

IN THE HIGH COURT OF DELHI AT NEW DELHI

Extraordinary Criminal Writ Jurisdiction

Writ Petition (Criminal) ___ of 2020

(Under Article 226 of the Constitution of India)

In the matter of:

Md Mustafa.

...Petitioner

Versus

GNCT of Delhi & Ors.

...Respondents

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New Delhi

Date: 19.02.20

Filed by:

Ms. Nabila Hasan

Advocate for the Petitioner

576 Masjid Road, Jangpura, Delhi 110014

+91 9911626645| nabila.hasan@hrln.org

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NOTICE OF MOTION

Sir,

The enclosed application in the aforesaid matter as being filed on behalf of the Petitioner and is likely to be listed on or any day thereafter. Please take notice accordingly.

New Delhi, .01.20

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URGENT APPLICATION

To,

The Registrar

High Court of Delhi,

New Delhi

Sir,

Kindly treat the matter on the file on an urgent basis. The ground for urgency in the instant case is that the petitioner is a victim of aggravated police brutality, and thereby is entitled to compensation for the loss he has incurred in order to avoid a grave injustice and irreparable damage to the Petitioner, in addition to the mental and physical trauma he has already suffered. The Petitioner hails from a poor family and therefore in light of the grievous physical and mental trauma he has suffered, is in urgent need of compensation.

Delhi 20.02.2020

Filed by:

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Advocate for the Petitioner

576 Masjid Road, Jangpura, Delhi 110014

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Certificate

This is to certify that coloured copies/photocopies supplied to the Respondents by way of advance notice are identical to those filed and relied on by the petitioner before this Hon Court.

Delhi, .01.2020

Filed by:

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Court Fee

Delhi, .01.2020

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MEMO OF PARTIES

1. Md. Mustafa

... Petitioner

Versus

1. Government of NCT of Delhi

Through its Chief Secretary

A Wing, I P Estate, Delhi Secretariat

New Delhi 110 002

...Respondent No 1

2. Department of Law and Order

Government of NCT of Delhi

C Wing, 7th Level, Delhi Secretariat

New Delhi 110 002

...Respondent No 2

3. Department of Home,

Government of NCT of Delhi

5th Floor, C- Wing Delhi Secretariat,
New Delhi-110 001 ...Respondent No 3

4. Delhi Police

Through the Commissioner of Police
Police Headquarters, I. P. Estate,
ITO, New Delhi-110 002 ...Respondent No 4

5. Delhi Legal Services Authority

Through its Member Secretary
1st floor, Pre-Fab Building
Patiala House Courts
New Delhi 110 001 ...Respondent No 5

6. Department of Social Welfare

Government. of NCT of Delhi,
GLNS Complex, Delhi Gate
New Delhi - 110 001. ...Respondent No.6

7. Jamia Millia Islamia University

Through its Vice Chancellor
Jamia Nagar, New Delhi 110025 ...Respondent No 8

8. Union of India

Through its Principal Secretary
Ministry of Home Affairs
North Block, Central Secretariat
New Delhi 110 001

...Respondent No. 9

New Delhi

Date: .02.20.

Filed By

Ms. Nabila Hasan

Advocate for the Petitioner

576 Masjid Road, Jangpura, Delhi 110014

+91 9911626645 | nabila.hasan@hrln.org

SYNOPSIS

1. The present urgent writ petition is being filed under Article 226 of the Constitution of India seeking intervention of this Hon'ble Court for directions to the Respondents to provide compensation to the

Petitioner for the physical and mental trauma suffered by him as a result of the failure of the State to protect the fundamental rights of its citizens. The Petitioner is a victim of brutal violence carried out by armed forces which entered the campus of Jamia Millia Islamia University without the authorisation of the University administration. The Petitioner also seeks the registration of an FIR against the armed forces who are responsible for the critical medical condition of petitioner who has severely fractured both his hands.

2. The main grounds on which this Petition is filed is the brutality exercised by the Delhi police against the Petitioner, due to which the Petitioner fractured both his hands, suffered acute mental trauma, and due to which his personal property viz his laptop was irreparably damaged, as a result he is unable to lead normal life. If the Petitioner is not adequately compensated for his physical and mental trauma and to redress the losses caused by constitutionally violative acts of the Delhi Police, this will be a grave injustice towards the Petitioner.
3. The petitioner is being impugned with the action of the police officials who have grossly violated the fundamental sacrosanct right to life and personal liberty entrenched in Article 14 and 21 of the Constitution of India. The present petition focuses upon the infliction of arbitrary violence by the Delhi Police on non-protestors, such as the Petitioner, and protestors of the CAA

alike, in a feigned attempt to restore law and order. The present brutal attack on the Petitioner can be substantiated by the words of Justice K V Krishna Iyer, "*an unarmed, peaceful protest procession is no jural anathema.*" The exercise of police brutality in light of the current CAA protests is a paradigm of state organized violence, whereby the State has failed to maintain law and order, and with its utilisation of systemic violence has caused the Petitioner grave mental and physical trauma.

FACTS

4. In July 2018, the Petitioner, aged about 27 years, enrolled in a Master of Arts in Social Exclusion and Inclusive Policy program at Jamia Millia Islamia University in New Delhi. The petitioner is a bright and dedicated student, who is also a graduate of a Bachelor of Commerce and Master of Business Administration ('MBA') degree. He is UPSC aspirant, aspires to serve his country.

5. On 15.12.2019, the Petitioner was studying from around 9 am onwards in the Ibn-e-Sina Library (Old Library) of JMI in the MA/MPhil Room in preparation for his upcoming UPSC examination. At around 5.30 pm, the Petitioner heard the noise of tear gas shellings coming from outside the MA/MPhil Room. This created a panic among the students sitting the library. At around 05:45 pm, policemen started violently banging on the MA/MPhil room door and eventually broke down the door. Around 20-30

policemen barged in and started arbitrarily beating students with lathis and shouting foul communal and religious abuses.

6. The 3 policemen aggressively approached the petitioner's table and broke in discriminatory lathi charge, and hit head and as the Petitioner tried to escape the violence, they continued to beat him on his back. In that lathi charge, the electronic gadget was also damaged. A true copy of photographs of injuries sustained by the Petitioner and his broken laptop are marked and annexed herein at Annexure P1 (Pg No._____).
7. The Petitioner in order to escape and save his life ran towards the hostel, but once again the armed forces attacked the Petitioners with Lathi. The Petitioner was beaten by the police with lathis severely on his head and on his hands and therefore was in immense pain, this left both his hands fractured and head bruised.
8. Thereafter, police personnels detained him rather than taking him to the hospital. The policemen at the police station made the Petitioner sit on the cold floor in the Police Station. While the Petitioner felt blood clotting in his head and felt a drastic increase in swelling, and felt excruciating pain. He begged the SI to provide some medical assistance, but the SI dismissed his request. The students continued to plead with the SI for provision of medical aid, saying "sir, isko toh bhej do! Yeh marr jayega!" to

which the S.I. replied, "koi farq nahipadta agar ik do marr bhijaye!".

9. The Police officials confiscated the Petitioner's phone and violated his right to talk to his relative or legal representative. After several hours, the Petitioner and along with other students were taken to the Jai Prakash Narayan Trauma Centre (AIIMS). One policeman accompanied each of the students in the van and held their hands, treating them like criminals. The medical staff asked about his injury, to which the Petitioner responded, "assault by police." However, the staff at the hospital incorrectly recorded the Petitioner's statement as "brought by police but assaulted by unknown persons." This was very frustrating for the Petitioner as he was beaten aggressively and arbitrarily by the police. The petitioner was undertaken for medical examination including including an X-ray, CT Scan and an ultrasound. It was found that both the Petitioner's hands were fractured, and hence a plaster was applied to both hands. It is pertinent to note that all the medical examination reports of the Petitioner are not being given to the Petitioner.
10. After the medical examination petitioner, the Petitioner along with other injured detainees were were taken back to the Police Station. Later, the Petitioner was release from NFC Police station. After being released from Police station, he was taken to Apollo

hospital for the second medical opinion. Further medical tests such as an X-ray were conducted on the Petitioner.

11. The unfortunate incident of 15.12.2019 and 16.12.2019 left the Petitioner in immense mental trauma and physical pain whereby even pain killers would sometimes prove to be ineffectual in subsiding the pain. Additionally, the Petitioner has not been able to sleep properly for several days. He often experiences flashbacks of the incident, and whenever he thinks of the events that transpired on 15.12.19, the Petitioner is overcome with anxiety and fear. The petitioner finds it highly stressful to recount the incident to media persons, social activists and lawyers, and inopportunately has had to do so repeatedly, in the process of seeking justice for the atrocities committed by the police and variously by the State against him.

12. The petitioner, who is a victim of state organised violence has recalled the entire horrific incident by way of testimony as follows:

"My name is Md Mustafa, aged about 27 years, S/o S K Khalil, R/O Room no.40, Allama-Iqbal Hostel, Jamia Millia Islamia, New Delhi – 110025. Permanent R/o Village Post Baisakhwa Police Station Gopalpur, District West Champaran, Dettiah, Bihar – 845307. I am a second year student of M.A. in Social Exclusion and Inclusive policy. My college ID No. is 20180892.

I would reach Library by 9 am everyday because I intended to appear for UPSC exams in 2020. On 15th December 2019, around 05:30 pm, I could hear tear gas shells being used from all around within the Old Library. I was on the first floor where a room is designated for masters' students. There were 20-25 of us and all of us felt quite nervous and scared. Some of us then decided to shut the doors to the room from inside. Around 05:45 pm, we could feel somebody was trying to break through the doors to the room. We were confused if it was students or the police. The noises were so loud that it made us all the more scared so we did not open it. Suddenly, I heard the noise similar to tear gas. The door was then forcefully broken by the Delhi police and they entered. I heard the noise of the students while police were beating. There were 20-30 policemen in the room.

I used to sitting in the corner of the room since there was a charging point and I needed it for my laptop. The table I was at was being shared by the 4 students out that there were 3 male students and 1 female student. Around 3 policemen approached us. They first hit me on the right side of my head with a Lathi. They continued to hit me on my back as I was trying to escape from the room.

The moment I reached the stairs, there were police and CRPF standing on both sides, continuously hitting me using Lathi. My charger, books and bags were left in the library. I had a file in one of my hands and my laptop in another. The moment I reached the end of stairs to the ground floor, the police first hit me on my right hand from which I was holding the laptop, my laptop fell down from hand.

I then ran towards the gate of the library where I was almost 200-300 policemen. They had been hitting other students too. If CCTV footage shown to me then I can easily identify those police personal who beaten me and others student inside Jamia old library. I was trying to head towards the hostel but the police made me run towards gate no. 7 instead. I ran towards gate No. 7, I reached Ghalib statute. At some point, I raised my hands in order to protect my head from sustaining injury. I covered my head with my hands. They hit me with batten on my hands where I sustained profound injury in both my hand. At moment I was feeling immense pain in both my hand and head. I almost fell near the statute and lost my consciousness. As I gained consciousness, I realised even this hadn't stopped them from hitting me or the other students around me who had fallen down.

I along with other 6-7 students ran towards the metro pillar opposite to gate no. 7, one of them named Roohul was bleeding from his face and another was injured badly on their leg. The police had made us sit there. The police tried to hit me again but this time on my private parts which they just missed.

Another student then came through gate no.7, he had a long beard and he was reading kalma. The S.I. started to tell all of us, "tum log kalma padh hi lo." A PCR van then approached us and I limped towards it and sat by myself. I thought that the van would take us to the hospital. The guy who was bleeding from his face and another student were also made to sit inside the van. They told us that they will be taking us to Holy Family Hospital but they had changed the route, heading towards Sukhdev Vihar. We were taken to New Friends' Colony Police station where they made me and other students sit on the cold floor in a room situated behind S.H.O's office. I was not able to sit on the floor so I had lied down. I was crying of severe pain. Almost after 2 hours, a Paramedical person came inside who sprayed something on my hands which failed to give me any relief and then did the dressing of Roohul who was hit on their face. By this time, there were 16 of us in that room.

I started to cry as I felt blood had started to clot on my head since swelling was increasing. An S.I. was sitting on a chair in the room whose name plate was hidden. I was crying and telling him to provide some medical aid. He told me that the ambulance would arrive in an hour. The other students were also supporting me because they could see I was in a bad shape. It had been another 2 hours and ambulance did not come. Some of the students then told the S.I. sitting, "sir, iskotohbhej do. Yehmarrjayega," to which the S.I. replied, "koefarqnahipadta agar ik do marrbhijaye." I can easily identify the S.I. if he paraded in front of me.

They didn't even have enough water to give to us. They did not have any supplies to accommodate all of us. They took our phones and they were not letting us call home but we continued to urge them. They were telling us, "patahai, saale tum logon ne bus jalayihai, NFC mein tod fodkihai." We asked them if we could meet the S.H.O. to which they said, "wohmilenge jab unhemilnahoga. Abhinahimilenge."

Around 12.30am, Colin Gonsalves, Senior Advocate along with another advocate entered the room. The woman started to take all of our names. Colin said that as an

advocate, he has the right to speak to his clients in private but the 3-4 policemen in the room did not comply with this and said that the S.H.O. had told them to not leave the room. We gave them our names, numbers and addresses for them to move bail.

The lady advocate then asked the S.I. where was his name plate but as he was about to take it out for her to see, he put it back inside and went along to stand with the other police personnels in the room whose name plates were not visible as well.

We were all then served one samosa each after Colin had left. Around 1 am, the registrar, deputy proctor and other professors from the proctorial team of JMI came to meet us who told us that they had been trying to get us out.

They made 16 of us sit with 16 Delhi police. Every student was made to sit next to a policeman. We were taken to Jai Prakash Narayan Trauma centre opposite AIIMS. The police personnel filled my form since I had fractures on both of my hands. The staff asked me how I had gotten injured to which I replied, "assault by police." The staff instead wrote "brought by police but assaulted by unknown persons."

Which is incorrect statement. I was beaten and assaulted by police.

They injected me with painkillers on both of my shoulders because I was experiencing excruciating pain. They then took me for different tests. I was taken for X-ray, C.T. Scan and ultrasound. They did not give me any reports except for the M.L.C. I was taken to a room on the ground floor where a person began to put kacha plaster on me, whom I asked if I had fractures on both the hands to which he replied, "haan, dono haath mein fracture hai."

I was taken back to NFC police station by bus which had gotten us to the trauma centre. We were taken to the room we were sitting in earlier. There was water on the floor somehow so most of the students chose to kept standing. Around 7 am, the proctorial team got there and they signed the a document on our behalf in front of the S.H.O. Out of 16, 14 of us were from the university.

I started to walk from the exit towards Community Centre where I saw proctorial team and some social activists standing. We heard that Apollo would provide us free treatment so I and another student who lived in the hostel with me, decided to go along in a Scorpio owned by one of

the activists. We were made to enter from the backside entry of Apollo. Wheelchairs were then brought and we were taken to emergency. They prescribed some more tests like X-ray, etc. next day on 16 Dec around 10.30am, I was taken back to Jamia from gate no. 7 by somebody who runs a canteen in University. Some of my friends were present there and I started to cry. They took me to my hostel, Allama-Iqbal. Caretaker Fazli of the hostel served me something to eat and gave me a heater because it was quite cold.

On same day, 16 Dec 2019 around 12-1 pm, I heard loud noises similar to the ones made by the usage of tear gas and flash grenades which made me really scared. Two friends of mine, Lareb and Rashid went to see the gatekeeper to request him to call an ambulance from Ansari Healthcare Clinic situated inside Jamia. I was scared that the police would enter the hostel again and hit me. Through the ambulance, I went to my friend's place in Shaheen Bagh. At gate no.7, I saw that students were protesting against the Delhi police and 2-3 buses of the police were stationed there.

I have been advised for bed rest for more than 45 days. I the whole incident my laptop has broken as it fell from my

hands. I come from a very meagre family in Bihar. I didn't receive any compensation from any authority .My studies have affected due to the fractures in my hands. This whole incident has left scars on my memory. Even when I sleep, I feel that the police are loudly knocking the doors again. I feel I need to see a psychiatrist when I comes back to Delhi because I have been traumatised badly.

I desire strong legal action against Delhi Police, I am confident that my supporting evidence will verify my account."

A true copy of the Petitioner's signed testimony is marked and annexed herein as **Annexure P-2.**

13. The petitioner's plight as mentioned in his testimony raises serious doubts in relation to the legality and moral turpitude of the police.

14. The petitioner has sustained fatal injury to both his hands, and has become bed ridden for approximately 45 days. Moreover, he is suffering from mental trauma in the aftermath of the events which unfolded on 15 and 16 December 2019.

15. The petitioner's hands were plastered at the trauma centre and he will potentially require further medical treatment in the future to

prevent deterioration of the condition of his hands. A true copy of the medical documents are marked as Annexure P-3.

16. The petitioner is currently in his final semester of studies in his Masters program. Prior to the brutal attack on him carried out by the police, the Petitioner was preparing for his upcoming UPSC examination. As a result of the injuries and mental trauma sustained by him, the Petitioner is unable to study for this exam, and his future academic plans have been derailed.

17. The entry of police personnel into the library and lathi-charging innocent students who were studying is shocking. The manner in which the petitioner along with other students were lathi-charged indiscriminately has set up an appalling precedent by state administration.

18. The petitioner lost crucial time when he required urgent medical attention as the police unjustly detained him at NFC police station and dismissed his desperate requests for medical aid notwithstanding the Petitioner's critical condition.

19. The barbaric violence of the police personnel is unjustified since the students in the library were peace-loving citizens and were not even part of protest. The police personnel lathi charged without any provocation from the students. In fact, the petitioner and other students in the library were so afraid that they had locked the doors of the library from inside. There is absolutely no

justification for breaking the door open and indiscriminately lathi charging on the students who were running for safety.

20. That there is absolutely no justification for labelling the students in library as anti-social. Rather, the Petitioner is of the view that it was the police personnel who were acting like anti-social goons. It is pertinent to note that the entry of the police personnel into the campus was illegal. Jamia Millia Islamia is a central university and no police authority is allowed inside unless prior permission is obtained from the University administration. The Proctor, Jamia Millia Islamia has released an official statement which confirms that no prior permission was obtained by the police to enter the University campus. A true copy of the statement of the proctor is at Annexure P-5 (Pg No._____).

21. It is an abrogation of justice that although the police are liable for the tragic events that unfolded on 15.12.2019, they are still responsible for further investigation in the present case. This creates the risk of sabotaging crucial evidence. The principle of *Nemo judex in causa sua* is applicable in the present case.

22. The petitioner should be compensated taking consideration into following:

- i. Loss of opportunity to lead a normal life.
- ii. Physical instability for his lifetime.

iii. Mental Trauma which stays for the rest of his life.

iv. Loss of educational opportunities

v. Loss of livelihood opportunities.

vi. For physical and psychological treatment and medicines, transport and communication etc.

vii. Government's/state's failure in protecting rights its citizens

viii. Loss of social security

23. The petitioner has been subjected to brutal police violence, with serious fracture caused to both his hands. The state has failed to discharge its duties. In addition to compensation for mental and physical trauma, the petitioner also seeks the registration of an FIR against the police personnel. Hence the petitioner has approached the Hon'ble High Court of Delhi with his grievance.

Relief Sought

24. In view of the facts and circumstances of this petition, the Petitioner prays before this Hon'ble Court, inter alia, for the following:

- a) For an order directing the Respondent herein to pay a compensation of at least 1 Crore Rupees for physical and mental losses suffered by him;

- b) For an order directing the Respondents herein to reimburse the Petitioner, the expenses of his medical treatment that he has already incurred including the transport cost for travelling incurred while accessing the hospitals for treatment and surgeries;
- c) For an order and direction to the Respondents herein to bear all the expenses of the Petitioner required in the treatment in the future;
- d) For an order and direction to Respondents to register an FIR into the offences committed by police forces;
- e) For an order and direction to the Respondent to pay the costs of this petition as quantified by this Hon'ble Court;

25. Thus, in view of the present facts and circumstances, the Petitioner is left with no other option than to approach this Hon'ble Court and to seek immediate intervention for a direction to the Respondents to compensate and further rehabilitate the Petitioner for the unspeakable damage caused to the Petitioner.

LIST OF DATE

Date	Event
July 2018	The Petitioner was admitted as a student of Jamia Millia Islamia University in the Master of Arts in Social Exclusion and Inclusive Policy program.

15.12.2019	<p>The Petitioner arrived at the Ibn-e-Sina Library (Old Library) of the JMI Campus like everyday's routine to revise for his upcoming Union Public Services Commission ('UPSC') examination, which he is set to appear in June 2020</p>
15.12.2019 5.30pm	<p>At around 5.30pm, the Petitioner heard noises of tear gas shellings coming from outside the MA/MPhil room. The sound of the tear gas shellings made the Petitioner feel extremely anxious and frightened. A few students locked the doors of the MA/MPhil Room from inside as they were extremely frightened.</p>
15.12.2019	<p>At approximately 5.45 pm, the Petitioner heard violent banging on the door. Approximately 20-30 policemen forcefully entered the MA/MPhil Room. The policemen started beating the Petitioner with lathis his head. The Petitioner tried to escape the violence, but the police continued to beat him on his back. The police and CRPF standing on either side of the staircase continuously beat him with their lathis where his laptop fell to the floor and broke.</p>
15.12.2019	<p>The Petitioner made his way towards the hostel, but was interrupted by the police who forced him to run towards Gate No. 7 instead. The police lathi charge continued. As the Petitioner was running towards Gate No. 7, he raised his hands in order to protect his head from sustaining injuries from the police lathis. Despite his attempts to protect his head, the Petitioner could not avoid lathi injuries to his head. Also, as his hands were in the way, the Petitioner sustained grievous injuries to both his hands</p>

	<p>due to the lathis. The petitioner was feeling excruciating pain in his hands, and head at this point.</p>
15.12.2019	<p>The police detained him and took him along with students in PCR van to New Friends' Colony Police station.</p>
15.12.2019	<p>The policemen at NFCPS instructed the students to sit on the cold hard floor in a room situated behind the SHO's office. There were 16 students in total in detention at NFCPS at this time. Another 2 hours passed but no ambulance came to the station for the Petitioner's aid. The students continued to plead with the SI for provision of medical aid, saying "sir, isko toh bhej do! Yeh marr jayega!" to which the S.I. replied, "koe farq nahi padta agar ik do marr bhijaye!"</p>
15.12.2019	<p>No water was provided to the students at NFCPS, and the Police Station lacked adequate facilities to accommodate all the students. The policemen confiscated the Petitioner and other students' phone and refused to let them call home.</p>
16.12.2019	<p>The petitioner along with other injured and detainees were taken to Jai Prakash Narayan Trauma Centre opposite AIIMS. The medical staff asked about his injury, to which the Petitioner responded, "assault by police." However, the staff at the hospital incorrectly recorded the Petitioner's statement as "brought by police but assaulted by unknown persons." This was very frustrating for the Petitioner as he was beaten aggressively and arbitrarily by the police. The petitioner was undertaken for</p>

	<p>medical examination including including an X-ray, CT Scan and an ultrasound. It was found that both the Petitioner's hands were fractured, and hence a plaster was applied to both hands. It is pertinent to note that all the medical examination reports of the Petitioner are not being given to the Petitioner.</p>
16.12.2019	<p>After being released from Police station, he was taken to Apollo hospital for the second medical opinion. Further medical tests such as an X-ray were conducted on the Petitioner.</p>
16.12.2019-present	<p>Since the incident, the Petitioner has experienced immense physical pain whereby even pain killers would sometimes prove to be ineffectual in subsiding the pain. Additionally, the Petitioner has suffered severe mental trauma due to the incident and has not been able to sleep properly for several days. He often experiences flashbacks of the incident, and whenever he thinks of the events that transpired on 15.12.19 and 16.12.2019, the Petitioner is overcome with anxiety and fear. He remains worried for his future as he is no longer able to sit the upcoming UPSC examination, which was the next step he had to take in order to pursue a career in civil services. The Petitioner finds it very stressful to recount the incident to media persons, social activists and lawyers, and inopportunately has had to do so repeatedly, in order to attain justice for the horrors he has encountered.</p>

23.01.2020	The Petitioner filed the complaint before the Jamia Police station for beating him with lathi, and for creating violence at the campus of Jamia Millia Islamia University, Delhi and to register FIR against the police officials under various sections of IPC. No action has been taken on the complaint.
01.20	Hence, the present petition is being filed.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Extraordinary Criminal Writ Jurisdiction

Writ Petition (Criminal) No _____ of 2020

In the matter of:

Md. Mustafa

...Petitioner

Versus

Government of National Capital Territory of Delhi &Ors ...Respondents

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, 1950 AND SECTION 482 OF CODE OF CRIMINAL PROCEDURE, 1973 FOR AN ORDER OR DIRECTIONS TO THE RESPONDENTS FOR PAY A COMPENSATION OF AT LEAST 1 CRORE RUPEES, PROVIDE FREE MEDICAL TREATMENT AND REGISTRATION OF FIR INTO THE OFFENCES COMMITTED BY POLICE FORCES AND ALONG WITH OTHER RELIEF

To,

The Lord Chief Justice of Delhi and

His Lordship's Companion Justices of the Hon High Court of Delhi

Humble petition of the petitioner most respectfully showeth:

MOST RESPECTFULLY SHOWETH:

1. The present urgent writ petition is being filed pursuant to Article 226 of the Constitution of India seeking intervention of this Hon'ble Court for directions to the Respondents to provide compensation to the

Petitioner for the physical and mental trauma suffered by him as a result of the failure of the State to protect the fundamental rights of its citizens. The Petitioner is a victim of brutal violence carried out by armed forces which entered the campus of Jamia Millia Islamia University without the authorisation of the University administration. The Petitioner also seeks the registration of an FIR against the armed forces who are responsible for the critical medical condition of petitioner who has severely fractured both hands.

FACTS OF THE CASE

2. In July 2018, the Petitioner, aged about 27 years, enrolled in a Master of Arts in Social Exclusion and Inclusive Policy program at Jamia Millia Islamia University in New Delhi. The petitioner is a bright and dedicated student, who is also a graduate of a Bachelor of Commerce and Master of Business Administration ('MBA') degree. He aspires to enter civil services in the near future.

3. On 15.12.2019, the Petitioner was studying from around 9 am onwards in the Ibn-e-Sina Library (Old Library) of JMI in the MA/MPhil Room in preparation for his upcoming UPSC examination. At around 5.30 pm, the Petitioner heard the noise of tear gas shellings coming from outside the MA/MPhil Room. He, along with the other students in the room became very scared and anxious and some students consequently locked the door of the MA/MPhil Room. At around 05:45 pm, policemen started violently banging on the MA/MPhil room door and eventually broke down the door. Around

20-30 policemen barged in and started arbitrarily beating students with lathis and shouting foul communal and religious abuses.

4. The 3 policemen aggressively approached the table at which the Petitioner was sitting and started beating the Petitioner with lathis. They hit the Petitioner on the right side of his head, and as the Petitioner tried to escape the violence, they continued to beat him on his back. The Petitioner ultimately reached the staircase outside the MA/MPhil room and the police and CRPF standing on either side of the staircase continuously beat him with their lathis. The Petitioner had to leave his books, bags and computer charger in the library while trying to escape. The Petitioner was carrying a folder in his left hand and his laptop in his right hand. When the Petitioner reached the bottom of the staircase near the ground floor, the police beat him with a lathi on his right hand, from which his laptop fell to the floor and broke. A true copy of photographs of injuries sustained by the Petitioner and his broken laptop are marked and annexed herein at **Annexure P1 (Pg No. _____)**.

5. The Petitioner ran towards the entrance/exit gate of the Ibn-e-Sina Library where 200-300 policemen were gathered and were beating other students. The Petitioner made his way towards the hostel, but was interrupted by the police who made him run towards Gate No. 7 instead. The police lathi charge continued. The Petitioner was beaten by the police with lathis severely on his head and on his hands and therefore was in immense pain. He fell down near Ghalib

Statue and lost consciousness temporarily. As he regained consciousness he realised that the police were still beating him, now on his feet, hips and waist, which were left severely bruised. The Super Intendent present at the site also made derogatory and Islamophobic comments such as "tum log kalma padh hi lo!".

6. The Petitioner and group of other injured students were taken in a PCR van to New Friends' Colony Police Station. The policemen at the police station made the Petitioner sit on the cold floor in the Police Station. The Petitioner was not in a fit state to sit on the floor and hence lay down on the floor, and was crying as he was in severe pain. While the Petitioner felt blood clotting in his head and felt a drastic increase in swelling, and felt excruciating pain. He begged the SI to provide some medical assistance, but the SI dismissed his request. The students continued to plead with the SI for provision of medical aid, saying "sir, isko toh bhej do! Yeh marr jayega!" to which the S.I. replied, "koi farq nahipadta agar ik do marr bhijaye!"

7. The Police officials confiscated the Petitioner's phone and violated his right to talk to his relative or legal representative. After several hours, the Petitioner and along with other students were taken to the Jai Prakash Narayan Trauma Centre opposite AIIMS. One policeman accompanied each of the students in the van and held their hands, treating them like criminals. The medical staff asked about his injury, to which the Petitioner responded, "assault by

police.” However, the staff at the hospital incorrectly recorded the Petitioner’s statement as “brought by police but assaulted by unknown persons.” This was very frustrating for the Petitioner as he was beaten aggressively and arbitrarily by the police. The petitioner was undertaken for medical examination including including an X-ray, CT Scan and an ultrasound. It was found that both the Petitioner’s hands were fractured, and hence a plaster was applied to both hands.

8. The petitioner, who is a victim of state violence has recalled the entire horrific incident by way of testimony. A true copy of the Petitioner’s signed testimony is marked and annexed herein as **Annexure P2 (Pg No _____)**.

9. It is pertinent to note that all the medical examination reports of the Petitioner are not being given to the Petitioner. The petitioner’s hands were plastered at the trauma centre and he will potentially require further medical treatment in the future to prevent deterioration of the condition of his hands. The true copy of the MLC issued by Jai Prakash Narayan Trauma Centre (AIIMS) dated 16.12.2019 is marked and annexed as **Annexure P3 (Pg No. _____)**.

10. After the medical examination petitioner and along with other detainees were taken back to the Police Station. Later, the Petitioner was release from NFC Police station. After being released from Police station, he was taken to Apollo hospital for the second

medical opinion. Further medical tests such as an X-ray were conducted on the Petitioner. The true copy of the MLC issued by Apollo dated 16.12.2019 is marked and annexed as **Annexure P4 (Pg No. _____)**.

11. The unfortunate incident of 15.12.2019 and 16.12.2019 left the Petitioner in immense mental trauma and physical pain whereby even pain killers would sometimes prove to be ineffectual in subsiding the pain. Additionally, the Petitioner has not been able to sleep properly for several days. He often experiences flashbacks of the incident, and whenever he thinks of the events that transpired on 15.12.19, the Petitioner is overcome with anxiety and fear. The petitioner finds it highly stressful to recount the incident to media persons, social activists and lawyers, and inopportunately has had to do so repeatedly, in the process of seeking justice for the atrocities committed by the police and variously by the State against him.

12. Since the incident, the Petitioner has experienced immense physical pain whereby even pain killers would sometimes prove to be ineffectual in subsiding the pain. Additionally, the Petitioner has suffered severe mental trauma due to the incident and has not been able to sleep properly for several days. He often experiences flashbacks of the incident, and whenever he thinks of the events that transpired on 15.12.19, the Petitioner is overcome with anxiety and fear. The Petitioner finds it highly stressful to recount the incident to media persons, social activists and lawyers, and inopportunately has had to do so repeatedly in the process of seeking

justice for the atrocities committed by the police and vicariously by the State against him.

13. The petitioner's plight as mentioned in his testimony raises serious doubts in relation to the legality and moral turpitude of the police.

14. The petitioner has sustained fatal injury to both his hands, and has become bed ridden for approximately 45 days. Moreover, he is suffering from mental trauma in the aftermath of the events which unfolded on 15 and 16 December 2019.

15. The petitioner is currently in his final semester of studies in his Masters program. Prior to the brutal attack on him carried out by the police, the Petitioner was preparing for his upcoming UPSC examination. As a result of the injuries and mental trauma sustained by him, the Petitioner is unable to properly study for this exam, and his future academic plans have been derailed.

16. The entry of police personnel into the library and lathi-charging innocent students who were studying is shocking. The manner in which the petitioner along with other students was lathi-charged indiscriminately has set up an appalling precedent by state administration.

17. The petitioner lost crucial time when he required urgent medical attention as the police unjustly detained him at NFC police station

and dismissed his desperate requests for medical aid notwithstanding the Petitioner's critical condition.

18. The petitioner fails to comprehend any difference between anti-social elements of society and the police personnel who created havoc in the library on intervening night of 15.12.2019.

19. The barbaric violence of the police personnel is unjustified since the students in the library were peace-loving citizens and were not even part of protest. The police personnel lathi charged without any provocation from the students. In fact, the petitioner and other students in the library were so afraid that they had locked the doors of the library from inside. There is absolutely no justification for breaking the door open and indiscriminately lathi charging on the students who were running for safety.

20. That there is absolutely no justification for labelling the students in library as anti-social. Rather, the Petitioner is of the view that it was the police personnel who were acting like anti-social goons. It is pertinent to note that the entry of the police personnel into the campus was illegal. Jamia Millia Islamia is a central university and no police authority is allowed inside unless prior permission is obtained from the University administration. The Proctor, Jamia Millia Islamia has released an official statement which confirms that no prior permission was obtained by the police to enter the University campus. A true Copy of the statement of the proctor dated

17.12.2019 is marked and annexed as **Annexure P5 (Pg No_____)**).

21. It is an abrogation of justice that even though the police are liable for the tragic events that unfolded on 15.12.2019, they are still responsible for further investigations in the present case. This creates the risk of sabotaging crucial evidence. The principle of *Nemo judex in causa sua* is applicable in the present case.

22. That petitioner's agony is manifest in his pictures alone which were widely circulated in the media to showcase the brutality of police violence on the campus of JMI dated 15.12.2019.

23. The Petitioner filed the complaint before the Jamia Police station for beating him with lathi, and for creating violence at the campus of Jamia Millia Islamia University, Delhi and to register FIR against the police officials under various sections of IPC. No action has been taken on the complaint. The True copy of the complaint filed by the Petitioner before Jamia Police Station dated 23.01.2020 is marked and annexed as **Annexure P6 (Pg No._____)**).

24. The petitioner has been subjected to brutal police violence, with serious fracture caused to both his hands. The state has failed to discharge its duties. In addition to compensation for mental and physical trauma, the petitioner also seeks the registration of an FIR. Hence the petitioner has approached the Hon High Court of Delhi with his grievance.

GROUNDS

25. In light of the aforementioned facts and circumstances, the present petition is being filed on the following grounds:

- A. Because the Petitioner has suffered serious injuries and losses due to police brutality, this is completely a failure of the State to fulfil its responsibilities to protect its citizens.
- B. Because awarding compensation for degradation of life and liberty is a public law remedy available to victims of police assault and battery.
- C. Because Due to the Petitioner's injuries, his chances of fair participation in society has decreased drastically. As the State is liable for the injuries caused to the Petitioner. India adopts a compensatory method and advocates "full and fair compensation" in all cases as provided in *Rattan v Rajinder* (1996) ACJ 372 at paragraph [19]. The State is liable to compensate the Petitioner for the following:
 - a. Cost of medical treatment – including medications, stay in the hospital, nursing and any other medical aid provided.
 - b. Compensation for pain and suffering: several factors such as severity of injury, medical treatment required, psychological stress and long-term physical and emotional scars, must be

taken into account as prescribed in *Nagappa v Gurudayal Singh & Ors* [2003] 1 LRI 76 at paragraph [25]. Counselling services for the mental trauma suffered by the Petitioner must also be factored into compensation calculations.

- D. The principle of *Res Ipsa Loquiter* is applicable in the present case. The mere occurrence of the police brutality towards the Petitioner, resulting in fractured hands is sufficient to demonstrate the negligence of the State to discharge its duties. If it were not for the police's violent conduct, the severe physical and mental trauma caused to the Petitioner would not have resulted.
- E. That lax behaviour and conduct of the police officials under such circumstances has been highlighted by Hon'ble Supreme Court in *Lalita Kumari Vs. Govt. of U.P & Ors.* (2014) 2 SCC. It was held that the registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. The relevant parts are extracted below:

- i. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- ii. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
- iii. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
- iv. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
- v. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information

received but only to ascertain whether the information reveals any cognizable offence.”

F. It is important to note that the Ministry of Home Affairs granted relief by way of compensation to the victims of the anti-Sikh Riots of 1984. A sanction issued on 16.12.2014 mandated the payment of an additional compensation of Rs 5 Lakh to the next of kin of the persons who died in the anti-Sikh Riots and to whom compensation was already paid. This Hon’ble Court possesses the power to formulate a similar scheme for the victims of police brutality within the Campus of Jamia Millia Islamia. A true Copy of the compensation scheme for the victims of Anti-Sikh Riots dated 16.12.2014 is marked and annexed herein at **Annexure P7 (Pg No._____)**.

G. Because the police act of beating the Petitioner, treating him like a criminal despite his innocence, and discriminating against him on the basis of his Islamic faith is thereby breach of Article 14 and 19 of the Constitution.

H. Because the State has committed a constitutional breach by violating Article 21 of the Constitution of India. Article 21 states:

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

- I. The State has vindicated the sacrosanct fundamental right to life and the personal liberty of the students who were simply studying in the library. It is pertinent to note that Article 21 contains an exception viz. "procedure established by law." The Supreme Court construed the definition and purview of a 'procedure established by law' in *Maneka Gandhi v Union of India*, as one that is 'fair, just and reasonable.' Undoubtedly, the Police were not following any fair, just and reasonable procedures in the present case.
- J. Because the Police did not uphold allegiance to the Constitution of India as required by the Government of India Code of Conduct for Police.
- K. Because the Police failed to recognise and respect the limitations of their powers and functions in contravention with the Government of India Code of Conduct for Police.
- L. Because the police did not keep in mind the welfare of the people and was not sympathetic or considerate towards the Petitioner in contradistinction with the Code of Conduct for Police.
- M. Because the police were not courteous or well-mannered in breach of the Code of Conduct for Police.
- N. The police did not remain secular in contravention with the Code of Conduct for Police. The true copy of the Code of Conduct of Police is marked and annexed as **Annexure P8 (Pg. No. _____)**.

O. Because he Delhi police exercised arbitrary violence against the Petitioner in breach of International standards enumerate hereunder:

I. The State breached Article 5 of the United Nations Declaration on Human Rights ('UDHR') which provides that no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.

II. The State breached Article 3 of the UDHR which provides that:

"Everyone has the right to life, liberty and security."

III. The State breached Article 6(1) of the International covenant on Civil and Political Rights (ICCPR) provides that

"Every human being has the inherent right to life.

This right shall be protected by law. No one shall be arbitrarily deprived of his life."

IV. The police breached Article 7 of the ICCPR which provides:

"no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

V. The police used abusive language towards the Petitioner, including religious slurs in breach of the

International Covenant on Civil and Political Rights (ICCPR) Article 20 (2), which provides:

"Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

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

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

VII. Because the police departed from General Principle 4 inter alia in resorting to the use of force viz. lathi beatings, before applying non-violent means.

P. Because the Delhi Police entered the Jamia Millia Islamia University campus grounds without prior authorisation of the administration.

Q. That the petitioner has not filed any other similar petition before this Hon'ble court or before any other court of India in the same matter, which is the subject matter of this petition.

R. The petitioner should be compensated taking consideration into following:

ix. Loss of opportunity to lead a normal life.

x. Physical instability for his lifetime.

xi. Mental Trauma which stays for the rest of his life.

xii. Loss of educational opportunities

xiii. Loss of livelihood opportunities.

xiv. For physical and psychological treatment and medicines, transport and communication etc.

xv. Government's/state's failure in protecting rights its citizens

xvi. Loss of social security

S. In view of the above submissions and facts, the petitioner herein seeks the immediate intervention of this Hon'ble Court for direction to the respondent to pay compensation, free medical aid, rehabilitation to the Petitioner/victim and to formulate a scheme for the petitioner so that his chances of fair participation in society can be returned to its original position.

T. The copies of the annexes annexed herein are true copies of the respective originals.

- U. The petitioner has exhausted all the possible remedies and there is no efficacious and alternative remedy available to the petitioner other than to approach this court and file the petition. Hence, the petitioner is filing the present petition.
- V. In view of the above submissions and facts, the petitioner herein seeks the immediate intervention of this honorable court for direction to the respondent to pay compensation, free medical aid, rehabilitation to the Petitioner/victim. The Court should formulate a scheme for the petitioner so that his chances of fair participation in society can be returned to its original position.

PRAYER

26. In view of the facts and circumstances of this petition, the Petitioner prays before this Hon'ble Court, inter alia, for the following:

- a) For an order directing the Respondent herein to pay a compensation of at least 1 Crore Rupees for physical and mental losses suffered by him and as mentioned in Para 22 of synopsis ;
- b) For an order directing the Respondents herein to reimburse the Petitioner, the expenses of his medical treatment that he has already incurred including the transport cost for travelling incurred while accessing the hospitals for treatment and surgeries;

- c) For an order and direction to the Respondents herein to bear all the expenses of the Petitioner required in the treatment in the future;
- d) For an order and direction to Respondents to immediately register an FIR into the offences committed by police forces;
- e) For an order and direction to the Respondent to pay the costs of this petition as quantified by this Hon'ble Court;
- f) For any other order or direction that this Hon'ble Court may deem fit and appropriate under the facts and circumstances of the instant case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IN
DUTY BOUND EVER PRAY

New Delhi

Filed by:

Date: .02.2020

Ms. Nabila Hasan

Advocate for the Petitioner

576 Masjid Road, Jangpura, Delhi 110014

+91 9911626645| nabila.hasan@hrln.org

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) No. _____ OF 2020

(Under Article 226 of the Constitution of India)

In the matter of:

Md. Mustafa

...Petitioner

Versus

Government of National Capital Territory of Delhi &Ors ...Respondents

Affidavit

I, Md Mustafa, _____

_____ do hereby solemnly affirm and swear:-

1. That I am the Petitioner in the abovementioned Application, and as such am well conversant with the facts and circumstances of this case and hence competent and authorized to swear the present affidavit.
2. That I have read and understood the contents of the accompanying Application from page ___ to page ___ and from para to para and say that I have understood the contents thereof. I further state that the contents thereof are true and correct to my knowledge and belief.
3. That the annexures to the accompanying Application are true and correct copies of their respective originals.

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) No. _____ OF 2020

(Under Article 226 of the Constitution of India)

In the matter of:

Md. Mustafa

...Petitioner

Versus

Government of National Capital Territory of Delhi &Ors ...Respondents

**AN APPLICATION SEEKING PERMISSION TO FILE LENGHTY
SYNOPSIS AND LIST OF DATES ON BEHALF OF THE PETITIONER**

THE CHIEF JUSTICE AND HIS COMPANION JUSTICES

HON'BLE DELHI HIGH COURT, NEW DELHI

HUMBLE PETITION OF THE PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. The present urgent writ petition is being filed under Article 226 of the Constitution of India seeking intervention of this Hon'ble Court for directions to the Respondents to provide compensation to the Petitioner for the physical and mental trauma suffered by him as a result of the failure of the State to protect the fundamental rights of its citizens. The Petitioner is a victim of brutal violence carried out by armed forces which entered the campus of Jamia Millia Islamia University without the authorisation of the University administration. The Petitioner also seeks the registration of an FIR against the police forces who are responsible for the critical medical condition of

petitioner who has severely fractured both legs. The Petitioner further seeks court-monitored investigation in the present case as the perpetrators of the violence are the police themselves.

2. The contents of the petition is not repeated here for the sake of brevity but may be treated as part and parcel of the application.
3. The present Petitioner t has moved for permission to file the detailed Synopsis and List of dates with this Petition as the issues involved are necessary to narrate the synopsis in detail to accommodate the facts and circumstances.
4. The balance of convenience lies in favour of the Petitioner and has every likelihood of succeeding in this case.
5. This application is bona fide and made in the interest of justice.

Prayed, therefore, that this Hon'ble Court may be pleased to:

- a) Allow and take on record the lengthy Synopsis and List of dates filed by the Petitioner along with the Writ Petition.
- b) pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS PETITIONERS SHALL EVERY PRAY

Delhi .02.2020

Filed by:

Ms. Nabila Hasan

Advocates for the Appellant

576 Masjid Road, Jangpura, Delhi 110014

+91 [9911626645](tel:9911626645)|nabila.hasan@hrln.org

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) No. _____ OF 2020

(Under Article 226 of the Constitution of India)

In the matter of:

Md. Mustafa

...Petitioner

Versus

Government of National Capital Territory of Delhi &Ors ...Respondents

Affidavit

I, Md Mustafa, _____

_____, do hereby solemnly

affirm and swear:-

1. That I am the petitioner in this present Writ petition and therefore I am well conversant with the facts and circumstances of this case and in such capacity, I am competent to swear this affidavit.
2. I have read the contents of the Petition from paragraph 1 to _____ at page nos _____ to _____ and the Petition has been shown and explained to me in vernacular, and that I have understood the contents thereof, which are true and correct to the best of my knowledge and belief.