

SYNOPSIS AND LIST OF DATES

Being aggrieved and dissatisfied by the substantial inaction of the Respondents in addressing the various acts of human right violations of the members of the Armed Forces, from the perpetrators of violence within the state, resulting in obstruction in the discharge of their duty as well as danger to the safety and security of these army personnel at the place of their deployment, the Petitioners are approaching this Hon'ble Court by filing the present Petition.

The Petitioners are daughter of Army officials, serving and retired respectively and greatly disturbed by the incidents of unruly and disruptive mobs pelting soldiers and army convoys in counter insurgency area like Shopian, J&K *etc.* The Petitioners are further disturbed by the troops in the Indian Army, having to suffer the ire of stone pelters, while they are discharging their duty of maintaining peace and security in the area of their deployment. More often than not, there are FIRs filed against these troops and soldiers, if they take any action in retaliation or in self-defence, against the perpetrators of stone pelting. The Petitioners have no grievance to any Complaint/FIR being

filed against any armed forces personnel, for any act done by them, which amounts to any criminal offence under the law for the time being in force. However, they are very much aggrieved by the fact that no similar action is taken against the perpetrators of violence, against the Armed Force personnel. Infact it is shocking to note that the former Chief Minister of the State of J&K, in the legislative assembly declared that as many as 9760 FIRs registered against the stone pelters shall be withdrawn as they were first time offenders. It is pertinent to note that firstly, the state is not entitled to withdraw an FIR, once registered against a person without following the due process of law, as provided in the Cr.P.C/RPC; secondly, the Complainant or the victim of the offence is entitled to prosecute the perpetrator of a crime against him. Depriving the Armed Forces Personnel of his right to prosecute a person, who has committed an offence against him, is a violation of his fundamental right to life and liberty including the right to legal recourse. Further, armed forces personnel are also derided of their basic human rights of defending themselves against assault and safeguarding their life and limb.

Thus, the Petitioners made a complaint regarding human rights violation to the Ld. National Human Rights Commission, New Delhi, citing specific instances of human rights violations of the armed personnel. The Ld. NHRC issued notices to the Respondent No. 1, received a reply stating that it is the responsibility of the state government and the explanation of the state government should be sought in that regard. The Petitioners have been refused a copy of the said interim report on the ground that it is an interim report. Thereafter, the Ld. NHRC issued notice to the Respondent No. 3 i.e. the state of J&K. It is submitted that only after three reminders issued by the Ld. NHRC, the Respondent No. 3 state contended in their reply to the Ld. NHRC that the said subject falls under List II of the Seventh Schedule and hence, the Ld. NHRC has no jurisdiction to entertain and inquire into the said complaint. Without giving an opportunity for the Petitioners to be heard, the Ld. NHRC, directly transferred the Complaint to the Ld. State Human Rights Commission for further proceedings. It is submitted that subject of armed forces falls squarely under List I of the Seventh Schedule of the Constitution of India. Moreover, the Protection of Human Rights Act itself provides

for vesting of jurisdiction in the Ld. NHRC, regarding any complaint in respect of human rights violation against the Armed Forces personnel. Thus, the decision of the Ld. NHRC to transfer the Complaint of the Petitioners to the State Human Rights Commission on the grounds of lack of jurisdiction is misconceived and untenable. In the meantime, violations of human rights of the Armed Forces Personnel continue to be violated unabated. There is no mechanism put in place, by the Centre or the State to deal with such brazen acts of human rights violation of the forces. The Armed Forces Personnel is deployed in these disturbed areas, by orders of the Respondents, to discharge their duties. As such, it is necessary that the Respondent No. 1, puts in place a mechanism to deal with and enforce the security of its forces.

Hence, in the absence of any mechanism or plan of action itself is a violation of the fundamental rights of the armed forces personnel to discharge their duties without obstruction and fear of disciplinary actions against them for defending themselves against the stone pelters. It is in this perspective that the Petitioners are approaching this Hon'ble Court for the reliefs as prayed.

03.03.2017

It came to be reported that the Army and the State Police jointly launched a cordon and search operation in Hafoo area of Tral, Pulwama, J & K, after getting intel inputs about presence of militants. As soon as the cordon was launched encounter with militants hiding in a house started and simultaneously heavy stone pelting also began.

An INSAS rifle was snatched from CRPF personnel. In Shopian, J&K as well youth pelted stones on security forces owing to which militants managed to escape from the spot in Shillipora Heff, J&K.

23.05.2017

Thereafter, Maj. Leetul Gogoi was reported to have tied up a stone pelter to the bonnet of his jeep to thwart a stone pelting mob during the by-election for the Srinagar Lok Sabha constituency. J&K Police lodged an FIR against him and the Army initiated a court-of-inquiry against him. Maj. Gogoi led his platoon of 53 RR

and was responding to an urgent message of distress from ITBP personnel who were held hostage in Budgum, Srinagar by a murderous mob, some of whom were wielding stones, petrol bombs and sticks on roof tops.

Nov 2017

In November 2017, it was reported that two youths drove their car right across a Military check post in J&K despite repeated warnings of stopping and not crossing the check post without appropriate identification. They evaded two check posts which naturally evoked suspicion that they were terrorists. As per their duty to safeguard the area, the security personnel fired shots at the car in order to stop them. Unfortunately, a way laid shot killed the youths. These Army personnel are being tried for murder.

- 27.01.2018 It was reliably learnt that an FIR was lodged against the 10 Garhwal Unit of the Indian Army when the soldiers fired in self-defence after an administrative convoy was attacked by stone pelters in a village in J&K.
- 31.01.2018 In pursuance of the same, an FIR was also filed in connection with stone pelting incident in Shopian, J&K when the Army convoy was pelted with stones by a mob. Instead of a generic FIR in the matter the name of a specific Army Officer was included in the said FIR.
- 03.02.2018 Thereafter, the State of Jammu and Kashmir government had declared the withdrawal of cases registered against 9,730 people involved in stone-pelting incidents as being first-time offenders, between 2008 and 2017.
- 07.02.2018 The Petitioners being extremely disturbed by the plight of the soldiers of the Indian

Army being inflicted by atrocities and brutalities, approached the National Human Rights Commission vide representation dated 07.02.2018 bearing Case No. 15/9/0/2018.

09.02.2018 The Hon'ble Commission issued notice to the Ministry of Defence calling upon them to respond with regards to the grievance mentioned by the Petitioners in their representation, within 4 weeks.

02.06.2018 Thereafter, the Respondent No. 2 filed their report dated 17.04.2018 admitting that the Armed Personnel were deployed to help the Respondent No. 3 for maintaining law and order in the state and further that it is the Respondent No. 3 who is withdrawing the cases against the stone pelters, which in turn may encourage the acts of the terrorists and hence it's the duty of the Respondent No. 3 to safeguard the human rights of the

members of the Armed Forces. Thereafter, the Ld. NHRC vide order dated 02.06.2018 directed the Chief Secretary, Government of Jammu and Kashmir to file a report with regarding the same.

04.01.2019 It is submitted that the Respondent No. 3 after being summoned for 3 consecutive dates, spanning a period of 4 months, and after much delay filed their report in pursuance of the summons issued by the Ld. NHRC. The Respondent No. 3 was pleased to contend before the Ld. Commission that the said matter falls within the exclusive domain of the State Legislature and since the State has its own statute establishing the State Human Rights Commission, the representation of the Petitioners can be adjudicated only by the Ld. State Commission and the Respondent No. 4 Commission has no jurisdiction to entertain the said representation.

Surprisingly, the Hon'ble NHRC vide its order dated 04.01.2019 was pleased to agree with the contention of the Respondent No. 3 and was pleased to hold that since the matter relates to Entry I of List II i.e. State List, which falls within the exclusive domain of the State legislatures, the Ld. NHRC lacks the jurisdiction to entertain issues falling within the said list and hence transferred to the State Human Rights Commission, Jammu and Kashmir for further action.

Furthermore, as many as 759 incidents of stone pelting were reported in Jammu and Kashmir so far in 2018, the Rajya Sabha was informed on 12.12.2018, by the Union minister of State for Home Hansraj Ahir. Furthermore, over 587 incidents of terrorists violence in the state till 2 December this year in which 86 security personnel and 37 civilians were also killed

Hence, in light of the aforesaid circumstances and in the absence of any mechanism or plan of action itself is a violation of the fundamental rights of the armed forces personnel to discharge their duties without obstruction and fear of disciplinary actions against them for defending themselves against the stone pelters. Therefore, it is in this perspective that the Petitioners are approaching this Hon'ble Court for the reliefs as prayed.

THROUGH THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA,
NORTH BLOCK, CABINET SECRETARIAT,
RAISINA HILL,
NEW DELHI – 110001 ...**RESPONDENT NO. 1**

2. MINISTRY OF DEFENCE

THROUGH THE SECRETARY,
NORTH BLOCK,
CABINET SECRETARIAT,
RAISINA HILL,
NEW DELHI – 110001 **...RESPONDENT NO. 2**

3. STATE OF JAMMU & KASHMIR

THROUGH THE SECRETARY,
HOME DEPARTMENT,
CIVIL SECRETARIAT,
JAMMU/SRINAGAR. **...RESPONDENT NO. 3**

4. NATIONAL HUMAN RIGHTS COMMISSION

THROUGH THE SECRETARY,
GPO COMPLEX, MANAV ADHIKAR BHAWAN,
C BLOCK, INA, NEW DELHI,
DELHI 110023. **...RESPONDENT NO. 4**

WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA

TO
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANIONS JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF
THE ABOVE NAMED
PETITIONERS.

MOST RESPECTFULLY SHOWETH:-

1. The Petitioners by way of the present Writ Petition under Article 32 of the Constitution of India are aggrieved by the substantial inaction of the Respondents in addressing the various acts of human right violations of the members of the Armed Forces, from the perpetrators of violence within the state, resulting in obstruction in the discharge of their duty as well as danger to the safety and security of these army personnel at the place of their deployment and also by the order dated 04.01.2019, passed by the Ld. National Human Rights Commission in refusing to further inquire in to aforesaid human rights of the armed forces personnel and transferring the proceedings to the Ld. State Human Rights Commission [JK], which is in clear violation of the fundamental rights guaranteed under Article 21 of the Constitution of India.

2. The Petitioners herein are daughters of Army officials, serving and retired respectively, who are very much concerned about the predicament of soldiers and troops of the Indian Army who are deployed at the borders of the country to protect the sovereignty and security of the nation and are on various instances, subjected to brutalities and indignities by obstructionists and anti-national elements within and beyond the borders.
3. It is pertinent to state that as children of Army Personnel, the Petitioners herein are greatly disturbed by the incidents of unruly and disruptive mob pelting stones at soldiers and army convoys in counter-insurgency areas like Shopian, J&K. Furthermore, it appears from news reports that such attacks are completely unprovoked and unwarranted. Following due process of law, FIRs are registered regarding the retaliatory and defensive firing by the Army personnel on the frenzied mob. However, no similar complaints or FIRs are seen to be registered and followed with prosecution against the perpetrators of violence in the form of stone pelting. The complete disregard for the human rights of these soldiers who are attacked and

have to simply defend themselves by making a split second decision as to the means of self-defence has disturbed the Petitioners.

4. It is submitted that the soldiers who are the serving in the Indian Army have been performing their bonafide duties as per the directions and charter of duties as provided by the Respondent No. 2 themselves. Furthermore, the Petitioners are concerned and traumatised by the extremely hostile situation on ground, whereby the soldiers are subjected to brutalities and hence the inaction of the Respondents in protecting the armed forces in the ongoing situation is not only demoralizing the officers and troops deployed in counter terrorism and counter insurgency operations in J&K and NE states, but is also in utter disregard to their safety and security. Despite the aforesaid conditions, the Respondents have not even established a procedure or a system to safeguard the interests of these Army personnel and they continue to be humiliated in the areas where they are posted as the troops due to such inaction are compelled to restrain themselves from

effectively defending and reacting to the hostile acts committed against them.

5. It is pertinent to note that while discharging their duty, of maintaining peace and order, they invite the ire of the defiants in the citizenry of the state. The Army has been deployed there since the State machinery was incapable of singly handling the law and order situation. But the irony is that the very administration which the Army seeks to assist and support has failed to safeguard the human rights of its personnel. On one hand the Army is expected to curb unlawful and disruptive activities of trouble makers but while doing so they are expected to face attacks on them without having the right to defend their own lives. They are expected to watch their troops suffer injuries, deaths and also witness their vehicles being burnt, rifles snatched *etc.* All this is absolutely against their human rights.
6. It is submitted that there are numerous incidents of unruly and disruptive mobs, hurling stones and petrol bombs at an Army Convoys. The most startling one being the one in Shopian, J&K, was extremely disturbing. It

has been learnt that the said attack was completely unprovoked and unwarranted. Following the due process of law, the details of the incident came to be recorded through an FIR bearing no. 26/2018 dated 27.01.2018, P.S. Shopian u/s. 336, 307, 302 of the Ranbir Penal Code. Thereafter, the frenzied mob was defended by retaliatory fire after following the due process of law i.e. by firing in air as warning. However, the incident noted in the FIR has ignored and omitted the names of the perpetrators of violence i.e. the stone pelters. Furthermore, going by the clips of the speech of the by the then Hon'ble Chief Minister of the Respondent No. 3, it is clear that action against the perpetrators has not been taken after deliberations and considerations, to achieve a stated object of the State Government, which is to provide amnesty to first time offenders with an object of infusing them in the mainstream and as a means to offer rehabilitation. In the process, the *jawan* who was at the receiving end of the stone pelting has been humiliated and rendered *dehors* his dignity. The soldier is discharging his duty of maintaining peace and order in the region where he is deployed.

7. It is submitted that the Shopian incident is not an isolated incident. Following are some of the glaring incidents where the Army has been at the receiving end of the people whom it has been deployed to protect:

03.03.2017 Joint party of Army and Police launched a cordon and search operation in Hafoo area of Tral, Pulwama, J & K, after getting intel inputs about presence of militants. As soon as the cordon was launched encounter with militants hiding in a house started and simultaneously heavy stone pelting also began.

An INSAS rifle was snatched from CRPF personnel. In Shopian, J&K as well youth pelted stones on security forces owing to which militants managed to escape from the spot in Shillipora Heff, J&K. Hereto annexed and marked as **ANNEXURE P/1** is the copy of the news report in respect of incident of Pulwama, J and K, on 3.3.2017

23.05.2017 Maj. Leetul Gogoi was reported to have tied up a stone pelter to the bonnet of his jeep to thwart a stone pelting mob during the by-election for the Srinagar Lok Sabha constituency. J&K Police lodged an FIR against him and the Army initiated a court-of-inquiry against him. Maj. Gogoi led his platoon of 53 RR and was responding to an urgent message of distress from ITBP personnel who were held hostage in Budgum, Srinagar by a murderous mob, some of whom were wielding stones, petrol bombs and sticks on roof tops. Hereto annexed and marked as **ANNEXURE P/2** is the copy of the news report dated 23.5.2017 regarding Maj. Leetul Gogoi.

Nov 2017 Two youths drove their car right across a Military check post in J&K despite repeated warnings of stopping and not crossing the check post without appropriate identification. They evaded

two check posts which naturally evoked suspicion that they were terrorists. As per their duty to safeguard the area, the security personnel fired shots at the car in order to stop them. Unfortunately a way laid shot killed the youths. These Army personnel are being tried for murder.

27.01.2018 FIR was lodged against the 10 Garhwal Unit of the Indian Army when the soldiers fired in self-defence after an administrative convoy was attacked by stone pelters in a village in J&K. Hereto annexed and marked as **ANNEXURE P/3** is the copy of the news report dated 5.2.2018 regarding the incident dated 27.1.2018.

31.01.2018 FIR was filed in connection with stone pelting incident in Shopian, J&K when the Army convoy was pelted with stones by a mob. Instead of a generic FIR in the

matter the name of a specific Army Officer was included in the said FIR.

03.02.2018 Furthermore, various news reports have revealed that FIR's registered against the stone pelters and violence perpetrators have been withdrawn upon directions of the State Government. It is but obvious that the morale of troops is likely to be affected adversely in face of such kid glove treatment afforded to the perpetrators of violence against the armed forces, irrespective of political compulsions, if any. Hereto annexed and marked as **ANNEXURE P/4** is the copy of the news report in respect of the statement in the Legislative Assembly regarding withdrawal of FIR's registered against the stone pelters as first time offenders.

8. The Petitioners herein thus being extremely disturbed by the plight of the soldiers of the Indian Army being

inflicted by atrocities and brutalities including witnessing mutilations and desecrations of the bodies of their brother officers, along with the plight of the soldiers facing indignity at the hands of those within the country, had approached the National Human Rights Commission vide representation dated 07.02.2018 bearing Case No. 15/9/0/2018. Hereto annexed and marked as **ANNEXURE P/5** is the copy of the representation dated 07.02.2018 bearing Case No. 15/9/0/2018.

9. The Hon'ble Commission has issued notice to the Ministry of Defence calling upon them to response with regards to the grievance mentioned by the Petitioners in their representation, within 4 weeks. Hereto annexed and marked as **ANNEXURE P/6** is the copy of the notice dated 09.02.2018, issued by the Ld. NHRC.
10. The Petitioners had regularly and diligently pursued their Complaint with the Ld. NHRC. Thereafter, the Respondent No. 2 filed their report dated 17.04.2018 admitting that the Armed Personnel were deployed to help the Respondent No. 3 for maintaining law and order in the state and further that it is the Respondent No. 3

who is withdrawing the cases against the stone pelters, which in turn may encourage the acts of the terrorists and hence it's the duty of the Respondent No. 3 to safeguard the human rights of the members of the Armed Forces. Thereafter, the Ld. NHRC vide order dated 02.06.2018 directed the Chief Secretary, Government of Jammu and Kashmir to file a report with regarding the same. Hereto annexed and marked as **ANNEXURE P/7** is the copy of the order dated 02.06.2018.

11. It is submitted that the Respondent No. 3 after being summoned for 3 consecutive dates, spanning a period of 4 months, and after much delay filed their report in pursuance of the summons issued by the Ld. NHRC. The Respondent No. 3 was pleased to contend before the Ld. Commission that the said matter falls within the exclusive domain of the State Legislature and since the State has its own statute establishing the State Human Rights Commission, the representation of the Petitioners can be adjudicated only by the Ld. State Commission and the Respondent No. 4 Commission has no jurisdiction to entertain the said representation. Surprisingly, the Hon'ble NHRC vide its order dated

04.01.2019 was pleased to agree with the contention of the Respondent No. 3 and was pleased to hold that since the matter relates to Entry I of List II i.e. State List, which falls within the exclusive domain of the State legislatures, the Ld. NHRC lacks the jurisdiction to entertain issues falling within the said list and hence transferred to the State Human Rights Commission, Jammu and Kashmir for further action. Hereto annexed and marked as **ANNEXURE P/8** is the copy of the order dated 04.01.2019.

12. It is submitted that the Hon'ble NHRC erred in transferring the same without appreciating the fact that the firstly, the matter relates to the Armed Forces of the Country, which clearly falls in the List I of the Seventh Schedule, Constitution of India and secondly the Ld. NHRC Act itself provides for redressal of a complaint in respect of violation of human rights by or any member of the Armed Forces to be entertained by the Ld. NHRC. Thus, since the Act itself vests the jurisdiction to entertain a Complaint regarding violation of human rights by an armed forces personnel in the Ld. NHRC, it legitimately follows that any complaint by a member of

the Armed Forces can also seek redressal from the Ld. NHRC. This is so because such human right violations have occurred during the period of their deployment in such areas. The Ld. NHRC has completely ignored the aforesaid legal position, while refusing to exercise the jurisdiction vested in it by the enactment.

13. It is submitted that Article 19(1)(b) of the Constitution of India protects freedom of speech, allowing citizens, for one, the right “*to assemble peaceably and without arms.*” But, every citizen is entitled to exercise such rights provided conditions to be imposed whenever so required by the State. Since India is a signatory to the ICCPR [International Covenant on Civil and Political Rights], the state shall protect the right to freedom of expression and opinion, but restrictions may be imposed on certain grounds including protection of “*public order.*” Notwithstanding the aforesaid, the state of J&K has been in a sub optimal war since independence. A peculiar situation persists whereby the Government of India acknowledges these areas as disturbed areas. In the opinion of the state, the area is in such a disturbed and dangerous condition that the use of armed forces in

aid of civil power has been found necessary and hence the Armed Forces (Special Powers) Act, 1958 has been enacted. The said Act vests certain special powers on the Armed Forces, including but not limit to firing upon or using force wherever found necessary after giving such due warning to persons disturbing public order. Thus, the Army is required to assist and participate in performing functions of the failed state machinery.

14. It is submitted that since 2008, the valley has witnessed a major change from terrorist related violence to stone-pelting. The country has witnessed a steep rise in the crowds of stone pelting over the last few years, especially after the killing of Burhan Wani in July 2016. Therefore, nowadays, it is common to witness a middle-aged boy/woman to cordon off a security post and seize a security personnel's weapon; or for human shields to obstruct encounters with stones in order to cover the militants. These stone pelters are often directly or indirectly funded or brain-washed in a manner to affect the security and sovereignty of the country. Due to the increase in the mob violence across the valley, the

security forces have suffered heavy casualties since 2015.

| | of Incidents | alties Suffered by Security Forces |
|---|--------------|------------------------------------|
| 5 | | |
| 5 | 3 | 5 |
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15. Furthermore, various news reports have revealed that FIR's registered against the stone pelters and violence perpetrators have been withdrawn upon directions of the State Government. It is but obvious that the morale of troops is likely to be affected adversely in face of such kid glove treatment afforded to the perpetrators of violence against the armed forces, irrespective of political compulsions, if any.

16. Thus it cannot be denied that the in either of the aforementioned cases, the soldier is at the receiving end of extreme indignity and violation of his human rights, without existence of any stated policy or mechanism setup by the Government, to assure and ensure the protection of the human rights of the armed personnel.

The morale of the soldiers is being compromised and adversely affected, more frequently than not, by political vagrancies. Even in cases of external aggression is concerned, it cannot be left to the kith and kin of the martyr to pursue a battle for dignified closure. It is the bounden duty of the Respondents, on whose collective behalf, the martyr has sacrificed his life, to ensure visible justice for his humiliation and indignity suffered in death. Thus, it is reasonable to expect that the Respondents take up the cause for his justice in appropriate bilateral/international forums on a global platform to obtain redressal to the fullest extent possible.

Secondly, as far as internal unrest is concerned, the Respondents are legitimately expected to setup a mechanism and lay down a clear policy to ensure protection of the rights and dignity of the members of the armed forces, while discharging their *bona fide* duties as per their mandate.

17. It is most respectfully submitted that other countries would never tolerate such indignities rained upon their

armed forces. Following is the punishment imposed upon such perpetrators in other countries.

i. United States of America:

Under American law they can receive very long sentences and even be sentenced to life in prison. Under American law, individuals who were part of a group engaged in rock-throwing can be convicted and imprisoned even if they did not personally throw any missiles.

ii. Israel:

The law prescribes a sentence of 10 years if prosecutors are unable to prove harmful intent from the stone thrower, and 20 years, if it is clear that the attacker desired to cause bodily harm.

iii. New Zealand:

In New Zealand, individuals who throw rocks at cars can serve 14 years for endangering transport.

iv. Australia:

Under Australian law, rock throwers can be sentenced to up to 5 years in prison.

v. Great Britain:

In Great Britain, expansive legislation on public disorder introduced in 1986 allows stone throwers to be sentenced on average to 3.5 years in prison if the criminal justice system can prove that the action took place in a riot.

vi. Turkey:

Turkey presses charges and imposes prison sentences for the crime of being part of a group throwing stones at police, even when the rock-throwers are 15 years of age and younger.

18. It is submitted that the troops suffer the indignity of being stoned by mobs and compelled to restrain themselves from effectively defending themselves and the Government property to be in consonance with executive directives. There cannot be a day when troops wait for written orders to fire at a terrorist lest he be found to be a local youth with a stone in one hand and a petrol bomb in the other.

19. It is submitted that the inalienable rights and safeguards as provided under the Constitution of India

is applicable to all the citizens throughout the territories of the country. Self-defence and self-preservation is the most basic human instinct which is duly recognised by the constitutional and criminal jurisprudence of all the civilisations. Time and again the Hon'ble Supreme Court in a catena of judgments including *Surjit Singh v. State of Punjab and Ors.* [1996 SCC (2) 336] has held that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. Furthermore, the importance and validity of the duty and right to self-preservation has species in the right of self-defence in criminal law. Therefore, it is most respectfully submitted that the same has to be even extended to officers of the Indian Army. Furthermore, neither the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA), 1990 nor Army Act, 1950, restricts armed forces personnel's right to life and self-preservation as guaranteed under the Constitution of India, notwithstanding the fact that even if any of the provisions of the Army Act and rules made thereunder is in conflict with Part-III of the Constitution,

the same will be rendered ultra-vires. It is pertinent to note that in the matter of *Lt. Col. Prithi Pal Singh Bedi v. Union of India and Ors.* [1983 SCR (1) 393] this Hon'ble Court has further observed that in the larger interest of national security and military discipline Parliament in its wisdom may restrict or abrogate such rights in their application to the Armed Forces but this process should not be carried so far as to create a class of citizens not entitled to the benefits of the liberal spirit of the Constitution. Hence, these inalienable rights of the Armed Personnel cannot be abrogated by any institution, being ultra-vires to the basic structure of the Constitution of India.

20. The Petitioners further wish to submit that as per the criminal jurisprudence under both Indian Penal Code and Ranbir Penal Code, the right of self-defence is equally applicable to every citizen including the personnel of the Armed Forces. It is a settled position of law that nothing is an offence done in the exercise of right to private defence as every person is entitled to protect his own bodily safety and integrity. However, in case of the armed personnel, they are not only entitled

to protect themselves, but rather also have a duty cast upon them by the Respondents to ensure security of the area in which they are deployed. In *Deo Narain v. State of U.P.* [1973 AIR 473], the Hon'ble Supreme Court has held that the right to private defence of the body commences as soon as reasonable apprehension of danger to the body arises and a mere reasonable apprehension is enough to put the right of self-defence into operation. These armed personnel despite being armed with necessary arms, are often left in abstruse to suffer at the hands of the anti-social elements due to the ambiguity in the approach of the Respondents in dealing with them including the stone pelters *etc.*

21. It is submitted that media reports clearly indicate that as many as 9703 FIR's filed against the perpetrators of the stone pelting incidents were directed to be withdrawn as a policy, with a stated aim to bring the youth of the state in the mainstream. However criminal jurisdiction mandates that once an FIR is registered against any person, the same cannot be taken back, without following the due process of law, especially in

pursuance of a policy of the government no such FIR can be directed to be withdrawn. Criminal offences under the IPC, alleged against the perpetrators cannot be dismissed by way of a policy. This is nothing but abuse of the process of criminal law and more over a violation of the right of any armed forces personnel to prosecute a person who has committed an offence against him and the state. Instead of taking strict action against stone pelters and others obstructing the armed forces personnel in the discharge of their duties, the state itself appears to be shielding the perpetrators and throwing the security forces to fend for themselves. In fact, the Respondents themselves are expected to take collective action against the perpetrators of violence against its security forces instead of protecting the perpetrators in pursuance of their so called stated policy for any reasons. Thus protection of the perpetrators by the State itself is a gross violation of the fundamental rights of the victims in this case the soldiers of the security forces.

22. The Petitioners are thus seeking directions to the Respondents to formulate a policy and promulgate a

mechanism to safeguard the rights of armed forces personnel against violations while discharging *bona fide* military duty. It is the duty of the Respondents to safeguard and protect the inalienable rights of every citizen of the country including the Armed Forces personnel. The instances cited above clearly indicate that the fundamental rights and human rights of the Armed Forces personnel, as envisaged by Article 21 of the Constitution of India, are being grossly violated and no measures have been seen to be taken to mitigate the same. Hence, the Petitioners in their locus as citizens of the country and wards of Armed Forces personnel are filing the present Petition as a Public Interest Litigation.

PRAYERS

23. The Petitioners therefore pray that this Hon'ble Court may kindly be pleased to:

A. Issue a Writ of Mandamus, direction or order in the nature of such writ, directing the Respondents to formulate a policy to safeguard the rights of Armed Forces personnel against human right violations by unruly mob or individuals obstructing/attacking

them during the discharge of their military duty and thereby protect the fundamental right guaranteed under Article 21 of the Constitution of India.

B. Pass necessary directions/orders setting aside the order dated 04.01.2019, transferring the representation to the State Human Rights Commission and direct the Respondent No. 4 to complete the investigation during the pendency of this Petition and place before this Hon'ble Court for appropriate orders.

C. Pass any other just and reasonable orders to meet the ends of justice.

FOR THIS ACT OF KINDNESS, THE PETITIONERS, AS IN DUTY BOUND, SHALL EVER PRAY.

Drawn by:

Filed by:

Neela Gokhale
Ilam Paridi
Advocate for the Petitioners
Drawn on: .02.2019
Filed on: .02.2019

