent and request the matter to be taken up through the Video-Conferencing Mode, as the ongoing pandemic and lockdown situation incapacitates them from their physical presence before this Hon'ble Court. The petitioners/applicants state that the Video-Conferencing will be done by the Petitioner No. 2(In-Person) either through the "Vidyo App" or in the alternative medium/app as suggested by this Hon'ble Court.
9. That the petitioners/applicants state that the Petitioner No.2 In-Person would link through his own desktop/mobile for the said hearing through Video-Conferencing Mode and would not be using the VC link facility available at the

premises of this Hon'ble Court, as currently the petitioner(s) are serving the period of lockdown.

10. That the petitioners also seek exemption from filing duly affirmed affidavit in the prevailing circumstances with an undertaking that the deficit court fees will be paid subsequently.

11. That the present applicant is being filed *bonafide* and in the interests of the public at large.

PRAYER

12. That, in view of the above and the facts and circumstances of the case, looking into the urgency of the matter(s), it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- i. Allow this application, in the interests of justice and fairness and the public at large, allowing the instant petition to be listed and heard at the earliest through the Video-Conferencing mode, preferably, within a week of filing;
- ii. Exempt the filing of duly affirmed affidavit, for the time being, in the prevailing circumstances;

- iii. And/or pass such other and further order as this court may deem fit and proper in the facts and circumstance of the case.

**FOR WHICH ACT OF KINDNESS, THE
PETITIONERS SHALL AS INDUTY BOUND, EVER
PRAY.**

DRAWN BY:

**SHASHWAT ANAND
(ADVOCATE)**

FILED BY:



**DEVESH SAXENA
(ADVOCATE)
(Petitioner No. 2 In-Person)**

FILED ON- 07.07.2020

VERIFICATION

I, the deponent, above named, do hereby verify that the contents of Para 1 to 12 of this application are true to the best of my personal knowledge, all of which I verily believe to be true and that no part of it is false and nothing material has been concealed therefrom.

Verified at Prayagraj (Allahabad), Uttar Pradesh (U.P.), on this 7th day of July, 2020.



DEPONENT

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I. A. NO. _____ OF 2020**IN****WRIT PETITION (CIVIL) NO. _____ OF 2020**

(Under Article 32 of the Constitution of India)

(PUBLIC INTEREST LITIGATION)**IN THE MATTER OF:****PEOPLE'S CHARIOTEER ORGANIZATION (PCO) &
ANR.****.....Petitioners**

Versus

UNION OF INDIA & ORS.**...Respondents****APPLICATION FOR SEEKING PERMISSION TO****APPEAR AND ARGUE IN PERSON****TO,
THE HON'BLE THE CHIEF JUSTICE OF
INDIA AND HIS LORDSHIP'S
COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA.****THE HUMBLE PETITION OF THE
PETITONERS ABOVE-NAMED****MOST RESPECTFULLY SHOWETH:**

1. That the present petition has been filed by the petitioners in public interest, under Article 32 of the Constitution of India, *inter alia*, seeking:

An appropriate writ, order or direction issuing and laying down guidelines to fill the gaping legal lacunae, and for ensuring an effective and purposeful framework and its enforcement to fulfil the constitutional obligation of ensuring and securing the right to life and to live with human dignity and the prevention of custodial torture/deaths/rapes, in exercise of its inherent power under Article 142 of the Constitution, in the interest of justice and fairness;

Along with, for a further or alternative writ, order or direction, in the nature of Mandamus directing the Central Government to form an Independent Committee monitored by this Hon'ble Court consisting of members from all the relevant departments/ministries which can review the entire legal framework and find pitfalls in the existing legal framework in order to curb the menace of custodial torture/deaths/rapes, so as to enable rehauling of the legislative mechanisms in consonance with the guidelines laid down by this Hon'ble Court with due regard to the recommendations of the Law Commission(s) and the International Legal Regime.

2. That all the facts leading to filing of this petition have been set out in detail in the accompanying Writ Petition filed in

public interest, and the same are not being repeated herein for the sake of brevity.

3. That since the petitioner no. 2/applicant is an Advocate by profession, hence he is in a position to assist this Hon'ble Court in his personal capacity and does not require aid of an Advocate to represent him.
4. That the present application is being filed *bona fide* and in the interests of the public at large.

PRAYER

5. That, in view of the above and the facts and circumstances of the case, looking into the urgency of the matter(s), it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- i. Allow this application, in the interests of justice and fairness and the public at large, allowing the Petitioner No. 2 to appear and argue in-person in the instant petition;

- ii. And/or pass such other and further order as this court may deem fit and proper in the facts and circumstance of the case.

**FOR WHICH ACT OF KINDNESS, THE
PETITIONERS SHALL AS INDUTY BOUND, EVER
PRAY.**

DRAWN BY:

**SHASHWAT ANAND
(ADVOCATE)**

FILED BY:



**DEVESH SAXENA
(ADVOCATE)
(Petitioner No. 2 In-Person)**

FILED ON- 07.07.2020

VERIFICATION

I, the deponent, above named, do hereby verify that the contents of Para 1 to 5 of this application are true to the best of my personal knowledge, all of which I verily believe to be true and that no part of it is false and nothing material has been concealed therefrom.

Verified at Prayagraj (Allahabad), Uttar Pradesh (U.P.), on this 7th day of July, 2020.



DEPONENT