

Synopsis

1. This petition is filed by victims of the attack that took place on peaceful protestors by the police and gangs affiliated to the party in power at the centre. All the petitioners are those who were severely injured and admitted to hospitals. All of those have experienced a nexus between the hate speech slogan made by 4 prominent persons belonging to the party in power that were repeated again and again not only in Delhi but across the country, which exhorted the followers of these leaders to take the law into their own hands and kill peaceful protestors.
2. Victim Petitioners are putting on record (at Annexure P- hereto) the videos that went viral relating to 4 prominent persons as well as other persons from the ruling party and in all these videos the 4 politicians and others were telling their followers as well as the general population that they should kill those protesting against CAA. The statements made by these 4 persons were as under:
 - I. Kapil Mishra, 23.02.2020:

""This is what they wanted. This is why they blocked the roads. That's why a riot-like situation has been created. From our side not a single stone has been pelted. DSP is standing beside us. On behalf of all of you, I am saying that till the time Trump goes back, we are going to go forward peacefully. But after that we will not listen to the Police if

roads are not cleared after three days. By the time Trump goes, we request the Police to clear out Jafrabad and Chaand bagh. After that, we will have to come on the roads. Bharat mata ki jai! Vande mataram!"

- II. Anurag Thakur, Member of Parliament, Hamirpur Lok Sabha Constituency and Minister of State for Finance, Government of India; 20.01.2020:

“Desh ke gaddaron ko, goli maaron saalon ko”

- III. Parvesh Verma, Member of Parliament, West Delhi; 28.01.2020:

“*The people of Delhi know that the fire that raged in Kashmir a few years ago, where the daughters and sisters of Kashmiri Pandits were raped...caught on in UP, Hyderabad, Kerala, the same fire is raging in a corner in Delhi. Lakhs of people gather there. This fire can reach the residences of Delhi anytime. People of Delhi will have to decide wisely. These people will enter your houses, rape your sisters & daughters, kill them. There's time today, Modi ji & Amit Shah won't come to save you tomorrow...*”

- IV. Abhay Verma, sitting MLA, Laxmi Nagar, East Delhi; 25.02.2020”

“desh ke gaddaron ko, goli maaron saalon ko”

3. After these statements were made the said persons also took part in demonstrations where the *slogan* "*desh ke gaddaron ko, goli maaro saalo ko*" was repeated again and again. After these leaders engaged in the hate speech and exhortation to murder peaceful protestors, attacks broke out all across Delhi. Therefore this was not simply a case of hate speech but it was hate speech coupled with mobilization so that people were actually killed.
4. A complaint was given to the police on 23.2.20 (at Annexure P-hereto) naming the persons involved in the incitement but that FIR was not registered. In fact, it appears that not a single FIR has been registered against the mobs that are controlled by the party in power. On the contrary, the police registered over 123 FIRs against the victims and others so that they were doubly victimized in that the victims suffered injuries and then they were arraigned as accused persons. Such was the nature of the collusion between the party in power, the militant mobs of the party and the police.
5. Multiple instances of hate speech in addition to the 4 main hate speeches set out above were also put on record. It thus appears that after the 4 main hate speeches delivered by senior politicians including a minister of State, a Member of Parliament and MLAs, others began to emulate them and hate speeches began to spread not only across Delhi but across the country as well. This is why the earlier bench which heard the matter warned that the situation should not escalate to one akin to the Sikh genocide.

6. As a result of judicial abstention and any control over the police hate speech spread like wild fire and the petitioner put on record the following sample additional hate speeches as under:

a. Parvesh Verma, Member of Parliament, West Delhi;
28.02.2020:

"If in Delhi, BJP come, then after 11th give me one month, how manyever masjids have been built on government land in my lok sabha , I wont leave even one of them standing."

b. Tarun Chug, National Secretary, Bharatiya Janta Party;
29.01.2020:

"We will not let Delhi become Syria and allow them to run an ISIS-like module here, where women and kids are used. They are trying to create fear in the minds of people of Delhi by blocking the main route. We will not let this happen.(We will not let Delhi burn).#ShaheenBaghKaSach"

30.01.2020:

"aaj yeh tukde tukde ganga ka head office ban chukka hai shaitani bagh, aur ye log bharat ko, delhi ko Syria banana chahte hai, hum banne nahi denge."

c. Tajinder Pal Bagga; 30.01.2020:

"In Shaheen Bagh, claims are being made that the Indian Army kills its own people. Indian Army is being equated with the Pakistani army. Shaheen Bagh has become a hub on Anti- nationals. And on 11th February, after the results, a surgical strike will be done on this adda."

d. Vishnu Gupta, Founder and National President, Hindu Sena;

30.01.2020:

"Shaheen Bagh me desh desh virodhi naare lagaye ja rahe hai, bharat ko todne ki baaten kahin ja rahi hai, aasam ko bharat se alag karne ki baaten kari ja rahi hai....2 feb ko hindu sena ne sabhi aas paas ke gaon vasi, shetra vasi, okhla ke sabhi logon ko bulaya hai... hum in jihadi gaddron ko road se hatayenge, wahan rad se unko khaded diya jayega"

e. Ajay Bisth (popularly known as 'Yogi Adityanath'), Chief

Minister of Uttar Pradesh:

"Dilli ki rajya sarkar ka jo paisa aata hai, ye paisa dilli ki viks par kharch nahi hota, ye paisa yahan ki janta ko shudh jal uplabdh karane me kharch nahi hota. Congress aur Kejriwal, in uppadhamiyon ko kya khilate the? Biryani aur Hum kya khila rahe hain? Goli!"

19.02.2020:

"UP main koi danga nahi hua. Agar koi marne ke liye aa hi raha hai, vo jinda kaise bachega. Police ki goli se koi nahi

marā (There were no riots in Uttar Pradesh. If someone comes out with the intent of dying, how will he remain alive? No one died in police firing).....Upadravi, upadravi ki goli se marey hain (the trouble-makers died from bullet of another trouble-maker),"

f. Somasekhara Reddy, MLA, Karnataka; 03.01.2020:

"It's just a caution for those who are protesting against the CAA (Citizenship Amendment Act). We are 80 per cent and you (Muslims) are 18 per cent. Imagine what will happen if we take charge,...Beware of the majority when you live in this country. This is our country. If you want to live here, you will have to, like the Australian Prime Minister said, follow the country's traditions,.....So, I warn you that CAA and NRC are made by Modi and Amith Shah. If you will go against these acts, it won't be good.....If you wish, you can go to Pakistan. We don't have any issues. Intentionally, we would not send you....If you will act as enemies, we should also react like enemies.

g. Tejasvi Surya, Member of Parliament, 05.02.2020:

"what is extremely disappointing, what is extremely troubling is that the opposition of this country, knowing fully well that these legislations specially the citizenship amendment act, has nothing whatsoever to do with taking citizenship away from anyone, has

gone around the country indulging in a campaign of lies, campaign of slander, misguiding the people of this country.....what is happening today in Shaheen Bagh in Delhi is a stark reminder that if the majority of this country of this country is not vigilant, if the patriotic Indians do not stand up to this, the days of Mughal raj coming back and revisiting Delhi is not very far away. Sir, what is happening in Shaheen Bagh is fanatic islamism, masquerading in the garb of constitutional secularism sir, and therefore we must exercise vigilance to ensure that his country is on the path to true secularism”.



Photographs

7. The Petitioner also put on record photographs of the persons injured by swords and guns and petrol bombs. These photographs are at Annexures P- . Similar photographs were also placed before the High Court in the Jamia case.

Statutory provisions

8. The relevant provisions relating to hate speech are as follows:

Section 153 A, Indian Penal Code:

“153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence,

language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill will between different religious, racials, language or regional groups or castes or communities, or 1. Subs. by Act 35 of 1969, s. 2, for section 153A. 41

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, 1 [or] 1

[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants

in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

(2) Offence committed in place of worship, etc.—
Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

Section 153 B, Indian Penal Code:

“[153B. Imputations, assertions prejudicial to national integration.—(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members

of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in subsection (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with

imprisonment which may extend to five years and shall also be liable to fine.]

Section 295 A, Indian Penal Code:

“ [295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of 7 [citizens of India], 8 [by words, either spoken or written, or or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 9 [three years], or with fine, or with both.]”

High Court approach in Writ Petition 565 of 2020

Harsh Mander vs. State

Not as innocuous as it looks

9. Harsh Mander & Another filed a Writ Petition in the Delhi High Court seeking reliefs as set out at Annexure P- hereto and the said matter was heard first by one bench and thereafter, on the transfer of the justice hearing the matter, was heard by the bench of the Hon'ble Chief Justice who after hearing preliminary

arguments adjourned the matter to 13.4.20. Though that order of adjournment looks innocuous the following circumstances set out will show how arbitrary the order was particularly in the factual context of 10 persons being killed every day in Delhi as a result of physical attacks on the minority community that is protesting peacefully against the CAA. Up to today above 46 persons have been killed, hundreds injured, many of them seriously, properties all across Delhi have been set ablaze and whole communities destroyed.

10. When the matter was filed and mentioned before the Hon'ble High Court, it was immediately taken up by a bench of the High Court, notices were issued immediately and hearing began focusing, for the time being on the first prayer in the Petition being:

INDIAN LEGAL NEWS

“For a writ of mandamus or any other appropriate writ, order or direction to the respondents to register FIRs against 1) Kapil Mishra 2) Anurag Thakur and 3) Parvesh Verma and all those persons who engaged in criminal activities under Section 147, 148, 149, 153A, 153B, 120B, 295A of the Indian Penal Code read with Sec 3 & 4 of Damage of Public Property Act, arrest them forthwith and prosecute them in accordance with law.”

11. The hearing remained inconclusive on that day i.e. 26.2.20 and an order was made which is set out hereunder:

"IN THE HIGH COURT OF DELHI AT NEW DELHI +
W.P.(CrI.) 565/2020

HARSH MANDER & ANR. Petitioners Through: Mr.Colin Gonsalves, Senior Advocate with Ms.Sneha Mukherjee, Ms.Nabila Hasan, Mr.Siddharth Seem and Mr.Tariq Adeeb, Advocates. versus

GNCT OF DELHI & ORS. Respondents Through: Mr.Arun Bhardwaj, CGSC with Mr.Tushar Mehta (SGI) for Union of India. Mr.Rahul Mehra Standing Counsel (CrI.) of State, with Mr. Tushar Sannu, Mr.Jamal Akhtar, Mr.Chaitanya Gosain, Mr.Divyank Tyagi, Mr.Amanpreet Singh and Mr.Anand Thumbayil, Advocates. Mr.Praveer Ranjan, Special Commissioner of Police. Mr.Mehmood Pracha, Mr.R.H.A.Sikander, Mr.Jatin Bhatt, Mr.Sanawar, Ms.Afsha Pracha, Mr.Prateek Gupta, Mr.Yashovardhan Oza, Ms.Vidushi Bajpai and Mohd. Danish, Advocates for Applicant. CORAM: JUSTICE S.MURALIDHAR JUSTICE TALWANT SINGH O R D E R % 26.02.2020

1. Although the notice issued in this petition was accepted in the forenoon today by Mr. Amit Mahajan, learned counsel,

on behalf of the Respondent Nos.2 and 3, i.e. Commissioner of Police, Delhi (CP) and Deputy

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Commissioner of Police (North-East) [DCP (NE)], a serious objection was raised in the post lunch session by Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal) that given the judgment of this Court in GNCTD v. Union of India 232 (2016) DLT 196 (DB), and of Constitution Bench of the Supreme Court in State (NCT of Delhi) v. Union of India and Anr. (2018) 8 SCC 501 and of a two-Judge Bench of the Supreme Court in GNCTD v. Union of India 2019 SCC Online SC 193 his role as the only counsel who can possibly represent the Delhi Police cannot be bypassed. He pointed out that Union of India is not even a party to the petition.

2. In response to the above submission, Mr. Tushar Mehta, learned Solicitor General of India ('SG') handed over an application praying that Union of India should be impleaded as party/Respondent to the petition. The said application is taken on record. The Registry is directed to number the application. Notice is issued on that application.

3. The Court is at this stage only considering prayer (I) in the present petition. This Court has heard the submissions of Mr. Colin Gonsalves, learned Senior counsel for the Petitioners, Mr. Tushar Mehta, learned SG and Mr. Rahul Mehra, learned Senior Standing counsel (Criminal) for the Delhi Police.

4. The Court has viewed four video clips in the Court. The first of the video clips is of the speech delivered by Mr. Anurag Thakur, who is a Member of Parliament from the Hamirpur Lok Sabha constituency in Himachal Pradesh and also happens to be a Minister of State for Finance in the Government of

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India. This is a speech delivered on 21st January, 2020.

5. The second clip is of an interview given by Mr. Pravesh Verma, Member of Parliament from the West Delhi Constituency on 28th January, 2020 to the HT Channel. The

third is a video clip of the speech delivered by Mr. Kapil Mishra on 23rd February, 2020 in the presence of DCP, North East Mr. Ved Prakash Surya. The fourth is a video clip that shows Mr. Abhay Verma, a sitting MLA of the Laxmi Nagar constituency in Delhi on 25th February, 2020, repeating the very slogan that features in the first clip of Mr. Anurag Thakur.

6. It must be mentioned here that in the forenoon session, Mr. Tushar Mehta stated that he had not watched any of the above videos. One of these clips of Mr. Kapil Mishra was then played in open Court in the pre-lunch session. During the lunch recess, Mr. Mehta apparently watched the remaining three videos.

7. In the post-lunch session, Mr. Praveer Ranjan, Special Commissioner of Police, stated that while he had watched the first three videos, he had not viewed the fourth video of Mr. Abhay Verma. That clip was then played in the Court for his benefit.

8. The refrain of the learned SG's submission has been that the time is not 'appropriate' or 'conducive' for FIRs to be

registered in relation to these clips. He further refers to other video clips, which according to him are 'inflammatory' and which according to him would equally require action by

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the police at a 'conducive' time.

9. When asked to elaborate which is this 'conducive time', the learned SG stated it would not be possible for him to state at this stage. In light of what has been witnessed in the capital city in the last three days, with the number of death in the riots having risen to 18 (officially), with a large number of persons being injured, some critically, with the unabated arson and looting of properties and incidents of violence, stone pelting, the Court posed specific queries to Mr. Praveer Ranjan, Special CP about what the consequences would be with every day's delay in registering an FIR for each of the speeches played in Court which ex facie appear to be answering the description of the crime of hate speech in terms of Section 153A (a) and (b) IPC, both of which are cognisable and non-bailable. In addition to these clips the learned SG has referred to certain other clips

which he himself terms as 'inflammatory' and in respect of which no FIR has been registered. The Court has also impressed upon Mr. Ranjan that he should convey to the CP the 'anguish' of the Court regarding the consequences of failure to register FIRs in an atmosphere like the present one.

10. It must be added at this stage that Mr. Ranjan volunteered that in relation to the deaths, the destruction of properties, injuries to large number of people in the incidents over the last three dates in the capital city, as many as eleven FIRs have been registered. This in fact underscores the point which the Court wishes to make, particularly to the Delhi Police, viz., that an FIR is first and foremost an acknowledgement of the commission of a crime. The police should be guided by the judgment of the Constitution Bench of

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Supreme Court in Lalita Kumari v. Government of Uttar Pradesh (2014) 2 SCC 1 and go strictly by the mandate of the law. It should seriously consider the consequences that

would ensue with every day's delay in registering FIRs not only on the basis of the video clips that have been played in Court but all other video clips of speeches/actions by anyone, whosoever it may be, which disclose ex facie the commission of an offence, bearing in mind that the rule of law is supreme and that no one is above the law.

11. Mr. Ranjan Special CP, assures the Court that he will himself sit with the CP today itself and view all the videos, not limited to the videos played in the Court but any other videos that might be provided to them and which they perhaps already are in possession of and take a conscious decision which will be communicated to the Court tomorrow itself.

12. List on 27th February, 2020 at 2:15 PM.

13. Dasti under signature of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J. FEBRUARY 26, 2020 mr''

12. The matter was posted by this bench of the High Court on the next day i.e. 27.2.20 at 2:15 pm but it is informed that the notification

transferring the Hon'ble Justice to the Punjab and Haryana High Court was issued. With that the urgency of the matter was forgotten and the grave criminality engaged in by persons who instigated large scale killing, destruction of property, arson and causing grievous hurt was also instantly forgotten. On 27.2.20 at a perfunctory hearing the matter was adjourned to 13.4.20 despite counsel for the petitioner stating that on the night of 27.2.20, 10 persons were killed in Delhi and it was expected that murders would take place at 10 per day.

Issuing notice and then long adjournments in emergency matters

13. This practice of the Hon'ble Bench of the High Court of entertaining life and death matters and adjourning them endlessly gives the appearance of entertainment of the grievances of the victim community but in reality it amounts to nothing. The following are the examples:

- a. Nabila Hassan vs. Union of India (Writ Petition CrI. 3522/2019) was one relating to the brutal attack on the students of Jamia by the Delhi Police. The matter came up before the Delhi High Court on 19.12.2019 and without much ado was adjourned to 04.02.2020 to the intense disappointment of the Jamia students. It then came up on _____ and was immediately adjourned when the State asked for time to file a reply after having defaulted over two months. The matter was

adjourned to and the students have little confidence or faith that justice will be done to them. The prayers in that Petition were most urgent and are set out herein below:

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b. Thereafter, the following Petitions were filed in the Delhi High Court and met the same fate of prolonged adjournments as under:

- i. Mohd. Mustafa v. Union of India [Writ Petition (Crl.) 575/2020]
- ii. Shayan Mujeeb v. Union of India [Writ Petition (Crl.) 472/2020]
- iii. Mohd. Minhajuddin v. Union of India [Writ Petition (Crl.) 414/2020]

Arrest of the instigators the only way to bring peace

14. Petitioner is firmly of the belief that if the leaders instigating the mobs to commit ghastly crimes have FIRs registered against them and are arrested and kept in jail; this would have an immediate and salutary effect on the situation. If not done the violence can possibly exacerbate to a full blown national law and order situation.

Current situation and reliefs sought

15. At Maujpur from 23.02.20 onwards the attacks on the peaceful protestors by communal gangs began. This continued for 4 days at a very intense level and the violence is continuing even today. During these days the violence spread from Maujpur to Chand Bagh, Shiv Vihar, Mustafabad, Sherpur Chowk, Jaffrabad, Chandu Nagar, KhajuriKhas, Moonga Nagar, Noor EiElahi, Kardampuri, Ghonda, SubhashMohalla, Brijpuri, Yamuna Vihar, Karawal Nagar, Bhagirathi Vihar, Johripur, Kabir Nagar, Gamri Village, Gokalpuri and Ashok Vihar.
16. In Maujpur, Kapil Mishra made the hate speech set out above, gave a clear signal that the police were with him, and he came with his communal gang who, as soon as he left were given the signal to attack. Property was destroyed, about 60 persons were injured many of them seriously, property was set fire to, vehicles were destroyed of the minority community only, houses and shops were looted and this violence went on for 4 days without the police taking any action. The SHO, the ACP, and the DCP of the area took no steps to control the rioters and it appeared as if the communal gangs had full immunity to do whatever they liked.
17. In Chand Bagh, where a peaceful sit-in protest was going on since 13.1.20 without any untoward incident, as soon as the protestors announced on 23.2.20 that a peaceful march would take place to Rajghat and started the march at 11:19 a.m. leaving half the road free from traffic. The DCP, the ACP and the SHO stopped them

and asked them to squat on the road. The protestors squatted on the road till 8 p.m. and thereafter began returning to the protest site. The road was completely cleared. There was no violence at all from the protestors' side. As the protestors were reaching the protest site they found that communal groups had gathered near Victoria School. Journalists who went over to these groups could see that they had thrown stones and vehicles were damaged. This escalated and this communal groups destroyed a restaurant, burned vehicles and beaten an auto driver badly. They then arrived at Chand BaghPuliya and started throwing stones at the minority community. This is the same place where the body of an IB officer Ankit Sharma was found. At that stage the police turned up at the Puliya and on the basis of an understanding with the communal groups they began an indiscriminate assault mainly on the local minority community who were merely standing by watching the developments. The communal groups shouted Jai Shri Ram and all those shouting this slogan were not touched by the police. The police used tear gas and apparently even opened fire.

18. On 24.2.20, the protest site remained peaceful till 10 a.m. At about 10:30 the police entered 25ft road and lathi-charged the residents who were doing nothing untoward. A 90 year old woman suffered a head injury. Thus the picture that emerges and this is backed up with videos is that tear gas was being lobbed on the minority

community that was peaceful, the police was concentrating on its attack on that very community, behind the police stood a communal mob of about 800 persons who were shouting "Police prashashanhamaresaathhai" and "police prashashanzindabad". The police handed over the tear gas gun to some of these persons who used these guns to lob tear gas on the minority community from the terrace of Mohan Nursing Home. There are videos to this effect. Earlier the men from the communal groups exposed their genitals and shouted "yeh lo azaadi". They also shouted "road par kheechkelao, aurragado in aurtonkoaurdedoazaadi". This continued for about 8 hours. There were many serious injuries. A pregnant woman was beaten by the police and there is a video of NDTV in this regard. Once these attacks began by 1 p.m. the protest site was cleared and the attacks focused on the locals and the property. A shrine was burnt. The communal mob burned the petrol pump nearby. During all this the police and the mob appeared to be acting together, they were standing side by side, no action whatsoever was taken against the mob, even though there was a considerable police force. The violence went on throughout the night. Many places, houses and shops were burnt. The injured persons lying on the ground injured and bleeding were forced to sing the national anthem and vandemataram and a policeman put his lathi in the mouth of an injured person and said "ye le aazadi". One of these injured persons – Faizan – a 23 year old boy died.

19. On the next day, 25.2.20 the women of the area repaired the site and were in the process of resuming their peaceful sit-in protest by 9 a.m. when the communal forces gathered again in much larger number and began the stone pelting. These groups also went inside the narrow lanes of the community and began assaulting. Instead of controlling this mob the police continued lobbing tear gas on the very community that was being attacked and fired tear gas in the houses of the community. Once again the police was seen handing over the tear gas gun to the communal mob who then used it on the community. The communal mob blocked the roads, they blocked the pathway for the ambulances to enter and continued rampaging for several days. Once again the police took no action against them. In fact the police supported the communal groups in their repeated attacks. The DCP, the ACP, Anup Kumar and the SHO Tarkeshwar are responsible for the deaths, injuries and loss of property and deserved to be prosecuted. It appears that the persons in the communal mob were not local people but were brought from outside. Local leaders gave interviews on TV saying that they had lived in the area for a long time and that the assailants appeared to be outsiders. One positive development was that some members of the Hindu community within the area were providing shelter to the affected community. Throughout this incident the slogan "deshkegaddaronko - golimarosaalonko". Distress calls were made to the police repeatedly by the women who informed the police

that they feared sexual assaults. They got no help. They then contacted journalists. A Muslim auto driver who was a tenant in the area was beaten up by the communal mob, he was photographed by the mob with an axe in his hand which was handed over to him by the mob themselves and later he was brutally tortured in police custody and his nails were pulled out. He is now in Mandoli jail.

20. In all the affected areas large numbers of minority community have fled leaving their homes and belongings behind. In Chandbagh alone over 5,000 people have fled. The Victoria school, run by the minority community, was torched. In this area the people are facing a major food problem. Wheat flour that used to sell at Rs. 40 per kg is now selling for Rs. 100. Milk that usually sells at Rs. 56 per liter now sells at more than Rs. 100.
21. At Gokulpuri the tyre market consisting of 214 shops largely operated by the minority community was torched and gutted from 24.2.20 and thereafter. A mosque in the area was torched and completely destroyed. There are videos covering these incidents.
22. At Ashok Vihar, the communal mob climbed the minaret of a mosque and put a Hanuman flag. The mosque was vandalized extensively.
23. At Sherpur Chowk stone pelting started by the communal groups immediately after the hate speech done by Kapil Mishra around

4:30 p.m. Muslim shops were vandalized after these structures were specifically identified. The three nearby areas Chandu Nagar, Moonga Nagar and KhajuriKhas were similarly vandalized. The Fatima Masjid, KhajuriKhas and some madrasas at Chandu Nagar were vandalized.

24. The Shiv Vihar, Rajadhani Public School was seized and occupied by the communal mob for 24 hours and was used for stone throwing and other forms of violence. There were many injured persons. This was an area with the maximum casualties and bullet injuries have happened.

25. The testimonies of some of the victims of the areas where criminal activities took place are at Annexures P- .

26. Reports of the communal violence are hereby annexed at Annexures P- . These are from the Wire, The Quint, The Print, Caravan.

27. The situation in the hospitals is as follows:

There are at least 250 persons injured admitted in hospitals. Some of them are in ICU. The number of confirmed deaths are upwards of 46. The unofficial number is at least double that. Many of the bodies are not identified. Bodies are not being returned to the relatives who are grieving for days outside the hospitals. Relatives are being sent from pillar to post.

28. On 01.03.2020, AAP MLA Gopal Roy along with other persons visited the GTB Hospital. They dispersed monetary compensation of Rs. 20,000 to injured persons upon filling up of the form. However, persons who had lost their documents such as Aadhar card due to massive destruction of property were denied compensation and they were asked to produce identity proof which at this point in time is absolutely impossible for them.
29. It is reported that the police have now filed about 123 FIRs but it appears that there is not a single FIR against the police for their criminal and communal conduct and some token and unserious FIRs have been filed against the communal groups in a vague manner. Thus the overall approach of the Delhi Police was to take the victim community and to make them accused persons in the FIRs.
30. Delhi Police has now come out with photographs of alleged rioters on the Delhi police website. This was displayed on 27.2.20. This is at Annexure P- hereto. From this it can be seen that only the members of the minority community have been identified.
31. Hence this petition.

LIST OF DATES AND EVENTS

Date	Event
12.12.2019	The Citizenship Amendment Act, 2019 was passed. This intensified the protests that had been

	<p>happening against the Act in different parts of the country, especially Delhi.</p>
22.02.2020	<p>There was a long peaceful protest which was going on from last two month against the Citizenship Amendment Act and proposed Pan India NRC. On this day, it was called for a Bharat Band, the peaceful protesters; approximately 500-1000 people reached the Jafrabad Metro Station where the women led peaceful protests. They remained seated until 23.02.2020</p>
23.02.2019	<p>The BJP Leader, Kapil Mishra called for a rally in support of the Citizenship Amendment Act near Maujpur Metro Station which is situated at a distance of 1.4 kms from Jafrabad Police Station. Kapil Sharma not just addressed the rally but also made inflammatory, provocative and inciteful statements. On the same day, Kapil Mishra also tweeted inciteful and provocative posts on the social media "twitter".</p>
23.02.2020	<p>Soon after the twitter, the mobs with dangerous weapons started gathering and protesting pro-CAA at Maujpur with loud chanting of communal slurs and chanting of "Goli maro Saalon ko" and "Jai Shri Ram ". The mobs rapidly spread across</p>

	<p>different parts of the north east district of Delhi including Jafraabad, Maujpur, Chand Bagh, Noor-ei-Illahi, Gokulpuri, Bhajanpura and Sherpura Chowk.</p>
23.02.2020	<p>The same was followed by the telecast of Kapil Mishra's inciteful, inflammatory speech on Republic TV wherein he stated the following:</p> <p>Jaffrabad road is closed and Chaandbagh road is closed. We can't go anywhere. This cannot be tolerated. We will not allow another Shaheen Bagh in Delhi. I would like to say in two lines, that height cannot be increased by raising your ankles, and CAA will not be revoked by making women sit on the roads. This law has come, now clear the roads. That is why we have taken to the streets. We will absolutely not allow Jaffrabad to become another Shaheen Bagh that is why we are on the roads. We have understood that there is no way other than to take to the streets."</p>
23.02.2020	<p>Aggrieved by the actions of Kapil Mishra and the impact of the same, a group of advocates practicing in Karkardoma District Courts filed complaint D.D. No. 27B dated at the Jafraabad Police Station, regarding inflammatory tweets and speech in planned manner to break riots, disturb peace and</p>

	tranquility, stone pelting, communal speeches and to initiate fight between two religious communities.
24.02.2020	The Delhi Police started instigating the armed mob of people chanting communally charged comments such as "Jai Shri Ram". Videos and photographs of a man protesting with other armed protestors in support of CAA and associated right wing organizations emerged, brandishing and pointing a gun at a police officer and have widely been circulated on the internet.
24.12.2020	The peaceful protesters wrote a memorandum of demand to Nizamuddin Police station seeking for arrest of the BJP leader Kapil Mishra for inciting the violence through provocative speech in North-East areas in New Delhi and ensuring the safety on 20 protest sites in Delhi.
25.02.2020	The violence took place in Delhi in the various areas of North East in which at least 10 persons were killed in cold blood by the Delhi Police and members of organizations connected to the party in power at the centre (hereinafter 'assailants'). After provocative hate speeches were given by three prominent politicians linked to the assailants, the assailants

	carried out multiple brutal assaults on the unarmed persons who were protesting against the CAA. Apart from the 10 persons killed, more than 160 were injured, many of them seriously. Houses, shops and properties were burnt by the assailants with the police standing by watching with unconcern. In many cases, the police were themselves the assailants.
27.02.2020	The violence continued for over 4 days and in its wrath claimed upwards of 50 lives with hundreds severely injured and hospitalized. There has been massive loss of property which has claimed the home and livelihood of several hundreds.
25.02.2020	Hence, the Petitioner file this writ Petition

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

Writ Petition (Criminal) No. of 2020

[Under Article 32 of the Constitution of India read with Section
482 of the Code of Criminal Procedure]

In the Matter of:

'A' Wing, IP Estate,

Delhi Secretariat, New Delhi-110002 Respondent No.2

3. Commissioner of Police, Delhi

MSO Building, Police Headquarters

ITO, Delhi- 110002 Respondent No. 3

4. Deputy Commission of Police, North East,

New Seelampur, Shahdara

Delhi -110032 ... Respondent No. 4

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT, DIRECTION OR ORDER IN THE NATURE OF MANDAMUS & CERTIORARI FOR APPROPRIATE ACTION AGAINST AGAINST 1) KAPIL MISHRA 2) ANURAG THAKUR AND 3) PARVESH VERMA AND ALL THOSE PERSONS WHO ENGAGED IN CRIMINAL ACTIVITIES UNDER SECTION 147, 148, 149, 153A, 153B, 120B, 295A, 302, 307 OF THE INDIAN PENAL CODE READ WITH SEC 3 & 4 OF DAMAGE OF PUBLIC PROPERTY ACT, ARREST THEM FORTHWITH AND PROSECUTE THEM IN ACCORDANCE WITH LAW AND INVESTIGATION INTO THE VIOLENCE

TO:

THE HON'BLE CHIEF JUSTICE AND HIS
OTHER COMPANION JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER

MOST RESPECTFULLY SHOWETH THAT:

1. This petition is filed by victims of the attack that took place on peaceful protestors by the police and gangs affiliated to the party in power at the centre. All the petitioners are those who were severely injured and admitted to hospitals. All of those have experienced a nexus between the hate speech slogan made by 4 prominent persons belonging to the party in power that were repeated again and again not only in Delhi but across the country, which exhorted the followers of these leaders to take the law into their own hands and kill peaceful protestors.

1A. The Petitioners have not approached the concerned authorities for the same reliefs.

2. Victim Petitioners are putting on record (at Annexure P- 1 hereto) the videos that went viral relating to 4 prominent persons as well as other persons from the ruling party and in all these videos the 4 politicians and others were telling their followers as well as the general population that they should kill those protesting

against CAA. The statements made by these 4 persons were as under:

V. Kapil Mishra, 23.02.2020:

""This is what they wanted. This is why they blocked the roads. That's why a riot-like situation has been created. From our side not a single stone has been pelted. DSP is standing beside us. On behalf of all of you, I am saying that till the time Trump goes back, we are going to go forward peacefully. But after that we will not listen to the Police if roads are not cleared after three days. By the time Trump goes, we request the Police to clear out Jafrabad and Chaand bagh. After that, we will have to come on the roads. Bharat mata ki jai! Vande mataram!"

VI. Anurag Thakur, Member of Parliament, Hamirpur Lok Sabha Constituency and Minister of State for Finance, Government of India; 20.01.2020:

“Desh ke gaddaron ko, goli maaron saalon ko”

VII. Parvesh Verma, Member of Parliament, West Delhi; 28.01.2020:

“*The people of Delhi know that the fire that raged in Kashmir a few years ago, where the daughters and sisters of Kashmiri Pandits were raped...caught on in UP, Hyderabad, Kerala, the same fire is raging in a corner in*

Delhi. Lakhs of people gather there. This fire can reach the residences of Delhi anytime. People of Delhi will have to decide wisely. These people will enter your houses, rape your sisters & daughters, kill them. There's time today, Modi ji & Amit Shah won't come to save you tomorrow..."

VIII. Abhay Verma, sitting MLA, Laxmi Nagar, East Delhi;
25.02.2020"

"desh ke gaddaron ko, goli maaron saalon ko"

A true copy of the videos of hate speeches dated 23.02.2020, 20.01.2020, 28.01.2020 and 25.02.2020 is marked and annexed herewith as **Annexure P-1 (Page No. _____)**.

3. After these statements were made the said persons also took part in demonstrations where the *slogan "desh ke gaddaron ko, goli maaro saalo ko"* was repeated again and again. After these leaders engaged in the hate speech and exhortation to murder peaceful protestors, attacks broke out all across Delhi. Therefore this was not simply a case of hate speech but it was hate speech coupled with mobilization so that people were actually killed.
4. A complaint was made at the Jafrabad police station on 23.2.2020 naming the persons involved in the incitement but that FIR was not registered. In fact, it appears that not a single FIR has been registered against the mobs that are controlled by the party in power. On the contrary, the police registered over 123 FIRs

against the victims and others so that they were doubly victimized in that the victims suffered injuries and then they were arraigned as accused persons. Such was the nature of the collusion between the party in power, the militant mobs of the party and the police. A true copy of the police complaint no. DD 27 B made at Jafrabad Police Station dated 23.02.2020 is marked and annexed herewith as **Annexure P-2 (Page ____ to ____)**.

5. Multiple instances of hate speech in addition to the 4 main hate speeches set out above were also put on record. It thus appears that after the 4 main hate speeches delivered by senior politicians including a minister of State, a Member of Parliament and MLAs, others began to emulate them and hate speeches began to spread not only across Delhi but across the country as well. This is why the earlier bench which heard the matter warned that the situation should not escalate to one akin to the Sikh genocide.
6. As a result of judicial abstention and any control over the police hate speech spread like wild fire and the petitioner put on record the following sample additional hate speeches (at Annexure P-1) as under:

- a. Parvesh Verma, Member of Parliament, West Delhi;
28.02.2020:

“If in Delhi, BJP come, then after 11th give me one month, how manyever masjids have been built on government land in my lok sabha , I wont leave even one of them standing.”

b. Tarun Chug, National Secretary, Bharatiya Janta Party;

29.01.2020:

"We will not let Delhi become Syria and allow them to run an ISIS-like module here, where women and kids are used. They are trying to create fear in the minds of people of Delhi by blocking the main route. We will not let this happen.(We will not let Delhi burn).#ShaheenBaghKaSach"

30.01.2020:

"aaj yeh tukde tukde ganga ka head office ban chukka hai shaitani bagh, aur ye log bharat ko, delhi ko Syria banana chahte hai, hum banne nahi denge."

c. Tajinder Pal Bagga; 30.01.2020:

"In Shaheen Bagh, claims are being made that the Indian Army kills its own people. Indian Army is being equated with the Pakistani army. Shaheen Bagh has become a hub on Anti- nationals. And on 11th February, after the results, a surgical strike will be done on this adda."

d. Vishnu Gupta, Founder and National President, Hindu Sena;

30.01.2020:

"Shaheen Bagh me desh desh virodhi naare lagaye ja rahe hai, bharat ko todne ki baaten kahin ja rahi hai, aasam ko bharat se alag karne ki baaten kari ja rahi"

hai....2 feb ko hindu sena ne sabhi aas paas ke gaon vasi, shetra vasi, okhla ke sabhi logon ko bulaya hai... hum in jihadi gaddron ko road se hatayenge, wahan rad se unko khaded diya jayega"

- e. Ajay Bisth (popularly known as 'Yogi Adityanath'), Chief Minister of Uttar Pradesh:

"Dilli ki rajya sarkar ka jo paisa aata hai, ye paisa dilli ki viks par kharch nahi hota, ye paisa yahan ki janta ko shudh jal uplabdh karane me kharch nahi hota. Congress aur Kejriwal, in uppadhamiyon ko kya khilate the? Biryani aur Hum kya khila rahe hain? Goli!"

19.02.2020:

"UP main koi danga nahi hua. Agar koi marne ke liye aa hi raha hai, vo jinda kaise bachega. Police ki goli se koi nahi mara (There were no riots in Uttar Pradesh. If someone comes out with the intent of dying, how will he remain alive? No one died in police firing).....Upadravi, upadravi ki goli se marey hain (the trouble-makers died from bullet of another trouble-maker),"

- f. Somasekhara Reddy, MLA, Karnataka; 03.01.2020:

"It's just a caution for those who are protesting against the CAA (Citizenship Amendment Act). We are 80 per cent and you (Muslims) are 18 per cent. Imagine what will happen if we take charge,...Beware of the majority when you live in

this country. This is our country. If you want to live here, you will have to, like the Australian Prime Minister said, follow the country's traditions,.....So, I warn you that CAA and NRC are made by Modi and Amith Shah. If you will go against these acts, it won't be good.....If you wish, you can go to Pakistan. We don't have any issues. Intentionally, we would not send you....If you will act as enemies, we should also react like enemies.

g. Tejasvi Surya, Member of Parliament, 05.02.2020:

“what is extremely disappointing, what is extremely troubling is that the opposition of this country, knowing fully well that these legislations specially the citizenship amendment act, has nothing whatsoever to do with taking citizenship away from anyone, has gone around the country indulging in a campaign of lies, campaign of slander, misguiding the people of this country.....what is happening today in Shaheen Bagh in Delhi is a stark reminder that if the majority of this country of this country is not vigilant, if the patriotic Indians do not stand up to this, the days of Mughal raj coming back and revisiting Delhi is not very far away. Sir, what is happening in Shaheen Bagh is fanatic islamism, masquerading in the garb of constitutional secularism sir, and therefore we must exercise vigilance to ensure that his country is on the path to true secularism”.

Photographs

7. The Petitioner also put on record photographs of the persons injured by swords and guns and petrol bombs. These photographs. Similar photographs were also placed before the High Court in the Jamia case. A true copy of the photographs of the injured persons and damaged property, dated- 26.02.2020 is marked and annexed herewith **Annexure P-3 (Page ____ to ____)**.

Statutory provisions

8. The relevant provisions relating to hate speech are as follows:

Section 153 A, Indian Penal Code:

“153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill will between different religious, racials, language or

regional groups or castes or communities, or 1. Subs.
by Act 35 of 1969, s. 2, for section 153A. 41

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, 1 [or] 1

[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

(2) Offence committed in place of worship, etc.—
Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

Section 153 B, Indian Penal Code:

“[153B. Imputations, assertions prejudicial to national integration.—(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in subsection (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

Section 295 A, Indian Penal Code:

“ [295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of 7 [citizens of India], 8 [by words, either spoken or written, or or by signs or by visible representations or otherwise], insults or

attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 9 [three years], or with fine, or with both.]”

High Court approach in Writ Petition 565 of 2020

Harsh Mander vs. State

Not as innocuous as it looks

9. Harsh Mander & Another filed a Writ Petition in the Delhi High Court seeking reliefs as set out at Annexure P-4 hereto and the said matter was heard first by one bench and thereafter, on the transfer of the justice hearing the matter, was heard by the bench of the Hon'ble Chief Justice who after hearing preliminary arguments adjourned the matter to 13.4.20. Though that order of adjournment looks innocuous the following circumstances set out will show how arbitrary the order was particularly in the factual context of 10 persons being killed every day in Delhi as a result of physical attacks on the minority community that is protesting peacefully against the CAA. Up to today above 46 persons have been killed, hundreds injured, many of them seriously, properties all across Delhi have been set ablaze and whole communities destroyed. A true typed copy of "Harsh Mander & Anr. V. GNCT of Delhi [Writ Petition (CrI.) 565/2020] filed on 25.02.2020 is marked

and annexed herewith as **Annexure P-4 (Page _____ to _____)**.

10. When the matter was filed and mentioned before the Hon'ble High Court, it was immediately taken up by a bench of the High Court, notices were issued immediately and hearing began focusing, for the time being on the first prayer in the Petition being:

"For a writ of mandamus or any other appropriate writ, order or direction to the respondents to register FIRs against 1) Kapil Mishra 2) Anurag Thakur and 3) Parvesh Verma and all those persons who engaged in criminal activities under Section 147, 148, 149, 153A, 153B, 120B, 295A of the Indian Penal Code read with Sec 3 & 4 of Damage of Public Property Act, arrest them forthwith and prosecute them in accordance with law."

11. The hearing remained inconclusive on that day i.e. 26.2.20 and an order was made which is set out hereunder:

*"IN THE HIGH COURT OF DELHI AT NEW DELHI +
W.P.(CrI.) 565/2020*

HARSH MANDER & ANR. Petitioners Through: Mr.Colin Gonsalves, Senior Advocate with Ms.Sneha Mukherjee,

*Ms.Nabila Hasan, Mr.Siddharth Seem and Mr.Tariq Adeeb,
Advocates. versus*

*GNCT OF DELHI & ORS. Respondents Through:
Mr.Arun Bhardwaj, CGSC with Mr.Tushar Mehta (SGI) for
Union of India. Mr.Rahul Mehra Standing Counsel (CrI.) of
State, with Mr. Tushar Sannu, Mr.Jamal Akhtar,
Mr.Chaitanya Gosain, Mr.Divyank Tyagi, Mr.Amanpreet
Singh and Mr.Anand Thumbayil, Advocates. Mr.Praveer
Ranjan, Special Commissioner of Police. Mr.Mehmood
Pracha, Mr.R.H.A.Sikander, Mr.Jatin Bhatt, Mr.Sanawar,
Ms.Afsha Pracha, Mr.Prateek Gupta, Mr.Yashovardhan Oza,
Ms.Vidushi Bajpai and Mohd. Danish, Advocates for
Applicant. CORAM: JUSTICE S.MURALIDHAR JUSTICE
TALWANT SINGH O R D E R % 26.02.2020*

*1. Although the notice issued in this petition was accepted
in the forenoon today by Mr. Amit Mahajan, learned counsel,
on behalf of the Respondent Nos.2 and 3, i.e. Commissioner
of Police, Delhi (CP) and Deputy*

W.P.(CrI) 565/2020

*Commissioner of Police (North-East) [DCP (NE)], a serious
objection was raised in the post lunch session by Mr. Rahul*

Mehra, learned Senior Standing Counsel (Criminal) that given the judgment of this Court in GNCTD v. Union of India 232 (2016) DLT 196 (DB), and of Constitution Bench of the Supreme Court in State (NCT of Delhi) v. Union of India and Anr. (2018) 8 SCC 501 and of a two-Judge Bench of the Supreme Court in GNCTD v. Union of India 2019 SCC Online SC 193 his role as the only counsel who can possibly represent the Delhi Police cannot be bypassed. He pointed out that Union of India is not even a party to the petition.

2. In response to the above submission, Mr. Tushar Mehta, learned Solicitor General of India ('SG') handed over an application praying that Union of India should be impleaded as party/Respondent to the petition. The said application is taken on record. The Registry is directed to number the application. Notice is issued on that application.

3. The Court is at this stage only considering prayer (I) in the present petition. This Court has heard the submissions of Mr. Colin Gonsalves, learned Senior counsel for the Petitioners, Mr. Tushar Mehta, learned SG and Mr. Rahul Mehra, learned Senior Standing counsel (Criminal) for the Delhi Police.

4. The Court has viewed four video clips in the Court. The first of the video clips is of the speech delivered by Mr. Anurag Thakur, who is a Member of Parliament from the Hamirpur Lok Sabha constituency in Himachal Pradesh and also happens to be a Minister of State for Finance in the Government of

W.P.(CrI) 565/2020

India. This is a speech delivered on 21st January, 2020.

5. The second clip is of an interview given by Mr. Pravesh Verma, Member of Parliament from the West Delhi Constituency on 28th January, 2020 to the HT Channel. The third is a video clip of the speech delivered by Mr. Kapil Mishra on 23rd February, 2020 in the presence of DCP, North East Mr. Ved Prakash Surya. The fourth is a video clip that shows Mr. Abhay Verma, a sitting MLA of the Laxmi Nagar constituency in Delhi on 25th February, 2020, repeating the very slogan that features in the first clip of Mr. Anurag Thakur.

6. It must be mentioned here that in the forenoon session, Mr. Tushar Mehta stated that he had not watched any of the above videos. One of these clips of Mr. Kapil Mishra was then played in open Court in the pre-lunch session. During the

lunch recess, Mr. Mehta apparently watched the remaining three videos.

7. In the post-lunch session, Mr. Praveer Ranjan, Special Commissioner of Police, stated that while he had watched the first three videos, he had not viewed the fourth video of Mr. Abhay Verma. That clip was then played in the Court for his benefit.

8. The refrain of the learned SG's submission has been that the time is not 'appropriate' or 'conducive' for FIRs to be registered in relation to these clips. He further refers to other video clips, which according to him are 'inflammatory' and which according to him would equally require action by

W.P.(CrI) 565/2020

the police at a 'conducive' time.

9. When asked to elaborate which is this 'conducive time', the learned SG stated it would not be possible for him to state at this stage. In light of what has been witnessed in the capital city in the last three days, with the number of death in the riots having risen to 18 (officially), with a large number of persons being injured, some critically, with the unabated arson and looting of properties and incidents of violence, stone pelting, the Court posed specific queries to

Mr. Praveer Ranjan, Special CP about what the consequences would be with every day's delay in registering an FIR for each of the speeches played in Court which ex facie appear to be answering the description of the crime of hate speech in terms of Section 153A (a) and (b) IPC, both of which are cognisable and non-bailable. In addition to these clips the learned SG has referred to certain other clips which he himself terms as 'inflammatory' and in respect of which no FIR has been registered. The Court has also impressed upon Mr. Ranjan that he should convey to the CP the 'anguish' of the Court regarding the consequences of failure to register FIRs in an atmosphere like the present one.

10. It must be added at this stage that Mr. Ranjan volunteered that in relation to the deaths, the destruction of properties, injuries to large number of people in the incidents over the last three dates in the capital city, as many as eleven FIRs have been registered. This in fact underscores the point which the Court wishes to make, particularly to the Delhi Police, viz., that an FIR is first and foremost an acknowledgement of the commission of a crime. The police should be guided by the judgment of the Constitution Bench of

Supreme Court in Lalita Kumari v. Government of Uttar Pradesh (2014) 2 SCC 1 and go strictly by the mandate of the law. It should seriously consider the consequences that would ensue with every day's delay in registering FIRs not only on the basis of the video clips that have been played in Court but all other video clips of speeches/actions by anyone, whosoever it may be, which disclose ex facie the commission of an offence, bearing in mind that the rule of law is supreme and that no one is above the law.

11. Mr. Ranjan Special CP, assures the Court that he will himself sit with the CP today itself and view all the videos, not limited to the videos played in the Court but any other videos that might be provided to them and which they perhaps already are in possession of and take a conscious decision which will be communicated to the Court tomorrow itself.

12. List on 27th February, 2020 at 2:15 PM.

13. Dasti under signature of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J. FEBRUARY 26, 2020 mr''

A true typed copy of the order in Harsh Mander & Anr. V. GNCT of Delhi & Ors. [Writ Petition (crl.) 565/2020] dated 26.02.2020 is marked and annexed herewith as **Annexure P-5 (Page _____ to _____)**.

The matter was posted by this bench of the High Court on the next day i.e. 27.2.20 at 2:15 pm but it is informed that the notification transferring the Hon'ble Justice to the Punjab and Haryana High Court was issued. With that the urgency of the matter was forgotten and the grave criminality engaged in by persons who instigated large scale killing, destruction of property, arson and causing grievous hurt was also instantly forgotten. On 27.2.20 at a perfunctory hearing the matter was adjourned to 13.4.20 despite counsel for the petitioner stating that on the night of 27.2.20, 10 persons were killed in Delhi and it was expected that murders would take place at 10 per day. A true typed copy of the order in Harsh Mander & Anr. V. GNCT of Delhi & Ors. [Writ Petition (crl.) 565/2020] dated 27.02.2020 is marked and annexed herewith as **Annexure P-6 (Page _____ to _____)**.

Issuing notice and then long adjournments in emergency matters

12. This practice of the Hon'ble Bench of the High Court of entertaining life and death matters and adjourning them endlessly gives the appearance of entertainment of the grievances of the victim community but in reality it amounts to nothing. The following are the examples:

I. Nabila Hassan vs. Union of India (Writ Petition Crl. 3522/2019) was one relating to the brutal attack on the students of Jamia by the Delhi Police. The matter came up before the Delhi High Court on 19.12.2019 and without much ado was adjourned to 04.02.2020 to the intense disappointment of the Jamia students. It then came up on 04.02.2020 and was immediately adjourned when the State asked for time to file a reply after having defaulted over two months. The matter was adjourned to 23.04.2020 and the students have little confidence or faith that justice will be done to them. The prayers in that Petition were most urgent and are set out herein below:

"a. For a writ of mandamus or any other writ, order, directing the Respondents to declare on their website the full list with names of students and residents of Jamia Milia Islamia University and Aligarh Muslim University that were detained by State Police and paramilitary forces;

b. For a writ of mandamus or any other writ, order, directing the Respondents to provide detained persons access to their family members and to legal counsel;

c. For a writ of mandamus or any other writ, order, directing the Respondents to release all the students and residents so detained;

d. For a writ of mandamus or any other writ, order, directing the Respondents to provide instant and quality medical care to students and staff detained and others injured during the violence;

e. For a writ of mandamus or any other writ, order, directing the Respondents to immediately cease the violence being inflicted on to the students and residents of Universities,

f. For a writ of mandamus or any other writ, order, directing the Respondents to quash any and all criminal proceedings initiated against students of the Universities;

g. For a writ of mandamus or any other writ, order, directing the Respondents to preserve the CCTV footage of all cameras in and around the Universities.

h. For a writ of mandamus or any other writ, order, directing the Respondents to provide adequate monetary compensation to all persons detained and/or injured by the Police and paramilitary forces.

i. For a writ of mandamus or any other writ, order, directing the Respondents to set up a court-monitored committee headed by a retired High Court or Supreme Court Judge that shall conduct judicial inquiry into the acts of violence and arbitrary detentions by the State Police and Paramilitary Forces in a time-bound manner;

j. For a writ of mandamus or any other writ, order, directing the Respondents to ensure the safety of all students within JMI university campuses and to ensure that no student is forced to leave the campuses.

k. For a writ of mandamus or any other writ, order, directing the Respondents to ensure reopening of the University.”

II. Thereafter, the following Petitions were filed in the Delhi High Court and met the same fate of prolonged adjournments as under:

- i. Mohd. Mustafa v. Union of India [Writ Petition (Crl.) 575/2020]
- ii. Shayan Mujeeb v. Union of India [Writ Petition (Crl.) 472/2020]
- iii. Mohd. Minhajuddin v. Union of India [Writ Petition (Crl.) 414/2020]

Arrest of the instigators the only way to bring peace

- iv. Petitioner is firmly of the belief that if the leaders instigating the mobs to commit ghastly crimes have FIRs registered against them and are arrested and kept in jail; this would have an immediate and salutary

effect on the situation. If not done the violence can possibly exacerbate to a full blown national law and order situation.

Current situation and reliefs sought

- v. At Maujpur from 23.02.20 onwards the attacks on the peaceful protestors by communal gangs began. This continued for 4 days at a very intense level and the violence is continuing even today. During these days the violence spread from Maujpur to Chand Bagh, Shiv Vihar, Mustafabad, Sherpur Chowk, Jaffrabad, Chandu Nagar, KhajuriKhas, Moonga Nagar, Noor EiElahi, Kardampuri, Ghonda, SubhashMohalla, Brijpuri, Yamuna Vihar, Karawal Nagar, Bhagirathi Vihar, Johripur, Kabir Nagar, Gamri Village, Gokalpuri and Ashok Vihar.
- vi. In Maujpur, Kapil Mishra made the hate speech set out above, gave a clear signal that the police were with him, and he came with his communal gang who, as soon as he left were given the signal to attack. Property was destroyed, about 60 persons were injured many of them seriously, property was set fire to, vehicles were destroyed of the minority community only, houses and shops were looted and this violence went on for 4 days without the police taking any

action. The SHO, the ACP, and the DCP of the area took no steps to control the rioters and it appeared as if the communal gangs had full immunity to do whatever they liked.

- vii. In Chand Bagh, where a peaceful sit-in protest was going on since 13.1.20 without any untoward incident, as soon as the protestors announced on 23.2.20 that a peaceful march would take place to Rajghat and started the march at 11:19 a.m. leaving half the road free from traffic. The DCP, the ACP and the SHO stopped them and asked them to squat on the road. The protestors squatted on the road till 8 p.m. and thereafter began returning to the protest site. The road was completely cleared. There was no violence at all from the protestors' side. As the protestors were reaching the protest site they found that communal groups had gathered near Victoria School. Journalists who went over to these groups could see that they had thrown stones and vehicles were damaged. This escalated and this communal groups destroyed a restaurant, burned vehicles and beaten an auto driver badly. They then arrived at Chand BaghPuliya and started throwing stones at the minority community. This is the same place where the body of an IB officer

Ankit Sharma was found. At that stage the police turned up at the Puliya and on the basis of an understanding with the communal groups they began an indiscriminate assault mainly on the local minority community who were merely standing by watching the developments. The communal groups shouted Jai Shri Ram and all those shouting this slogan were not touched by the police. The police used tear gas and apparently even opened fire.

- viii. On 24.2.20, the protest site remained peaceful till 10 a.m. At about 10:30 the police entered 25ft road and lathi-charged the residents who were doing nothing untoward. A 90 year old woman suffered a head injury. Thus the picture that emerges and this is backed up with videos is that tear gas was being lobbed on the minority community that was peaceful, the police was concentrating on its attack on that very community, behind the police stood a communal mob of about 800 persons who were shouting "Police prashashanhamaresaathhai" and "police prashashanzindabad". The police handed over the tear gas gun to some of these persons who used these guns to lob tear gas on the minority community from the terrace of Mohan Nursing Home. There are videos

to this effect. Earlier the men from the communal groups exposed their genitals and shouted "yeh lo azaadi". They also shouted "road par kheechkelao, aurragado in aurtonkoaurdedoazaadi". This continued for about 8 hours. There were many serious injuries. A pregnant woman was beaten by the police and there is a video of NDTV in this regard. Once these attacks began by 1 p.m. the protest site was cleared and the attacks focused on the locals and the property. A shrine was burnt. The communal mob burned the petrol pump nearby. During all this the police and the mob appeared to be acting together, they were standing side by side, no action whatsoever was taken against the mob, even though there was a considerable police force. The violence went on throughout the night. Many places, houses and shops were burnt. The injured persons lying on the ground injured and bleeding were forced to sing the national anthem and vandemataram and a policeman put his lathi in the mouth of an injured person and said "ye le aazadi". One of these injured persons – Faizan – a 23 year old boy died.

- ix. On the next day, 25.2.20 the women of the area repaired the site and were in the process of resuming

their peaceful sit-in protest by 9 a.m. when the communal forces gathered again in much larger number and began the stone pelting. These groups also went inside the narrow lanes of the community and began assaulting. Instead of controlling this mob the police continued lobbing tear gas on the very community that was being attacked and fired tear gas in the houses of the community. Once again the police was seeing handing over the tear gas gun to the communal mob who then used it on the community. The communal mob blocked the roads, they blocked the pathway for the ambulances to enter and continued rampaging for several days. Once again the police took no action against them. In fact the police supported the communal groups in their repeated attacks. The DCP, the ACP, Anup Kumar and the SHO Tarkeshwar are responsible for the deaths, injuries and loss of property and deserved to be prosecuted. It appears that the persons in the communal mob were not local people but were brought from outside. Local leaders gave interviews on TV saying that they had lived in the area for a long time and that the assailants appeared to be outsiders. One positive development was that some members of the Hindu community within the area were providing shelter to the affected

community. Throughout this incident the slogan "deshkegaddaronko - golimarosaalonko". Distress calls were made to the police repeatedly by the women who informed the police that they feared sexual assaults. They got no help. They then contacted journalists. A Muslim auto driver who was a tenant in the area was beaten up by the communal mob, he was photographed by the mob with an axe in his hand which was handed over to him by the mob themselves and later he was brutally tortured in police custody and his nails were pulled out. He is now in Mandoli jail.

- x. In all the affected areas large numbers of minority community have fled leaving their homes and belongings behind. In Chandbagh alone over 5,000 people have fled. The Victoria school, run by the minority community, was torched. In this area the people are facing a major food problem. Wheat flour that used to sell at Rs. 40 per kg is now selling for Rs. 100. Milk that usually sells at Rs. 56 per liter now sells at more than Rs. 100.
- xi. At Gokulpuri the tyre market consisting of 214 shops largely operated by the minority community was torched and gutted from 24.2.20 and thereafter. A

mosque in the area was torched and completely destroyed. There are videos covering these incidents.

- xii. At Ashok Vihar, the communal mob climbed the minaret of a mosque and put a Hanuman flag. The mosque was vandalized extensively.
- xiii. At Sherpur Chowk stone pelting started by the communal groups immediately after the hate speech done by Kapil Mishra around 4:30 p.m. Muslim shops were vandalized after these structures were specifically identified. The three nearby areas Chandu Nagar, Moonga Nagar and Khajuri Khas were similarly vandalized. The Fatima Masjid, Khajuri Khas and some madrasas at Chandu Nagar were vandalized.
- xiv. The Shiv Vihar, Rajadhani Public School was seized and occupied by the communal mob for 24 hours and was used for stone throwing and other forms of violence. There were many injured persons. This was an area with the maximum casualties and bullet injuries have happened.
- xv. The testimonies of some of the victims of the areas where criminal activities took place are at Annexures P- .

xvi. Reports of the communal violence are hereby annexed at Annexures P- . These are from the Wire, The Quint, The Print, Caravan.

xvii. The situation in the hospitals is as follows:

There are at least 250 persons injured admitted in hospitals. Some of them are in ICU. The number of confirmed deaths are upwards of 46. The unofficial number is at least double that. Many of the bodies are not identified. Bodies are not being returned to the relatives who are grieving for days outside the hospitals. Relatives are being sent from pillar to post.

xviii. On 01.03.2020, AAP MLA Gopal Roy along with other persons visited the GTB Hospital. They dispersed monetary compensation of Rs. 20,000 to injured persons upon filling up of the form. However, persons who had lost their documents such as Aadhar card due to massive destruction of property were denied compensation and they were asked to produce identity proof which at this point in time is absolutely impossible for them.

xix. It is reported that the police have now filed about 123 FIRs but it appears that there is not a single FIR against the police for their criminal and communal conduct and some token and unserious FIRs have

been filed against the communal groups in a vague manner. Thus the overall approach of the Delhi Police was to take the victim community and to make them accused persons in the FIRs.

- xx. Delhi Police has now come out with photographs of alleged rioters on the Delhi police website. This was displayed on 27.2.20. This is at Annexure P- hereto. From this it can be seen that only the members of the minority community have been identified.

GROUNDS

17. Hence the Petitioners move before this Hon'ble Court by way of this petition, on, inter alia the following grounds:

- A. BECAUSE the local residents were participating in a peaceful and lawful demonstration and on other instances in past as per their rights enshrined under Article 14, Article 19 and Article 21 of the Constitution of India, UN Basic Principles on the Use of Force, Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR).
- B. The Delhi Police did not have the right to interrupt the protestors' freedom of speech, particularly as they were participating in a peaceful demonstration. Therefore, there has been a breach of Article 19(1) of the Constitution of India.

- C. Because the State has breached the Constitution by violating Article 21 of the Constitution of India. Article 21 states:

“Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.”

- D. Because the Delhi police and armed right wing mob deprived the residents and peaceful protestors of their life and personal liberty by beating them severely, by sexually assaulting females, and by detaining a group of students and torturing them. The State has vindicated the sacrosanct fundamental right to life and the personal liberty of the peacefully protesting students. It is pertinent to note that Article 21 contains an exception viz. “procedure established by law.” The Supreme Court construed the definition and purview of a ‘procedure established by law’ in *Maneka Gandhi v Union of India*, as one that is ‘fair, just and reasonable.’ Undoubtedly, the Police were not following any fair, just and reasonable procedures in the present case
- E. Because the Police did not uphold allegiance to the Constitution of India as required by the Government of India Code of Conduct for Police.

- F. Because the Police failed to recognise and respect the limitations of their powers and functions in contravention with the Government of India Code of Conduct for Police.
- G. The police did not keep in mind the welfare of the people and was not sympathetic or considerate towards the Petitioners in contradistinction with the Code of Conduct for Police.
- H. BECAUSE Delhi police exercised arbitrary violence against the Petitioners in breach of the international standards enumerate hereunder:
- a. The State breached Article 5 of the United Nations Declaration on Human Rights ('UDHR') which provides that no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.
 - b. The State breached Article 3 of the UDHR which provides that:

"Everyone has the right to life, liberty and security."
 - c. BECAUSE State Police and Paramilitary Forces attacked, molested, sexually assaulted, and ripped

off items of clothing such as hijabs and naqabs from female protestors of all ages on 10.02.2020. The violence against women exercised by police and State Police and Paramilitary Forces is in breach of Article 2(d) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which provides that States must take all appropriate measures to *“refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.”* The CEDAW Committee’s General Recommendation No. 19 provides that the CEDAW applies to violence perpetrated by public authorities, and therefore the acts of the police on 10.02.2020 fall within the purview of the Convention.

- d. The State breached General Provision 8 of the UN Basic principles on the Use of Force and Firearms which states that:

“Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.”

- e. BECAUSE State Police and Paramilitary Forces used extreme, ruthless and excessive physical force and violence, including sexual assault and molestation of women, against unarmed and peacefully protesting students. They did so in contravention of Article 3 of the UN Code of Conduct for Law Enforcement Officials, which states that Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The actions of the police were also in breach of Article 5 of the UN Code of Conduct for Law Enforcement Officials, which provides that law enforcement officials may not inflict or instigate any act of torture or other cruel, inhuman or degrading treatment or punishment.
- f. BECAUSE the State Police and Paramilitary Forces used unnecessary and disproportionate measures, including flash-rods, lathis and chemical gases against peaceful protestors who had not committed any unlawful act, which caused many of them to become dizzy and faint. Thus, this is in breach of the UN Human Rights Guidance on Less-Lethal weapons in Law Enforcement.
- I. BECAUSE State Police and Paramilitary Forces illegally and arbitrarily picked up and detained peacefully protesting

students, tortured the students in custody and denied them access to legal aid.

- J. BECAUSE the police attack on peacefully protesting individuals who were mainly students of Jamia Milla Islamia University on 10.02.2020 constitutes state organised violence.
- K. The Petitioners have not filed any other petition seeking the same relief in this Hon'ble Court of any other Court.

PRAYER

In view of the facts and circumstances, the petitioners pray for the following:

- A. For a writ of mandamus or any other appropriate writ, order or direction to the respondents to register FIRs against 1) Kapil Mishra 2) Anurag Thakur 3) Parvesh Verma and 4) Abhay Verma and all those persons who engaged in criminal activities under Section 147, 148, 149, 153A, 153B, 120B, 295A, 320, 302, 307 of the Indian Penal Code read with Sec 3 & 4 of Damage of Public Property Act, arrest them forthwith and prosecute them in accordance with law.

- B. For an order directing the constitution of an SIT consisting of officers from outside Delhi and headed by an officer of integrity and repute, capable of acting in an independent manner.
- C. Should the law and order situation deteriorate further for an order directing the Union of India to request the army to maintain law and order in Delhi and particularly in the areas where the communal attacks on the people are most ferocious as set out in this petition.
- D. For an order directing a retired Judge to enquire into the communal attacks that took place as described in this petition and to identify the police persons involved in the rioting and criminal conduct and thereafter direct that these police officers be dismissed from service in accordance with law.
- E. For an order directing exemplary compensation to be paid to those who were killed or injured as set out in this petition.
- F. For a writ of mandamus or any other writ, order, directing the Respondents to declare on their website the full list with names of persons that were detained by State Police and paramilitary forces.

G. For a writ of mandamus or any other writ, order, directing the Respondents to provide detained persons access to their family members and to legal counsel.

H. For an order directing the respondents to forthwith put up on a website the list of the persons detained by the police from 23.2.20 onwards together with full details regarding the name, gender, age of the persons detained together with the concerned police stations, the date of arrests/detention, whether the person has been released and if so details in respect thereof, and if in custody the place of custody and all other relevant details.

I. For a writ of mandamus or any other writ, order, directing the Respondents to preserve the evidence and CCTV footage of all cameras in and around the protest sites.

J. For an order directing the respondents and all other hospitals and health institutions public or private, to provide the families of the affected persons forthwith with the post mortem reports and their entire medical records and further to provide the families of the deceased with the bodies immediately. For an order directing the respondents

to do the DNA test in cases where only unidentifiable parts of the body of the deceased persons are available. Further for an order directing the respondents to keep the bodies of the deceased in a dignified and hygienic manner in the mortuaries and elsewhere with immediate effect.

K. For an order directing the respondents to forthwith provide adequate cooked food to all the affected families in the areas mentioned in this Petition as well as the hospitals and other areas of detention.

L. For a writ of mandamus or any other writ, order, directing the Respondents to ensure the safety and protection of all the protest sites, especially women and children.

M. For any other order/direction that this Hon'ble Court may deem fit.

Drawn on:

Filed by:

Drawn by: Sneha Mukherjee

Filed on:

SATYA MITRA

Advocate for the Petitioners

Bar & Bench (www.barandbench.com)

Bar and Bench

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