

Before the Commission of Inquiry

(Set-up by way of Order Dated 12-12-2019 passed by the Hon'ble Supreme Court in
WP (Crl) No 348/2019)

In relation to the Alleged Encounter in which four persons, namely Mohammed Arif,
Chintakunta Chennakeshavulu, Jolu Shiva & Jollu Naveen Were Killed in Hyderabad on 6th
December, 2019

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WRITTEN SUBMISSIONS ON BEHALF OF CW-2 K SAJAYA

I. Background

1. The present proceeding before this Hon'ble Commission arose from legal interventions filed before two constitutional courts in the interest of justice and to uphold the rule of law. The admitted case of all parties is that on 06.12.2019, Mohammed Arif, Chintakunta Chennakeshavulu, Jolu Shiva and Jollu Naveen were killed by policemen, while they were in police custody pursuant to judicial orders. Law and public policy both mandate for these custodial killings to be investigated, and even more so as some of the deceased suspects were minors on the date of alleged encounter , and also belonged to the Valmiki Boya Tribe, a vulnerable Backward Caste / Community in the State of Telangana.
2. This Hon'ble Commission was constituted by the Supreme Court of India vide Order dt. 12.12.2019 (See: **Ex. S-7**) to undertake the following exercise:

“Keeping in view all the peculiarities of the case, it is desirable and necessary to know the truth relating to the incident which has resulted in death of all the four accused persons when they were in custody of the police pursuant to an order passed by the Court. In other words, police was given custody of the four accused persons under a Court order. The death had occurred when the accused were in custody of law.

We are, therefore, of the considered view that an Inquiry Commission needs to be constituted for inquiring into the circumstances in which the four accused persons, namely, Mohammed Arif, Chintakunta Chennakeshavulu, Jolu Shiva and Jollu Naveen, were killed in Hyderabad on 6th December 2019.”

3. That it is submitted that the “*circumstances in which the four accused persons were killed*”, would take into account all developments from the registration of Cr. No. 480/2019 Woman Missing Case, RGIA Shamshabad P.S. on 27.11.2019 till the custodial killing of the four deceased suspects on 06.12.2019, and also include all developments in the investigations and inquiries conducted thereafter.
4. The relevant dates and events are briefly summarised below:

27.11.2019 26-year-old veterinarian doctor, Ms. Disha (being the assigned name as rape victim’s identity concealed as per law), while returning from work at around 9:22 pm, called her younger sister from ORR Toll Plaza, expressing fear for her safety and security, as her self driven two wheeler scooter had a flat tyre and was stuck. However, around 9:44 pm, when the doctor’s younger sister tried to contact her, the doctor’s mobile phone was switched off. The doctor’s family went to ORR Toll Plaza searching for her. They were made to go from one police station to another before eventually a missing woman complaint was registered as Cr. No. 480/2019 Woman Missing Case, RGIA Shamshabad P.S. [Refer to **Ex. S-44**, Copy of FIR in Cr. No. 480/2019)

28.11.2019 In the early hours of 28.11.2019, the charred body of Ms. Disha was found in the Shamshabad area, on the outskirts of Hyderabad. Ms. Disha had been allegedly raped and burnt to death. Common people were angry not just against the perpetrators but also against the inaction of the police on the night of 27.11.2019, when the

parents of Disha had contacted the local police station seeking help for their daughter, who had called them while being stranded on the highway with a flat tyre. An angry and anxious public protested against the police as well as senior State politicians, and there was a lot of pressure on the police to deliver. Three officers were suspended for not registering a case on 27.11.2019 in a timely manner. A case in this regard was registered at Shadnagar P.S., Cyberabad, as Cr. No. 784/2019 u/Sec 120(B), 366, 393, 506, 376D, 302, 201 r/w 34 Indian Penal Code. [Refer to **Ex. S-43**, Copy of FIR in Cr. No. 784/2019)

Intervening night 28.11.2019 and 29.11.2019 Md. Arif, Jollu Naveen, Jollu Shiva and Chintakunta and Chennakeshavulu were arrested from their residential homes by the police led by CW-15 Sridhar Kumar, with the help of CW-43 P. Srinivas Reddy.

Between 5:20 to 9:20 pm, purported confessional statements of all four accused persons were recorded inside PS Shadnagar by CW-44 in the presence of panch witnesses.

30.11.2019 Pertinently, the police did not seek police custody of the accused, and the 4 arrested men were remanded to 14 days judicial custody in Cherlapally jail.[Refer to remand order in **Ex. C-55**]

02.12.2019 The police filed an application seeking police custody of the four suspects, and the same was granted by the JMFC Shadnagar (CW-37) between 4:00pm and 5:00pm on the same day. [Refer to **Ex. S. 22**].

- 04.12.2019 The police took the four suspects out from Cherlapally Jail in pursuance of the order dt. 02.12.2019 passed by the JMFC Shadnagar, and took them to Ravi Guest House.
- 05.12.2019 Purported additional confessional statements of all four suspects are recorded at Ravi Guest House by CW-44 in the presence of Panch witnesses [Refer to **Ex. S. 27**]
- 06.12.2019 All four suspects were killed in an encounter in the early hours of the morning when the accused were taken to Chatanpally for proceedings u/Sec 27 Indian Evidence Act, 1872. Following this Cr. No. 803/2019 u/Sec 307, 394, 224, 332 r/w 34 IPC and Sec. 174 r/w 176 Cr.P.C. and Sec. 25(1-B)(a), 27 Arms Act was registered at Shadnagar P.S., Cyberabad, by the Assistant Commissioner of Police, Cyberabad, against the 4 deceased suspects.
- Hours after the alleged encounter, even as the bodies of the 4 deceased men lay in the open, the Commissioner of Police, Cyberabad, Mr. V.C Sajjanar (CW-38) held a press conference from the place of the incident and announced that the four arrested men were taken to the scene of offence for the reconstruction of the scene of offence and for collection of material objects, such as the victim's cell phone and power bank. He added that soon after they had reached the scene of the offence, the four men allegedly broke loose from their custody and that they attacked the policemen with sticks and stones, that they snatched the weapons from 2 policemen and started firing at them. Mr.Sajjanar stated that at this point the police, in self defense, fired upon the four arrested men and later found that they had gunned down all the four men. Further, he stated that 2 policemen had suffered injuries

and were admitted to hospital. In response to a question in the press conference if the policemen suffered bullet injuries, the Commissioner of Cyberabad said that there were no bullet injuries. In the press conference it was further stated by the Commissioner of Police, Cyberabad, that the 4 accused men were taken to the crime scene by 10 police officers, each of whom was armed with a firearm. In the press conference, the Commissioner also stated, “*See law has done its duty, see, law has done its duty, that’s all that I can say.*”

- 06.12.2019 evening
8pm hearing in High
Court
- Women rights’ activists and social activists wrote to the Chief Justice of the Telangana High Court, and upon the said representation, the Court took suo motu cognizance and registered WP(PIL) 173 of 2019.
- The High Court directed for videography of the post-mortem and preservation of the dead bodies.
- 08.12.2019
- State of Telangana constituted a SIT to probe the case. [Refer to **Ex. S5**]
- 09.12.2019
- Telangana High Court in the suo motu proceedings ordered that the bodies be transferred to Gandhi Hospital for preservation.
- 12.12.2019
- In WP (CrI.) 348 of 2019, Supreme Court of India directed that a Commission of Inquiry be constituted to uncover the truth in the present case. [Refer to **Ex. S6**]

17.12.2019 In WP(Crl) 364 of 2019, where K Sajaya (CW-2) is the lead petitioner, the Supreme Court directed the parties to approach the High Court for collection of evidence. Pursuant to said order, I.A. No. 1 in WP (Crl) 173 of 2019 was filed before the High Court of Telangana.

21.12.2019 Telangana HC on I.A. No. 1 of 2019 in WP(PIL) 173 of 2019 passed detailed orders for preservation and collection of evidence in order to ensure that the same is placed before the Commission of Inquiry. [Refer to **Ex. S7**]

II. Why did women's rights and social activists intervene through a letter representation to the Hon'ble Chief Justice ?

5. The news of the alleged police encounter shocked many, as it denoted a descent into vigilante and trigger-happy notions of instant justice, which is anathema to the rule of law. Various social activists and journalists were deeply pained by the sight and reports of public adulation and celebration of the encounter as a just punishment for the suspects, including by political office bearers. The press conference held by CW-38 Commissioner of Police, VC Sajjanar, in breach of all norms of supremacy of rule of law which governed the function and duties of the police and contrary to legal process, awarded a certificate of innocence to the policemen involved in the encounter, even before any inquiry or investigation, as mandated by law, had commenced. Such acts of the senior most police official, coupled with widespread adulation for the killing of four suspects, cast a dark shadow over the prospects of any fair inquiry or investigation into the encounter, as the incident already stood pre-judged and celebrated. It was in these circumstances that the intervention of constitutional courts was sought to reinstate some sanctity to the legal process so that the rule of law can be restored, and the killing of four suspects in a police encounter received a fair and impartial probe. It was only upon the intervention of the civil

society members that the present Commission of Inquiry was constituted by the Hon'ble Supreme Court, and the High Court of Telangana passed detailed orders which led to the preservation of crucial material evidence that has now been presented before this Hon'ble Commission.

6. That society's cry for justice against custodial death was judicially acknowledged in *DK Basu vs State of West Bengal* (1997) 1 SCC 416, where it was held:

“However, inspite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the creditibility of the Rule of Law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.” (Para 18)

7. That it is submitted that women's fundamental rights guaranteed by the Indian Constitution, including, the right to life with dignity; freedom of movement; freedom to practise and profession; all stand jeopardised by the unending spiral of violence against women. It is indeed poignant that in the 21st century, a young professional woman, Disha, returning home from work did not make it back home safely on that fateful night. When one woman suffers an incident of sexual violence, the impact is felt by all women. All women in this country have a legitimate expectation that the law of the land will step in to hold the perpetrators to account and deliver justice. The

rule of law provides a guarantee and assurance to women of the enjoyment of equal citizenship in the exercise of their basic rights. Any action, whether of criminals or State agents, which poses a threat to the rule of law, in turn creates a society that jeopardizes the freedoms, rights and safety of women, as impunity and rule of law cannot coexist. The gruesome killing of Disha affected women as a class, and all women have a stake in combating such violence and seeking a just society premised on rule of law. But when the criminal justice system is completely bypassed by police action which arbitrarily decides between innocence and guilt, it is incorrect to state that “*the law has done its duty*”. When perpetrators of violence on women’s bodies are not dealt with in accordance with law, the rights of women as a class are in jeopardy, and that is what led CW-2 K Sajaya and others to seek the intervention of constitutional courts. Derogation from rule of law is not permissible under any circumstances and trigger happy solutions by men in uniform to an incident of gang rape and murder of a young woman, will not secure justice for women.

III. Substantive justice in criminal law lies in procedural sanctity

8. The Code of Criminal Procedure, 1973, is not a mere collection of various administrative or processual norms and methods of investigation and litigation in criminal cases. It is a detailed enumeration of various procedural and substantive aspects of law that define the rights of various parties in a criminal case, and especially the rights of the accused. It is trite in law to state that adherence to procedural law is imperative for human rights and freedoms to be safeguarded.
9. The Code of Criminal Procedure, 1973, embodies various substantive as well as fundamental rights of persons who are treated as suspects or accused in a criminal case, and the investigating agency or the police is not at liberty to ignore or trample over criminal procedure, as that amounts to denial of the rights of the suspects and accused to the extent that it casts a shadow over the entire investigative process. The dictum, “*Justice must not only be done, but seen to be done*” would lose all meaning if the police officers investigating an alleged crime were to ignore criminal procedure and proceed at will, and such investigations shall forever be tainted and inspire no confidence in the outcomes. With that perspective, it becomes very pertinent that the

identification, arrest and other investigative elements in the present case are marred with illegalities that cast a huge cloud of suspicion over the sanctity of the process and raise serious concerns which require proper investigation. The Hon'ble Supreme Court held in *Re Madhu Limaye 1969 (1) SCC 292*,

“As stated in Ram Narayan Singh vs. State of Delhi & Ors. this court has often reiterated that those who feel called upon to deprive other persons of liberty in the discharge of what they conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law...” (Para 10)

IV. Illegalities during investigation of Disha gang-rape and murder

A. Time and manner of arrest

10. That it is evident from a perusal of the depositions of witnesses before this Hon'ble Commission, as well as from the records of arrest of the deceased suspects, that the police has deliberately and consistently drawn a veil over the illegalities of the procedure adopted by them while arresting the deceased suspects. The whitewashing and suppression of the illegalities of the arrest has been laid bare in the deposition of the family members of the suspects, as well the cross examination of CW-15, A. Sreedhar Kumar, the then SHO Shadnagar PS who was also the arresting officer, and CW-44, ACP Vasam Surender, the Investigating Officer in Cr. No. 784/2019.
11. That it is the case of the police that the deceased suspects were arrested on 29.11.2019 between 1:00- 2:00 pm from their homes in their respective villages at Gudigandia and Jekler and were brought to P.S. Shadnagar where Arrest Memos were executed.
12. That the family members of the deceased suspects have deposed that the deceased were in fact apprehended from their homes between 3:00-4:00 am on 29.11.2019, by persons in civil clothes, who were accompanied by one Srinivas Reddy, who is the owner of Lorry No. TS 07 UA 3335, which is said to be involved in the commission of the offence against Disha.

Arrest of C. Chennakeshavulu

13. That CW-3 (Smt. Chintakuntla Renuka, wife of deceased C. Chennakeshavulu) states that her husband was taken from their house at 3:00 am by persons in civil clothes, who were accompanied by Srinivas Reddy. She further states that the family of the deceased were told that the deceased was being taken to identify the house of Arif and will be brought back to them. No signatures were obtained from the family on 29.11.2019. (Refer to Q. 18, 20, 22, 24, 27 in CW-3 deposition)

Arrest of Jollu Shiva

14. That CW-8 (Jollu Rajaiah, father of Jollu Shiva) states that Srinivas Reddy accompanied by persons in civil clothes arrived in a private vehicle between 3:00-4:00 am. On the pretext of taking his son to work, Srinivas Reddy took him out of the house and assured the witness that his son would be brought back by 6:00 am. (Refer to Q. 11, 12, 23, 78 in CW-8 deposition)

Arrest of Jollu Naveen

15. That CW-7 (Jollu Laxmi, mother of Jollu Naveen) in her Affidavit (**Ex. C-41**) also narrates a similar sequence of events as CW-8. (Refer to Para 2 of **Ex. C-41**)

16. That it is submitted that contemporaneous police records corroborate the testimony of the families of the deceased suspects. In the Remand Case Diary dated 30-11-2019 (**Ex. C-55**) under Serial No. 8, at S. No. 7, Mr. Srinivas Reddy is listed as “*Owner of lorry & brought the accused A1 to A4 to the police station.*” When confronted by this fact, CW-44, ACP V. Surender absurdly answers that this is a “*copy-paste mistake*”. (Refer to Q. 28, 30 of CW-44 deposition). CW-15 A. Sreedhar Kumar, the then SHO Shadnagar PS who was the arresting officer, further evasively states that it is a “*typographical error.*” (Refer to Q.82 in CW-15 deposition).

17. It is apparent from the facts stated above that there was a deliberate ploy to fabricate records and create an artificial paper trail to provide an illusion of statutory compliances at the time of arrest of D-1 to D-4. However, the true facts seem to have crept into the Remand Case Diary before the criminal design could be conjured.

Contrary depositions about the extent of Srinivas Reddy's involvement in the arrest.

18. That curiously, **Ex. C-72**, the arrest instruction memo issued by CW-44, IO, ACP Surender to CW-15, only states the names of villages of the deceased and contains no information about the identity of the deceased, their house addresses or their age, despite CW-44, ACP Vasam Surender stating in his Affidavit and deposition that he had already come to a conclusion about the identity of the suspects after identification by Srinivas Reddy. (Refer to CW-44 Affidavit- **Ex. C-181**)
19. That CW-15 admits in his deposition that the IO informed him about Srinivas Reddy and together they proceeded to the houses of all four deceased suspects in order to apprehend them. In view of no names being mentioned in the arrest instruction memo, CW-15 states that he arrested the deceased suspects with the assistance of Srinivas Reddy. CW-15 evasively states in his deposition that he does not remember if he asked for any proof of identity from the accused or their relatives at the time of arrest. CW-15 categorically admits that he was unable to inquire about the age and identity of the deceased suspects, and further states, *"Since I was accompanied by Srinivas Reddy, who was acquainted with the accused persons, I apprehended the accused persons based upon the identification made by Srinivas Reddy"* (Refer to Q. 31-35, Q. 121, Q. 125 in CW-15 deposition). In sharp contrast to the sequence of events as narrated by the arresting officer, CW-44, ACP Vasam Surender states that Srinivas Reddy only accompanied the police to the house of Mohommed Arif, after which Mohommed Arif led them to the houses of the other suspects. (Refer to Q. 26 in CW-44 deposition). CW-15, the arresting officer also states that Srinivas Reddy accompanied the police back to the police station after the arrest, which CW-44 denied in his deposition. (Refer to Q. 49 in CW-15 deposition and Q. 27 in CW-44 deposition)
20. That the sequence of events leading to the production of the accused in PS Shadnagar on 29.11.2019 is rendered suspect on a reading of the depositions of CW-15, A. Sreedhar Kumar, SHO Shahnagar PS who was the arresting officer and CW-44, ACP Vasam Surender, IO in Cr. No. 784/2019. It is extremely dubious that the arresting

officer and the Investigating Officer have contrary narrations regarding how suspects in a case of this magnitude were arrested. These facts reveal a clear design to suppress the extent of involvement of Srinivas Reddy in the arrest of the deceased suspects in an attempt to obfuscate the fact that the police solely relied on Srinivas Reddy to effect the arrest of the deceased suspects.

Police admit that no Arrest Memo was issued at the time of arrest

- 21.** That CW-15, A. Sreedhar Kumar, SHO Shadnagar PS and the arresting officer admits in his deposition that no Arrest Memos were executed and handed to the families of the accused at the time of arrest, as mandatorily required by law. The explanation put forward by the arresting officer does not inspire confidence.. CW-15 states that a large mob of 100 to 150 people had gathered in Jaklair Village and 200- 300 persons had gathered in Gudigandla village. Due to the presence of this mob, he was unable to issue Arrest Memos. It is nowhere stated in the deposition of CW-15 that the mob was interfering with the police work or threatening the police team. Curiously there is no mention of the presence of a mob in the case diary, in his statement under 161 CrPC or in the Arrest Memo, a fact admitted by CW-15 in his deposition. The non execution of a memorandum of arrest while making the arrest is a clear violation of Section 41B of the Cr.P.C. From a perusal of the testimony and the documentary record it is apparent that CW-15, a senior police officer, to cover up the blatant breach of a mandatory directive of the statute, is at this belated stage introducing the issue of the mob as an afterthought. (Refer to Q. 42, 43, 48, 134-136, 127, 128, 129 in CW-15 deposition)

Belated and unreliable Arrest Memos executed

- 22.** That Ex. C-12 to Ex. C-15 are the Arrest/Court Surrender forms of the deceased suspects, executed at 5:00 pm in P.S. Shadnagar. The place of apprehension is recorded as the respective villages of the deceased suspects and the time of apprehension is between 1:00 pm and 2:00 pm. (Refer to **Ex. C-12** to **Ex. C-15**).

23. That CW-15, the SHO who is also the arresting officer, states in his deposition that he reached PS Shadnagar at 5:00 pm and produced the deceased suspects before the IO, ACP Vasam Surrender. Further he states that the Arrest Memos were executed after the confessional statements of the four accused were recorded, which concluded at 10:30 pm. When confronted with the fact that according to the Arrest Memos, the time of arrest is 5:00 pm, CW-15 states that the contents of the Arrest Memo are correct and the arrests took place before the confessional statements. (Refer to Q. 64, 67, 73 and Q. 84 to 89 in CW-15 deposition)
24. That the contents of **Ex. C-55** the remand case diary, written by the CW-44, corroborates the initial versions stated by CW-15. However, when confronted with the contents of **Ex. C-55**, which reproduces the confession statement from Page No. 344 to page 350 and in the last five lines of the first paragraph on Page No. 350 records as follows, *“Later, I effected arrest of duly served the notice to the relatives of accused A1 to A4 u/S. 50-A Cr.P.C...”*, CW-15 states that *“Actually, the arrest was done at 5:00 pm. It is a practice here that arrest is recorded after recording confessional statements. In the hurry, the statement pointed out in the case diary might have been incorporated as per our usual practice. It is a mistake.”* (Refer to Q. 89 in CW-15 deposition)
25. That the Affidavit (**Ex. C-181**) of CW-44 in his also corroborates the initial version put forward by CW-15- *“...that after recording the confessional statement of the accused and after observing the procedure U/S. 50 and 50A Cr.P.C. I arrested the accused A1 to A4 in the crime.”* In his deposition before the Hon’ble Commission however, CW-44 resiles from the sequence of events as disclosed by him in his affidavit, and states that the accused were arrested at 5:00 pm but he issued the arrest memos only after recording the confessional statements of the accused, which concluded at 9:20pm. He further states that intimation of arrest was given to the relatives and signatures obtained on the Arrest Court Surrender From between 9:30 to 10:00 pm. (Refer to Q. 14, 15, 184 in CW-44 deposition)

26. That the practice of preparing the Arrest Memo after recording confessional statements of an arrested individual is completely alien to the Code of Criminal Procedure and expressly violates S. 41-B of the Cr.P.C.
27. That the glaring inconsistencies within the written records of the arrest, the statements of the CW-15 and CW-44 in their Affidavit and the fact that they conveniently resile from their statements when confronted with these inconsistencies lead to the conclusion that Arrest Memorandum executed by the police does not truthfully record the facts of the arrest but was merely a poor attempt to create a paper trail that would white wash the illegalities in the arrest of the deceased suspects, and show paper compliance with the provisions of the Code of Criminal Procedure.

Notices under S. 50 and 50A Cr.P.C. not given to accused and families

28. That in violation of S. 50 and S. 50-A of the Code of Criminal Procedure, 1973, the suspects and the families of the deceased were not informed about the factum of arrest, let alone the grounds of arrest when they were apprehended from their homes between 3:00-4:00 am on 29.11.2019. The family members of the deceased have attested to the fact that they only learnt that the deceased suspects had been arrested when they saw the same on television later on 29.11.2019. (Refer to Q. 16 in CW-7 and Q.15 in CW-8 deposition dt. 17.09.2021)
29. That CW-7 (Jollu Laxmi, mother of Jollu Naveen) states in her deposition that no one from the police informed her about the arrest or obtained her signatures. (Refer to Q. 17, 18, 19 in CW-7 deposition)
30. That the Arrest Memos (**Ex. C-12 to Ex. C-15**) record the families of the deceased suspects as witnesses to their arrest, which CW-15 and CW-44 state was effected at 5:00 pm at P.S. Shadnagar. However, the families of the deceased categorically deny being witnesses to the arrest of the deceased suspects in P.S. Shadnagar.
31. That CW-8 (Jollu Rajaiah, father of Jollu Shiva) specifically denies putting his thumb impression on **Ex. C-13** (Arrest/Court Surrender Form- Jollu Shiva) and **Ex. C-15**

(Arrest/Court Surrender Form- Jollu Naveen), where he is shown as a witness. (Refer to Q. 64 in CW-8 deposition)

- 32.** That **Ex.C-14** (Arrest/Court Surrender Form - C. Chennakeshavulu) records Chinthakunta Kurmaiah, father of C. Chennakeshavulu as a witness to the arrest memo. CW-3, (Smt. Chintakuntla Renuka, wife of deceased C. Chennakeshavulu), categorically states in her deposition dt.14.09.2021 that no one from the family visited the Police Station on 29.11.2019. She further states that her father-in-law only went to the police station 3-4 days after the arrest, when the police directed him to bring clothes for her husband. (Refer to Q. 25, 26 of CW-13 deposition)
- 33.** That the deposition of CW-15 and CW-44 differ from each other, on the presence of family members of the accused at the time of arrest. According to CW-15 the arrests were made at 5:00 pm in P.S. Shadnagar, in the presence of the family members of the accused. (Refer to Q. 73-75 in CW-15). However, CW-44 in his deposition states that though the arrest was effected at 5:00 pm, *“But arrest intimation was given to the relatives and signatures obtained on the Arrest Court Surrender Form by 9:30 pm to 10:00 pm. By that time, the relatives of the accused had come to the police station.”* When questioned about the presence of the relatives of the accused in the police station at 5:00 pm when the accused were arrested, CW-44 expressly states that *“they were not present in the police station at 5:00 pm.”* (Refer to Q. 184-185 in CW-44 deposition). This inconsistency between the deposition of 2 senior police officials renders the arrest highly suspect and unreliable.
- 34.** That the glaring irregularities in the identification, apprehension and arrest of the deceased suspects, which is in complete contravention of the clear procedure prescribed by the Code of Criminal Procedure, exhibits the cavalier and mala fide manner in which the police undertook the arrest and investigation. The admission of CW-44 that the individuals cited as witnesses to the arrest in the Arrest Memo were in fact not present in the Police Station at the time he states the suspects were arrested, proves that there are no witnesses to the arrest purportedly effected at 5:00 pm at P.S. Shadnagar, rendering the version of the police completely false and unreliable.

- 35. Ex. C-56** (Notice under S. 50A of the Cr.P.C dt. 29.11.2019) only reflects that notice of arrest was given to Mohd. Hussain (father of Mohd. Arif) and Chintakunta Kurmaiah (father of C. Chennakeshvu) and not to the relatives of Jollu Shiva and Jollu Naveen. CW-3, (Smt. Chintakuntla Renuka, wife of deceased C. Chennakeshavulu), categorically states in her deposition dt. 14.09.2021 that her father-in-law, C. Kurmaiah only went to the police station 3-4 days after the incident, when the police directed him to bring clothes for her husband. No family member was called to, or visited, the police station prior to that. (Refer to Q. 25, 26 of CW-13 deposition)
- 36.** That **Ex. C-72** (Arrest Instruction Memo) issued to the Investigating Officer, CW-14 records that the accused are to be arrested in Cr. No 784/2019 under Sections 120(B), 366, 506, 376-D, 302, 201 r/w 34, 392 IPC. In clear contravention of the mandate of S. 50(1) which states that every police officer arresting any person without a warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest, **Ex. S-51** (the notice of arrest purportedly given to the accused) only states that the accused are being arrested under S. 302/201 IPC.
- 37.** That the inconsistencies and material irregularities in the record of arrest can only lead to the conclusion that documents pertaining to the arrest of the deceased do not reflect the reality of the timing and circumstances of the arrest, and lay bare the non-adherence to the procedure of arrest as laid down in Sections 41B, 50, 50A of the Cr.P.C, 1973. The very inception of the investigation is rendered unreliable and the differing versions of the police officials and the record with respect to the arrest of the 4 accused, strikes at the heart of the integrity of the investigation. There has been a clear and concerted effort to fabricate documents and create a false record, which ought to be subjected to a thorough impartial investigation and legal action taken against the erring officials.

B. Juvenility of the Accused

Record conclusively demonstrates that 3 of the accused were juveniles at the time of arrest and detention.

38. That three of the deceased individuals, C. Chennakeshavulu (aged 15) , Jollu Naveen (aged 15) and Jollu Shiva (aged 17) were juveniles at the time of their arrest and subsequent death in police custody as per records produced before this Hon'ble Commission. Unless an investigation is carried out, one cannot rule out the possibility that the concerned police authorities were aware of the juvenility of the above stated individuals and deliberately and maliciously concealed the same. Reliance is placed on the following documents exhibited before this Hon'ble Commission with regard to the age of the accused.

- a) C. Chennakeshavulu: **Ex. C-31** - Bonafide certificate of C. Chennakeshavulu dt. 24.07.2018 issued by Zila Parishad High School, Gudigandla Village, Makthal Mandal, Mahabubnagar District, records his date of birth as 10.04.2004, which would place his age at 15 years on the date of incident. **Ex. C-34** - Admission entry dt. 04.07.2014 with admission number 1999 in the attested extract of the admission register for the years 2014-2015 which also records his date of birth as 10.04.2004.
- b) Jollu Naveen: **Ex. C-38** - Original Admission register of Mandal Parishad Primary School, Chinnaporla. **Ex. C-39** - Original Application form for admission of Jollu Naveen. **Ex. C-42**- Original Bonafide certificate dt. 09.12.2019 issued by Head Master, Mandal Parishad Primary School, Chinnaporla, Utkoor Mandal, Mahabubnagar District. These documents record his date of birth as 04.04.2004, which would place his age at 15 years on the date of incident.
- c) Jollu Shiva: **Ex. C-33** - Admission entry dt. 26.08.2008 with admission number 1668 in the attested extract of admission register for the years 2014-2015, records his date of birth as 15.08.2002. **Ex. B-4**- School Bonafide certificate of J. Shiva Kumar dt. 09.12.2019 records his date of birth as 15.08.2002. This places the age of the accused at 17 years on the date of incident.

39. That evidently the above stated documents which are also the primary documents for determination of age under S. 94(2)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015, were ignored and overlooked by the police, who made no effort to ascertain the age of the accused by calling for the documents.
40. That from the photographs of the three deceased juveniles at the time of their arrest, it is apparent that even by appearance three of the accused persons looked like they were minors, and this in itself ought to have prompted the police to inquire about their age. The process of age verification at the time of arrest / detention, if the said person appears to be around 18-21 years of age, as provided for in Section 94 of the JJ Act, 2015, was not carried out by the police. This preliminary step is mandatory in order to ensure no juvenile is subjected to the rigours of detention in adult police lockups. In *Gopinath Ghosh vs State of West Bengal* 1984 (Supp) SCC 228 the Hon'ble Supreme Court has held,
- “We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special acts dealing with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be, for obtaining credit worthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law.”*(Para 13)
41. That after coming into force of the Juvenile Justice Act, 2015 a duty is cast on statutory authorities including the police to ensure that no juvenile is dealt with under ordinary criminal law outside the purview of the JJ Act. Under Section 3 of the Juvenile Justice Act, 2015, which lays down the ‘General Principles of Care and Protection of Children’, state agencies are statutorily bound to respect and adhere to the listed fundamental principles and guidelines framed by the Act. The Act guarantees dignity, equality, care, best interest, right to be heard, safety, privacy and

confidentiality, non- stigmatising semantics, non-discrimination, restoration to their families at the earliest, and use of positive measures besides requiring detention to be a measure of last resort and for the shortest period of time.

42. Shockingly and in complete violation of their statutory responsibilities under the JJ Act, 2015, the police admit that they made no effort to inquire about the age of the aforesaid accused. The complete and utter disregard towards procedure laid down by the JJ Act, deprived the three deceased juveniles of their right to statutory protections at the time of arrest and detention.

43. That CW-15, A. Sreedhar Kumar, the then SHO Shadnagar PS who was also the arresting officer admits that no steps were taken by him to verify the identity or age of the deceased suspects while arresting them. CW-15 evasively states in his deposition that he does not remember if he asked for any proof of identity from the accused or their relatives at the time of arrest. CW-15 categorically admits that he did not inquire about the age and identity of the deceased suspects, and further states, *“Since I was accompanied by Srinivas Reddy, who was acquainted with the accused persons, I apprehended the accused persons based upon the identification made by Srinivas Reddy”*. (Refer to Q. 31-35, Q. 121, Q. 125 in CW-15 deposition)

44. That CW-3 (Smt. Chintakuntla Renuka, wife of deceased C. Chennakeshavulu), categorically states in her deposition dt. 14.09.2021 that the police did not inquire about the age of her husband, C. Chennakeshavalu. (Refer to Q. 36)

45. That the Hon’ble High Court of Delhi in *Court on Its Own motion vs. Department of Women and Child Development & Ors.* WP(C) 8889 of 2011 passed a slew of directions in its order dated 11.05.2012 regarding determination of age of the accused at the earliest in accordance with the provisions of the JJ Act, 2015.

“E. For the Investigating Officer or any other police officer acting under the instruction of Investigating Officer:

(i) Every Police officer at the time of arresting/apprehending young offenders shall be under obligation to inform the alleged offender about his right to be dealt with under the provisions of Juvenile Justice Act if he is below 18 years of age and a proper counselling shall be done on the point of age.

(ii) IO or any other police officer affecting the arrest/ apprehension shall also prepare the Age Memo. A copy of such Age Memo shall also be delivered to the alleged offender and his parents/ guardians/ or relative who have been intimated about his arrest.

(iii) At the time of forwarding the copy of FIR to the Ilaka Magistrate within 24 hours, IO shall be under duty to file the preliminary age memo along with the FIR in case arrest /apprehension is made before forwarding the FIR.

(iv) On completion of age inquiry, which shall be done, preferably within one week of arrest/apprehension, the completed age memo be filed before the court concerned.

(v) At the time of first production of an offender who is between 18 to 21 years of age as per the initial inquiry of the IO as above, before the Court, IO or the Police officer responsible for producing the offender before the Court, shall produce alleged offender, along with a copy of the FIR and age memo before the Secretary of respective District Legal Services Authority, irrespective of whether the alleged offender is being represented by a legal aid lawyer or not.

(vi) If the alleged offender claims to be a juvenile and age documents to support such claim are not readily available and it is not possible for IO to obtain such documents within 24 hours of arrest, accused shall be produced before Juvenile Justice Board.

(vii) At the time of first production of offender before Court or JJB, it shall be the duty of IO to ensure that parents or relatives of such offender are duly informed about (1) date, (2) time and (3) particulars of the court of such production and a copy of such intimation shall be produced before the Court at the time of first production.” (Para 17 E)

Numerous violations of JJ Act.

46. That it is evident that the deliberate failure of the police to abide by statutory procedure resulted in juvenile suspects being deprived of the protections of the

Juvenile Justice Act, 2015, which if followed would in all likelihood have protected them from the fatal events of 06.12.2019.

- a)** That in complete violation of Section 10 of the Juvenile Justice Act and Rule 8 of the Juvenile Justice (Care and Protection of Children Model Rules) the minor suspects were kept in police custody through 29.11.2019 and then remanded to judicial custody in adult prison on 30.11.2019. The concerned police authorities under the garb of being confident about their age on the basis of their appearance, and the unsubstantiated explanation of a law and order situation preventing them from making a preliminary inquiry about the age of the deceased, frustrated the provision of Sec. 10(1) of the JJ Act and Rule 9 of Juvenile Justice (Care and Protection of Children Model Rules) 2015. These provisions mandate that the special juvenile police unit or the designated child welfare officer, shall produce the child before the Juvenile Justice board without any delay within 24 hours of the child's apprehension by the police. On 02.11.2019, the police authorities again sought police custody of the arrested juveniles, which was granted vide order of the Judicial Magistrate on 02.12.2019 for a period of ten days.
- b)** That the three juvenile suspects were denied the benefit of Section 12 of the JJ Act, 2015 which mandates that any person who is apparently a child shall be released on bail and if not released on bail by the officer-in-charge of the police station, shall be kept only in an observation home. This renders the judicial custody as well as the police custody of the three (A2 to A4) minors illegal, and all consequent investigative steps are also vitiated.
- c)** That no information was provided to the parents and relatives of the deceased juvenile suspects at the time of their arrest in violation of S. 13 of the JJ Act, 2015.
- d)** That in deliberately and knowingly abdicating their statutory and constitutional responsibilities, the police ensured that no effective claim of

juvenility can be put forward by the parents and relatives of the deceased suspects and effectively closed the door to a determination of age by the Juvenile Justice Board.

Deliberate misrepresentation of age in application for remand dt. 30.11.2019

47. That CW-44 Vasam Surender has in his deposition in response to Q. 188 stated that an ID card of all four accused persons was provided to him on 29.11.2019 after he had issued notice to the families of the four arrested persons. The documents produced by CW-44 itself records contradictory ages of the deceased suspects which corroborates the fact that no inquiry was made as to their juvenile status, and there was a deliberate attempt to ensure that no document on record correctly records the age of the deceased suspects.
48. That while Ex. C-13 to Ex. C-15 (Arrest/Court Surrender Form) records the age of Jollu Shiva, C. Chennakeshavulu and Jollu Naveen as 19 years, the application for judicial custody in Ex. C-55 Remand Case Diary, records the age of Jollu Shiva as 20 years, C. Chennakeshavulu as 21 years and Jollu Naveen as 20 years. That admittedly the deposition of CW-44 and CW-9 (Sri Jaruplavath Pandu, Tahsildar cum Mandal Executive Magistrate) reveals that no identity documents were forwarded with the application for judicial custody or at the time of production of the deceased suspects before the Executive Magistrate.

C. Delayed and sham Medical Examination

49. That Section 54 of the Code of Criminal Procedure mandates that when any person is arrested, he shall be examined by a medical officer soon after the arrest is made. It is the admitted case of the police that the deceased individuals were medically examined after 1:00 pm on 30.11.2019 in P.S. Shadnagar. (Refer to Q. 226 of CW-44 depositions). No explanation has been put forward by the Investigating Officer, ACP Vasam Surender regarding the reasons for the delay in examining the deceased suspects, who had already spent close to 36 hours in the custody of the police after they were apprehended from their homes between 3:00 am to 4:00 am on 29.11.2019. Even according to the case of the police, the Accused were medically examined close to 24

hours after they were apprehended by the police between 1:00 pm to 2:00 pm on 29.11.2019, after spending one night in police custody. No explanation has been put forward as to why the deceased suspects could not be medically examined on 29.11.2019 itself.

50. That a bare perusal of the report of the medical examination (in Ex. C-55, the Remand Case Diary) conducted inside P.S. Shadnagar on 30.11.2019 casts a shadow on the reliability of such examinations. It is striking that the medical officer conducting the examination of A-3 has not found it fit to record the age of the accused presented before him. A-3, Jollu Naveen was a minor boy aged only 15 years at the time of his arrest. It defies belief that a trained and registered medical practitioner would not notice the juvenility of the accused during the examination. This lapse by the medical examiner while in the police station inspires little confidence in the medical examination and rather points to the coercive control of the police over the entire proceedings.
51. The salutary provision mandating medical examination of the accused upon arrest was introduced in the Code as a preventative measure against custodial torture. The police during investigation has insidiously side stepped these statutory directives and paid no more than lip service to them, thereby jeopardising the basic human rights guaranteed to all accused persons and in turn rendering the entire arrest and investigation illegal.

D. Illegal and untenable confessions recorded on 29.11.2019

52. That it is the case of the officers of the Cyberabad Police, that the deceased suspects confessed to their offences in Cr. No. 784/2019 at the time of their arrest on 29.11.2019. In his deposition CW-44, ACP Vasam Surender states that he interrogated the accused from 4:45 to 5:00 pm, during which they confessed to committing the offence. (Refer to Q. 17-18 in CW-44 deposition) In Ex. C-55, (Remand Case Diary), CW-14 states, *“Later at about 5:00 pm, the above four accused suspects brought to PS Shadnagar and produced before me at Shadnagar PS. I interrogated the suspects categorically and they admitted the offence. Immediately I summoned two mediators i.e. Lws 17 & 18 recorded the confessional statement of accused A1 to A4*

categorically one after another in the presence of above mediators...” In his Affidavit, Ex. C-181, CW-44 states “...I requisitioned Tahsildar, Farooqnagar mandal to send two of his employees to as as Panch witnesses for the purpose of investigation and in turn Farooqnagar Mandal sent two of his staff members to as as Panch witnesses. As the accused confesses the offence, I recorded the confessional statements of A1 to A4 from 17:20 hours to 21:20 hours on 29.11.2019 separately one after the other in the presence of two panch witnesses with the assistance of my staff.”

- 53.** As per the deposition of CW-15, Sreedhar Kumar (the then SHO P.S. Shadnagar) after the preparation of the Arrest Memo, ACP Surender directed him to secure panchas, in the presence of whom he recorded the confessional statements of the four accused. CW-15 states that the requisition for the Panchas (**Ex. C-74**) was issued by the ACP at 5:05 pm, which were sent by CW-15 to the office of the Tahsildar through a constable. He further answers that the panchas came to the police station at 5:15 pm. (Refer to Q. 77-81 in CW-15 deposition)
- 54.** The sequence of events as narrated by CW-44 and CW-15 appears implausible in so far as it highly improbable that in the span of less than 20 minutes, an order for requisition of Panch witnesses was issued and sent to the office of the Tahsildar, Panch witnesses were allotted by the Tahsildar and the Panch witnesses arrived at the police station and began recording the confessions of the accused.
- 55.** That a perusal of the deposition of CW-44 before this Hon’ble Commission further reveals the mala fide attempt made by him to give an inadmissible confession the colour of an extra-judicial confession. In stating the manner in which the confessions were recorded on 29.11.2019, CW-44 completely resiles from the statements made by him in the remand case diary (Ex. C-55), and also on oath in his Affidavit (Ex. C-181). CW-44 states that he instructed the panchas to put questions to the accused and instructed the scribe to write what the accused stated. He further states that he was not present at the place of recording of the confessional statements, but was present elsewhere within the premises of the police station. (Refer to Q. 150 and Q. 202 in CW-44 deposition). Curiously, CW-44 states that the scribe was provided as the

Panchas could not write. Admittedly, the Panchas to the confessional statements of the deceased suspects on 29.11.2019, were government servants and held the post of Village Revenue Officer and Village Revenue Assistant, which renders CW-44's explanation for providing a scribe highly suspect and bizarre. (Refer to Q. 150-154 in CW-44 deposition)

E. Deliberate suppression of CCTV footage of P.S. Shadnagar

56. That the police have deliberately concealed and suppressed the CCTV footage from P.S. Shadnagar by putting forward contradictory versions about the presence of CCTV Cameras and the preservation of footage.

- a) CW-15 confirms in his deposition that CCTV cameras were installed in P.S. Shadnagar and in working condition between 28.11.2019 and 06.12.2019 but he did not preserve the same as he did not think it was "necessary". (Refer Q. 2 to Q. 5 and Q. 109)
- b) SW-3, DCP J. Suredner Reddy, the Investigating officer appointed by the SIT issued notices under S. 91 Cr.P.C on the directions of the Hon'ble High Court to furnish the CCTV footage from P.S. Shadnagar. In response to his notice, the SHO Shadnagar informed him orally that the data is not available because CCTV's **were not functioning** between 29.11.2019 and 10.12.2019. He admits that he did not record the oral information received from the IO in his case diary. It is evident that there was no serious effort made by the Investigating Officer appointed by the SIT, to verify the actual position of the installation and working condition of the CCTV cameras, or to recover the CCTV footage, or investigate why the same was not provided by the SHO of P.S. Shadnagar (Refer to Q. 182, 183, 187 in CW-44 deposition)
- c) In **Ex. C-75**, Letter dt.13-03-2020 addressed to the Hon'ble Commission by the Addl. DGP, L&O, Telangana, it is recorded that, "There **are no CCTV cameras** available in Shadnagar Police Station".
- d) CW-16, Mahesh Bhagwat, Commissioner of Police, Rachakonda Commissionerate in response to Q. 46 asking him to categorically clarify the correction position as to the CCTV footage from Shadnagar police station states that, "*On 12.03.2020 while furnishing reply to Inquiry Commission*

through our Addl. Director General (Law & Order) we have mentioned that there are no CCTV cameras installed in Shadnagar Police station. Therefore no CCTV footage of the above place available.” However, in response to Q. 47 he adds that SHO, P.S. Shadnagar orally informed I.O. J. Suredner Reddy that cameras were installed in Shadnagar P.S. but footage was not available. He further states, “*..in our State, there are community CCTV sponsored by the local community. That cameras may be installed in Shadnagar P.S. as in official record we couldn’t find Government cameras installed.*” (Refer to Q. 46 and 47 in CW-16 deposition)

57. That these inconsistent and contradictory statements made by senior police officials disclose an attempt to mislead the Hon’ble Commission and suppress the CCTV footage, or shirk responsibility for the loss and non preservation of said footage. The CCTV footage of PS Shadnagar would have shed on many significant facts including, the time of arrest of deceased suspects, but also whether their parents and relatives were present in P.S Shadnagar at the time of execution of arrest memos and serving of notices under S. 50-A of the Cr.P.C. Additionally CCTV footage would also reveal the circumstances in which the deceased suspects purportedly confessed to the offences in Cr. No. 784/2019 on 29.11.2019.
58. That reliance is placed on the specific directions issued by the Supreme Court in *Shafi Mohammad vs. State of Himachal Pradesh (2018) 5 SCC 311* (Para 13) and *Paramvir Singh Saini vs. Baljit Singh and Ors (2020) 7 SCC 397* (Para 12 to 18) where the apex Court emphasized the need for installation of CCTV cameras to check human rights violations in police stations and directed that every state constitutes an independent committee to study CCTV camera footage and periodically publish reports. In Para 17 of its judgement in *Paramvir Singh Saini (supra)*, the Hon’ble Supreme Court specifically directed that data from CCTV Cameras must be preserved for a period of 18 months. The actions of the police are in clear violation of express guidelines laid down by the Hon’ble Supreme Court regarding the installation and functioning of CCTV cameras in police stations.

59. That it is noteworthy that the Hon'ble High Court of Bombay vide order dated 02.12.2020 in *Wajid vs. State of Maharashtra (Crl WP No. 1111/2020)* held that if the police's submission that CCTV cameras were not functioning on a date when there have been alleged human rights violations committed in the police station is believed, the whole purpose behind the installation of CCTVs would be defeated. The Hon'ble High Court further held that there must be an enquiry to check the veracity of such submissions, including but not limited to inspection of documents to check whether any contemporaneous record corroborates such a claim made by the police.
60. The bald assertion and contrary submissions made by the police about the installation of CCTV cameras in P.S. Shadnagar and their admission that no CCTV Cameras were installed in the interrogation centre - Ravi Guest House, ought to lead to a strong suspicion of wrongdoing against the police officers. Their averments pertaining to CCTV cameras were plainly not independently verified by the SIT constituted to probe the present case.

F. Illegality in Remand proceedings by Executive Magistrate

61. That on 30.11.2019, the deceased suspects were remanded to 10 days in Judicial Custody by CW-9, Sri Jaruplavath Pandu, Tahsildar cum Mandal Executive Magistrate, Farooqnagar Mandal, who by virtue of Order Dis. No. 1527, issued by the I-Additional District and Sessions Judge, Mahboobnagar discharged judicial functions on 30.11.2019. (Refer to **Ex. C-201**, Order Dis. Mo. 1572 of I-Additional District and Sessions Judge, Mahboobnagar)
62. The burden cast by Article 22(2) of the Constitution is a high and sacred one. It is a bulwark against police misconduct as it ushers the application of a judicious mind to safeguard the constitutionally guaranteed right to life and liberty which can only be curtailed by procedure established by law under Article 21. That a perusal of the deposition of CW-9, Jaruplavath Pandu, Tahsildar cum Mandal Executive Magistrate, Farooqnagar Mandal, reveals the shocking irregularities in the remand proceedings which occurred within P.S. Shadnagar on 30.11.2019. That it is evident that the deceased suspects were produced before an Executive Magistrate who was either

unwilling or unable to discharge his duty in compliance with the mandate contemplated by Article 22 of the constitution and S. 167 of the Code of Criminal Procedure.

No inquiry regarding the date, time and place of arrest.

63. CW-9 admits in his deposition that neither did the police tell him nor did he inquire from the accused as to how and when they were arrested. (Refer to Q. 125-127 in CW-9 deposition)

No independent inquiry into the contents of the remand diary

64. That on page 24 of the deposition of CW-9, the Hon'ble Commission recorded the demeanour of the witness and stated, *"The witness inspite of being a graduate and inspite of being a Gazetted Officer on a responsible post of a Tahsildar claim that he was not conversant with English language and could understand and answer only in Telgu language...The witness appeared to be giving evasive answers when the questions were asked in Telgu language. Very strangely, each question were required to be translated in Telgu to this Gazetted officer working as a Tahsildar."* The witness later in his deposition states that the contents of the remand diary were explained to him by the Court staff. In a most shocking manner, even after referring to the Remand Report, CW-9 could not state the place, date and time of the arrest of the deceased suspects before the Hon'ble Commission. (Refer to Q. 130 in CW-9 deposition)

Arrested suspects not informed that they have the right to be represented by legal counsel.

65. That CW-9 admits that he did not inform the accused that they had the right to be represented by legal counsel. (Refer to Q. 152 in CW-9 deposition)

Police produced no identification documents before the Executive Magistrate.

66. That no identification documents were produced by the police before the Executive Magistrate along with the Remand Application or at the time of production of the deceased suspects before him. CW-9 states that he verified the personal details of the

deceased suspects on the basis on the confessional statements, the Arrest Memo, intimation to relatives, which were the only documents shown to him. The witness also stated that does not remember whether he checked the documents personally or had it done through the Court staff. (Refer to Q. 119 and Q. 157 in CW-9's deposition)

Pre-prepared typed remand order reduced into writing by the Executive Magistrate

67. That a perusal of the deposition of CW-9 reveals that a pre-prepared typed remand order was given to him by the Court Superintendent along with the remand case diary and other records at the police station when he reached there. Strangely, after admitting to signing a typed remand order, when confronted with a copy of the hand written remand order dt. 30.11.2019, the witness states “ *...that a typed matter was shown to me and I wrote that down with my hand...*”. Pertinently, in response to Q. 142, CW-9 has admitted that the remand order dt. 30.11.2019 was typed in advance and handed over to him, and he simply rubber stamped the same. (Refer to Q. 132, 137, 138, 141, 142) Thus the order remanding the accused to judicial custody was *ex-facie* illegal.

No verification of whether the relatives of the deceased suspects were informed of their arrest.

68. That it is evident that the Executive Magistrate did not make any attempt to verify if notices under S.50A of the Cr.P.C. had been served on the relatives of all four accused, despite stating that he verified the same. Ex. C-56 (Certified copy of Section 50 (A) notice dt. 29.11.2019) clearly does not record that notices were issued and served on the relatives of Jolly Shiva and Jollu Naveen. (Refer to Q. 154, 155)
69. That it is evident from the above that the remand proceedings conducted on 30.11.2019 within the confines of P.S. Shadnagar were conducted in a manner that denied the deceased suspects the opportunity of being protected by judicial scrutiny. CW-9 in disregarding his constitutional and statutory obligations enabled the police's design to conceal the fact of the juvenility of three arrested suspects, C.

Chennakeshavulu, Jollu Naveen and Jollu Shiva. By failing to ask the deceased suspects their age, CW-9 deprived the deceased suspects an opportunity to state their claims of juvenility thereby also circumventing the procedure established by law as contemplated under S. 9 (2) of Juvenile Justice Act, 2015. The remand of juvenile suspects to judicial custody in violation of S. 10 of the JJ Act, 2015, nullified the protections statutorily granted to the children in conflict with the law under the JJ Act, and gross travesty of justice occasioned by the failure of the Executive Magistrate to inquire about their age and ensure effective compliance of S. 50A Cr.P.C.

G. ID cards of arrested persons concealed from the record by CW-44

70. That CW-44, Vasam Surender, has in his deposition in response to Q. 188 stated that an ID card of all four accused persons was provided to him on 29.11.2019 after he had issued Notice to the families of the four arrested persons. However, Ex. C-262 reveals that on 30.11.2019, in a letter numbered C.No. 784/Crime/18-19 addressed by CW-44 to the Superintendent, Central Prison, Cherlapally, forwarding the four persons to judicial custody, it is stated that “*accused A-1 to A-4 not having ID proofs presently*”. Further, CW-44 has admitted in his answer to Q. 232 that the fact of the receipt of the ID cards of the accused persons was also not mentioned or recorded in the case diary. It is important to note that given that three of the suspects belonged to a Scheduled Tribe, suppression of material information while calling upon the Jail Superintendent, a public servant, to exercise his powers against the said suspects, could attract penal provisions under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

H. Mechanical manner of remand proceedings dt. 02.12.2019

71. That admittedly, the proceedings before the JMFC Shadnagar on 02.12.2019, were carried out in a mechanical and almost farcical manner with scant respect for the rights of the arrested persons. Such remand orders, passed without any judicious application of mind and giving no opportunity to the accused, are an anathema to law and due process, and an affront to the most basic principle of natural justice - *audi alteram partem*. Through such farcical proceedings the most sacrosanct of

constitutionally guaranteed rights, personal liberty, was compromised and jeopardised.

72. CW-37 Sri P. Shyam Prashad, who had granted police custody of the four persons on 02.12.2019, has admitted to the following instances of illegalities in the proceedings of 02.12.2019:

i. CW-37 made no effort to verify if the remand application had been served on the accused and presumed that the signatures on the requisition were that of the accused as the signatures tallied with the names and were attested by the Jailor. [Refer to CW-37's deposition Q. 5 to 7]

ii. CW-37 has stated that the accused persons not produced before him either physically or virtually for the remand proceedings. [Refer to CW-37's deposition Q. 8 to 12]

iii. No legal aid counsel was appointed for the accused persons. [Refer to CW-37's deposition Q. 16]

iv. No notice of the remand proceedings was issued to the accused by the JMFC. [Refer to CW-37's deposition Q. 17]

v. Although no notice of the proceedings was issued by the JMFC, and the accused were neither represented nor produced, the JMFC presumed that the accused did not intend to file any counter as the Jailor had not forwarded any counter. [Refer to CW-37's deposition Q. 19]

73. That it is settled law that while remanding the accused to police custody, the Magistrate must apply his mind to all facts before him including the record of the case, and not pass orders in a mechanical and routine manner. In *Manubhai Ratilal Patel vs State of Gujarat* (2013) 1 SCC 314, the Hon'ble Supreme Court has held:

“The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on

the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.” (Para 24)

I. Purpose of Police custody - manipulated change in spot of recovery

74. That it is a matter of record that the police had recorded purported confessional statements of the four accused persons on 29.11.2019 itself, even prior to formally recording the arrest. Ex. C-196 to C-199, the confession panchnamas dated 29.11.2019, record that the accused had hidden the belongings of the deceased woman (phone, power bank, wrist watch) “*at some distance from the crime scene*” and “*near the bushes*”. Thus, as per the recorded confession, the victim’s belongings were lying in an open field near some bushes, which could have been accessed by one and all. However, pertinently no police custody of the accused persons was sought on 29.11.2019 or 30.11.2019 to recover the victim’s belongings. The police showed no urgency to recover the said material, and filed an application (**Ex. S 22**) for police custody four days after arrest, on 02.12.2019. The stated purpose in the application was to recover incriminating evidence on the basis of the confessions recorded on 29.11.2019.

75. That even thereafter, upon having been granted police custody on the evening of 02.12.2019, the police only took custody of the accused persons on 04.12.2019. Having finally taken the accused into police custody, the police again did not proceed to the stated site of crime to recover the victim’s belongings. The accused were taken

to Ravi Guest House where they were interrogated and purported additional confessional statements were recorded. Pertinently, in the additional confessions (**Ex. S27**), it was recorded that the victim's belongings were "*hid near the big current pole towards east side from the burnt dead body at some distance.*" Thus, the place where the victim's belongings were allegedly thrown was altered from the first set of confessions dt. 29.11.2019 to the second set of confessions dt. 05.12.2019. There was no other material difference in the confessions, and all four accused persons had altered their confessions similarly, although the police insist that at the time of recording the confessions, the accused were seated separately and were not in each others' earshot.

- 76.** It stands to reason that the police could not have known in advance that the accused who had been in judicial custody since 30.11.2019, would change their statement with regard to the location and manner in which the victim's phone, power bank and wrist watch had been hidden or thrown away. The fact that upon the initial set of confessions, no effort was made to recover the items, and an additional confession was recorded altering the spot of purported recovery before taking the accused to Chatanpally for recovery proceedings under Section 27 Indian Evidence Act, 1872, casts serious doubts and raises grave suspicion over the purpose behind seeking police custody on 02.12.2019, and calls for a serious probe into the manner in which confessional statements were again recorded on 05.12.2019.

J. Illegality associated with Ravi Guest House

Non-installation of CCTV Cameras.

- 77.** That it is the case of the police that in view of the threat to the life of the deceased suspects by members of the public, they identified a safe and confidential place to keep the accused during the period of police custody. The accused were accordingly transferred from Central Prison Cherlapally at 11:00 pm on 04.12.2019 and reached Ravi Guest House, Mirzaguda, Shankarpally Mandal at 1:00 am on 05.09.2019 where they were kept till 06.09.2012. CW-44, states in his Affidavit that the Accused men were interrogated at the safe house on 05.12.2019. Further, a second round of

confession statements were also recorded in police custody at the safe house during the intervening night of 05.12.2019 and 06.12.2019.

78. That it is an admitted fact that there were no CCTV cameras installed by the police in Ravi Guest House. In response to Q. 38, CW-18 DCP N. Prakash Reddy admits that he did not insist that CCTV cameras be installed at Ravi Guest house. He evasively states that he informed ACP Shadnagar, (CW-44) to make all arrangements for the safe house. The justification put forward by CW-44, the Investigating Officer reveals that no attempt was made by the police to install CCTV cameras in Ravi Guest House. CW-44 in claims he was informed by his Assistant IO that Anil Kumar (CW-25, the Manager of Anil Guest House) stated that a technician was not available to install the said cameras and he promised to install them the next day.(Refer to Q. 65, 66 of CW-44 deposition). The explanation put forward by CW-44 for the non-installation of cameras is a mischievous attempt to deflect the responsibility of fulfilling the statutory duties imposed by the Hon'ble Supreme Court.
79. That it is evident that the SIT did not investigate the reasons for non-installation of CCTV cameras at Ravi Guest House. In response to Q. 184, SW-3 states that "Since there were number of eye witnesses, recovery of articles and evidence of safe house witnesses and vehicle log books and also FSL reposts, I did not consider it necessary to get the CCTV footage."

No information provided to the parents and relatives of the deceased suspects regarding the place of custody

80. That it is an admitted fact that the families of the deceased were not informed about the location/site of police custody after the deceased suspects were shifted out of Cherlapally jail on 04.12.2019. Further, no notification has been brought on record declaring Ravi Guest House as an interrogation centre. The failure to inform the family of the deceases suspects is in direct contravention of the guidelines laid down in *DK Basu vs State of West Bengal* (1997) 1 SCC 416 , where the Supreme Court held:

“A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.” (Emphasis supplied) [Para 35 (3)]

K. Illegal and untenable confessions - Episode 2 dt. 05.12.2019

- 81.** That a second round of illegal confessions were recorded by the police on 05.12.2019, after taking the deceased suspects into police custody and placing them at Ravi Guest House. No coherent or plausible reason has been put forward by the police authorities as to why a second round of confessions were recorded, when according to their case, the deceased suspects had already confessed to the crime on 29.11.2019 and stated that they will point out of the place where the victim’s articles were hidden by them.
- 82.** That CW-44 in his deposition states that the confession was recorded at the reception counter in the Hall in Ravi Guest House in the presence of the accused, the panchas, requisitioned by him on 05.12.2019 and a scribe. He denies being present in the room and states that he instructed the panchas to put questions to the accused and instructed the scribe to record the answers so stated by the accused. CW-44 put up the same untenable explanation for the presence of a scribe at the time of recording the second confessions, i.e. the inability expressed by the Panchas to write. Admittedly, the Panchas, Rajashekar is an Assistant Executive Engineer and Abdul Rauf is a Revenue Inspector, are educated persons holding important official positions, rendering the claim put forward by CW-44 extremely implausible and unbelievable. (Refer to Q. 141, 142, 143, 147, 149, 156, 157 of CW-44 deposition)
- 83.** When confronted with the contents of his Affidavit (Ex. C-181), where CW-44 states, *“...I along with the panch witnesses Sri. Rajashekar, AE, R&B Dept. Shadnagar and Sri Abdul Rauf, Addl. Revenue Inspector, Farroqnagar Mandal reached the Safe house place by 10:00 pm on 5/12/2019. Thereafter I interrogated the accused A1 to A4 and recorded their confessional statements in presence of the aforesaid panch*

witnesses with the help of my staff.”, the witness resiles from the statements made by him on oath, stating that the statements in the affidavit occurred due to “overlapping”, which he explains is “the gap that might have occurred either in my giving instruction or the Advocate understanding my instructions.” (Refer to Q. 158, Q. 159, 162 of CW-44 deposition)

84. That when confronted with the contents of the case diary dt, 05.12.2019 maintained by him, which also specifically records that the statements of the accused were recorded by him in the presence of mediators, CW-44 again resiles from the sequence of events recorded by him in the case diary maintained by him. (Refer to Q. 165 in CW-44 deposition)

85. The denial of categorical statements made by him in his own sworn Affidavit and Case Diary, exhibits a desperate attempt to whitewash the truth of the circumstances in which the purported confessions were recorded on 29.11.2019, and then again on 05.12.2019. The procedure stated to be followed by CW-44 in calling Panch witnesses to interrogate the accused and record the statements of the accused while in police custody is blatantly absurd and alien to the Code of Criminal Procedure.

86. That this sequence of events displays complete disrespect of the law and an attempt to pervert the procedures and safeguards laid down in the law in an effort to circumvent the inadmissibility of confessional statements made to a police officer or while in the custody of the police under S. 25 and 26 of the Indian Evidence Act. At the time of recording the confession, the deceased suspects were in the custody of the police by a Court Order, admittedly Ravi Guest house was surrounded by police personnel and as admitted by CW-44, the Panch witnesses arrived with him, rendering his attempt to present the purported confessions as extra-judicial confessions, untenable in the eyes of law.

V. The arrival at Chatanpally and the fabricated narrative of self defense

87. That the narrative of the police with regard to the circumstances in which the encounter took place is riddled with inconsistencies and at times is opposed to logic

and reason, and thereby raises various questions which have remained unexplained in the depositions of witnesses, and requires an independent investigation for the true facts to emerge.

- 88.** As per the entries in the order book of Ravi Guest House (safe house) **Ex. C-253**, CW-44 along with the four accused and other policemen and panchas left the safe house at 3:00 AM on 06.12.2019. They then travelled a distance of 65 to 70kms (as per CW-44's answer to Q. 313). As per the statement of CW-44 before the NHRC, the bus arrived at Chatanpally around 4:30am, however in reply to Q. 314, CW-44 states that they arrived at 05:30am. The same discrepancy is also found in the statements of the bus driver, CW-27 M. Yadagiri, who has stated before the NHRC that the bus reached Chatanpally bridge around 4:40am, but has stated in his deposition before this Hon'ble Commission that the bus reached around 5:30 or 5:45 am. (See Q. 102 to 106 of CW-27's deposition).
- 89.** That broadly, the statements given by CW-44 to CW-53 state that the accused A-1 (Arif) pushed CW-51 Jankiram and assaulted the police party by throwing soil in their eyes. A-1 then snatched the service pistol of CW-45 and pushed him to the ground and shouted "arey urakandira". A-1 then started running to escape, while A-2 (Shiva) and A-3 (Naveen) threw soil into the eyes of the police and panch witnesses. On hearing A-1, A-4 Ch. Chennakeshavulu snatched a 9MM weapon from CW-49 after A-3 assaulted him on his head with a stone. A-2 is also stated to have attacked his handler CW-50 Aravind Goud with a stick and caused him injuries. It is also stated that the four persons were trying to escape and simultaneously firing indiscriminately towards the police, and that CW-44 asked them to surrender and not fire. Further, it is stated that warning shots were fired by CW-46 Lal Madhar on the instructions of CW-44. Only thereafter, as the accused did not relent, is the police stated to have fired in the general direction of the accused persons. This narrative is neither reliable nor credible for multiple reasons which are detailed below:

- i. The FIR (**Ex. S2**) lodged after the incident does not record any particulars or roles of the accused persons in the alleged assault on the police, and makes

vague and general allegations. The specifics have been added into the narrative as later interpolations, and this raises serious doubts over the authenticity of the police's claims. The witnesses have failed to satisfactorily explain why no detail whatsoever was mentioned in the FIR, although more than one witness has stated before the Commission that they saw which accused snatched the weapons before firing. Thus, all facts were very much in the knowledge of the police party, yet omitted from the FIR, which leads to the irresistible conclusion of later fabrication.

ii. No credible explanation has been put forth as to why the accused persons were not handcuffed when they were taken to Chatanpally for recovery proceedings, given the highly sensitive nature of the case. It is noteworthy that CW-44 states that he did not seek permission to handcuff the accused as he felt that the force was adequate. (Refer to CW-44's deposition Q. No. 71)

iii. It is a matter of record that A-1 to A-4 had no pending prior criminal cases, and they were thus not hardened criminals with training in handling arms and ammunition, or in combat. The photographs of the accused show that at least three out of four were very thin and of tender age, it defies belief that they could have individually or collectively overpower their police handlers and assault trained armed policemen.

iv. It is relevant to note that persons who had never handled a 9mm pistol in their life are not likely to be acquainted with its working and would find it difficult to operate the same readily.

- a. SW-3 J. Surender Reddy, DCP, Rachkonda Commissionerate, in his deposition (Refer Pg 127 of 2124) states that the safety latch of a 9mm pistol is generally in locked position and it is unlocked only before firing. Thus, at the time when the accused allegedly snatched the pistols from the pouch, the pistol should have been in locked position.
- b. In the seizure panchnama **Ex. S-30**, there is no mention whether the safety latch of the pistols found in the hands of the deceased were

turned On or Off. CW-16 Mahesh Bhagwat, Commissioner of Police, Rachkonda, has stated in his deposition in response to Q. 53 that the SIT did not investigate the issue of locking of the safety latch of the two 9mm pistols.

- c. CW-34, NB Bardhan, retired Director and HOD Ballistics in Central Forensic Sciences Laboratory, CBI, has in response to Q. 3 given his categorical expert opinion with regard to a 9mm pistol that, *“If you put the safety knob on the safe position, the trigger will not function. If you remove that, then the trigger will function.”* He has further stated in his answer to Q. 4 that, *“if a person has never handled a pistol, he will not be able to identify the knob.”*
- d. In view of the above, it appears improbable that the accused persons could have fired upon the police party after snatching the 9mm pistols as the accused had no prior knowledge or experience about the said pistols.
- e. CW-45 and CW-49 have attempted to state that their pistols were on “magazine load” so the safety knob or latch would not affect its firing. The said averment is contradicted by the deposition of the expert witness CW-34 as well as by senior officer SW-3, DCP, Rachkonda Commissionerate.
- f. That CW-38 VC Sajjanar has in response to Q. 125 in his deposition admitted that in the Press Conference dt. 06.12.2019, he had stated that the concerned weapon were already unlocked prior to the incident. When questioned, in response to Q. 126 to 128, CW-38 states that he had learnt about the safety latches being unlocked from CW-18, DCP Shamshabad, and that he had not personally verified the same. CW-18 too states that he had not verified the same himself, and his information was based on the briefing by CW-15, SHO Shadnagar P.S. However, CW-15 nowhere in his affidavit or deposition remotely suggests having provided any such information to CW-18.

vi. That the police's narrative is not corroborated by recovery of any incriminating fingerprints, and this further raises suspicions over the veracity of the police's claims. No fingerprints of the four deceased persons have been found or traced on the two pouches which are alleged to have been opened by A-1 and A-4 when they snatched the firearm from the policemen. No fingerprint has been traced to the 9mm pistols either, nor has any fingerprint been traced on the stick purported to have been used by A-2 to assault CW-50. Refer to SW-3's deposition at page 125 of 2124

vii. That the two policemen said to have been injured in the assault, CW-49 and CW-50, received minor injuries - laceration and hairline fracture of scapula. No life threatening injury was caused to any policeman. Further, the deposition of the medical witness CW-32 Dr. Gone Naveen Kumar is inconsistent on whether CW-49 was conscious, semi conscious or unconscious upon arrival at the government hospital (Refer to Q. 50 and 51 of the deposition of CW-32). The MLC does not record that CW-49 and CW-50 were unconscious. Further, in reply to Q. 100, CW-32 admits that in his statement before the NHRC he had stated that CW-49 and CW-50 were conscious and walking, and were not in a serious condition.

viii. There are no firearm injuries to any person despite allegations of indiscriminate firing by the accused.

ix. All entry wounds of bullets are on the front side of the bodies of the four deceased persons, despite the police narrative that they were trying to escape and run away. It is clear that all four were shot while they were facing the police and not while fleeing. Even if it is assumed as *arguendo* that A-1/D-1 and A-4/D-4 were facing the police and firing at them, it makes no logical sense why A-2/D-2 and A-3/D-3 who had no firearms would face towards the police, instead of running further away from them. Despite such queries, no plausible explanation regarding this has come from the policemen involved in the encounter. The location of the entry wounds casts a grave shadow of suspicion over the entire encounter and self defense narrative, and in itself is a circumstance that calls for an impartial investigation. [Refer to Q.279 of SW-3's

deposition where it is admitted that there are no bullet entry wounds on the backside of D-1 to D-4]

x. Apart from the oral testimony of the police party and panch witnesses who were part of the police party, there is no forensic or scientific material to corroborate the claims of the police with regard to the extraordinary and unbelievable sequence of events near Chatanpally bridge on 06.12.2019. The FIR (Ex. S2) reveals a predetermined outcome was to be arrived at by the investigation, as contrary to law, no FIR was registered under Sec.302 IPC to investigate the true facts leading to the shootout by the police of the the deceased persons premised on an improbable theory of self defense was incorporated in it.

VI. Right of Self defence to be proved during trial and cannot be invoked in the FIR to scuttle the investigation

90. That it is the mandate of the law that whenever a cognizable offence is alleged to have been committed, it ought to lead to registration of FIR, as held in *Lalita Kumari vs State of UP* (2014) 2 SCC 1. In the present case, it is admitted that D-1 to D-4 were killed by policemen. Yet, no FIR was registered under Section 302 IPC against the policemen. Instead, shockingly, FIR Crime No.803/2019 of Shadnagar PS was registered against the deceased persons on 06.12.2019 u/Secs 307, 394, 224, 332 r/w 34 IPC and Sec. 174 r/w 176 Cr.P.C. and Sec. 25(1-B)(a), 27 Arms Act.

91. That the Hon'ble Supreme Court in WP(Crl) 348/2019, [Ex. S-6]relating to the incident under enquiry, in its Order dt. 12.12.2019 commented upon the same stating:

“After the encounter, FIR No. 803 of 2019 has been registered under Sections 307, 224, 394, 332 read with Section 34 of the Indian Penal Code, 25(1-B)(a) and 27 of the Arms Act, and under Section 174 read with Section 176 of the Code of Criminal Procedure, 1973. This is rather odd, as it is obvious that no prosecution is contemplated against dead persons who can neither be tried nor convicted.” (Emphasis supplied)

92. That the judgment of the High Court of Andhra Pradesh at Hyderabad in *AP Civil Liberties Committee vs Government of AP* MANU/AP/0031/2009 has dealt with the proposition and held as below:

195. *According to the State, despite the claim of self-defense justification by officers of the law enforcement party, if it were interpreted that Section 154(1) Cr.P.C. obligates the recording and registration of a culpable offence against the involved police officers, the police force would be demoralized and subjected to the avoidable jeopardy and the trauma of investigation or trial. This is broadly the justification presented by the State for its deeply entrenched and unique practice.*

196. *We do not consider that the morale of our law enforcement officials, who perform under difficult, taxing and stressful situations, is so fragile as to be shattered by the due observance of the legal process. In any event, the inexorable mandate of law cannot be sacrificed at the altar of expediency or to placate executive phobia of the legal processes.*

...

199. *When the claim is of a self-defense justification, the law is very clear that an ordinary civilian may claim such justification as well. A private defense claim by a member of the police force stands on no different or special footing. Explanations 1 and 2 to Section 99 IPC clearly exemplify that an individual has a right of private defense even against a public servant or against an act done, or attempted to be done, by the direction of a public servant.*

...

206. *The analysis in the preceding paragraphs compels the conclusion that a self defense justification cannot be assumed to be legitimate or established on the mere assertion by or on behalf of the perpetrator, without the rigor of a focused investigation for the purpose of collecting relevant evidence after registration of the FIR incorporating the name of the perpetrator(s), if and as*

disclosed in the information conveyed and duly enumerating the appropriate provisions of substantive law.

207. In our considered view the failure to record and register the primary offence (of the death of civilian(s) in a transaction involving exchange of fire with officers of the police establishment of the State) is a grave and wholly unwarranted transgression of constitutional and sovereign responsibility. The State is legislatively mandated to record and register a cognizable offence and thereafter set the criminal law in motion including the immediately following process of investigating into the offence.

208. A person (whether a civilian or a public servant) accused of a cognizable offence including of culpable homicide is exculpated of the prohibited conduct only on the ascertainment and establishment of the necessary facts, which rationally support the claim of private defense. It inexorably follows that when the information is conveyed to an officer in charge of the police station (even if be by a police officer), that the death(s) occurred as a consequence of firing by the police in self defense, such information must be recorded under Section 154(1) Cr.P.C. treating the information as one relating to commission of the cognizable offence of culpable homicide amounting to murder. An investigation mandated by Section 157 Cr.P.C., must follow. The investigation could be avoided only by (the officer in charge of the police station) recording in a report, clear reasons for failing to pursue investigation. Recording of such reasons is mandatory and a non-derogable obligation qua the provisions of Section 157 Cr.P.C.

209. We therefore consider and hold that the registration of civilian death(s) in police encounters exclusively Under Section 174 Cr.P.C. is wholly inappropriate and unauthorized. We further hold that such information shall be recorded and registered Under Section 154(1) Cr.P.C., a process that structurally ensures judicial oversight, control and supervision, of the integrity of the investigatorial process. We reject the contention that an obligation to record the first information Under Section 154(1) Cr.P.C and to investigate

into the facts and circumstances of the case so recorded Under Section 157 Cr.P.C is avoided by the stratagem of an inquest Under Section 174 Cr.P.C. The stand by the State that there is nevertheless an investigation on registering the case under Section 174 Cr.P.C. or incidentally after registering a case against the offences by the civilian party, is an extravagant argument, incongruous with the provisions of the Cr.P.C. We find no justification on text, principle or authority for this deviant process that has been entrenched as an inveterate and regnant practice in the State.”

93. The above judgment of the High Court of Andhra Pradesh was challenged in the Hon’ble Supreme Court in *Andhra Pradesh Police Officers Association vs. A.P. Civil Liberties Committee 2019 SCC OnLine SC 1600*, but the Hon’ble Supreme Court did not set aside the judgment of the High Court, and further reiterated the principles laid down in *People’s Union for Civil Liberties vs State of Maharashtra (2014) 10 SCC 635*. Thus, the observations in *APCLC (Supra)* are binding.

94. The National Human Rights Commission (NHRC) too addressed a letter - dated 2.12.2003 to all the Chief Ministers of States and to Union Territories intimating the procedure to be followed in cases of death in the course of police action. In the said letter, it was *inter-alia* directed:

“C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C.”

95. That even otherwise, the law on private defense is the same for policemen and civilians, and it is well settled that the onus is on the accused to establish his plea through evidence led in trial. The landmark judgment of the Hon’ble Supreme Court in *Kashiram vs State of MP (2002) 1 SCC 71*, which is cited by numerous later judgments, categorically explains how the plea of private defense is to be raised in a criminal case:

“23. Section 105 of the Evidence Act, 1872 provides that the burden of proving the existence of circumstances which would bring the act of the accused alleged to be an offence within the exercise of right of private defence is on him and the court shall presume the absence of such circumstances.

...

24... Though Section 105 of the Evidence Act enacts a rule regarding burden of proof but it does not follow therefrom that the plea of private defence should be specifically taken and if not taken shall not be available to be considered though made out from the evidence available in the case. A plea of self-defence can be taken by introducing such plea in the cross-examination of prosecution witnesses or in the statement of the accused persons recorded under Section 313 CrPC or by adducing defence evidence. And, even if the plea is not introduced in any one of these three modes still it can be raised during the course of submissions by relying on the probabilities and circumstances obtaining in the case as held by this Court in Vijayee Singh case [(1990) 3 SCC 190 : 1990 SCC (Cri) 378 : AIR 1990 SC 1459].”

[Reliance is also placed on *S.S.Rathi, ACP vs. CBI* (2011) 6 SCC 1- para 44, 52, 60.]

96. Thus, the mandate of the law is that whenever death is caused by police action, whatsoever be the circumstance, an FIR has to be registered for culpable homicide, noting the specific role of the policemen in the encounter and mentioning all details of the bullets fired, etc., and the issue of self defense would be a matter of trial, for the accused policemen to prove by leading evidence to that effect. There must mandatorily be an investigation into the incident so as to determine the culpability of the accused policemen under law, if any.

97. However, where the Commissioner of Police issues public declarations lauding the police action without any probe or investigation and no effective FIR is registered against the policemen who have caused the death(s), there remains little or no hope

for a fair investigation thereafter being conducted by officers of the same cadre, as the case has not only been pre-judged by a very high ranking police official but also publicly proclaimed as a successful act of policing.

Necessity and proportionality principles govern the right to self defense

98. That whether the right to self defense extends to taking the life of another, is governed by Sections 96 to 106 of the Indian Penal Code, which places the onus to prove that the right existed upon the person claiming such right. The Hon'ble Supreme Court in *V Subramani vs State of Tamil Nadu* (2005) 10 SCC 358 has laid down the scheme of the said provisions and held,

“A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject matter of right of private defence. The plea of right comprises the body or property (i) of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101, IPC define the limit and extent of right of private defence.” (Para 12)

99. In the present case, whether the threat perceived by the police officers was a reasonable threat to their life to warrant taking the life of D-1 to D-4, of whom two were admittedly unarmed even as per the police party's narrative, would be a matter of evidence to be led during trial, and cannot be determined at the stage of investigation. However, suffice to say that the police party involved in the encounter will be saved from conviction under S. 302 IPC only if they are able to establish the threat, and continuance of the threat, as per the statutory requirement of Sections 99-106, and failure to establish necessity and proportionality in their action would be fatal to their plea of self defense.

VII. Proceedings under Section 27, Indian Evidence Act, 1872

100. It is settled law that recoveries made pursuant to a confession made to a police officer is only admissible under Section 27 Indian Evidence Act, 1872, if it leads to discovery of a fact not already known to the police. In such circumstances, it is baffling why verbatim confessional statements were recorded of all four accused, when the fact was already in the knowledge of the police after the confession of A-1 had been recorded. Since the confession of A-1 dt. 05.12.2019 had already disclosed the purported location from where the victim's phone, power bank and wrist watch were stated to be recovered, no further confessional statements were required to be recorded for the purposes of carrying out recovery. In view of the above, it is submitted that the recovery proceedings could have been conducted by taking only A-1 to the place where the articles were hidden, and there was no investigative need to take all four accused persons together to Chatanpally. This is particularly concerning, given that the police has otherwise taken extraordinary measures in the case, including departing from mandatory criminal procedure, to apparently protect the accused from the baying mob. This is also the reason cited by CW-44 for taking the accused to Chatanpally before sunrise. Why then were all four accused taken to Chatanpally when the law only required A-1 to be taken, is a question that remains unanswered.

101. The phone, power bank and wrist watch stated to be of the victim has been recovered from a blue polythene cover [Refer to **Ex. S30**] from the pit which was purportedly shown only by A-1. [Refer to Q. 93 of CW-45's deposition]. It is pertinent here to refer to the additional confessional statement of A-1 which is part of **Ex. S 27**. In the said statement, it was recorded that the victim's belongings were "*hid near the big current pole towards east side from the burnt dead body at some distance.*" There is no reference to any blue polythene cover in the said statement. CW-31, Dr. N Venkanna, Assistant Director Clues Team, Hyderabad City, in reply to Q.71 has stated that the articles in the polythene cover were not visible without pulling out the entire polythene cover from the soil. Thus, the said articles were completely covered by the blue polythene cover. In such circumstances, the non-mentioning of the blue polythene cover in the additional confession of A-1 raises doubts whether the purported recovery could be held to have been pursuant to his confessional statement.

102. A-1 to A-4 were killed in the alleged encounter, admittedly before the blue polythene was taken out of the soil. Since the confessional statement did not refer to the blue polythene, and the recovered mobile, power bank, wrist watch and phone wire were not seen or identified by the accused before they were killed, there was no effective discovery of fact from the confessional statements.

103. It is also relevant to note that the articles recovered by CW-44, mentioned in **Ex. S30**, have not been identified by the victim's family. SW-3 further admits in Q. 488 and 490 of his deposition that the articles of the victim were not photographed or videographed at the time of recovery. As such, it remains uncertain and unclear whether the said articles belonged to the victim at all in the present case.

VIII. The signs of a cover-up: Press Conferences held by the Commissioner of Police VC Sajjanar and Deputy Commissioner of Police, N Prakash Reddy on 29.11.2019 and 06.12.2019

104. That the actions of the police through the period of investigation evinces a series of deliberate acts that were calculated to malign the deceased suspects by selectively

leaking manifestly false information in press conferences held by the police officials, immediately after the arrest and death of the deceased suspects. Similarly deliberate actions were undertaken immediately after their death in police custody to ensure their encounter in police custody would satiate the vengeful impulses of a shocked public, and vitiate the possibility of a fair inquiry into their actions leading to the deaths of the deceased suspects.

105. On 29.11.2019, less than two hours after the police claimed the arrest of 4 men suspects in the gang rape and murder of the Dr. at the Commissioner of Police, VC Sajjanar (CW-38) and the DCP N. Prakash Reddy (CW-18) addressed a press conference where gory details of the crime and the ongoing investigation were leaked to the media, including a photograph of the four suspects in police custody. (Q. 96 in CW-18 deposition and Q. 39, 43 in CW-38 deposition)

106. CW-18 admits to briefing the Commissioner of Police regarding the details revealed in the Press Conference. In his deposition before this Hon'ble Commission, he admits that he did not inquire from the ACP regarding the basis on which the ages of the accused were communicated to him. (Q. 146 to Q. 148). When questioned about the fact that minute details about the investigation and the alleged roles played by the suspects were revealed by him to the media, the only explanation put forward by CW-38 is that the Press Conference was based on the briefing done by DCP, Shamshabad. (Q. 40, 43 in CW-38 deposition)

107. When asked about the propriety of holding such a press conference, especially with regard to the observations of the Hon'ble Supreme Court, CW-18 states that he would need access to the Hon'ble Supreme Court order and is only aware of the general observation that investigation should not be hampered due to media briefings. (Q. 169-170 in CW-38 deposition) The bald denial of the Commissioner of Police, VC Sajjanar to a specific question, regarding whether he thought it was improper to have briefed the media about the purported confession obtained from the accused before the factum of arrest and confession were reported to the jurisdictional magistrate, is shocking and reveals the malicious intent with which the police

conducted the investigation and prejudiced the case against the four suspects. (Refer to Q. 60 and 61 of CW-38 deposition)

108. That shockingly, while the purported confessions of the accused were still underway, manifestly false and concocted information was given to the media regarding the role played by the deceased suspects in Cr. No. 784/2019 on the basis of the purported confession made by A-1, Mohd. Arif. Even while relaying details to the media accessed from the purported confession made by the suspect, the Commissioner and the Deputy Commissioner of Police admit to not having read it before addressing the media. (Refer to Q. 58 and 59 in CW-38 deposition and Q. 201 in CW-18 deposition)

109. In his deposition before this Hon'ble Commission, when confronted with the inconsistencies between the recorded confession and the information presented to the media, CW-18, DCP N. Prakash Reddy states that the Commissioner presented the facts differently. (Refer to Q. 143-145 in CW-18 deposition) The fact that details of the alleged confessional statement of Mohd. Arif were made public even before the statements of Jollu Naveen, Jollu Shiva and C. Chennakeshavulu were recorded, manifestly prejudiced a fair investigation against the other accused.

110. That consistent with the belligerent attitude displayed through the course of the investigation against the deceased suspects and a complete disregard for constitutional and statutory protections afforded to them, the Commissioner of Police, VC Sajjanar and DCP N. Prakash Reddy held a press conference less than 300 meters away from the site of the alleged encounter at 3:00 pm, while the bodies of the deceased suspects were still present at the scene of occurrence and a scene and recovery panchnama were yet to be executed. (Refer to Q. 120, 121, 138, and 149 in CW-38's deposition).

111. In the course of the press conference admittedly false information contrary to the record of the case was leaked to the media, in a concerted effort to frustrate the possibility of a fair enquiry into the circumstances in which the deceased suspects were killed in police custody. CW-38 in his press conference stated that articles

belonging to the victim were recovered at the instance of the accused, when admittedly no such recovery had been effected at that point. (Q. 136 in CW-38 deposition). The Commissioner further stated that the DNA profiling of both the victim and the accused had been conducted, which was again admittedly false. (Q.162 and Q.177 in CW-18 deposition) The only explanation put forward by the Commissioner in his deposition is that these facts were “erroneously mentioned”. (Q. 129 in CW-38 deposition).

112. That not only did the Commissioner of Police and Deputy Commissioner of Police hold a press conference adjacent to the site of the alleged encounter, while the bodies of the deceased suspects were still present at the scene and investigation was still underway, in violation of all principles of a fair criminal investigation, they gave manifestly false information to the press. A reference to the transcript of the Press Conference (Part of **Ex. C-26** - the Affidavit of CW-2), reveals that before an inquiry under Section 176(1A)CrPC was even commenced by the Judicial Magistrate, the Police Commissioner declared that police had fired upon the deceased suspects in self defence. In this way senior police officers provided a justification and seal of approval to the alleged encounter and misled the public and the gang rape victim's family and the public.

113. That the Hon’ble Supreme Court has on many occasions deprecated the practice of the police conducting a media trial through select media leaks. The Hon’ble Supreme Court in *Rajendran Chingaravelu vs. RK Mishra* (2010) 1 SCC 457 held that the police should not disclose details of evidence pertaining to an ongoing investigation as the same is not in the interest of justice.

“But the appellant's grievance in regard to media being informed about the incident even before completion of investigation, is justified. There is a growing tendency among investigating officers (either police or other departments) to inform the media, even before the completion of investigation, that they have caught a criminal or an offender. Such crude attempts to claim credit for imaginary investigational breakthroughs should be curbed. Even where a suspect surrenders or a person required for questioning voluntarily

appears, it is not uncommon for the Investigating Officers to represent to the media that the person was arrested with much effort after considerable investigation or a chase.

Similarly, when someone voluntarily declares the money he is carrying, media is informed that huge cash which was not declared was discovered by their vigilant investigations and thorough checking. Premature disclosures or 'leakage' to the media in a pending investigation will not only jeopardise and impede further investigation, but many a time, allow the real culprit to escape from law... ” (Para 21)

- 114.** In *Romila Thapar vs. Union of India* (2018) 10 SCC 753 HMJ. Chadrachud made the following observation in his dissenting opinion,

“...The use of the electronic media by the investigating arm of the State to influence public opinion during pendency of an investigation subverts the fairness of the investigation. The police are not adjudicators nor do they pronounce upon guilt.” (Para 74)

- 115.** The Hon'ble High Court of Delhi in its judgement delivered on 27.07.2020 in *Devangana Kalita vs. Delhi Police W.P. (Crl) 898/2020* has held,

“The police or any other agency cannot use media to influence public opinion to accept that the accused is guilty of an alleged offence while the matter is still being investigated. The same is not only likely to subvert the fairness of the investigation but would also have the propensity to destroy or weaken the presumption of innocence, which must be maintained in favour of the accused till he/she is found guilty after a fair trial.” (Para 45)

...

“Selective disclosure of information calculated to sway the public opinion to believe that an accused is guilty of the alleged offence; to use electronic or other media to run a campaign to besmirch the reputation or credibility of the person concerned; and to make questionable claims of solving cases and

apprehending the guilty while the investigations are at a nascent stage, would clearly be impermissible...” (Para 50)

- 116.** The cavalier attitude of the Commissioner, VC Sajjanar, regarding the fact that four suspected persons, including three juvenile individuals, Jollu Naveen (aged 15, Jollu Shiva, aged 17 and C. Chennakeshavulu aged, 15 were killed in police custody is exemplified in his response to the following question put forward by a journalist during the press conference,

Question from journalist : “Sir, last question Sir. Lots of criticism coming in that the police has taken law into the hands. Any word from the State Home Ministry because (unclear)...NHRC has also taken cognizance of this incident.”

*V.C. Sajjanar : “See law has done its duty, see, law has done its duty, that’s all that I can say.” (Refer to **Annexure A-9** in the Affidavit of CW-2, exhibited as **Ex. C-26**)*

IX. NHRC Investigation From Evening of 7th December, 2019 and 10th December, 2019

- 117.** A team of 5 police officers from the National Human Rights Commission arrived in Hyderabad on the evening of 7-12-2019. The team consisted of 2 DSPs, 2 Inspectors and the team leader was the rank of DIG, Ms Manzil Saini. Upon arriving in Hyderabad the team headed straight to the scene of firing by about 6pm. In their duration of stay between the evening of 7-12-2019 and 10-12-2019, the team of 4 police officers led by the DIG examined 21 witnesses.

- 118.** All the police witnesses examined by the Hon’ble Commission admitted to the NHRC examining and recording their statements. They admitted that the NHRC team asked questions and recorded the statements. An interpreter was used to communicate the questions in Telugu. A sketch of the scene of offence was prepared and given to each witness to mark his position and that of others at the scene of firing. Each of the witnesses were asked to mark their positions from the start to the end of the event of

firing. All witnesses admitted to having signed on each page of their statement.

119. That pertinently, the police party deposed one version before the NHRC and vehemently denied the same before this Hon'ble Commission. The statements before the NHRC, being closer in time to the incident, are crucial to understand the true sequence of events that transpired on that fateful morning, as this was the earliest version of events recorded by an independent statutory body. It is significant that each of the witnesses have vehemently denied the contents of statements made by them before the NHRC, as they contradict the narrative later concocted and fabricated by the police and other State witnesses to mislead this Hon'ble Commission.

120. The difference in versions of the witnesses between that of the NHRC and the Hon'ble Commission are collated under the following heads:

a) Whether Assistant IO examined A1 to A 4 on 5/12/2019 :

CW-48 (Q No 152) stated before NHRC that nobody came to interrogate accused persons on 5/12/2019. CW-52 before NHRC said that he was not aware if A1 to A 4 were interrogated/questioned by Asst IO K Venkat Reddy on 5/12/2019 (Q 114). However, the statement was denied before the Commission. It is the case of the police that the Accused were brought from Cherlapally jail to the safe house on the intervening night of 4th and 5th December, 2019, at about 1:00AM. The Commission repeatedly questioned CW-44 about the extent of interrogation that took place on 5/12/2019 by the Assistant IO Venkat Reddy; the reasons for the delay in taking the accused for recovery; and the reason for the delay in CW-44 reaching the safe house at 10pm on 5/12/2019. Further the purported Interrogation Notes made by the Asst IO Venkat Reddy was not made part of the Case Diary, and is thus open to fabrication. CW-44 and CW-15 were questioned about the need for an interrogation and the need for a 2nd confession as the 1st confession was recorded on the evening of 29-11-2019 in which the Accused had already confessed about the articles that they had allegedly hidden, and disclosed the location. This casts a grave doubt over the ostensible investigative need of the

police to take the accused persons to Chatanpally before sunrise on 06.12.2019.

b) Time of Starting from Safe House at 3/3.30am and Reaching Chatanpally at 4/4.30am:

The following witnesses stated before the NHRC that they left the safe house at 3/3.30 am, reached Chatanpally by 4/4.30am, sat in the bus for one hour and then deboarded after 5.30am. -SW-4 (Q No 52); CW-30(Q No 111); CW-44 (Q No 315). CW-45 (Q No 178); CW-46 (65); CW-47 (Q No 111); CW-48 (Q No 176); CW-52(Question 113). CW-27 (Q No 105, 108. However the said statements were denied by all before this Hon'ble Commission. CW-51 (Q No 100) admits that the bus arrived at the safe house at 12am. Out of 13 persons (including the driver and panchas) who had proceeded to Chatanpally, ten of them deposed before the NHRC that they left the safe house at 3/3.30am. The distance between the safe house and Chatanpally is about 60km, the major part being on the highway. The fact that three of the police party carried torch lights and dragon lights also points to the fact that they reached the scene of firing at 4.30am in the morning, well before sunrise.

c) Visibility:

CW-46 (Q No 107) refers to the visibility as "light dark" before NHRC. CW-51 (Q No 102) stated before NHRC that it was dark and there was medium fog, and that there was visibility for 20-30 feet. CW-45(Q No 179) deposed before NHRC that visibility was poor. CW-27 stated before NHRC that it was dawn and that visibility was not clear (Q No 119-120). Four witnesses deposed before NHRC that visibility was poor. All these witnesses have in their deposition before this Hon'ble Commission denied their statements to the NHRC investigating team. This Commission had pointed out that in December the sun rises later and often there is fog in the morning. This is further affirmed by the related evidence that three members of the police party were carrying torch lights and dragon lights. If indeed they had reached

the field after 6am, there would be no necessity of carrying torch/dragon lights.

d) ACP leading the police party, police party moving in single file and the path being narrow:

The following witnesses confirmed before the NHRC that the ACP, CW-44, was leading the police party which was moving in a single file and that the path was narrow - CW-51(Q 104 – 106); CW-47 (Q No 115); CW-45 (Q No 179); CW-46(Q No 51). The same was however denied before the Hon'ble Commission. Four witnesses have deposed before NHRC that ACP Surender, CW 44, led the police party, that they moved in single file and that the way was narrow, whereas in the Affidavits filed before this Commission, they changed the alignment of their formation to rows. If the police party had moved in single file and the path was narrow, A-1 wouldn't have been able to snatch the pistol from CI Narasimha Reddy, and the other Accused wouldn't have been able to attack the police party and snatch their guns simultaneously. It is manifest that this belated alteration and improvement in answers by the police, is configured to fit the alleged encounter theory.

e) Throwing soil in eyes of CI Narasimha Reddy and Attack on Police Party:

CW-47 (Q No 125) and CW-51(Q No 107 & 108) did not state before the NHRC team about the accused throwing soil/dirt in the eyes of CI Narasimha Reddy. Before this Hon'ble Commission, the witnesses have denied making these statements. SW-4 admits that he did not state before NHRC that soil was thrown into the eyes of the police party (Q No 33). His statement before NHRC is marked as **Ex C-19**. SW-4 (Q No 76) stated before NHRC that A-1 Arif was not carrying any stone, stick or weapon in his hands when he was running. SW-4 also states to the NHRC team that he did not see any accused persons attacking police personnel (Q No 89). Both statements are now denied before this Hon'ble Commission. Throwing soil in the eyes of the police party is also not mentioned in the complaint in support of FIR

803/2019, nor was it mentioned by the injured witnesses CW-49 & CW-50 before the Judicial Magistrate. This fact was also not deposed by CW-47, CW-51 and SW-4 before the NHRC. Throwing soil in the eyes of the police party is a distinct improvement with the sole intention of creating a plausible story to explain the circumstances of the encounter in a manner that can justify the self defense claim. Because without the so-called soil throwing incident, it would be impossible for the police to sustain the fiction of A-1 managing to grab the pistol from CW-45. It is a material improvement in the case which strongly points towards manipulation of facts to cover up a fake encounter.

f) Firing in Standing Position:

CW-47 (Q No 127) states before the NHRC team that he was in standing position while firing. CW-48 (Q No 122 & 123) stated before the NHRC team that he opened fire in a standing position. CW-48(Q No 69) also states before NHRC that the other 2 shooters were in standing position while firing. Before this Hon'ble Commission, the said witnesses have denied the same. CW-48 before the Commission denies that he was in standing position, and adds as explanation that what he meant was, that he was standing in a kneeling position! The fact that in the first instance the police witnesses have stated that the shooters were in standing position, completely falsifies the account of the police that they were attacked, that they took cover behind the 5th embankment and that they fired in self defense. The depositions and untenable explanations offered before this Hon'ble Commission disclose yet another marked improvement which undermines the police case of having fired in self defence.

g) Injured policemen had fallen down but were conscious:

CW-52(Q No 103) deposed before this Hon'ble Commission about injured policemen being conscious. CW-32, the CHC doctor, stated before the NHRC team that injured policemen were conscious and that they were walking by themselves, that they were not in serious condition (Q No 100). CW-32 also asked injured persons about injuries (Q No 101). CW-35 the doctor who treated CW-50 Aravind Goud, at Care Hospital, stated before the NHRC team

that his patient suffered brief loss of consciousness. There was no attempt made to use the police bus to transfer the so called injured policemen to the nearest hospital. Despite the ambulance reaching Chatanpally, there was no effort to take the injured policemen in the ambulance to the hospital. The allegedly injured policemen were finally taken in Bolero vehicles to the Area hospital at Shadnagar. The Medico Legal record at both Shadnagar Area hospital and Care Hospital shows that the policemen were conscious and coherent. The nature of the injuries also falsifies the version of the police.

h) That all witnesses were intimidated and forced to sign their statements before NHRC:

The following witnesses CW-45 (Q Nos 180 -186); CW-46(104-105); CW-53(Questions No 110 – 111) while denying their statements recorded before the NHRC team, have spoken about being intimidated by NHRC investigating team and forced to sign their statements. CW-44 (Q Nos 86 -110) was questioned in depth by this Hon'ble Commission about why he did not complain to superior officers about the conduct of the NHRC investigating team. In Q No 240 the witness is pointedly asked as to why he did not speak about the threats and intimidation in his Affidavit before this Hon'ble Commission. Witness says that he wanted to close the matter. Such scandalous and serious allegations against the NHRC investigating team cannot be believed when they are made in passing while answering questions put by the Hon'ble Commission, in the absence of contemporaneous complaints to that effect. Evidently, these allegations are an afterthought as the witnesses could not explain the drastic change of stance made by them in their statements before this Hon'ble Commission.

X. Judicial Magisterial Inquiry u/Sec 176(1-A) Cr.P.C.

121. The Principal Junior Civil Judge-cum-Judicial First Class Magistrate Shadnagar examined as CW-10 by this Hon'ble Commission conducted Judicial Inquiry u/s 176(1-A) CrPC. CW-10 however received a copy of FIR 803/2019 only at 4.40pm on

06.12.2019. By then, the 4 Executive Magistrates (CW-9, CW-11, CW-12 & Late Hyder Ali) had concluded the inquest proceedings on D 1 to D 4, and the dead bodies were moved to the Government General Hospital, Mahbubnagar. By the time CW-10 reached the Hospital, the postmortem on D-1 and D-2 had already been concluded.

122. That on 07.12.2019, CW-10 went to Care Hospital and recorded statements of the 2 injured policemen Aravind Goud (CW-50) and Kore Venkateshwarlu (CW-49);enquired from the concerned doctors and examined the case sheets. On 09.12.2019, CW-10 visited the scene of offence and prepared a sketch of the scene of offence.

123. It is submitted that the following are the contentious issues about the Magisterial Inquiry u/s 176(1-A) CrPC in Cr No 803/2019:

a) Delay in Sending FIR in Cr No 803/2019 to CW-10:

SW-3 admits at Q.No 323 that Jurisdictional Magistrate CW-10 received a copy of FIR at 4.40pm on 06.12.2019. SW-3 does not explain why there was such a long delay as Shadnagar court is only 3.5 km from the police station. (Q 337 -338)

b) Conduct of Investigating Officer SW-3 in getting the Inquest conducted by Executive Magistrates:

In Questions 321 – 346, the Investigating Officer SW-3 is asked at length about why Executive Magistrates were called to conduct the Inquest on D1 to D4, about who called them, and why the IO did not wait for the Judicial Magistrate to conduct the inquiry. SW-3 gives no convincing answer about the delay in dispatching the FIR in Cr 803/2019 to the jurisdictional judicial Magistrate and the omission in waiting for the Judicial Magistrate to conduct inquiry. It is almost as if the inquest was allowed to be completed before the Judicial Magistrate is informed and proceedings under Sec 176(1-A) Cr.P.C. could commence.

c) Delay in arranging the visit of the Judicial Magistrate to the scene of offence:

The Judicial Magistrate CW-10 has stated in her Affidavit that there was delay in SW-3 arranging her visit to the scene of offence. The Magistrate could visit the scene of firing only on 09.12.2019, three days after the incident. SW-3 is not only evasive about not facilitating the visit of the Judicial Magistrate to the scene of offence but also blames the Magistrate for delay. (Q 334 -336) In all this while, the place of occurrence remained accessible and populated by local and national media covering the sensational news of the alleged encounter.

124. That the fatal delay in communicating the FIR to CW-10 rendered the proceedings under Sec 176(1-A) CrPC a mere formality, as the scene of offence had been contaminated and the dead bodies removed even before CW-10 was informed. Further, even the postmortem of D-1 and D-2 had been carried out before CW-10 could reach the hospital. The haste and urgency with which inquest proceedings were conducted by calling Executive Magistrates to the scene of offence, while simultaneously delaying the proceedings u/Sec 176(1-A) Cr.P.C., casts strong suspicion behind the motive of SW-3 in delaying the Magisterial inquiry proceedings. Improper proceedings u/Sec 176(1-A) Cr.P.C., defeat the purpose and legislative intent behind the statutory amendment which mandates Magisterial inquiry into custodial deaths, as has been held in *Kasthuri v. State of T.N (2014) SCC Online Mad 12579- para 20, 23, 24, 32, 33, 40*; *Pugalenthi v. State of T.N (2014) SCC Online Mad 12704- para 5,6, 7, 8, 11*; *PUCL v. State of Maharashtra (2014) 10 SCC 635-para 31.4*

XI. Invoking Command Responsibility as a principle of law.

125. In the present case, CW-38 VC Sajjanar has authorised various steps taken by his subordinate officers and has received regular briefings from them, but he claims that he was only involved in a superficial role as the formal signing authority and has refused to take responsibility. For all the false and baseless information that CW-38 has proclaimed as facts to the media which has prejudiced public minds against the four deceased persons, he states that he had no personal information or knowledge and was acting only as per the information that was provided to him by his

subordinates. On the other hand, the subordinate officers use CW-38 as a shield and state that their actions were under constant supervision, and that the false media proclamations were not based on their factual briefing but caused by CW-38's erroneous interpretation and presentation of facts. To deal with precisely such situations, where the 'ghost of anonymous authority' needs to be exorcised to pin accountability on officers, reliance has to be placed on the doctrine of command responsibility.

126. That international law imposes individual criminal responsibility on superior officers of law enforcement agencies in circumstances where the superior who has effective authority and control over his subordinates complies or participates in abuse through superior orders, instigation, consent or acquiescence. The principle of command responsibility also criminalizes the deliberate and negligent omissions of the superior where he had knowledge of or consciously disregarded information indicating that his subordinates were committing or about to commit crimes. Article 28 of the Rome Statute imposes criminal responsibility on superiors who fail to take all necessary and reasonable measures to prevent or repress the commission of crimes by their subordinates or to submit the matter to competent authorities for investigation and prosecution. Article 28 of the Rome Statute states as under:

“Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) *That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.*

(b) *With respect to **superior and subordinate relationships** not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:*

(i) *The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;*

(ii) *The crimes concerned activities that were within the effective responsibility and control of the superior; and*

(iii) *The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”*

127. The doctrine of command responsibility is explained by the International Criminal Court in the judgment *In the case of the Prosecutor vs Jean-Pierre Bemba Gombo* ICC-01/05-01/08, where it held,

“172. The Chamber considers that Article 28 is designed to reflect the responsibility of superiors by virtue of the powers of control they exercise over their subordinates. These responsibilities of control aim, inter alia, at ensuring the effective enforcement of fundamental principles of international humanitarian law, including the protection of protected persons and objects during armed conflict. The fundamental responsibilities which such superiors assume, and the potential for irreparable harm from a failure to properly fulfil those responsibilities, has long been recognised as subject to regulation by

criminal law. Historically, this is most clearly seen in the context of military commanders, whose individual criminal responsibility has been recognised in domestic law, in jurisprudence since at least the aftermath of the Second World War; and was subsequently reflected in Article 86 of Additional Protocol I to the Geneva Conventions.

...

183. For the purpose of Article 28(a), following consistent international criminal jurisprudence, the Chamber finds that “effective control” requires that the commander have the material ability to prevent or repress the commission of the crimes or to submit the matter to the competent authorities.”

- 128.** That the judgment in *Bemba* (Supra) importantly clarifies that the doctrine of command responsibility not only applies when a superior officer fails to prevent or repress the commission of crimes by his subordinates, but it can also be attracted if the superior authority fails to take steps to submit the matter before appropriate authorities for investigation.
- 129.** That the Commissioner of Police, VC Sajjanar and the Deputy Commissioner of Police, N. Prakash Reddy actively participated in the investigation in Cr. No. 784/2019 and had direct supervision over it. The acts of omission and commission, of these two high ranking senior police officers, through the investigation and the alleged encounter on 06.12.2019 reveal that through calculated and deliberate acts they allowed a slew of illegalities, culminating in a sensational alleged encounter and accolades for the police for circumventing the rule of law and celebrating the usurping of the role of courts to determine the guilt or innocence of an accused.
- 130.** That the evasion of supervisory responsibility by CW-38 during his deposition before the Hon’ble Commission, even while projecting himself as the face of the investigation during the multiple press conferences conducted by him, is a shoddy

attempt to underplay his involvement, direction and acquiescence to the multiple illegalities during the investigation and circumstances leading to the death of the deceased suspects in police custody.

- a) In response to Q. 23 in his deposition before this Hon'ble Commission, CW-38 the Commissioner of Police, VC Sajjanar categorically states, "*I did not monitor the investigation in Crime No. 784 of 2019*". This manifestly untrue declaration is an attempt to evade responsibility for the actions of his subordinates whose depositions consistently prove that no major decisions were taken during the investigation in Cr. No 784/2019 without the involvement and consent of CW-38. That CW-18, DCP N. Prakash Reddy, has categorically stated in his deposition that regular updates were given to the Commissioner of Police both orally and in writing. (Refer to Q. 10 and Q. 72 in CW-18's deposition). CW-15, A. Sreedhar Kumar (the then SHO of Shadnagar P.S.) also categorically states that the VC Sajjanar was monitoring the investigation in Crime No. 784/2019.
- b) That when confronted by specific memos issued by him constituting special teams to assist the IO, specifically identifying police personnel to aid ACP Shadnagar during custodial investigation, sanctioning long range weapons for escort duty of the deceased suspects, granting permission to keep the accused in Ravi Guest House, CW-38 deflects all responsibility onto DCP Shamshabad (Q. 26, 28 to 29, 33, 82).
- c) That when confronted by the manifestly false and prejudicial information given to the media in the press conferences addressed by him on 29.11.2019 and 06.12.2019, CW-38 evades all responsibility for the prejudice caused to the accused by claiming that all his statements were made on the basis of briefings given by DCP Shamshabad, and that he had not verified the facts. (Refer to Q. 39, 40, 58, 59, 123, 129, 138, 139) DCP Shamshabad, CW-18 however maintains that the discrepancies in the statements made at the press conferences occurred because the Commissioner misrepresented the facts he

was briefed on. (Q.145, 162, 156, 155)

- d) That the Commissioner of Police not only denies having knowledge of issues he has briefed the media on, he also denies taking specific decisions regarding the investigation of the case despite issuing multiple memos to his subordinates throughout the course of the investigation. A bare and manifestly false denial cannot absolve the Commissioner of his superintending role when documents speak to the contrary. The gross misconduct of the police at every stage of the investigation into Crime No. 784/2019 represents a complete abdication of duty.
- e) That a probe into the circumstances leading to the death of the deceased individuals in police custody, and the specific actions of the superior officials who actively participated in the investigation of Cr. No. 784/2019 and attempted to cover up and frustrate a fair inquiry into the killing of the deceased suspects, is necessary to ensure that the culture of impunity which allows trigger happy policemen to take the law into their hands does not continue any further.
- f) A perusal of the record of the present encounter would reveal the striking similarities with what the United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, Christof Heyns, has described as a script for “fake encounters” in India in his 2013 report after his India visit to the Human Rights Council.

“Where they occur, “fake encounters” entail that suspected criminals or persons alleged to be terrorists or insurgents, and in some cases individuals for whose apprehension an award is granted, are fatally shot by the security officers. A “shootout scene” is staged afterwards. The scene portrays those killed as the aggressors who had first opened fire. The security officers allege in this regard that they returned fire in self-defence.

After the incident, the security officers register a First Information Report (FIR) which often reflects their account of events. The Special Rapporteur heard concerns that the content of these reports is frequently undisputed, which eventually leads to the swift closure of the case. Along the same line, it appears that few, if any, encounter cases have been brought to the point of conducting investigations and, where applicable, prosecuting alleged perpetrators. Where inquiries are undertaken, the results are frequently not disclosed. Another difficulty in the investigation of encounters lies in the lack of witnesses, often due to the fact that encounters take place mostly during the early hours of the morning. Alternatively, witnesses fear coming forward with testimonies. In some cases, such a situation is further complicated by a reported practice of offering gallantry awards and promotions to security officers after the encounters, as well as of pressuring law enforcement officers, who face already heavy workloads due to understaffing, to demonstrate results.”

- g) It is incumbent on the State to ensure that such practices by police officers to evade their duty and pervert statutory obligations are not shielded by recourse to prepared and stage managed accounts that have the danger of becoming routine if unchecked.

XII. Right to Know the Truth and Right to Justice

131. That the truth behind “encounters”, often a euphemism for extra judicial killings by the police, is important to be uncovered as it has implications for rights of individuals, groups, law and public policy. The victim has a right to justice; the deceased victim and the victim's family have an inalienable right to know the truth; the people have a right to know whether the rule of law was followed or not by functionaries and instrumentalities of the State. Any abuse of authority or excessive use of power by agents of the State poses a grave threat to the constitutionally guaranteed right to life and liberty of all persons which are deeply wedded to the

supremacy of the rule of law. Accountability is the bedrock on which the rule of law is built. Agents of the state, particularly men in uniform who are vested with the legal authority to use force, must scrupulously adhere to the law and any departure from the same must be subjected to scrutiny, interrogation and adjudication. If seeking the truth does not lead to an investigation and accountability, then the entire exercise may be rendered illusory and redundant. The Hon'ble Supreme Court, in its celebrated judgment dated 08.07.2016 in *Extra Judicial Execution Victim Families Association (EEVFAM) vs Union of India and Anr*, (Writ Petition (Criminal) No. 129 of 2012) has explained this by holding:

“It is necessary to know the truth so that the law is tempered with justice. The exercise for knowing the truth mandates ascertaining whether fake encounters or extra-judicial executions have taken place and if so, who are the perpetrators of the human rights violations and how can the next of kin be commiserated with and what further steps ought to be taken, if any.”
(Emphasis supplied) (Para 3)

- 132.** That the encounter of the four suspects in the rape and murder of Disha leaves in its trail more victims seeking justice and truth. Firstly, the next of kin of Disha, who have a right to fair investigation and a right to justice, which places on the State the responsibility to prosecute the perpetrators of the heinous crime in accordance with law. As the accused persons have been killed in an alleged encounter due process of law has been short circuited by the police. The right of Disha and her family to justice delivered through a judicial verdict stands jeopardised. The next of kin of deceased suspects D-1 to D-4, have a right to know the truth about the circumstances of their death; and a right to justice if D-1 to D-4 have been extrajudicially killed; and given the overwhelming evidence that 3 of the deceased suspects were juveniles, the alleged encounter assumes an even more egregious form. Lastly, but importantly, citizens have a right to know the truth as its legitimate expectation of a just, fair and equitable society is premised on the supremacy of rule of law, which is under threat whenever the ugly head of impunity emerges through custodial killings by trigger happy policemen. Derogation from the rule of law is impermissible in any context or

situation, and even more so when it comes to violence against women.

133. That the proceedings before this Hon'ble Commission have revealed that the arrest, custody and interrogation of D-1 to D-4 were in violation of various statutory as well as constitutional rights, and that the police made no effort to give them even an illusion of fairness in the manner in which they were dealt with between 29.11.2019 and 06.12.2019. The fact that three of the four deceased appear to be juveniles is a shocking finding emerging from the record, and there is a serious need for a detailed probe into the purported narrative of the police encounter. In any event, for the multiple violations in the arrest, custody and interrogation of D-1 to D-4, prior to their killing, the next of kin of D-1 to D-4 ought to be heavily compensated by the State. Compensation for illegal state action is a public law remedy which the next of kin of the deceased would be entitled to as the right to life of D-1 to D-4 under Article 21 of the Constitution has been wrongly and arbitrarily abrogated by illegal action of State actors in uniform.

134. That as has been submitted hereinabove, the mandate of the *PUCL* (Supra) and *APCLC* (Supra) judgment require that an FIR be registered against the police team involved in the alleged encounter for the deaths of D-1 to D-4, and the role and responsibility of the policemen involved in the encounter be thoroughly investigated. Further, the aspect of media leaks and media briefings by high ranking police officials, CW-38 and CW-18, in violation of strict directions passed against the same in various judgments by the Hon'ble Supreme Court, including *Rajendran Chingaravelu v RK Mishra* (2010) 1 SCC 457, also needs to be probed, in order to determine whether the media briefings were part of a calculated strategy to demonize and dehumanise D-1 to D-4 in a manner that was likely to aid in controlling and managing the public response to an act of 'administrative liquidation'. As such, the investigation ought to be directed not only against the policemen (CW-45 to CW-53) led by CW-44 on 06.12.2019 at Chatanpally, but also include a thorough investigation into the role of CW-15, CW-16, CW-17, CW-18 and CW-38 in the incident, including the Telangana SIT's investigation into the case.

135. That apart from the shocking facts of the encounter, the proceedings before this Hon'ble Commission have also revealed a disturbing state of the wholesale non-implementation of the *DK Basu* guidelines as well as the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, with regard to the procedure to be followed when a child in conflict with law, or a person appearing to be aged between 18 and 21 years, is arrested and detained. The State of Telangana must take immediate steps to train and familiarize its police force with the mandate of the JJ Act so that no child is subjected to the horror of custodial death like D-2 to D-4.

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