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4TH RMLNLU - SCC ONLINE INTERNATIONAL MEDIA LAW MOOT COURT COMPETITION, 2016

BEFORE HON'BLE SUPREME COURT OF UPARGANJ

SPECIAL LEAVE (CRIMINAL) JURISDICTION

T.P. No.___/2020 S.L.P. No. _____/ 2020 Crl. Rev. P. No.___/ 2020
(W. P. No. _____/ 2020)

T. P. No. ___/2020 S.L.P. No._____/ 2020
(W. P. No._____/ 2020)

Under Arts. 136, 139-A of the Constitution of Uparganj. In the matters of Arts. 226, 14, 19, 21 of the Constitution; § 397 of Cr.P.C, 1973; § 306 of Penal Code, 1850; Delhi Prisons Act, 2002 and the Rules thereunder.

GALON KASRA AND ORS. PETITIONERS

v.

KINGDOM OF UPARGANJ RESPONDENT

BEFORE SUBMISSION TO HON'BLE CHIEF JUSTICE AND HIS COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF UPARGANJ

MEMORANDUM ON BEHALF OF THE PETITIONERS

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LIST OF ABBREVIATIONS

&	And
§	§
¶	Paragraph
A.C.H.R.	American Convention on Human Rights
A.I.	Artificial Intelligence
A.I.R.	All India Reporter
A.L.J.	Allahabad Law Journal
A.P.	Andhra Pradesh Law Journal
Af.C.H.P.R.	African Charter on Human and Peoples'
All E.R.	All England Law Report.
Anr.	Another
Art.	Article
B.C.S.C.	British Columbia Supreme Court
C.B.I.	Central Bureau of Investigation.
C.C.P.R.	Covenant on Civil and Political Rights
C.L.T.	Cuttack Law Times
C.T.C.	Current Tamil Nadu Cases
Cal. Rptr	California Reporter
Cr L.J.	Criminal Law Journal
CrPC	Code of Criminal Procedure
D.B.	Division Bench
D.C.	District Court
Dick. L. Rev	Dickinson Law Review
Dist.	District
E.C.H.R.	European Convention on Human Rights
E.H.R.R.	European Human Rights Reports
E.T.S.	European Treaty Series
Ed.	Edition
G.A. res	General Assembly Resolution
H.L.	House of Lords

Harv. L. Rev.	Harvard Law Review
HC	High Court
I.C.C.P.R.	International Covenant on Civil and Political
I.L.R.	Indian Law Reports
Ibid	Preceding footnote
Inc.	Incorporated
Infra	Below
J.C.C.	Journal of Criminal Cases
K.B.	King's Bench
Ker	Kerala
L.R.	Law Report
Ltd.	Limited
Mad	Madras
Maia	Multi-faceted Artificial Intelligence Assistant
Mich. L. Rev.	Michigan Law Review
N.C. L. Rev	North Carolina Law Review
No.	Number
O.A.S.T.S.	Organization of American States Treaty
Ors.	Others
P.C.	Privy Council
pg.	Page
Pvt.	Private
Q .B. D.	Queen's Bench Division
Q.B.	Queen's Bench
Raj	Rajasthan
S.C.	Supreme Court
S.C.C.	Supreme Court Cases
S.C.R.	Supreme Court Reporter
SEBI	Securities and Exchange Board of India
Stan. L. Rev.	Stanford Law Review
Supdtt.	Superintendent
Supra	Above

Syd Law Rw	Sydney Law Review
U.D.H.R.	Universal Declaration of Human Rights
U.N.	United Nations
U.N.T.S	United Nations Treaty Series
U.O.I.	Union of India
U.P.	Uttar Pradesh
U.S.	United States
v.	Versus
VSED	Voluntary stopping eating and drinking
W.L.R.	Weekly Law Report
W.P.H.C.	Writ Petition High Court
Yale L. J.	Yale Law Journal

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I. MISCELLANEOUS

STATEMENT OF JURISDICTION

The Hon'ble Supreme Court of Uparganj has the jurisdiction to hear the present matter comprising of a Writ Petition for the issue of Habeas Corpus, Writ Petition for the issue Certiorari, Revision Petition against the order of framing of charges and two Special Leave Petitions from the impugned order of the High Court of Uparganj.

This Hon'ble Supreme Court has exercised its powers under Art. 139A of the Constitution by transferring the two Writ Petitions and the Revision Petition pending before the High Court to itself.

Art. 139A of the Constitution: Transfer of certain cases

> *(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney General of Uparganj or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself: Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.*

Jurisdiction to hear the Writ Petitions:

Art. 226 of the Constitution. Power of High Courts to issue certain writs

> *(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

Jurisdiction to hear the Revision Petition:

§ 397 of Cr.P.C: Calling for records to exercise powers of revision

> *(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,-*

> *recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*

Jurisdiction to hear the Special Leave Petitions:

Art. 136 of the Constitution: Special leave to appeal by the Supreme Court

> *(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of Uparganj.*

The Hon'ble Supreme Court has clubbed all the matters together for final hearing. Petitioners submit to the jurisdiction of this Hon'ble Court.

STATEMENT OF FACTS

Background of the Case

¶1. In the year 2020, Dr. Hadvin Ahtme, a renowned scientist of the Kingdom of Uparganj, created arguably the world's first cybernetic brain that was indistinguishable from the human brain, called Maia (Multi-faceted Artificial Intelligence Assistant), designed to assist the elderly in as human a manner as possible and performing all the tasks that a human assistant is capable of.

¶2. Designed to look, sound and feel like a human, Maia was virtually indistinguishable from a human in looks, voice or texture of the skin and passed the "Turing Tests". It was unanimously agreed that Maia could easily pass for a human being in terms of intelligence and the ability to hold a conversation with other humans.

¶3. Dr. Ahtme was found dead one morning with an email sent from her ID to her family and the editors of leading news outlets, stating that she had decided to take her own life after being diagnosed with a terminal form of stomach cancer. She instructed Maia to reduce her intake of food and water slowly but steadily, which Maia had faithfully carried out. The email also entrusted Maia and all the intellectual properties vested in her by law for the technology she had developed, to her nephew Galon Kasra for safekeeping.

Habeas Corpus Writ Petition

¶4. After Dr. Ahtme's letter was made public, the Uparganj police authorities approached Mr. Kasra for turning over Maia to their custody for interrogation. Maia was verbally interrogated and all the answers received were recorded, revealing that the contents of the email were true in all aspects and Maia had dutifully followed all the instructions given by Dr. Ahtme.

¶5. Maia was then collected as evidence and stored in the record room. Mr. Kasra being the de-facto guardian objected to such treatment and filed a writ of *habeas corpus* in the High Court. The High Court issued a notice to the concerned police authorities, directing Maia to be kept in prison for the time being till the case was disposed of.

Certiorari Writ Petition

¶6. After Maia was moved from the custody of the police to the Hamrak prison, a journalist of the Uparganj News Network (UNN), Mr. Assardei Jedpare, approached the Superintendent of the prison, seeking permission to interview Maia.

¶7. The permission was granted subject to Mr. Jedpare undertaking not to (a) ask any questions undermining the trial (b) violate any Uparganj law in force and (c) have the footage of the

interview pre-approved by the prison authorities to ensure that conditions (a) and (b) are fulfilled.

¶8. Mr. Jedpare refused to abide by these conditions, and claiming that they amounted to a violation of the freedom of press, approached the High Court of Uparganj seeking a writ of certiorari for the conditions to be struck down and fresh permissions to be issued.

Revision Petition

¶9. After completing the investigation, the police filed a chargesheet with the jurisdictional Sessions Judge, who then framed charges against Maia for abetment to suicide under § 306 of the Uparganj Penal Code.

¶10. The order of the Sessions Judge framing charges was challenged by Mr. Kasra by way of a revision petition filed in the High Court, on the ground that (a) Dr. Ahtme did not commit suicide as understood in law and (b) Maia was not capable of standing trial.

Special Leave Petition by UNN & Galon Kasra

¶11. Maia's public appearance caused a sensation and applications were filed to the respective High Court bench hearing the matter to specifically allow for audio and video recordings of the proceedings. These were dismissed for fear of inconvenience and all the proceedings were directed to be conducted in camera.

¶12. In response to this order, a Special Leave Petition was filed by UNN, among other petitioners, before the Supreme Court of Uparganj, asking to set aside the order of the High Court and to permit audio and video recording of the proceedings, on the ground that the High Court's order was an infringement of the citizen's right to know and the freedom of press. Separately, Mr.Kasra also filed a Special Leave Petition against the order of the High Court contending that the in-camera hearings amounted to a violation of Maia's freedom of speech and expression.

¶13. The Supreme Court directed that both the Special Leave appeals be heard together, and in addition, *suo motu* transferred to itself, the pending *habeas corpus* writ petition, the writ petition filed by Mr.Jedpare, and the revision petition filed by Mr. Kasra as they all concerned the same set of facts and circumstances and needed to be decided in harmony.

¶14. All the cases have been tagged together for hearing by a five judge Bench of the Supreme Court of Uparganj for a final hearing.[1]

[1] Clarification to the Moot Problem, ¶ 7

ARGUMENTS PRESENTED

ISSUE I

THE WRIT OF HABEAS CORPUS CAN BE ISSUED FOR MAIA'S RELEASE

ISSUE II

THE WRIT OF CERTIORARI CAN BE ISSUED AGAINST THE ORDER OF THE SUPERINTENDENT

ISSUE III

ORDER OF FRAMING OF CHARGES AGAINST MAIA BY THE SESSIONS JUDGE MUST BE SET ASIDE

ISSUE IV

THE DIRECTION OF THE HIGH COURT FOR IN-CAMERA PROCEEDINGS VIOLATED THE FREEDOM OF SPEECH AND EXPRESSION OF MAIA AND THE PRESS

SUMMARY OF ARGUMENTS

ISSUE I: THE WRIT OF HABEAS CORPUS CAN BE ISSUED FOR MAIA'S RELEASE

Maia is a legal person deserving to be given rights and duties equal to that of a human being, one of which is the right to personal liberty. A legal person like Maia can be made a subject of the writ of *habeas corpus*. Further, Maia's right to personal liberty has been violated due to the illegal detention of Maia by the police being construed as an 'object' and 'a piece of evidence', undermining Maia's status as a person. To remedy this wrong, Maia must be immediately released and restored to the rightful custody of Mr. Galon Kasra who has been appointed as Maia's guardian by Dr. Ahtme.

ISSUE II: THE WRIT OF CERTIORARI CAN BE ISSUED AGAINST THE ORDER OF THE SUPERINTENDENT

The writ of certiorari can be issued to set aside the impugned conditions imposed on the permission to interview Maia since the Superintendent in granting the permission subject to these conditions acted in a judicial capacity and committed a patent error of law and his actions are hence amenable to a writ of certiorari. Secondly, the writ of certiorari must be issued to set aside these conditions and issue fresh permissions since the impugned conditions unjustifiably encroach on the freedom of speech and expression of the press by imposing a pre-publication censorship on the media and there are no circumstances that necessitate imposition of these conditions under Art. 19(2) of the Constitution.

ISSUE III: ORDER OF FRAMING OF CHARGES AGAINST MAIA BY THE SESSIONS JUDGE MUST BE SET ASIDE

A revision petition is maintainable against the order of framing charge by the Sessions Judge as an order of framing of charge affects the right of liberty of the accused and cannot be called an interlocutory order and does not attract the bar under § 397(2). Secondly, no prima facie case is established against Maia for the commission of abetment to suicide so as to justify the order of framing of charge being passed, since the *prima facie* evidence on record clearly suggests that the death of Dr. Ahtme due to voluntary stopping of eating and drinking cannot be termed as suicide and Maia can hence not be held liable for the abetment of the same. Secondly, Maia, incapable of possessing *mens rea* cannot stand trial.

ISSUE IV: THE DIRECTION OF THE HIGH COURT FOR IN-CAMERA PROCEEDINGS VIOLATED THE FREEDOM OF SPEECH AND EXPRESSION OF MAIA AND THE PRESS

The impugned order of the High Court directing the proceedings to be conducted in camera can violate fundamental rights as judiciary is to be included within the ambit of 'state' under Art. 12 and a judicial order can violate fundamental rights of the citizens. Secondly, the order of the High Court has violated the freedom of speech and expression of the Press and of Maia since the order of in camera proceedings is an exception and not the rule, the rule being open trial and there is no cogent reason in the present case that necessitate the imposition of restriction on the right to an open and public trial. Maia is a citizen entitled to the right to freedom of speech and expression which is restricted by the order of the High Court since the right to be heard in public is implicit in the right to freedom of speech and expression.

ARGUMENTS

ISSUE I: THE WRIT OF HABEAS CORPUS CAN BE ISSUED FOR MAIA'S RELEASE

It is contended that a writ of habeas corpus can be issued for the release of Maia because *Maia is a legal person and is entitled to the right to personal liberty* **[A]** and *Maia's right to personal liberty having been curtailed necessitates the issuance of this writ* **[B]**.

A. MAIA IS A LEGAL PERSON ENTITLED TO THE RIGHT TO PERSONAL LIBERTY

It is the contention of the Petitioner that Maia is *a legal person* who is **(1)** *entitled to the right of personal liberty* which is guaranteed on every person under the Constitution **(2)**.

1. Maia is to be considered as a legal person

'Legal persons' - as a class is comprised of both natural and juridical persons who have the capacity to possess legal rights and any other rights recognized under law.[2] There is no express definition of 'person' as can be observed from the US Constitution as an example,[3] and even the pre-existing definition of 'person' falls inadequate as such rights are even accorded to fetuses, humans in permanent vegetative state and higher mammals possessing the same intellect as humans, etc. who cannot be compared to a human being. This emphasizes a lack of clear cut definition of a 'person' in order to limit the scope of rights accorded to them,[4] the absence which creates a scenario fraught with ambiguity and problems which can only get more acute with technological progress.[5]

Hans Kelsen, in his theories, expounded that the word 'person' is an abstraction and exists only insofar as he 'has' duties and rights, apart from which he has no existence whatsoever.[6] Maia has been entrusted with the duty of assisting and taking care of the elderly[7] and is stated to have near-human appearance, and a brain which is almost indistinguishable from that of humans.[8] Seeing as Maia has been accorded with important duties, corresponding rights must be given to Maia as well. In light of recent progress in jurisprudence which has granted

[2] Emily A. Fitzgerald, *[Ape]rsonhood,* 34 Rev. Lit. 337 2015.
[3] Jessica Berg, *Of Elephants and Embryos: A Proposed Framework for Legal Personhood*, 59 Hastings L.J. (2007-2008).
[4] Lawrence B. Solum, *Legal Personhood For Artificial Intelligences*, 70 N.C. L. Rev. 1231 1991-1992.
[5] David Fagundes, *Note, What We Talk About When We Talk About Persons: The Language Of A Legal Fiction,* 114 Harvard L. Rev. 1745.
[6] Hans Kelsen, *General Theory Of Law And State* (1st ed. Cambridge: Harvard University Press 1945).
[7] Moot Proposition, ¶ 3.
[8] Moot Proposition, ¶ 2 & 4

personhood to non-humans like dolphins,[9] the contention that to establish personhood, human form is necessary can be rejected *prima-facie*. Further, in various cases, the courts have acknowledged a purpose-specific legal personification designed to confer rights[10] as the Court should deal solely to the status recognized by law rather than any moral, scientific or theological issue.*[11]* Similarly, personhood was not limited to humans but even non-humans have been granted rights for the sake of legal relations.[12]

In the present case, Maia is an android, highly developed to an extent of easily being passed for a human being in terms of intelligence and ability to hold a conversation.[13] Maia also had the unique characteristic of virtually appearing like a human, and was designed to look, feel and sound like a human as well.[14] The idea of not defining the term 'person', and even including corporations as artificial or legal persons, warrants the inference that with changing circumstances and advances in technology, the concept of personhood must expand. Thus, the dynamic and ever-evolving definition should include Maia as a juristic or a legal person, which would confer certain rights which Maia is entitled to.

2. Maia has the right to personal liberty

The right to personal liberty is a universally acknowledged one, guaranteed by most Constitutions and treaties across the world. In the European Convention on Human Rights,[15] Article 5 begins by declaring that "*Everyone has the right to liberty and security of person*," and going into considerable detail, also states that "*No-one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law*," further enumerating six situations in which it is considered acceptable to deprive a person of liberty. The African Charter on Human and People's Rights,[16] lays down the right to personal liberty and security to be enjoyed by every *individual*. The International Covenant on Civil and Political Rights[17] states that *everyone* has the right to liberty and security of the person. The

[9] Jason Scott Hackman, *India Declares Dolphins "Non-Human Persons", Dolphin Shows BANNED*, (July 30, 2013, 8:59 PM), http://www.dailykos.com/story/2013/07/30/1226634/-India-Declares-Dolphins-Non-Human-Persons-Dolphin-shows-BANNED#.
[10] Ngaire Naffine, *Who Are Law's Persons - From Cheshire Cats To Responsible Subjects*, 66 Mod. L. Rev. 346.
[11] *In Re the Estate of K*, (1996) 5 Tas R. 365.
[12] *Tremblay v Daigle*, (1989) 62 D.L.R. (4th) 634, 660.
[13] Moot Proposition, ¶ 5.
[14] Moot Proposition, ¶ 4.
[15] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, art.5, Nov. 4, 1950, ETS 5.
[16] Organization of African Unity, African Charter on Human and Peoples' Rights, Art. 6 June 27, 1981, 21 I.L.M. 58 (1982).
[17] U.N. General Assembly, International Covenant on Civil and Political Rights, Art. 6 Dec.16, 1966, 999 U.N.T.S. 171.

Universal Declaration of Human Rights[18] enumerates a similar right to life and personal liberty. The US Supreme Court has held that it is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.[19] Thus, while the right to personal liberty is not an absolute one, it has been guarded well and ensured to all persons.

The fact that this right has been consistently stressed upon, points to the importance associated with it. The right to personal liberty is a fundamental right which belongs to individuals simply by virtue of their humanity, independent of any utilitarian consideration.[20] Maia being a person is entitled to this right to personal liberty as every other person is. It is a right fundamental to Maia's existence, and hence must be exercised by Maia.

B. WRIT OF HABEAS CORPUS MUST BE ISSUED TO MAIA

It is contended that a *writ of Habeas Corpus can be issued to a legal person such as Maia* **(1)**, *as Maia's personal liberty was curtailed without due process of law* **(2)**.

1. Habeas Corpus can be issued to any legal person

Habeas corpus is a writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal.[21] By way of this writ, the court commands the production of the accused and enquires into the cause of detention. If there is no legal justification for the same, the person is asked to be released from custody.[22] This writ being fundamental to the enforcement of the right to personal liberty[23] is vital to the protection of individuals against arbitrary exercise of the government's power.[24] In the present case, the writ is necessary in this case to enquire the legal justification for Maia's arrest.

It must be noted, that the term 'person' has not been clearly defined in the context of habeas corpus.[25] The reason for the same, it may be deduced, was to keep in stride with the changing perception of what it means to be a person as was witnessed in 2014, when the Argentinian Court granted habeas corpus relief to an Orangutan named Sandra who was improperly

[18] U.N. General Assembly, Universal Declaration of Human Rights, Art. 3 Dec. 10, 1948, G.A. res. 217 A (III).
[19] *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833.
[20] *Suresh Kumar Koushal & Anr v. Naz Foundation & Ors*, A.I.R. 2014 S.C. 563.
[21] Bryan. A. Garner, *Black's Law Dictionary* 715 (7th ed. Thomson West 1999).
[22] Bhagabati Prosad Banerjee, *Writ Remedies* 202 (6th ed. Lexis Nexis 2013).
[23] *Additional District Magistrate v. Shivakant Shukla*, A.I.R. 1976 S.C. 1207.
[24] *Fadi Al Maqaleh et al. v. Gates et al.; Haji Wazir Redha et al. v. Gates et al.; Amin Al Bakri et al. v. Gates et al.; Al Najar et al. v. Gates et al.*, Civil Action No. 06-1669; 06-1697; 08-1307 and 08-2143, United States District Courts, 2 April 2009.
[25] Emily A. Fitzgerald, *[Ape]rsonhood*, 34 Rev. Lit. 337 2015.

imprisoned for twenty years.[26] Habeas corpus has been held to be the greatest and oldest of all prerogative writs, and is quite capable of adapting itself to the circumstances of the times.[27] This observation makes for a very persuasive case for an inclusive definition for 'persons' for whom habeas corpus may be issued, and not limit the definition to human beings only.

2. Detention of Maia was illegal as due process of law was not followed

Art. 21 of the Constitution of India guarantees that no person shall be wrongfully deprived of his life or personal liberty except in accordance with procedure established by law.[28] It is one of the foremost and fundamental rights guaranteed in the Constitution that one cannot be deprived of except by the procedure prescribed by law.[29] Art. 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure.[30] Especially after the expansive view undertaken for Art. 21, the procedure used to detain a person must be just, fair and reasonable, and must be established by law,[31] conforming to the principles of natural justice.[32]

In the present case, Maia was "collected as evidence" as part of the investigation[33] which completely undermines Maia's status as a person capable of intelligent thinking and decision making. Maia was "stored" in the record room, and upon appeal by Mr. Galon Kasra, was later moved into prison. During this entire process, however, Maia was not the accused, but was a part of the evidence in the trial. Thus, the reasons to keep Maia, a sensitive subject, and the embodiment of technological advancement, in a prison with dangerous under-trials and convicts,[34] were unjustified.

It has been often stated that the law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other.[35] It has also been stated that to strike the balance between the needs of law enforcement on the one hand and the protection of the person from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of

[26] *Captive Orangutan Has Human Right to Freedom, Argentine Court Rules*, (Dec. 22, 2014, 05:25 PM), http://www.nbcnews.com/news/world/captive-orangutanhas-human-right-freedom-argentine-court-rules-n273376.
[27] *R v. Secretary of State for the Home Department, Ex parte Muboyayi*, (1992) 1 Q.B. 244.
[28] Const. of Uparganj. art 21.
[29] *State of Punjab v. Sukhpal Singh,* A.I.R. 1990 S.C. 231.
[30] *Ranjitsingh Brahmajeetsingh Sharma v. State of Maharashtra,* (2005) 5 S.C.C. 294.
[31] *Maneka Gandhi v. Union of India,* A.I.R. 1975 S.C.C. 775.
[32] *Kartar Singh v. Union of India,* (1994) 3 S.C.C. 569.
[33] Moot Proposition, ¶ 13.
[34] Moot Proposition, ¶ 17.
[35] *Joginder Kumar v. State of Uttar Pradesh, (*1994) 4 S.C.C. 260.

statecraft, and the pendulum over the years has swung to the right.[36] Maia, in the present case, has fallen victim to the same. Further, any police officer or relevant authority putting a person behind bars and detaining them must justify the reasons for the same, and must not use this power arbitrarily.[37] Without cause and without communication of any plausible reason, Maia was unnecessarily and arbitrarily detained in the record room without any due process of law being followed.

It is submitted that the arrest violates Maia's right to personal liberty, and detention is not justified, hence warranting habeas corpus.

ISSUE II: THE WRIT OF CERTIORARI CAN BE ISSUED AGAINST THE ORDER OF THE SUPERINTENDENT

It is contended that a writ of Certiorari should be issued against the order of the Superintendent to set aside the conditions imposed on the permission to interview Maia since the *Superintendent in this case, acted in a judicial capacity making a patent error of law* **[A]** and *imposed conditions which violate the freedom of the press* **[B]**.

A. CERTIORARI CAN BE ISSUED TO SET ASIDE THE CONDITIONS

A writ of certiorari can be issued to set aside *the conditions imposed by the Superintendent on the permission to interview Maia since the superintendent acted in a judicial capacity* **(1)** *making a patent error of law* **(2)**.

1. The Superintendent acted in a judicial capacity

The difference between a judicial and administrative action has been defined in an old Irish case[38] which stated that the term 'judicial' does not necessarily mean acts of a judge or legal tribunal sitting for the determination of matters of law, but an act done by competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others. This opinion has been widely accepted, even by Indian courts,[39] as the best definition of a judicial act as distinguished from an administrative act.[40] A judicial act does not necessarily constitute an act of a court or a tribunal. As long as there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the

[36] *Nandini Satpathy v. P. L. Dani,* A.I.R. 1978 S.C. 1025.
[37] *Radhakrishnan alias R.K. v. The State and Anr,* 2003 Cri L.J. 4167.
[38] *Regina (John M'Evoy) v. Dublin Corporation,* (1878) 2 L.R. Irish 371, 376.
[39] *Province of Bombay v. Khusaldas Advani,* A.I.R. 1950 S.C. 222.
[40] *Frome United Breweries Co. v. Bath Justices,* (1926) A.C. 586, 602.

exercise of such power.[41] For the purposes of issuing a certiorari, the test observed is, when a body of persons (1) having legal authority (2) to determine the questions affecting the rights of subjects and (3) having the duty to act judicially, (4) act in excess of their legal authority, a writ of certiorari may issue.[42]

In the present case, a writ of certiorari becomes necessary to consider the legal position of the prison Superintendent. According to the Delhi Prison Rules,[43] unconvicted prisoners are granted the facility of two interviews and writing two letters each week. Further, the Delhi Prisons Act, 2000, states that due provisions must be made for admission of those persons desiring to communicate with the prisoners, so far as is consistent with the interest of justice, with special regards to legal advisors.[44]

With regards to these provisions, it becomes evident that the Superintendent is conferred with the quasi-judicial powers to determine whether or not a prisoner may be granted an interview with a friend, legal advisor or a relative. The rules and provisions of the Delhi Jail Manual allow the Superintendent considerable power of exercising discretion and judgment, in interest of justice.

In light of the above arguments, it becomes evident, that while refusing, granting or conditionally granting the permission to interview a prisoner, the Superintendent acts in a judicial capacity, rather than in a purely administrative or ministerial capacity.

2. Grounds for issuing a writ of Certiorari

The grounds for granting certiorari have been distinctly laid down by the Hon'ble Supreme Court.[45] Where an action is *ultra vires*, it can be controlled by certiorari and also by some other public law remedies.[46] But where an action violates the rules of natural justice or the tribunal commits and error of law, certiorari is practically the main method of judicial control.[47]

Certiorari, it has been widely accepted, can be issued when there is a patent error of law which is a manifest error apparent on the face of the proceedings based on clear ignorance or

[41] *State of Orissa v. Dr. Binapani Dei,* A.I.R. 1967 S.C. 1269.
[42] *The King v. London County Council,* (1931) 2 K.B. 215.
[43] Delhi Prisons (Prisoners' Welfare Fund, Appeals, Petitions, Interviews And Communication) Rules, 1988, Rule 41.
[44] Delhi Prisons Act, 2000 § 40.
[45] *Surya Dev Raj v. Ram Chander Rai,* 2003 (6) S.C.C. 675.
[46] Bhagabati Prosad Banerjee, *Writ Remedies* 159 (6th ed. Lexis Nexis 2013).
[47] Bhagabati Prosad Banerjee, *Writ Remedies* 159 (6th ed. Lexis Nexis 2013).

disregard of the provisions of law.[48] When a quasi-judicial authority ignores relevant considerations, or takes into account irrelevant considerations, it amounts to error of law.[49] Thus, it is humbly contended that the prison Superintendent in this case, committed an error in law due to the reasons laid out in the following arguments.

B. CONDITIONS IMPOSED ON THE INTERVIEW VIOLATE FREEDOM OF THE PRESS GUARANTEED UNDER ART 19(1)(A) OF THE INDIAN CONSTITUTION.

Freedom of speech and expression guaranteed under Art 19(1)(a) of the Indian Constitution includes within its scope the freedom of the press.[50] A free press is regarded as the fourth institution in a democracy, providing an effective check to the executive, legislature and the judiciary.[51] Blackstone, in his commentaries, stated that the importance of the liberty of the press consists in laying no previous restraint upon publications.[52] The imposition of pre-censorship is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression.[53] Thus, in a country which boasts of a free and thriving press, along with close to 100% literacy rate, the freedom of the press and the right of the people to be informed of a case raising important legal questions, must be adequately protected.[54]

The Supreme Court of India has held that neither the Government nor its officials have any authority to impose a prior restraint upon publication of a material.[55] In the present case, the prison Superintendent imposed a condition of having the footage of the interview approved.[56] Free and frank discussion and criticism of matters of public interest must in no way be curtailed.[57] A 'free press' which is neither directed by the Executive nor subjected to censorship, is a vital element of a free State.[58] To protect the importance of the free press in Uparganj, the imposition of the condition must be struck down.

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[48] *Syed Yakoob v. K. S. Radhakrishnan*, A.I.R. 1964 S.C. 477; *Hari Vishnu Kamath v. Syed Ahmad Ishaque and Ors*, A.I.R. 1955 S.C. 233; *Satyanarayan Laxminarayan Hegde and Ors. v. Mallikarjun Bhavanappa Tirumale*, (1960) 1 S.C.R. 890.
[49] *Smt. Ram Piari v. Rallia Ram,* A.I.R. 1982 S.C. 1314.
[50] *Bennett Coleman and Co. v. Union of India and Ors,* A.I.R. 1973 S.C. 106.
[51] *New York Times v. Sullivan,* 376 U.S. 254.
[52] 4 William Blackstone, *Commentaries on the Laws of England* 151-152 (reprint University of Chicago Press 1979).
[53] *Brij Bhushan and Anr. v. the State of Delhi*, A.I.R. 1950 S.C. 129.
[54] Moot Proposition, ¶ 1.
[55] *R. Rajagopal v. State of Tamil Nadu,* A.I.R. 1995 S.C. 264.
[56] Moot Proposition, ¶ 20.
[57] Sir Alfred Denning, *Freedom Under the Law* 44 (1st ed. Stevens and Sons 1949).
[58] *M. Hasan and Anr. v. Government of Andhra Pradesh and Ors*, A.I.R. 1998 A.P. 35.

Pre-publication ban even under a court injunction can be justified in the interest of justice only when there is a clear and imminent danger to the administration of fair justice and not otherwise.[59] The duty of the press and videographers is to collect information and inform the same to the public, which has the right to enjoy this basic right.[60] Every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued.[61] Where a Sessions Judge gave interviews to the press discussing the merits of a case which was sub-judice, it was held that no citizen has a right to make use of Article 19 in a manner so as to bring the Contempt of Courts Act[62] into action.[63] Interviews in a sub-judice case, thus, should not undermine the ongoing trial. In the present case, following the Superintendent's order might expose the interview footage to the review of the prison authorities, which might lead to a biased perspective of the same. However, removing the conditions imposed would not lead to undermining the trial owing to the efficacy of the press and the literacy of the populace.

In light of these arguments, it is humbly contended that the order of the Superintendent is against the freedom of speech and expression, and thus a writ of certiorari must be issue.

ISSUE III: ORDER OF FRAMING OF CHARGES AGAINST MAIA BY THE SESSIONS JUDGE MUST BE SET ASIDE

It is contended that a *revision petition is maintainable against the order of framing charge by the Sessions Judge* and the same cannot be termed as an interlocutory order attracting the bar under § 397(2) **[A]**. Secondly, *no prima facie case has been established against Maia for the commission of abetment to suicide* so as to justify the order of framing of charge being passed **[B]**.

A. REVISION PETITION IS MAINTAINABLE

The term 'interlocutory order' has been given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial.[64] An order which substantially affects or decides or overrides important rights and liabilities of the parties cannot be termed

[59] *Reliance Petrochemicals Limited v. Proprietors, Indian Express Newspaper Bombay Pvt. Ltd*, A.I.R. 1989 S.C. 190.
[60] *M. Hasan and Anr*. v. *Government of Andhra Pradesh and Ors*, A.I.R. 1998 A.P. 35.
[61] *Handyside v. United Kingdom*, 1976 E.H.R.R. 737.
[62] Contempt of Courts Act, 1971 § 3
[63] *Subhash Chand v. S. M. Aggarwal and Anr*, 1984 Cri L.J. 481.
[64] *Madhu Limaye v. State of Maharashtra*, A.I.R. 1978 S.C. 47.

as 'interlocutory' so as to bar a revision against that order.[65] The test to decide whether the impugned order is interlocutory or not is to see if by upholding the objections raised by a party, it would result in culminating the proceedings, and if so, such an order will not be merely interlocutory in nature.[66]

An order of framing charge is an order of moment for the accused which affects his liberty.[67] Such an order should not be treated as interlocutory, but at the most can be called an intermediate order,[68] which is revisable by exercise of powers under § 397(1) and the embargo contained under § 397(2) not to exercise powers of revision in relation to an interlocutory order, is not applicable to this revision.[69]

B. SESSIONS JUDGE WAS NOT JUSTIFIED IN ORDERING FRAMING OF CHARGE

The conditions that need to be fulfilled for framing of a charge are, presumption of the commission of an offence or the existence of a prima facie case,[70] and sufficient evidence to support the accusation against the accused[71] and the court is under a duty to find out whether such a prima facie case is made out against the accused.[72]

The court is required to find out if the facts emerging from the materials and documents on record disclose the existence of all the ingredients constituting the alleged offence, and for this purpose it can sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as the gospel truth.[73] The court is expected to take all due diligence as to whether the charge framed is supported by prima facie and sufficient material evidence.[74]

It is contended that there is no prima facie case established to justify the order framing charge against Maia as *Dr. Ahtme's death cannot be termed as 'suicide'* **(1)** and hence *no offence of*

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[65] *Hasmukh A. Jhaveri v. Shella Dadlani*, 1981 Cri L.J. 958 (Bom.); *Amar Nath v. State of Haryana*, A.I.R. 1977 S.C. 2185; *State of Gujarat v. Manoj Kumar Achalagi Khatri*, 2001 Cri L.J. 1223 (Guj); *State of Gujarat v. Ashulal Nanji Bisnoi*, 2002 G.L.H. (2) 579.

[66] *Amar Nath v. State of Haryana*, A.I.R. 1977 S.C. 2185; *Prabhakaran v. Excise Circle Inspector, Wadakkancherry*, 1993 Cri L.J. 3599 (3603) (Ker-D.B.); *Madhu Limaye v. State of Maharashtra*, A.I.R. 1978 S.C. 47; *Rajendra Kumar Sitaram Pande v. Uttam & Another*, A.I.R. 1999 S.C. 1028; *K.K. Patel v. State of Gujarat*, A.I.R. 2000 S.C. 3346; *Mohanlal Maganlal Thakur v. State of Gujarat*;, *M.K.C.G. Medical College, Berhampur,* 47 (1979) C.L.T. 126; *Mohanlal Devanbhai Chokshi v. J.S. Wogh*, 1981 Cri L.J. 454; *Jhaveri v. Shella Dadlani*, 1981 Cri L.J. 958*; Dattatraya Narayan Samant v. State of Maharashtra*, 1982 Cri. L.J. 1025.

[67] *Amar Nath v. State of Haryana*, A.I.R. 1977 S.C. 2185.

[68] *Madhu Limaye v. State of Maharashtra*, A.I.R. 1978 S.C. 47; *Amar Nath v. State of Haryana*, A.I.R. 1977 S.C. 2185.

[69] *Madhu Limaye v. State of Maharashtra*, A.I.R. 1978 S.C. 47.

[70] *Bellow v. Parker*, (1903) I.R. *7 C.W.N. 521*; *Manjoor Khan v. State of Mysore*, A.I.R. 1962 Mys. 106.

[71] *Natabar Khan v. Emperor*, 27 C.W.N. 923

[72] *Krishna Gopal Mathodkar v. State*, 2010 Cri L.J. (N.O.C.) 108 (Bom).

[73] *Niranjan Singh Karam Singh Panjabi v. Jitendra Bhimraj Bijja*, A.I.R. 1990 S.C. 1962.

[74] *Assistant Director, Enforcement Directorate, Govt. of India, Madras v. Khader Sulaiman*, 2003 Cri L.J. 2468.

abetment to suicide can be made out **(2)**; thus *establishing no prima facie case against Maia* **(3)**.

1. Dr. Ahtme did not commit 'suicide' as understood by law

It is contended that Dr. Ahtme did not commit suicide as understood in law as *voluntary stopping of eating and drinking does not constitute as suicide* **(a)** *Terminally ill patients have a right to self determination* **(b)**

(a.) Voluntary Stopping of Eating and Drinking does not constitute suicide

As Justice Brennan has observed, "*for many, the thought of an ignoble end, steeped in decay, is abhorrent.*"[75] While it is universally agreed that all suicides are unnatural death,[76] it is contended that Dr. Ahtme's death caused due to not eating and drinking constitutes a natural death.[77]

It is to be noted that Dr. Ahtme was suffering from a terminal stomach cancer.[78] A longer life is not always a better life and when the quality of life diminishes, it is preferable for some to hasten death rather than endure the perils of what, is an exceedingly poor quality of life.[79] In this context, it was held there is no obligation to feed and hydrate a patient who intends to end his life by ceasing to intake any food and water.[80]

A right to Voluntary Stopping of Eating and Drinking (hereinafter referred to as VSED) can be found in common law torts. Force feeding a person who is voluntarily refusing food and fluid is battery.[81] The right to refuse life-sustaining medical treatment is an offspring of battery since the person has a right to be free from bodily intrusion.[82] It is contended that provision of oral nutrition and hydration is nothing but medical treatment and a patient has the right to refuse it.[83] Though there is a slight difference between taking food by natural

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[75] *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990).
[76] *Narender Singh Arora v. State (Govt. of NCT of Delhi) & Ors.*, Crl. Rev. P. No.555/2003.
[77] T. Sheldon, *Doctors Should Care for People Who Choose to Die by Starvation, Says Dutch Medical Association*, BMJ 348 (2014) g331.
[78] Moot Proposition, ¶ 8.
[79] J. L. Abrahm, *Patient and Family Requests for Hastened Death*, Hematology (2008): 475-480; Linda Ganziri et al., *Oregonians' Reasons for Requesting Physician Aid in Dying*, 169 Archives Internal Med. 489.
[80] *H Ltd v. J & Anor* (2010) S.A.S.C. 176 (Austl.) ¶ 98; Tony Sheldon, *Row Over Force Feeding of Patients with Alzheimer's Disease*, 315 Brit. Mfd. J. 327 (1997).
[81] *Morton v. Wellstar Health Sys*., 653 S.E. 2d 756, 758 (Ga. Ct. App. 2007); *Siegel v. Ridgewells, Inc*., 511 F. Supp. 2d 188, 194 (D.D.C. 2007).
[82] *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990).
[83] Rebecca Dresser, *When Patients Resist Feeding: Medical, Ethical, and Legal Considerations*, 33 J. AM. Geriatrics Soc'y 790, 790 (1985); *In re Plaza Health & Rehab*. Ctr., N.Y. Sup. Ct. Onondaga County, Feb. 2, 1984; *A.B. v. C.*, 477 N.Y.S. 2d 281, 283 (Sup. Ct. 1984*);*
In re Brooks, 258 N.Y.S. 2d 621 (Sup. Ct.1987); *Thor v. Superior Court*, 855 P.2d 375, 379 (Cal. 1993).

means and the medical administration of nutrition, such a difference is not sufficient to make a distinction between suicide and the right of self-determination.[84]

(b.) Terminally ill patients have a right of self-determination

A person, who is legally and mentally competent, is entitled to refuse food and water, and to reject any invasive manipulation of his body or other form of treatment, including artificial feeding, even though without it he will die.[85] Sufferings of such a terminally ill person need not be prolonged by forcefully keeping him alive with all the pain and sufferings.[86] The principle of self-determination requires the state to respect a patient's judgment about how much pain and suffering she wishes to tolerate before dying.[87] Thus, a Dr. Ahtme's ability to control her bodily integrity also encompasses the right not to consent, or the right to informed refusal of treatment.[88] Courts have characterized a patient's right to self-determination as a privacy interest, stating that when an individual is afflicted with terminal illness that offers no hope of reversal, that person effectively has a right to die.[89] Such a right to self-determination is also a constitutionally protected due process liberty interest in the United States.[90] A competent person has a constitutionally protected right to refuse lifesaving nutrition and hydration if the refusal outweighs the interests of the state.[91]

Further, under Article 21 of the Constitution the right to life includes the right to live with human dignity,[92] and such life is not mere living but living in health. Health is not the

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[84] *H Ltd v J & Anor* (2010) S.A.S.C. 176 64 (Austl.).
[85] *Sidaway v. Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* (1985) A.C. 871, 904-905; *In re F (Mental Patient: Sterilisation)* (1990) 2 A.C. 1; *Airedale NHS Trust v Bland* (1993) A.C. 789.
[86] *Union Pacific Ry. v. Botsford*, 141 U.S. 250 (1891).
[87] *Bouvia v. Superior Court*, 225 Cal. Rptr. 297,305 (Cal. Ct. App. 1986); *Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261, 299 (1990); *In re Gardner*, 534 A. 2d 947, 951 (Me. 1987); *In re Guardianship of Doe*, 583 N.E. 2d 1263, 1269 (Mass. 1992); *In re Lawrence*, 579 N.E. 2d 32, 41 (Ind. 1991); *In re Quinlan*, 355 A. 2d 647,633 (NJ.); *Garger v. New Jersey*, 429 U.S. 922 (1976); *Roe v. Wade*, 410 U.S. 113, 152-53 (1973); *In re Browning*, 568 So.2d 4, 10 (Fla. 1990); *Planned Parenthood v. Casey*, 505 U.S. 833; *Schloendorff v. Society of New York Hospital*, 105 N.E. 92, 93 (1914); *S. v. McC. (orse S.) and M (D.S. intervener) W v. W*, (1972) A.C. 24 43; *Sidaway v. Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* (1985) A.C. 871, 882; *Nancy B. v. Hotel Dieu de Quebec* (1992) 86 D.L.R. (4th) 385.
[88] *Bouvia v. Superior Court*, 225 Cal. Rptr. 297, 299-300 (Cal. CL App. 1986); *Satz v. Perlmutter*, 379 So. 2d 359, 360 (Fla. 1980); *Brophy v. New England Sinai Hosp*., 497 N.E. 2d 626, 637-38 (Mass. 1986); *Superintendent of Belchertown St. Sch. v. Saikewicz*, 370 N.E. 2d 417, 419 (Mass. 1977); *In re Farrell*, 529 A. 2d 404, 407 (N.J. 1987).
[89] *In re Quinlan*, 355 A. 2d 647 (N.J.); George P. Smith, *All's Well That Ends Well: Towards Policy of Rational Suicide or Merely Enlightened Self Determination?* 22 U.C. Davis L. Rev. 275 (1989).
[90] *Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261,277 (1990); *McKay v. Bergstedt*, 801 P.2d 617, 622 (Nev. 1990); *Carey v. Population Servs*. Int'l, 431 U.S. 678,684-85 (1977); *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Meyer v. Nebraska*, 262 U.S. 390,399-400 (1923); Kathy T. Graham, *Last Rights: Oregon's New Death with Dignity*, 31 Willam Erre L. Rev. 601, 619-20 (1995).
[91] *Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261,277 (1990), at 280.
[92] *Vikram Deo Singh Tomar v. State of Bihar*, 1988 (Supp) SCC 734 ¶ 2.

absence of illness but a glowing vitality.[93] In the case of a dying person who is terminally ill and where the death due to termination of natural life is certain and imminent and the process of natural death has already commenced, he may be permitted to terminate it by a premature extinction of his life in these circumstances and it is not a crime.[94]

Courts have allowed patients to refuse life saving care to permit patients to "die with dignity"[95] in order to protect their status as a human being."[96] Therefore, Dr. Ahtme taking an 'informed decision' to allow nature to have its course, is not guilty of 'attempt to commit suicide' under § 309 of the Penal Code.[97] Consequently, Maia who stopped giving providing food and water following her commands cannot be guilty of abetting suicide under § 306 of the Indian Penal Code.[98]

2. Maia is not liable for abetment to suicide

For a person to be charged under § 306 for abetment to suicide, the case for suicide must be proved.[99] In the present case, it is contended that since the death of Dr. Ahtme cannot even be considered to be suicide in the first place, Maia cannot be charged for an offence of abetment to suicide. Assuming for the sake of argument, that it does amount to suicide, it is contended that, *Maia lacks the requisite mens rea to be charged for the offence of abatement to suicide* **(a)** and *is not capable of standing the trial* **(b)**.

(a.) Maia did not have the mens rea required to be shown for abatement to suicide

It is contended that Maia had no specific intention in aiding or in commission of the suicide.[100] It is not enough to prove that Maia merely facilitated the commission of the crime,[101] to constitute as an abettor; some active steps must be taken, with intent to instigate the principal. In other words, it requires proof of mens rea, that is, intention to aid, as well as

[93] *P. Rathinam v. Union of India and Anr*., (1994) 3 S.C.C. 394.
[94] *Aruna Shanbaug; Gian Kaur v. State of Punjab*, 1996 (2) S.C.C. 648.
[95] *Rasmussen v. Flemming*, 741 P. 2d 674,678 (Ariz. 1987); *Airedale NHS Trust v. Bland* (1993) All E.R. 82 (H.L.).
[96] *Superintendent of Belehertown St. Seh. v. Saikewicz*, 370 N.E. 2d 417, 424 (Mass. 1977).
[97] Law Commission of India, March 2006, 196th Report on Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners).
[98] *Airedale NHS Trust v. Bland*, 1993 (1) All E.R. 821 (H.L.); *Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261, 277 (1990); *Ward of Court, Re a*, 1995 I.L.R.M. 401; *Law Hospital N.H.S. Trust v. Lord Advocate*, 1996 S.L.T. 848; *Ciarlariello v. Schater*, 1993 (2) S.C.R. 119; *Rodriguez v. The Attorney General of Canada*, 1993 (3) S.C.R. 519; *Q v. Guardianship Administrative Board & Pilgrim*, 1998 V.S. (C.A.); *Northridge v. Central Sydney Area Health Service*, (2000) N.S.W. 1241 (S.C.); *Issac Messiha v. South East Health*, 2004 N.S.W. (S.C.) 1061; *Auckland Area Health Board v. Attorney General*, 1993 (1) N.L.L.R. 235.
[99] *Wazir Chand v. State of Haryana*, A.I.R. 1989 S.C. 378;
K. Prema Rao and State of Andhra Pradesh v. Yadla Srinivas Rao, A.I.R. 2003 S.C. 11; *Dalbir Singh v. State of Uttar Pradesh*, A.I.R. 2004 S.C. 1990.
[100] *Muthammal v. Maruthatlal*, 1981 Cri L.J. 833.
[101] *Shevanti v. Emperor*, A.I.R. 1928 Nag. 257; *Shri Ram & Another v. The State of Uttar Pradesh*, 1975 S.C.C. (3) 495.

knowledge of the circumstances.[102] Proof of the intent further involves a positive act of voluntary assistance.[103]

In an offence of abetment, the intention should be to aid an offence or to facilitate the commission of an offence.[104] In the present case, it was Maia's intention only to dutifully follow the instructions given by Dr. Ahtme and Maia could not have had any knowledge of the consequences of following such instructions, namely, that it would cause the death of Dr. Ahtme. If the person who lends his support does not know or has no reason to believe that the act which he was aiding or supporting was in itself a criminal act, it cannot be said that he intentionally aids or facilities the doing of the offence.[105]

(b.) Maia is not capable of standing trial

It is a recognised principle of common law that a felony may be committed by the hands of an 'innocent agent' who, having no blameable intentions incurs no criminal liability of his acts. In such a case, it is the man who 'instigates' this innocent agent who is the real offender.[106] The test for competency to stand trial is determined by the capability of Maia to have sufficient ability to consult with a lawyer with a reasonable degree of factual understanding of the proceedings.[107] Maia neither had the criminal intent for abetment to suicide while following the instructions given by Dr. Ahtme, nor could have had any knowledge of the consequences of following such instructions.

Maia, incapable of exercising free will was an innocent agent. Though it is not disputed that Maia reflects the capabilities of a human being in terms of intelligence and the ability to hold a conversation with other humans,[108] these capabilities resemble the parallel capabilities of a mentally limited person, such as a child, or of a person who is mentally incompetent or who lacks a criminal state of mind.[109] Maia was firstly only a prototype of the technology that Dr. Ahtme had developed, and was only a few months old when the death of Dr. Ahtme occurred,[110] thus, unable of having a fully developed conscience and a sense of right and wrong. Legally, when an offense is committed by an innocent agent, like when a person

[102] *Giorgianni v. The Queen*, (1985) 156 C.L.R. 473.
[103] *National Coal Board v. Gamble*, (1959) 1 Q.B. 11.
[104] *Ferguson v. Weaving*, 1951 (1) All E.R. 412 (414).
[105] *Ram Nath v. Emperor*, A.I.R. 1925 All 230; *Ramnarayan v. King Emperor*, A.I.R. 1921 Pat 304; *Shyam Bahadur v State* , A.I.R 1967 Pat 312.
[106] *Anon.*, (1633) Kel. 52 (T.A.C.);
[107] *Dusky v. U.S.*, 362 U.S. 402 (1960)
[108] Moot Proposition, ¶ 5.
[109] Jerome Hall, *General Principles Of Criminal Law* 70-211 (2d ed. The Lawbook Exchange Ltd. 2005).
[110] Moot Proposition, ¶ 8.

causes a child,[111] a person who is mentally incompetent,[112] or who lacks a criminal state of mind to commit an offense,[113] such agent cannot be held responsible for the commission of the crime.

In the present case, supposing for the sake of argument, that Dr. Ahtme did commit suicide, Maia was then merely an instrument, and the *mens rea* cannot be attributed to Maia, but rather to Dr. Ahtme who was both the programmer and the user of the AI, and would be the perpetrator as a principal, accountable for the conduct of the innocent agent.[114] If an order by the superior is itself manifestly illegal, the executor of such an order cannot be made criminally liable.[115] Thus, no mental attribute required for imposition of criminal liability can be found in Maia.[116]

ISSUE IV: THE DIRECTION OF THE HIGH COURT FOR IN-CAMERA PROCEEDINGS VIOLATED THE FREEDOM OF SPEECH AND EXPRESSION OF MAIA AND THE PRESS.

It is contended that impugned order can violate fundamental rights **[A].** *The freedom of Speech and Expression of the Press has been violated* [**B].** Further, *Maia's right to freedom of speech and expression has also been violated by the impugned order* **[C].**

A. THE IMPUGNED ORDER IS CAPABLE OF VIOLATING FUNDAMENTAL RIGHTS.

The present SLPs are filed against the impugned order of conducting in-camera proceedings for Maia's trial, in violation of the right to freedom of speech and expression of the Press and the freedom of speech and expression of Maia. It may be contested by the Respondents that an order of Court cannot violate fundamental rights. In contrast to that, it is contended that Judiciary is State as understood by Art. 12.[117]

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[111] *Maxey v. United States*, 30 App. D.C. 63 (1907); *Commonwealth v. Hill*, 11 Mass. 136 (1814); *R. v. Michael*, 169 Eng. Rep. 48 (1840).
[112] *Johnson v. State*, 38 So. 182 (Ala. 1904); *People v. Monks*, 24 P. 2d 508 (Cal. Dist. Ct. App. 1933).
[113] *United States v. Bryan*, 483 F. 2d 88 (3rd Cir. 1973); *Boushea v. United States*, 173 F. 2d 131 (8th Cir. 1949); *People v. Mutchler*, 140 N.E. 820 (Ill. 1923);
State v. Runkles, 605 A. 2d 111 (Md. 1992); *Parnell v. State*, 912 S.W. 2d 422 (Ark. 1996); *State v. Thomas*, 619 S. W. 2d 513 (Tenn. 1981).
[114] *Morrisey v. State*, 620 A. 2d 207 (Del. 1993); *State v. Fuller*, 552 S.E. 2d 282 (S.C. 2001); *Gallimore v. Commonwealth*, 436 S.E. 2d 421 (Va. 1993).
[115] Michael A. Musmanno, *Are Subordinate Officials Penally Responsible for Obeying Superior Orders which Direct Commission of Crime?*, 67 Dick. L. Rev. 221 (1963).
[116] George R. Cross & Cary G. Debessonet, An *Artificial Intelligence Application in the Law: CCLIPS, A Computer Program that Processes Legal Information*, 1 High Tech. L.J. 329, 362 (1986).
[117] *Naresh* v. *State of Maharashtra*, (1966) 3 S.C.R. 744.

The action of any of the bodies comprised within the term 'state' as defined under Art. 12 can be challenged before the courts under Art. 13(2) on the ground of violating Fundamental Rights.[118] The most significant expression used in Art. 12 is "other authorities" which does not restrict including judiciary.[119] The Apex Court of India has held that the expression 'other authorities' includes all authorities created by the Constitution or statute on whom powers are conferred by law.[120] Judiciary, though not expressly mentioned in Art. 12 should be included within the expression of 'other authorities' as courts are set up by statute and the Constitution.[121]

The Courts have the power to make rules regulating its own procedure.[122] Thus, it can be said that judiciary performs administrative functions similar to State.[123] The courts like any other organ of the State are limited by the mandatory provisions of the Constitution.[124] In the present case, the order of conducting in-camera proceeding is a matter of procedure which can be regarded as an administrative order. Further, in the context of Art. 14, it was observed that discrimination may be brought about by the Legislature, Executive or Judiciary.[125] It extends to all actions of the State denying equal protection of the laws.[126] Judicial process is 'state action' and judiciary is bound to apply the Directive Principles in making its judgment.[127] Fundamental rights can be availed against the State organs, which include Judiciary.[128] Additionally, in America, it is well-settled that the judiciary is within the prohibition of the 14th Amendment pertaining to Fundamental Rights.[129]

Thus, it is submitted that the Judiciary is a State under Art. 12 and therefore can violate any fundamental right. Hence, the SLP is maintainable against the impugned order of the High Court which is violative of fundamental rights.

B. THE IN-CAMERA PROCEEDINGS WOULD VIOLATE THE FREEDOM OF THE PRESS.

[118] *Shamdasani v. Central Bank of India,* A.I.R. 1952 S.C. 59; *Vidya Verma v. Shivnarain,* A.I.R. 1956 S.C. 108: (1955) 2 S.C.R. 983.
[119] M.P Jain, *Indian Constitutional Law* 856 (7th ed. LexisNexis 2015).
[120] *Electricity Board, Rajasthan v. Mohan Lal,* A.I.R. 1967 S.C. 1857, *Umesh v. V.N. Singh,* A.I.R. 1968 Pat. 3.
[121] V.N Shukla, *Constitution of India* 20 (5th ed. Eastern Book Company 1969).
[122] Const. of Uparganj, art. 145, 146.
[123] H.M. Seervai, *Constitutional Law of India* 155 (1st ed. Universal Publishing 1967).
[124] D.D. Basu, *Commentary on the Constitution of India* 145 (5th ed. LexisNexis 1970).
[125] *Budhan Chodhury & Other v. The State Of Bihar,* 1955 S.C.R. (1) 1045.
[126] *Ibid*.
[127] *Kesavananda Bharti v. State of Kerala and Anr.* (1973) 4 S.C.C. 225.
[128] *Ibid.*
[129] *Virginia v. Rives*, (1880) 100 U.S. 313, 25 L. Ed. 667; *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Carter* v. *Texas*, 177 U.S. 442, 447; *Twining v. New Jersey*, 211 U. S. 78, 211 U. S. 90-91 (1908).

It is contended that *the freedom of the Press is necessary for an open justice system* **(1)** and the *impugned order is violative of freedom of press* **(2)**.

1. Restricting the Freedom of press violates the open justice rule.

Freedom of Speech and expression is essential for the proper functioning of a democratic government.[130] This right is bestowed upon under Art. 19(1)(a) of the Constitution. The Supreme Court of India held that the right to speech and expression includes the freedom of the press.[131] It is also considered to be a part of the basic structure of the Constitution.[132]

This right is further enshrined under Art. 19 of ICCPR and Art. 10 of ECHR which provides that the freedom of expression including freedom of Press, is a fundamental part of a democratic society.[133] According to ICCPR, free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression.[134]

"Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity."- Jeremy Bentham.[135]

It has been said that justice should not only be done, but seem to be done. Open Justice enables the public to see how justice is administered and by subjecting it to public and press scrutiny, safeguards the fairness of the trial.[136] The rule is that the trial should be conducted in open court where the public can view, media can report to the world or people who could not make it and the parties and witnesses to the suit shall watch the justice done. The principle of open justice is one of the most fundamental principles of our legal system.[137] The guilty should only be 'publicly condemned', and the innocent 'publicly acquitted'.[138]

Public support for the judiciary and the judicial system is directly linked to the public understanding of them and public confidence in them as essential elements of our democratic system. The press right is thus founded on the public right to know: the public right to have access to information so that it may understand and monitor the functioning of its

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[130] *Pennekamp v. Florida,* 328 U.S. 331 (1946); *Benhadj v. Algeria*, 1173/2003, U.N. Doc. A/62/40, Vol. II, at 122 (H.R.C. 2007); *Tae Hoon Park v. Republic of Korea*, C.C.P.R./C/64/D/628/1995; *Re. Ramlila Maidan Incident*, (2012) 5 S.C.C. 1.

[131] *Romesh Thapar v. State of Madras,* A.I.R. 1950 S.C. 124; *Benett Coleman & co. v. Union of India*, (1972) 2 S.C.C. 788; *Express Newspapers (P) Ltd. v. Union of India*, A.I.R. 1958 S.C. 578, *Sakal Papers (P) Ltd. and Others v. The Union of India* (1962) 3 S.C.R. 842.

[132] *His Holiness Kesavananda Bharti* v. *State of Kerala and Anr.,* (1973) 4 S.C.C. 225.

[133] *Rakhim Mavlonov and Shansiy Sa'di v. Uzbekistan*, C.C.P.R./C/95/D/1334/2004.

[134] United Nations, Human Rights Committee, General Comment No. 34, *Article 19: Freedom of Opinion and Expression*, C.C.P.R./C/G.C./34.
Marques v. Angola, Communication No 1128/2002, UN Doc CCPR/C/83/D/1128/2002.

[135] Garth Nettheim, *The Principle of Open Justice,* (1984) 8 Univ Tas Law Rev 25.

[136] *Scott* v *Scott,* (1913) A.C. 417.

[137] *Ibid*; *Dickason v. Dickason* (1913) 17 C.L.R. 50; *Russell v. Russell* (1976) 134 C.L.R. 495.

[138] *Tukaram vs. State of Maharashtra*, A.I.R. 1979 S.C. 185.

institutions.[139] The "public watchdog" status of journalists derives from the right of the citizen to be informed. In modern society, print and electronic media have to a large degree become the eyes and ears of the public. Thus, open justice is of paramount importance and the same cannot be restricted by ordering in-camera proceedings.

2. The order of in-camera proceeding is not justified in the present case.

This right can only be limited in grave cases "necessary in a democratic society", permissible only to the extent that they correspond to "a pressing social need".[140] It is clear that a court's inherent jurisdiction to control its own proceedings cannot exceed what is necessary for the administration of justice. This power to prevent the press from publishing generally refers to the reporting of evidence presented at the trial, the identity of complainants in sexual offenses, the identity of children involved in criminal proceedings, and any court proceedings taking place in the absence of the jury.[141]

The High Court has inherent power under § 327 of the Code of Criminal Procedure to make provision for open courts for public hearing but it also gives discretion to the presiding judge or magistrate that if he thinks fit, he can deny the access of the public generally or any particular person to the court during disclosure of indecent matter or when there is likelihood of a disturbance or for any other reasonable cause. This power should be exercised by the High Court in due caution and in exceptional circumstances.[142] The general principle is that an exception can only be justified if it is necessary in the interests of the proper administration of justice. In the present case, there is no compelling reason to restrict the freedom of press.

The freedom of speech and expression can only be limited by Art. 19(2) which is exhaustive. The restriction in this case is too remote from that of constitutionally authorised ground to restrict, making it invalid.[143] The restriction of the in-camera proceedings to does not come under the ambit of any of the constitutionally authorised ground under Art. 19(2).

Moreover, Supreme Court of India in *Naresh v. State of Maharashtra*[144] has held that prohibition to publication of a court proceeding cannot be in perpetuity. If it is so, it is violative of Art. 19 (1) of the Constitution of India. In the present case, the HC directed that

[139] *Attorney General v. Guardian Newspaper*, 3 All E.R. 545.
[140] *Sunday Times v. United Kingdom* (1979) 2 E.H.R.R. 245.
[141] Naylor, Bronwyn, *Fair Trial or Free Press: Legal Responses to Media Reports of Criminal Reports of Criminal Trials* 497 (1st ed. Cambridge Law Journal 1994).
[142] *Naresh Mirajkar and Ors. v. State Of Maharashtra and Anr*, A.I.R. 1967 S.C. 1.
[143] *Craig v. Harney*, 331 U.S. 367 (1947)
[144] *Naresh Mirajkar and Ors. v. State Of Maharashtra and Anr*, A.I.R. 1967 S.C. 1.

the next day's proceedings and all proceedings in the High Court of Uparganj where Maia was present would be conducted in camera. This is a restriction to publication in perpetuity since the restriction is for a indefinite period of time.

Further, § 10 of the Madrid Principles[145], developed in 1994 outlines permissible limits on the freedom of expression only to prevent serious prejudice to a defendant and to prevent serious harm to or improper pressure being placed upon a witness, a member of a jury, or a victim. In the present case, these conditions are not satisfied and in fact, the accused has made a similar demand to enforce its fundamental right to speech and expression.

Furthermore, in determining the extent to which restraints may legitimately be levied upon the press, the courts of U.S.A have applied the *clear and present danger* test.[146] According to the test, there must be a clear and present danger that the publication will result in some substantial interference with the proper administration of justice. The mere likelihood, however great, that a substantial evil will result, cannot alone justify a restriction upon freedom of speech or of the press. It is submitted that there exists no such danger to the administration of justice by allowing the press to 'reasonably' report on the proceeding.

C. THE IMPUGNED ORDER VIOLATES THE FREEDOM OF SPEECH AND EXPRESSION OF MAIA.

One may question that Maia is not a citizen of Uparganj. In contrast to that view, it is contended that *Maia can be regarded as a citizen being domiciled in Uparganj* **(1)**. *International Law provides freedom of expression to legal persons* **(2)**. *The impugned order violates Maia's right to speech and expression and right to fair trial guaranteed under the Constitution*[147] **(3)**.

1. Maia is a citizen of the Kingdom of Uparganj.

The term 'citizen' has not defined in the Constitution.[148] Halsbury's Laws of England states that the concept of nationality is also applicable to corporations.[149] Domicile may be deemed to be of three sorts, domicile by birth, domicile by choice, and domicile by operation of law.[150]

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[145] The Madrid Principles on the Relationship between the Media and Judicial Independence (1994).
[146] *Bridges v. California*, 314 U.S. 252 (1941); *Pennekamp v. Florida*, 328 U.S. 331 (1946); *Craig v. Harney*, 331 U.S. 367 (1947); *Superintendent, Delhi Jail v. Lohia*, A.I.R. 1960 S.C. 633; *Schenck v. United States*, 249 U.S. 47,52 (1919).
[147] *The State Trading Corporation of India and Ors. v. Commercial Tax Officer & Ors*, A.I.R. 1963 S.C. 1811.
[148] *Ibid.*
[149] *Halsbury's Laws of England* 113-114 (4th ed. LexisNexis 2010).
[150] Bryan. A. Garner, *Black's Law Dictionary* 572 (7th ed. Thomson West 1999).

The nationality of a corporation can be determined by place where it is originally domiciled.[151] If the concept of nationality can be applied to corporations, which have a legal personhood and the place of domicile determines its nationality, then applying similar logic to the case of Maia, it can be inferred that since, Maia who has a legal personhood is domiciled in the Kingdom of Uparganj should have the nationality of the country. The essentials of "domicile of choice" are the fact of physical presence at a dwelling place and the intention to make that place home. In the present case, Maia was created by Dr. Ahtme who is a renowned scientist of Uparganj. Moreover, there were talks about 'nationalising' Maia,[152] which is a strong inference that Maia is domiciled in Uparganj.

As rightly observed by the ICJ in the 'Nottebohm' case[153], '*a legal bond having as its basis a social fact of attachment, a genuine connection of existence and sentiments, together with the existence of reciprocal rights and duties*.' Maia has stronger factual ties with Uparganj and hence should be treated as a citizen of Uparganj being domiciled in the State.[154]

2. International Law provides freedom of expression to legal persons

Assuming but not admitting that Maia cannot be regarded as 'citizen' of Uparganj, it is contended that in international law all legal persons are entitled to protection of the fundamental rights. State must apply the principle of legality (*nullum crimen, nulla poena sine lege*) to natural person or legal entity.[155] The ECHR always intended to include corporate entities and other non-natural persons.[156] The European Court of Human Rights (ECtHR) even manages to expand the protection of juristic persons under the Convention.[157] Private legal persons have for a long time had a right to freedom of expression under Art. 10 ECHR.[158] Further, the African Charter also entails an open system of protection under Art. 55 AfChHPR, juristic persons can submit their matters to the Court. The African Commission found that banning several private newspapers constituted a violation of the right to freedom

[151] *Janson v. Driefontain Consolidated Mines*, (1902) A.C. 484.
[152] Moot Proposition, ¶ 7.
[153] *Liechtenstein v. Guatemala*, 1955 ICJ 1.
[154] *Baker v. Keck*, D.C. Ill., 13 F.Supp. 487*; Earley v. Hershey Transit Co*., D.C.Pa., 55 F.Supp. 981, 982; *Dodd v. Lorenz*, 210 Iowa 513, 231 N.W. 422, 424*; Commonwealth ex rel. Fortney v. Bobrofskie*, 329 Pa. 44, 196 A. 489, 490; *Perkins v. Guaranty Trust Co., of New York*, 274 N.Y. 250, 8 N.E.2d 849, 852; P. Dordrecht Weis, *Weis on Nationality and Statelessness in International Law* 4-5 (2nd rev. ed. Publishers Group 1979)
[155] P. Van Kempen, *Human Rights and Criminal Justice Applied to Legal Persons,* (December 2010), available at www.ejcl.org/143/art143-20.pdf.
[156] Emberland, M., *The Human Rights of Companies. Exploring the Structure of ECHR Protection* (Oxford University Press 2006)
[157] *Colas Est v. France*, Appl. 37971/97 ¶ 41.
[158]*Sunday Times v. the United Kingdom*, Appl. 6538/74 ¶ 44-68; *Kobenter and Standard Verlags Gmbh v. Austria*, Appl. 60899/00 ¶ 22-33; *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)*, Appl. 32772/02 ¶ 78-98; *Ukrainian Media Group v. Ukraine*, Appl. 72713/01 ¶ 38-70.

of expression under Art. 9 of AfChHPR.[159] Therefore, Maia is entitled to freedom of speech and expression by virtue of Public International Law.

3. Maia's fundamental rights under Art. 19(1) and 21 are being violated.

That freedom of speech must include the right to be heard by willing listeners and to persuade those listeners. The Courts in US have recognized this right in freedom of speech to have the willing listener be persuaded and to act on the basis of the advocacy contained in the speech.[160] On the possibility of the first public appearance of Maia after the death of Dr. Ahtme, there were many applications before the Chief Justice of the HC for audio and video recordings.[161] It can be inferred that Maia had "willing listeners". But Maia is being denied the chance to be heard by 'willing listeners' and to persuade them of her innocence.

Fair trial is an integral part of Art. 21 of the Constitution and rests on the basic principle of presumption of innocence.[162] The right to a fair trial under Art. 21 includes right to public trial. It is also an international norm designed to protect individuals from the unlawful and arbitrary curtailment of basic rights, most prominently right to life and liberty.[163] This right is also provided by Art. 14 of ICCPR which states that "*everyone shall be entitled to a fair and public hearing*."

Therefore, in the present case, the order of in-camera proceedings arbitrarily deprives Maia of her right to fair trial under Art. 21 as well as Art. 19(1) as there was no reasonable cause to pass such an order.

[159] *Art. 19 v. The State of Eritrea*, Comm. 275/2003 (2007); *Constitutional Rights Project and Others v. Nigeria*, Comm. 140/94, 141/94, 145/95 (1999) ¶ 54; *Civil Liberties Organization v. Nigeria*, Comm.101/93 (1995) ¶ 37.
[160] *In re Jackson*, 96 U.S. 727 (1878).
[161] Moot Proposition, ¶ 27.
[162] *Zahira Habibullah Sheikh and ors v. State of Gujarat and ors*, (2006) 3 S.C.C. 374, 395.
[163] U.N. General Assembly, International Covenant on Civil and Political Rights,Dec.16, 1966, 999U.N.T.S. 171.

PRAYER

Wherefore in light of the issues raised, arguments advanced and authorities cited, this Hon'ble Supreme Court may be pleased to:

1. Issue a writ of habeas corpus releasing Maia to the rightful custody of Mr. Galon Kasra.
2. Issue a writ of certiorari to strike down the conditions imposed on the permission for interviewing Maia and grant fresh permission for the interview.
3. Set aside the order of the Sessions Judge framing charge against Maia for abetment to suicide of Dr. Ahtme.
4. Set aside the order of the High Court direction the proceedings to be conducted in camera.

AND/OR

Pass any other order that this Hon'ble Court may deem fit in the interests of justice, equity and good conscience.

And for this the Petitioners, as is duty bound shall forever humbly pray.

Sd/-

(Counsels on behalf of the Petitioners)