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IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

PUBLIC INTEREST LITIGATION

WRIT PETITION (C) No. OF 2018

[A Writ Petition under Article 32 of The Constitution of India for
Enforcement of Public Interest In The Fundamental Rights Guaranteed
Under Part-III of The Constitution]

IN THE MATTER OF:

Indira Jaising, Senior Advocate, D/o Late Shri Bansilal Jaising, aged about
77 years, R/o C-65, Third Floor, Nizamuddin East, New Delhi-110013–
Taxable

... Petitioner

Versus

- 1. Registrar General**, Supreme Court of India, Bhagwan Das Road,
New Delhi-110001
- 2. Union Ministry of Law & Justice**, Through its Secretary, A-Block, C.
G. O. Complex, Lodi Road, New Delhi-110003
- 3. Ministry of Information and Broadcasting**, Through its Joint
Secretary, M/O Information & Broadcasting, Room No. 552, A Wing,
Shastri Bhawan, New Delhi-110001
- 4. Ministry of Electronics and Information Technology**, Through The
Deputy Director General National Informatics Centre, Electronics
Niketan, 6, C. G. O. Complex, Lodhi Road, New Delhi-110003
- 5. Supreme Court Bar Association**, Through The President, Supreme
Court of India, Tilak Marg, New Delhi-110001

... Respondents

All respondents are contesting respondents.

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA FOR ENFORCEMENT OF PUBLIC INTEREST IN THE
FUNDAMENTAL RIGHTS GUARANTEED UNDER PART-III OF
THE CONSTITUTION**

TO,

THE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF

THE PETITIONER HEREIN

MOST RESPECTFULLY SHOWETH:

1. This Writ Petition is filed in public interest by Senior Advocate, Ms. Indira Jaising under Article 32 of the Constitution of India in furtherance of the rights of citizens and the general public to access courts and more particularly in furtherance of their right to information which is a pre-requisite to their fundamental right to be able to freely express their opinions guaranteed under Article 19(1)(a) of the Constitution of India.

ARRAY OF PARTIES

2. The Petitioner is a citizen of India and is a practicing Senior Advocate in this Hon'ble Court. The Petitioner's annual income is in excess of Rupees twenty lakhs and is taxable. A true copy of the PAN Card of the Petitioner is attached herewith and marked as **Annexure P-1** at

Page 56.

3. The Petitioner does not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Petition in public interest.
4. The Petitioner seeks a writ of mandamus from this Hon'ble Court for live streaming of Supreme Court cases/proceedings wherein matters of constitutional and national importance impacting the public at large are being heard and decided.
5. This Writ Petition is filed as *Pro Bono* for enforcement of the public interest, to advance the rule of law, and bring accessibility and transparency in the administration of justice.
6. The Petitioner has filed this writ petition in public interest and has over the past 50 years been advocating for the rights of the marginalized sections of society, and for transparency and accountability. The following indicate her public interest work and her credibility:
 - a. She was enrolled as a member of the Bar Council of Maharashtra in 1964 and was designated as Senior Advocate in 1986 by the High Court of Bombay. She was the first woman to be designated a Senior Advocate by the High Court of Bombay.
 - b. Since the commencement of her career, she has been interested in women's issues. She represented the Air Hostesses of Air India when they were seeking equality with the male co-workers and equal pay for equal work. She fought the legal battle for Mary Roy, a Syrian Christian woman who fought for equal inheritance rights. She has also argued on the Olga Tellis case of right to

The Invisible Lawyer

livelihood of the homeless (see (1985) 3 SCC 545), and the Bombay Hawkers Union for the rights of hawkers (see AIR 1985 SC 1206). She represented Rupen Deol Bajaj against K. P. S. Gill in the case of sexual harassment at workplace and had him convicted for that purpose (see (1995) 6 SCC 194). It was the first case of its kind against a senior police officer in the country by an IAS officer. She represented Gita Hariharian, a mother who challenged the Hindu Minority and Guardianship Act, which declared the father as the natural guardian of the children to the exclusion of the mother (see (1999) 2 SCC 228). This Hon'ble Court held that the mother was also the guardian of the child. The judgment has had a very beneficial impact for women who can now apply for passports for their children and admit them in schools when they are separated from their husbands. She has worked tirelessly on the issue of dowry deaths to protect women from violence in the home. She represented Satya Rani Chadha whose daughter was murdered within a few months of her marriage.

- c. Since then she worked to create a new law on Domestic Violence. The Government of India passed the Protection of Women from Domestic Violence Act in 2005. The new law gave women for the first time a right to reside in the shared household and prevents them from becoming homeless when facing violence.
- d. Over the course of her career, she has been a petitioner in person in cases that seek expansion of transparency and accountability in

The Invisible Lawyer

judicial decisions by asking for publication of an inquiry report of a judicial committee investigating a complaint against a sitting High Court judge.

- e.** She has also argued for transparency in the procedure for designating senior advocates. Recently in 2017, the Hon'ble Court issued guidelines in this case, elaborating on the criteria to be followed while designating an advocate as a Senior in the Supreme Court and High Courts of the country.
- f.** She has worked on several environmental issues, to protect the beaches and coastlines of Goa from being constructed upon.
- g.** She was elected to represent India to the United Nations on the committee for the Elimination of all forms of Discrimination against women and served in that capacity from 2009 to 2012.
- h.** She was the first woman to be appointed Additional Solicitor General of India in 2009 and served in that capacity till May 2014 representing the Government in this Hon'ble Court.
- i.** She is the founder Secretary of Lawyers Collective, an organization, which provides legal services to women and children and marginalized communities. The President of India awarded Padma Shree to the Petitioner in 2005 for public service.
- j.** She currently serves as the Editor in Chief of the digital magazine, The Invisible Lawyer, the link to which can be found here: <http://www.lawyerscollective.org/the-invisible-lawyer>. This publication contains articles, interviews, and opinions on the current happenings in the legal field, along with analytical pieces

The Invisible Lawyer

simplifying pertinent judgments, and laws for the non-legal audience. She is also a regular contributor to newspapers and writes on issues of current legal interest, some of which can be found here:

j.i. Crime and Consent:

<http://indianexpress.com/article/opinion/columns/section-377-supreme-court-gay-sex-crime-and-consent-5018131/> A true typed copy of the article relating to crime and consent by the Petitioner published in the Indian Express is attached herewith and marked as **Annexure P-2** at page **57** to **61**.

j.ii. Right to Privacy: A brake on the Government:

<http://indianexpress.com/article/opinion/columns/right-to-privacy-supreme-court-judgement-emergency-4812129/> A true typed copy of the article relating to right to privacy by the Petitioner published in the Indian Express is attached herewith and marked as **Annexure P-3** at page **62** to **65**.

j.iii. Victim in the Dock:

<http://indianexpress.com/article/opinion/columns/victim-in-the-dock-law-of-cruelty-against-women-supreme-court-judgment-rajesh-sharma-and-ors-v-state-of-up-and-anr-4777931/> A true typed copy of the article relating to cruelty against women by the Petitioner published in the Indian Express is attached herewith and marked as **Annexure P-4** at page **66** to **71**.

k. The Petitioner has authored a book, 'Sexual Harassment at

The Invisible Lawyer

Workplace' published by Universal Law Publishing Co., New Delhi in 2006, and second edition in 2014.

The Respondent no. 1 is the Registrar general of this Hon'ble Court and is a necessary party to this Petition since it is the appropriate authority to implement the relief sought for in this Petition.

The Respondent no. 2 is the Union Ministry of Law and Justice and is a necessary party to this Petition since it is the appropriate authority to implement the relief sought for in this Petition.

The Respondent no. 3 is the Ministry of Information and Broadcasting and is a necessary party to this Petition since the issue in this Petition relates to broadcasting of proceedings of the Court and is the appropriate authority to implement the relief sought for in this Petition.

The Respondent no. 4 is the Ministry of Electronics and Information Technology and is a necessary party since it is the appropriate authority to implement the relief sought for in this Petition.

The Respondent no. 5 is the Supreme Court Bar Association and is a necessary party since the relief sought in this Petition may impact the advocates practicing before this Hon'ble Court and also, the stand and opinion of the Association should be considered.

FACTS THAT CONSTITUTE CAUSE OF ACTION

7. The Petitioner submits that live streaming of Supreme Court cases of constitutional and national importance having an impact on the public at large will empower and provide access to the ordinary citizens who cannot personally come to court due to social economic constraints though the decision of the court will impact them.

The Invisible Lawyer

- 8.** The Petitioner submits that the live streaming and videography of the proceedings of the Supreme Court in matters of great public importance will be in keeping with the principle of open access to justice and will ensure justice is not only done but it is seen to be done.
- 9.** The Petitioner submits that the Supreme Court may perhaps place restrictions on such videography and live streaming of proceedings of the Supreme Court in cases where there are countervailing interests of privacy as in in family law cases, and criminal law cases, as well as in the interests of witness testimonies in criminal matters.
- 10.** The Petitioner submits that she has a right to information in real time about the proceedings in Supreme Court of India on all matters of great public importance in exercise of her rights under Article 19(1)(a) of the Constitution of India.
- 11.** The Petitioner submits that a cardinal principle of law is that justice is not only to be done in public but also should be seen to be done and the best possible manner to achieve this goal is to live stream the proceedings so that arguments of all Counsels are heard and recorded, and the concerns of the judges as reflected in the interaction between the Counsels and the Court, are recorded accurately and without distortions.
- 12.** The Petitioner submits that such an exercise would inspire confidence in the functioning of the judiciary as an institution and help in maintaining the respect that it deserves as a co-equal organ of the State.
- 13.** It is submitted that having regard to the expanding public interest

The Invisible Lawyer

jurisdiction of this Hon'ble Court, judgments of the Court impact every single citizen and resident of the country. Hence, it is necessary that those who are impacted by the judgments of the Court have a right to be aware of the manner in which decisions are taken. A few examples would suffice to illustrate this point.

- 14.** This Hon'ble Court has dealt extensively with issues of environment, air pollution, safe, and adequate drinking water, ban on liquor to avoid deaths which routinely occurred on national highways, ban on firecrackers to prevent air and noise pollution, and extra judicial killings.
- 15.** Each of these judgments of the Hon'ble Court have been criticised, and their judgements have also been welcomed. While there is no problem with healthy criticism and criticism must be welcomed, live streaming of the arguments would encourage the understanding of the basis on which the decisions were made.
- 16.** In the recent past this Hon'ble Court has dealt with issues of great national importance such as the issue of Triple Talaq which has led to a variety of opinion being expressed before the hearing, during the hearing and after the hearing.
- 17.** This Hon'ble Court has in the recent past completed the constitutional bench hearing in the case of *Government of National Capital Territory of Delhi Vs. Union of India* which is critical to an understanding of relationship between Union Territory of Delhi and Union of India in which people of the country have a stake. Each of these cases should have been live-streamed to create public awareness in the case at hand.

The Invisible Lawyer

- 18.** In 2018, the Supreme Court is set to hear cases of national significance that impact the public at large, including issues of gender justice, right to choice. For example:
- a. K. S. Puttaswamy v. Union of India (W. P. (C) No. 494/2012):**
A group of petitions challenging the Aadhaar Act, 2016 have been put before the Constitution Bench, hearing for which is scheduled in January, 2018.
 - b. Indian Young Lawyers Association v. State of Kerala (W. P. (C) No. 373/2006):** The right of women to enter the Sabrimala Temple in Kerala has also been referred to the Constitutional Bench.
 - c. Navtej Singh Johar v. Union of India (W. P. (Crl) No. 76 of 2016):** Referral to a larger bench for the reconsideration of Suresh Koushal v. Naz Foundation, and the curative petition on this issue of de-criminalization of Section 377 of IPC.
 - d. Joseph Shine v. Union of India (W.P. (Crl) 194/2017):** The case challenging the adultery provision in the IPC, Section 497 as being violative of Article 14. This case has now been referred to a Constitution Bench for consideration.
 - e. Goolrukh Gupta v. Sam Rusi Chothia & Ors. (SLP (C) No. 18889 of 2012):** The case of a Parsi daughter to attend the funerals of her father, scheduled for January, 2018.
- 19.** Other important cases include but are not limited to:
- a. Swatija Paranjpe v. State of Maharashtra (SLP Civil No.**

The Invisible Lawyer

24602 of 2016): The case challenging the laws prohibiting slaughter of bulls and bullocks and consumption of beef is set for February, 2018. This case raises issues inter-alia of right to food of choice.

b. Nyayadhar v. Union of India, Ministry of Home Affairs and Ors. (W.P.(Crl) No. 156 of 2017): A judgment that provided guidelines to ensure that there is no misuse of Section 498A of IPC has been decided to be reconsidered by the Supreme Court.

- 20.** It is submitted that in order to avoid misinformation, conscious disinformation, and misunderstanding of the role of the Court in these matters, it is necessary that the proceedings be live streamed.
- 21.** It is submitted that in any event, in the light of new technology such as Twitter, live tweets are available from the Court rooms to inform people of argumentation in real time.
- 22.** It is submitted that rather than relying on an interpretation of what is happening in the Court by third parties, it is just and necessary that the public can view the proceedings first hand to make up their own minds on the merits of the debate in Court.
- 23.** It is submitted that there is a great archival value of cases that decide pertinent issues regarding the interpretation of the Constitution and fundamental rights of the citizens, along with furthering the welfare state, and safeguarding democracy.
- 24.** It is submitted that video recording and live streaming of proceedings in such cases has a significant educational role as the arguments advanced and the discussions that ensue between the bar and the bench

would hold an important learning value for students as well as young lawyers.

25. The Petitioner submits that co-equal organs of the State, i.e., both the houses of the Parliament do telecast their proceedings live and this has helped our understanding of governance and functioning of democracy. There is no rational reason why the proceedings of great public importance on public law should also not be telecasted live. The Lok Sabha proceedings have been recorded in both audio and video since 1994. In 2004, telecasting of proceedings from both the houses of the Parliament through satellite television commenced in the form of two separate television channels, Lok Sabha TV and Rajya Sabha TV to ensure that the public has access to the debates conducted between their democratically elected representatives. That the webcast and live streaming of these proceedings have also been ongoing since 2003 where the public can watch the participation in both the houses in real time.
26. That in this regard, the official website of the Parliament of India states,

“In the light of advancements made in the field of electronic media and the need to make the citizens aware of the deliberations in Parliament, the Lok Sabha Secretariat had taken several steps to record and telecast/broadcast the proceedings of Lok Sabha with the help of Doordarshan / All India Radio. Televising of proceedings provides the people a direct access to the work of their elected

The Invisible Lawyer

representatives in the highest democratic institution.”

- 27.** That the Parliament’s technological infrastructure enables the public access to the parliamentary proceedings, furthering democracy. Per their website,

“In order to telefilm and telecast live the complete proceedings of Parliament in a better manner, a sophisticated modern robotic camera system and a production control room had been set up in Parliament House. The system had become operational with effect from the Winter Session of Parliament in 1997. Under the new robotic camera system, there are eight robotic cameras which are operated by remote control from the production control room in Parliament House. From the Budget Session of 2000, the televised proceedings of Parliament are properly captioned/titled through BIID system installed by Centre for Development of Advanced Computing (C-DAC).”

- 28.** The Petitioner submits that the successful implementation of recording, telecasting and webcasting from the Parliament should follow to the Supreme Court, especially in matters of public importance, which will promote transparency and accountability in administration of justice and will inspire confidence of the public in the judiciary.
- 29.** The Petitioner submits that constitutional courts in other jurisdictions allow for live streaming of select cases as they acknowledge that it is

The Invisible Lawyer

not enough that courts are open as a matter of general principle but the same has to be made a reality. Lord David Neuberger of the Supreme Court of the United Kingdom in a speech in 2014 hailed the importance of open justice and stated that, *“Unless justice is carried out publicly, there is a real risk that the public will lose confidence in the justice system, and there is a real risk that judicial standards will slip.”*

A true typed copy of the Speech of Lord Neuberger dated 27.02.2014 at the Northern Ireland Judicial Studies Board is attached herewith and marked as **Annexure P-5** at page **72** to **103**.

30. That South Australian Chief Justice John Doyle in his paper, ***The Courts and the Media: What reforms needed and Why***, 1 UTS L. Rev. 25, 29 (1999), explained how open access to courts facilitate public confidence:

“[T]hat the legitimacy and effectiveness of the courts, and indeed of the system of justice, rest upon public confidence and support. That in turn must be derived from the public's perception of the manner in which we discharge our function. While our system of justice is underpinned by the power of the state, I believe that public confidence in the courts and public support for an independent judiciary is essential for the proper functioning of our system of justice... As an arm of government we should do what we can to inform Australians about our work and not simply take the view that those who choose to come to court to

The Invisible Lawyer

observe the administration of justice are free to do so. As well, because I believe that public confidence in the courts rests upon public understanding, it is our duty as officers of justice to maintain public confidence in the courts, and therefore to do what we can, once again, to give Australians information about what the courts are doing.”

“Confidence of the public in the courts depends upon the public having access to the courts, in the sense of being able to observe and understand what the courts are doing... If the courts are going to leave it to others, the media in particular, to determine how much and what sort of information the public gets about their workings, then the courts are saying that they are content to leave it to others to shape the public understanding and perception of the courts. That to me is not acceptable. I believe that the courts are well places to explain their function. I consider that experience shows that leaving that task to others is, in the long term, unsatisfactory... that the courts should cooperate with the media in this area. I say that because the media is the means by which Australians get much, probably most, of their information about the courts. That being so, and because Australians have a right to that information, we have a responsibility to assist the media. As I have explained, I believe that public confidence will be enhanced if we assist the media to communicate accurate

information to the public.”

A true typed copy of the paper titled “*The Courts and the Media: What reforms are needed and Why?*” by Hon’ble justice John Doyle, Chief Justice of South Australia is attached herewith and marked as **Annexure P-6** at page **104** to **115**.

- 31.** The report of a public consultation in New Zealand conducted on In-Court Media Coverage presented to the Chief Justice of the Supreme Court in 2014, concluded that,

“Our view is that the presence of film recording, cameras and audio recording in New Zealand courts facilitates a more open and accessible court system for the New Zealand public. Public access to court proceedings is necessary to inform the public of the courtroom process, and media reporting is an important aspect of that access... In our assessment the availability of in-court footage, even short extracts, promotes judicial accountability and public confidence in the judicial system. It gives the public some direct knowledge of the court event. If done properly it takes the viewer into the courtroom and provides a realistic picture of at least an aspect of what has happened.”

A true typed copy of the Report to the Chief Justice on In-Court Media Coverage for New Zealand is attached herewith and annexed as **Annexure P-7** at page **116** to **173**.

- 32.** That Professor Stepniak from Faculty of Law, University of Western Australia , puts it quite articulately in his paper,

The Invisible Lawyer

“It is often said that the judiciary is the arm of government that is most accountable because it conducts its hearings in open courtrooms and delivers detailed reasons for its decisions. This argument, however, loses any persuasiveness when we consider that few people are able to attend and observe proceedings; that even judges and lawyers have difficulty understanding judicial opinions; and that the vast majority of the population gain their information from television, which is hampered in its coverage of court proceedings because it is rarely permitted to record and broadcast the visual content that viewers expect.”

A true typed copy of the paper titled “*Technology and Public Access to Audio-visual coverage and recordings of court proceedings: Implications for common law jurisdictions*” by Daniel Stepniak is attached herewith and marked as **Annexure P-8** at page **174** to **207**.

- 33.** The Petitioner submits that at the very least, such recording and live streaming of proceedings of the Supreme Court should be undertaken only in matters of national importance that impact the public at large. Such recording and live streaming of matters before the appellate authority in the Supreme Court negates the issues of protection of witness testimony, or privacy of the witnesses and others involved, that may arise in the proceedings at the trial stage.
- 34.** That the former Deputy Chief Justice of South Africa, Dikgang Moseneke rightly points to the distinction to be made between cameras

The Invisible Lawyer

in the trial courts vis a vis cameras in the appellate authority. In a speech in 2015, he says,

“There is a big difference between appellate proceedings where only seasoned advocates appear before appeal courts and trial proceedings where live testimony is heard from witnesses. It is indeed arguable that unmitigated publicity, particularly in relation to lay witnesses may undermine the fairness of a trial. The search for the truth may fall victim of the “you are on camera” syndrome. Having warned as I have, in most cases, live camera footage will be more accurate than a reporter’s after-the-fact summary. Whatever account they give after they leave the courtroom will inevitably be a second-hand account, their interpretation bleeding into their report. More so, mischievously selected sound bites may indeed undermine accuracy and the important context within which the words were uttered.”

A true typed copy of the article titled *“The Media, Courts and Technology: Remarks on the Media Coverage of the Oscar Pistorius Trial and Open Justice”* by Dikang Moseneke is attached herewith and marked as **Annexure P-9** at page **208** to **225**.

- 35.** It is submitted that no questions arise of compromising the testimony of the witnesses in the Supreme Court of India and hence, the Petitioner herein is praying for a mandamus in the live recording of proceedings in the Supreme Court of India only on a trial basis in the larger public interest.

The Invisible Lawyer

36. That the Chief Justice of the Canadian Supreme Court, Chief Justice Beverly McLachlin, has strongly advocated for the use of cameras for recording the proceedings in the Supreme Court to further the common law principle of ‘open courts’, and said,

“In countries sharing the common law tradition, the open courts principle is a fundamental, indeed a constitutional principle. Nonetheless, despite the courts’ openness, people may still have little real understanding of how they operate. Most people have neither the time nor the inclination to attend hearings and peruse court records. This is where the media plays a role. Only through the efforts of the press can the vast majority be informed of proceedings before the courts and their judgments.”

A true typed copy of the article titled “*The Relationship Between the Courts and the Media, Remarks of the Right Honourable Beverley McLachlin*” by Chief Justice of Canada Beverly McLachlin is attached herewith and marked as **Annexure P-10** at page **226** to **241**.

37. That in furtherance of the common law principle of ‘Open Justice’, various common law jurisdictions, and even International courts, have facilities for audio recordings, video recordings of courtrooms, which are subsequently made available through various platforms, such as television, or the internet.
38. That Countries like Canada, Australia, only permit the recording and televising of their appellate court proceedings, to ensure fairness in witness testimony, and protection of privacy. However, there have

been reports where parts of trial court proceedings, excluding the witness testimony have been permitted to be broadcasted by the Judges in Canada. A true typed copy of the article titled “*Judge ruled cameras can be in courtroom for Travis Vader murder verdict*” by Janice Johnston is attached herewith and marked as **Annexure P-11** at page **242 to 246**.

- a. Supreme Court of Canada:** Since 1995, after the success of a pilot project to test the live televising of proceedings in two cases, the Canadian Supreme Court has been televising its hearings through the Canadian Parliamentary Affairs Channel (CPAC). All hearings of appeals are recorded on video. Most courtroom proceedings are webcast live and are later televised by the CPAC, although taking photographs while the court proceedings are ongoing is not permitted. Per the agreement between Supreme Court of Canada and CPAC, the Supreme Court retains the copyright on the broadcast material and has the discretion on its usage. The audio and visual coverage can only be undertaken on the Court’s facilities. The broadcast feed must be made available to other networks as well. Anyone wishing to obtain a video recording for an educational, non-commercial purpose must fill an on-line Request to Use Supreme Court of Canada Photographs, Videos or Webcasts. If approval is granted, the requestor will be required to sign an undertaking setting out the terms of use. The requestor will be required to pay a fee to obtain a copy of the tape. Note that certain appeals may be subject to a publication

The Invisible Lawyer

ban. If a request for a video recording is granted, it is the responsibility of the person or entity broadcasting the appeal to ensure that the publication ban is respected.

The consent of the parties is taken by the Canadian Supreme Court for the recording and televising of the proceeding and a prior written intimation at least two weeks in advance is required if a party does not want their appeal to be televised. The Supreme Court has four voice activated stationary cameras, that have default settings that focuses them on the person who is speaking.

The webcast of appeal hearings has been ongoing since February, 2009 and are subsequently archived on the Supreme Court's website. Similar to the televising of the hearings, the webcasts are also restricted if there is a privacy concern or a publication ban. These webcasts are archived on the Supreme Court website as well as the CPAC website. However, without express written authorization of the Supreme Court, these webcasts are prohibited from being broadcasted, re-broadcasted, transmitted, reproduced, communicated to the public by telecommunication or to be made available through any means in whole or part.

A true typed copy of The Day of the Hearing in Supreme Court of Canada is attached herewith and marked as **Annexure P-12** at page **247** to **250**. A true typed copy of the Request to Use Court Photographs, Videos or Webcasts in Supreme Court of Canada is attached herewith and marked as **Annexure P-13** at page **251** to **252**. A true typed copy of the Decisions of the Supreme Court of Canada in

relation to its release, publication ban, media briefings etc. is attached herewith and marked as **Annexure P-14** at page **253** to **257**. A true typed copy of the Recordings and broadcasting of hearings at the Supreme Court of Canada is attached herewith and marked as **Annexure P-15** at page **258**. A true typed copy of the Terms and Conditions imposed by the Supreme Court of Canada in relation to Privacy is attached herewith and marked as **Annexure P-16** at page **259** to **279**.

b. High Court of Australia: In the High Court of Australia, the highest and the final appellate authority, since 2013, the proceedings of a full court are recorded in the audio-visual format by the Court and are available on the website after a few business days. However, filming, photographs, or recordings by media personnel or the public is prohibited.

A true typed copy the list of Audio-visual recordings of proceedings of Full Court of High Court of Australia is attached herewith and marked as **Annexure P-17** at page **280** to **284**. A true typed copy of terms of photography and recording in the High Court of Australia is attached herewith and marked as **Annexure P-18** at page **285** to **287**.

39. That judicial bodies in other countries, like the United Kingdom, New Zealand, South Africa, and international forums like the European Court of Human Rights, International Criminal Court, permit a varying degree of recording of their court proceedings. For example, the United Kingdom, since 2005, only permitted the recording and broadcasting of proceedings from its Supreme Court, but recently,

The Invisible Lawyer

since 2012 has passed a law to record proceedings at the trial stage as well, but retains the discretion to the Judiciary; whereas the South African judiciary permits the usage of cameras and televising of proceedings on a case by case basis.

- a. United Kingdom:** The Constitution Reform Act of 2005 through its Section 47, permits the broadcasting and taking photographs from the proceedings of the Supreme Court. This section carves the exception for such recording of proceedings in the Supreme Court and reads as:

“Section 47: Photography etc:

(1) In Section 41 of the Criminal Justice Act 1925 (c. 86) (prohibition on taking photographs etc in court), for subsection (2)(a) substitute—

“(a) the expression “court” means any court of justice (including the court of a coroner), apart from the Supreme Court;”.

(2) In section 29 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 N.I.) (prohibition on taking photographs etc in court), for subsection (2)(a) substitute—

“(a) the expression “court” means any court of justice (including the court of a coroner), apart from the Supreme Court;”.

A true typed extract of Section 47 of the Constitutional Reform Act, 2005 is attached herewith and marked as **Annexure P-19** at

page 288.

The Practice Directions 8, amended in 2015, provides that the President and the Justices of the Supreme Court have given permission for video footage of proceedings before the Court to be broadcast where this does not affect the administration of justice and the recording and broadcasting is conducted in accordance with the protocol which has been agreed with representatives of the relevant broadcasting authorities. The President or the presiding Justice may additionally impose such conditions as he or she considers to be appropriate including the obtaining of consent from all the parties involved in the proceedings. The Policy on live text based communication from UK Supreme Court allows for the broadcast of proceedings via the permanent camera equipment installed in the courtrooms. The cases which come before the UK Supreme Court do not involve interaction with witnesses or jurors; and it is rare for evidence to be adduced which may then be heard in other courts.

The televising and broadcasting of proceedings of the Supreme Court has been undertaken by the way of agreement between the Supreme Court and main operators- Sky News ITN, and BBC. Although, the recording of the court proceeding is available for news and other educational purposes, it is restricted from being used for entertainment, satires, party political broadcasts, and advertising or promotion. Sky News also live streams these recordings on their website. these recordings on their website,

Additionally, using of still images from these proceedings in such a way so as to undermine the court's dignity and its functions is also prohibited.

Section 32 of the Crime and Courts Act, 2013 even permits the broadcasting and recording of courts and tribunals other than the Supreme Court at the discretion of the Lord Chancellor or the Lord Chief Justice. However, the sitting judge in that court does have the power to revoke that order if she deems it prejudicial to the matter in question.

The live stream of the UK Supreme Court can be accessed here:

<https://www.supremecourt.uk/live/court-01.html>

A true typed copy of the Practice Directions of the Supreme Court of United Kingdom is attached herewith and marked as **Annexure P-20** at page **289** to **304**. A true typed copy of the *Proposals to allow the broadcasting, filming, and recording of selected court proceedings* by the Ministry of Justice, United Kingdom is attached herewith and marked as **Annexure P-21** at page **305** to **339**. A screenshot of the proceedings streamed live by the UK Supreme Court is attached herewith and marked as **Annexure P-22** at page **340**. A screenshot of the webpage live streaming proceedings in the Supreme Court of United Kingdom is attached herewith and marked as **Annexure P-23** at page **341**.

b. New Zealand: The In Court Media Guidelines of 2016 provide for in court filming and recording of court proceedings. These Guidelines apply to all proceedings in the Court of Appeal, the

High Court and the District Court and any other statutory Tribunal that by order of that Tribunal choose to adopt them. The Guidelines provide for in court filming of proceedings by means of an application for the same by a media applicant. The Guidelines vest the respective court with discretion as to the acceptance or rejection of such application and the respective court is to decide on the application keeping in mind factors such as: the need for a fair trial; the desirability of open justice; the principle that the media have an important role in the reporting of trials as the eyes and ears of the public; court obligations to the victims of offences; and the interests and reasonable concerns and perceptions of the parties, victims and witnesses. Although these rules cover appellate as well as trial court hearings, these guidelines provide detailed guidelines to media applicants to record witnesses, children, defendants, to ensure there is no obstruction in delivery of justice.

The separate Supreme Court Guidelines provide the parties an option to object to such filming and recording during their hearing. In the moment of such objection, the final authority lies with a judge who will resolve the issue.

A true typed copy of the Supreme Court Media Guidelines by the New Zealand Government is attached herewith and marked as **Annexure P-24** at page **342** to **343**.

- c. South Africa:** Live streaming and televising of proceedings of the courts in South Africa has been permitted at the discretion of

the judges, although there is no legislation that lays down explicit guidelines for the same. It was mentioned by Dikgang Moseneke, former Deputy Chief Justice of South Africa, that in the Constitutional Court, the highest judicial authority in the country, “*media houses do not need special permission to televise [our] proceedings live or delayed.*” The live streams and video recordings of the proceedings are easily accessible on the news websites, as well as on Youtube. In a recent judgment **The NDPP v Media 24 Limited & others and HC Van Breda v Media 24 Limited & others (425/2017) [2017] ZASCA 97 (21 June 2017)**, the Supreme Court of Appeal, upheld the authority of a court to provide access to media inside the courtrooms for the purposes of recording and televising the proceedings after the due permission from the Judges and in accordance with their conditions.

A true typed copy of the Judgment of the Supreme Court of Appeal of South Africa in ***Henri Christo Van Breda v Media 24 Limited & Ors.*** is attached herewith and marked as **Annexure P-25** at page **344** to **393**.

d. European Court of Human Rights: Rules of the European Court of Human Rights under Rule 63 mandate that all oral hearings be held as public hearings, unless it is in the “*interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Chamber in special circumstances*”

where publicity would prejudice the interests of justice.” The President of the Chamber, or the Grand Chamber needs to decide the exception. Per the rule, these public hearings are filmed and subsequently broadcasted on the day itself, at 2:30 pm local time.

A true typed extract of Rule 63 from Rules of Court of the European Court of Human Rights is attached herewith and marked as **Annexure P-26** at page **394**. A true typed copy of the ECHR in 50 Questions is attached herewith and marked as **Annexure P-27** at page **395** to **414**.

e. Inter-American Court of Human Rights: As per Rule 15 of the Rules of Procedure of the Inter-American Court of Human Rights, as approved in 2009, require the hearings and deliberations of the court to be audio recorded. The videos of the hearings can also be accessed at their Vimeo page.

A true typed extract of Rule 15 of Rules of Procedure of the Inter-American Court of Human Rights is attached herewith and marked as **Annexure P-28** at page **415** to **416**. A screenshot of the webpage streaming the hearings of Inter-American Court of Human Rights is attached herewith and marked as **Annexure P-29** at page **417**.

f. International Criminal Tribunal for the Former Yugoslavia: The ICTY was constituted in 1993 for adjudication of crimes committed in the region of Croatia, Bosnia and Herzegovena, Kosovo, and the former Yugoslav Republic of Macedonia in the 1990s. The proceedings have been recorded and broadcasted in accordance with the principles of transparency and openness of the tribunal. As per the ICTY Rules of Procedure and Evidence,

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Section 78 requires all proceedings, except the discussions by the Chamber, to take place in open court. The exception to an open court, as provided in Section 77 hearing is limited to public order or morality, safety, security or non disclosure of the identity of a victim or witness, or the protection of the interests of justice. Rule 75 permits special measures to be taken for protection of certain witnesses. The witnesses have the right to be not identified on the recording, and/or get their voice altered. Rules 66 and 67 provide for the curtailment of a public telecast of the proceedings where the information under discussion has been provided under the condition of non identification of the entity concerned or the content of the materials provided. There are six cameras in each courtroom that cover the hearing, through which one footage is made by the staff, and broadcasted on their website after a 30 minute delay.

A true typed extract of Rules 66, 67, 75, 77, 78 from the Rules of Procedure and Evidence, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 is attached herewith and marked as **Annexure P-30** at page **418** to **431**. A true typed copy of the Establishment of the Tribunal – ICTY is attached herewith and marked as **Annexure P-31** at page **432** to **434**. A true typed copy about the ICTY is attached herewith and marked as **Annexure P-32** at page **435** to **440**. A true typed copy of the Courtroom Technology in ICTY is attached herewith and marked as

Annexure P-33 at page **441** to **444**. A screenshot of the webpage streaming live proceedings of ICTY is attached herewith and marked as **Annexure P-34** at page **445**.

g. International Criminal Court: The Rome Statute that governs the procedures of the ICC makes it mandatory for hearings to be held in public unless when required under Article 68 for protection of the victims and witnesses, or to protect evidence that contains confidential or sensitive information. To ensure that sensitive information is not made public, the recording of the proceedings are streamed on the internet with a 30 minute delay. Media personnel are not permitted to conduct any recordings in the courtrooms.

A true typed extract of Article 68 from the Rome Statute is attached herewith and marked as **Annexure P-35** at page **446** to **448**. A true typed copy of the interaction between the Media and the ICC is attached herewith and marked as **Annexure P-36** at page **449**. A screenshot of the web page live streaming court proceedings of the International Criminal Court is attached herewith and marked as **Annexure P-37** at page **450**. A true typed copy of the insights into the Media centre and press conferences in the International Criminal Court is attached herewith and marked as **Annexure P-38** at page **451** to **454**.

- 40.** The Petitioner submits that this Petition prays for live streaming proceedings in the Supreme court of India on matters of public importance.
- 41.** That the Petitioner has not filed any other Petition before this Hon'ble

Court or before any other Court seeking the same relief.

- 42.** The Petitioner being an advocate involved in significant human rights litigation is interested in protecting the vital public interest involved in the administration of justice and has filed this Writ Petition as Pro Bono on the following amongst other grounds:

GROUNDNS

Right to seek, and receive information in exercise of Freedom of Speech and Expression under Article 19(1)(a) of the Constitution

- A.** That the right to seek and receive information including live streaming of proceedings from the Supreme Court is a fundamental right guaranteed under Article 19(1)(a) of the Constitution.
- B.** That this Hon'ble Court in the case of *Secretary, Ministry of Information and Broadcasting, Government of India & Ors., v. Cricket Association of Bengal & Ors. (1995) 2 SCC 161* held in Para 75 that:

“...the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained.”

- C.** That in the same judgment, this Hon'ble Court vide Para 152 held that:

“152. The freedom of speech and expression is a right given to every citizen of this country and not merely to a few. No one can exercise his right of speech in such a manner as to violate another man's right of speech. One man's right to speak ends where the other man's right to speak begins. Indeed, it may be the duty of the State to ensure that this

right is available to all in equal measure and that it is not hijacked by a few to the detriment of the rest. This obligation flows from the Preamble to our Constitution which seeks to secure to all its citizens liberty of thought, expression, belief and worship. State being a product of the Constitution is as much committed to this goal as any citizen of this country. Indeed, this obligation also flows from the injunction in Article 14 that “the State shall not deny to any person equality before the law” and the direction in Article 38(2) to the effect: “The State, shall, in particular — endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people....” Under our constitutional scheme, the State is not merely under an obligation to respect the fundamental rights guaranteed by Part III but under an equal obligation to ensure conditions in which those rights can be meaningfully and effectively enjoyed by one and all.”

- D.** That our constitutional fabric is such that we accept the cardinal principle that justice must not only be done but seen to be done and thus it becomes essential that persons that may be affected by the Supreme Court’s decisions be able to access the same vide live streaming and video recording. Citizens including the Petitioner herein has a fundamental right under Article 19(1)(a) to receive information by way of live streaming of proceedings in the Supreme Court of

India.

- E. That this Hon'ble Court vide a five judge bench in ***Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545*** in Para. 47 held that:

“...justice must not only be done but must manifestly be seen to be done...It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done.”

- F. That recording and live streaming of Supreme Court cases of national importance will increase access to the Courts by enabling citizens who are unable to implead themselves as parties due to socio-economic constraints and whose rights may be affected to understand the reasoning behind the Supreme Court's judgment. This will be in consonance with their right to dignity and the intrinsic value of their right to be heard guaranteed under Article 21 of the Constitution of India, along with furthering the fundamental right of access to justice.

- G. That this Hon'ble Court in ***Olga Tellis (Supra)*** has noted in Para. 47 that:

“The right to be heard has two facets, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to individuals or groups, against whom decisions taken by public authorities operate, to participate in the processes by which those decisions are made, an opportunity that expresses their dignity as persons... Whatever its outcome, such a hearing represents a valued human interaction in which the affected person

experiences at least the satisfaction of participating in the decision that vitally concerns her; and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain way. Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one. Justice Frankfurter captured part of this sense of procedural justice when he wrote that the “validity and moral authority of a conclusion largely depend on the mode by which it was reached No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done.”

H. Decisions in public interest litigations impact the community at large, which is not necessarily present in Court during the hearing, but has a right to receive the information of the hearing in real time.

I. That Article 145(4) of the Constitution states that

“(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under Article 143 save in accordance with an opinion also delivered in open Court.”

The principle of open courts has open justice as an integral part of its functioning and has been given constitutional importance in many common law jurisdictions. In *Attorney General v. Leveller Magazine* [1979] AC 440, Lord Diplock, held that,

“The principle of open justice requires that the court should do nothing to discourage fair and accurate reports of proceedings.” Live streaming will eliminate misinformation and disinformation of court proceedings.

- J. That the principle of open courts has been expanded upon by this Hon’ble Court in *Mohd. Shahabuddin v. State of Bihar & Ors.*, (2010) 4 SCC 653 vide a two judge bench held in Para 215 that,

“... even if the press is present, if individual members of the public are refused admission, the proceedings cannot be considered to go on in open courts. In my considered view, an “open court” is a court to which general public has a right to be admitted and access to the court is granted to all the persons desirous of entering the court to observe the conduct of the judicial proceedings.”

Strengthen Public Confidence in the Judiciary under Article 21 of the Constitution

- K. That open and public functioning of courts is an essential part of building public confidence in the functioning of the courts and in administration of justice. That this Hon’ble court in *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Another*, AIR 1967 SC 1, vide a nine judge bench remarked that,

“Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial tribunals, courts must generally hear causes in open and must permit the public admission to the court room.”

- L.** That in the same case, Justice Bachawat articulated the importance of public confidence in the judiciary as in Paras 140 and 141, opined that

“A court of justice is a public forum. It is through publicity that the citizens are convinced that the court renders even handed justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the publication of the report of the court proceedings. The publicity generates public confidence in the administration of justice.” He adds, quoting from political philosophy, that, *“Hegel in his Philosophy of Right maintained that judicial proceedings must be public, since the aim of the Court is justice, which is universal belonging to all.”*

- M.** That Justice Hidayatullah in the same case remarked in Para 129 that,

“Hearing in open court of causes is of the utmost importance for maintaining confidence of the public in the impartial administration of justice: it operates as a wholesome check upon judicial behaviour as well as upon the conduct of the contending parties and their witnesses.”

But hearing of a cause in public which is only to secure administration of justice untainted must yield to the paramount object of administration of justice. If excessive publicity itself operates as an instrument of justice, the court may not be slow, if it is satisfied that it is necessary to do so to put such restraint upon publicity as is necessary to secure the court's primary object."

To further the principle of Open Justice, and transparency in administration of justice

- N.** That the right of access to justice demands that current technology of live streaming be used to further this right which is considered a fundamental right under the expansive ambit of Article 21 of the Constitution of India.
- O.** That the importance of the right to access justice has been recognised by this Hon'ble Supreme Court vide a five judge bench in ***Anita Kushwaha v. Pushap Sudan (2016) 8 SCC 509*** has held in Para. 29 that :

"access to justice is and has been recognised as a part and parcel of right to life in India and in all civilised societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman jurisprudential

maxim ubi jus ibi remedium, the development of fundamental principles of common law by judicial pronouncements of the courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilised societies and systems recognise and enforce”.

- P.** That this Hon’ble Court in **Anita Kushwaha (Supra)** has acknowledged in Para 35 that courts must be conveniently accessible in terms of distance for persons to access justice.
- Q.** That persons that are unable to physically access the Supreme Court due to socio-economic or health or physical disability related constraints and have failed to access justice shall at least be able to have first hand information to case proceedings on issues of constitutional importance that affect them directly or indirectly.
- R.** That the Hon’ble Supreme Court of Appeal of South Africa, in ***The NDPP v Media 24 Limited & others and HC Van Breda v Media 24 Limited & Others, (425/2017) [2017] ZASCA 97 (21 June 2017)***, vide a five judge bench expanded on the principle of open justice in Para 46 by holding that,

“It is thus important to emphasize that giving effect to the principle of open justice and its underlying aims now means more than merely keeping the courtroom doors open. It means that court proceedings must where possible be meaningfully accessible to any member of the public who wishes to be timeously and accurately apprised of such

proceedings. Broadcasting of court proceedings enables this to occur.”

Educational Role of the Court

- S. That this Hon’ble Court has acknowledged the power of media in spreading education and awareness, significant for a functioning democracy, vide judgment in *Life Insurance Corporation of India v. Professor Manubhai D Shah*, (1992) 3 SCC 637, vide a two judge bench in Para 8 held,

“The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy... It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set up, more so in a democratic set up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution.”

- T. That recording and live streaming the proceedings of cases of public importance would completely negate the chances of any misreporting, errors or second hand information that may be disseminated from such proceedings, and thereby limit any obstruction to administration of justice.

- U.** That allowing submissions of advocates to the courts and comments/questions posed by the court to the parties to the case to be live streamed would be likely to improve public understanding of the law and their adherence to law and have an educative value and thereby further the principle of Open Justice.

PRAYER

Under these circumstances, the Petitioner respectfully prays this Hon'ble Court may be please to:

- A.** Issue a writ order, or direction declaring that Supreme Court case proceedings of “constitutional and national importance having an impact on the public at large or a large number of people” shall be live streamed in a manner that it is easily accessible to the public for viewing;
- B.** Issue a writ of mandamus or direction directing the Respondent-1 representing Chief Justice and Judges of the Supreme Court to frame guidelines that enable the determination of cases as cases of “constitutional and national importance having an impact on the public at large or a large number of people” that qualify for live streaming and such guidelines shall be placed before the full court for approval;
- C.** Issue a writ of mandamus or direction directing the Respondent-1 representing Chief Justice and Judges of the Supreme Court to take all necessary actions required to live stream Supreme Court cases of “constitutional and national importance having an impact on the public at large or a large number of people” that qualify for live streaming; and/or

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- D.** Issue a mandamus to Respondents number 2,3, and 4 to make available all the necessary infrastructure required to live stream and/or video record proceedings in the Supreme Court.
- E.** Pending the availability of the infrastructure for live streaming, issue a writ of mandamus or direction directing the Respondent-1 representing Chief Justice and Judges of the Supreme Court court to record the proceedings of the court in matters of constitutional and national importance that impact the public at large and to upload these on its own YouTube channel which must be created, and would qualify for live streaming till the time the facility of live streaming is arranged. Such a channel would be cost effective and can be immediately put in place until arrangements are made for live streaming from infrastructure in Court. Cases of national importance currently listed before the Constitution Bench are:
- a.** K. S. Puttaswamy v. Union of India (W. P. (C) No. 494/2012): A group of petitions challenging the Aadhaar Act, 2016 have been put before the Constitution Bench, hearing for which is scheduled in January, 2018.
 - b.** Indian Young Lawyers Association v. State of Kerala (W. P. (C) No. 373/2006) : The right of women to enter the Sabrimala Temple in Kerala has also been referred to the Constitutional Bench.
 - c.** Navtej Singh Johar v. Union of India (W. P. (Crl) No. 76 of 2016): Referral to a larger bench for the reconsideration of Suresh Koushal v. Naz Foundation, and the curative petition on this issue

of de-criminalization of Section 377 of IPC.

- d.** Joseph Shine v. Union of India (W.P. (Crl) 194/2017): The case challenging the adultery provision in the IPC, Section 497 as being violative of Article 14. This case has now been referred to a Constitution Bench for consideration.
 - e.** Goolrukh Gupta v. Sam Rusi Chothia & Ors. (SLP (C) No. 18889 of 2012): The case of a Parsi daughter to attend the funerals of her father, scheduled for January, 2018.
- F.** Other important cases include but are not limited to:
- a.** Swatija Paranjpe v. State of Maharashtra (SLP Civil No. 24602 of 2016): The case challenging the laws prohibiting slaughter of bulls and bullocks and consumption of beef is set for February, 2018. This case raises issues inter-alia of right to food of choice.
 - b.** Nyayadhar v. Union of India, Ministry of Home Affairs and Ors. (W.P.(Crl) No. 156 of 2017): A judgment that provided guidelines to ensure that there is no misuse of Section 498A of IPC has been decided to be reconsidered by the Supreme Court.
- G.** Pass such other Order or Orders as are deemed fit and necessary in the interests of justice.

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

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SHADAN FARASAT

ADVOCATE FOR THE PETITIONER