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IN THE SUPREME COURT OF INDIA
(CRIMINAL WRIT JURISDICTON)
WRIT PETITION (CrI.) No. 57 OF 2020

IN THE MATTER OF:

SARA ABDULLAH PILOT

...PETITIONER

-VERSUS-

UNION TERRITORY OF J & K & ANR.

...RESPONDENTS

PAPER - BOOK

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ADVOCATE FOR THE PETITIONER: PRAGYA BAGHEL

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REJOINDER AFFIDAVIT ON BEHALF OF THE PETITIONER TO
REPLY DATED 02.03.2020, FILED BY THE RESPONDENT NO. 2
(DISTRICT MAGISTRATE, SRINAGAR, JAMMU & KASHMIR)

MOST RESPECTFULLY SHOWETH:

I, Sara Abdullah Pilot, D/o Dr. Farooq Abdullah, about aged 41 year,
R/o. Upper Ground Floor, Sagar Apartments, 6 Tilak Marg, New Delhi –
110001, presently at New Delhi, do hereby solemnly swear and affirm as
under: —

1. That I am the Petitioner in the above captioned matter and being conversant with the facts of the case am competent to swear and file the present Counter Affidavit.
2. That at the outset all statements, averments and submissions as made by the Respondent No. 2 in the Affidavit under Reply save and except what is a matter of record or is specifically admitted hereinafter are specifically denied. Any non-traversal be also treated as specifically denied by the deponent herein.
3. That at the outset it is further submitted that all such grounds as urged in the Affidavit under Reply that are in addition to and/or supplement the grounds as taken in the impugned grounds of

detention dated 05.02.2020 cannot be afforded judicial consideration as the same would tantamount to improving the grounds of detention by a subsequent Affidavit and the same being wholly inconsistent with the jurisprudence of preventive detention deserves to be specifically excluded from judicial consideration by this Hon'ble Court.

PRELIMINARY OBJECTIONS/SUBMISSION

4. That the deponent states and submits that the Respondent No. 2 by virtue of the Affidavit under Reply has for the first time supplied the material which was considered by the said Respondent while passing the impugned order of detention dated 05.02.2020 and that the said material that forms part of Affidavit under Reply as Annexure R 2/2 at pages 36 to 41 was not supplied to the detenu when the impugned order of detention was passed.
5. That it is further submitted that of the new material that has surfaced for the first time in the Affidavit under reply, the Respondent No. 2 has relied on certain social media posts as available on the Social Networking website of Facebook that after having been attributed to the detenu and being made part of the relied upon material, have been used against the detenu. The said posts, the list whereof is provided at page 40 of the Affidavit under Reply, has axiomatically enabled the Respondent No. 2 to enter satisfaction about the likelihood of the detenu to partake in activities that are prejudicial to maintenance of public order.

6. That on scrutiny of the verified Facebook account of the detenu, the deponent was shocked to discover that the said social media posts (as mentioned at page 40 as '*posts by Omar Abdullah*') that have been purportedly attributed to the detenu and have been maliciously used against him were not even made by the detenu through his verified Facebook account.

7. That it is submitted that the official Facebook account of the detenu, being a blue tick marked verified account has not made any posts as claimed in the relied upon material as annexed along with the Affidavit under Reply.

A snapshot of posts made by the official verified account of the detenu on 04.08.2019 are annexed herewith and marked as **Annexure A1** (pg. 16 to 19). A copy of Facebook instructions about verified accounts is annexed herewith and marked as **Annexure A2** (pg. 20 to 21).

8. That, it is submitted that on a scrutiny of the URL (Uniform Resource Locator) as provided in the list of posts as attributed to the detenu (<https://www.facebook.com/omarabdullahcm/>), it is found that the said URL is non-existent and that no page is hosted on the said URL. A fortiori no material as claimed by the Respondent No.2 in the list as mentioned actually exists. A snapshot of the website as displayed on the typing URL as mentioned is annexed herewith and marked as **Annexure A3** (pg. 22 to 22).

9. That it is submitted that apart from the fact that the aforementioned is a manifest dereliction of duty, both on part of the Respondent No. 2 as well as the Senior Superintendent of Police, commanding strict action in law, the same also illustrates the malicious non-application of mind on part of the Respondent No. 2 and the malafide nature of the exercise carried out against the detenu thereby vitiating in toto the impugned order of detention dated 05.02.2020.
10. That it is submitted that in the facts and circumstances of the present case wherein the only material used against the detenu are his social media posts, the reliance on posts that are non-existent and have been wrongly and maliciously attributed to the detenu vitiates the impugned order of detention in toto and renders the same legally unsustainable and utterly unconstitutional.
11. That in the light of the foregoing the entire exercise from the very inception is malicious, malafide, vexatious and suffers from manifest non-application of mind on part of the Senior Superintendent of Police as well as the Respondent No. 2 and is liable to be quashed with immediate effect with exemplary costs/strictures being imposed upon the Respondents for such blatant and arbitrary abuse of power.
12. That in addition to the above it is submitted that the non -supply of the material as now provided through the Affidavit under Reply is patently proved by the acknowledgement of receipt of grounds as given by the ~~detenu~~ on 06.02.2020 and as annexed along with the Affidavit under Reply (at page 43) wherein the receipt of documents

being 7 leaves of grounds of detention and 1 leaf of PSA warrant is acknowledged by the detenu. The said 7 leaves of Grounds of Detention along with the dossier that was served upon the detenu have been annexed along with the Petition and the same did not include the additional 4 leaves of material that are now supplied by virtue of the ~~Affidavit~~ Affidavit under Reply.

13. That thus non-supply of material to the detenu has, at the very inception, impaired the detenu's constitutional right of effective representation as enshrined under Article 22 (5) of the Constitution of India vitiating in sequel thereto the impugned order of detention as well as the proceedings carried out by the Advisory Board on 24.02.2020.

14. That without prejudice to the foregoing, it is submitted that even otherwise the material that has formed the basis of the impugned order of detention does not even remotely lead credence to the apprehension that the detenu was likely to indulge in activities that are prejudicial to maintenance of public order. *Per contra* it is reiterated that the corpus of tweets as made by the detenu that have been surprisingly used against the detenu bear testimony to the conscientious and concerted effort of the detenu being a prominent public figure to implore the citizenry to '*stay calm*' and '*not to take law in your own hands*' and that '*violence will only play in the hands of those who do not have best interests of the state in mind*'.

PARA WISE REPLY

15. The content of Para 1 & 2 merit no reply.

16. The contents of Para 3-5 are denied. It is denied that detenu ought to approach the Hon'ble High Court of J&K before approaching this Hon'ble Court. It is submitted that right to approach this Hon'ble Court for infraction of personal liberty is itself a fundamental right guaranteed under Article 32 of the Constitution of India. This Hon'ble Apex Court has, in a catena of constitutional judgments, held that the right to approach this Hon'ble Court directly for an infraction of personal liberty is a guaranteed fundamental right that cannot be denuded by a mere availability of remedy at High Court under Article 226 of the Constitution of India. In *Romesh Thapar vs State of Madras* (1950 SCR 594), a constitutional bench of this Court while negating the argument of availability of remedy under Article 226 has specifically held that,

Article 32 provides a "guaranteed" remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in Part III. This Court is thus constituted the protector and guarantor of fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights.

The same legal position was further reiterated by a constitutional bench of this Court in *K.K. Kochunni vs State of*

Madras (1959 Supp (2) SCR 316) wherein the Hon'ble Court has held that,

8. ...Further, even if the existence of other adequate legal remedy may be taken into consideration by the High Court in deciding whether it should issue any of the prerogative writs on an application under Article 226 of the Constitution, as to which we say nothing now — this Court cannot, on a similar ground, decline to entertain a petition under Article 32, for the right to move this Court by appropriate proceedings for the enforcement of the rights conferred by Part III of the Constitution is itself a guaranteed right. It has accordingly been held by this Court in *Romesh Thappar v. State of Madras* [1950 SCR 594] that under the Constitution this Court is constituted the protector and guarantor of fundamental rights and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking the protection of this Court against infringement of such rights, although such applications are made to this Court in the first instance without resort to a High Court having concurrent jurisdiction in the matter. ∴ The mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 32, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima facie established on the petition.

...

12. ...We are not unmindful of the fact that the view that this Court is bound to entertain a petition under Article 32 and to decide the same on merits may encourage litigants to file many petitions under Article 32 instead of proceeding by way of a suit. But that consideration cannot, by itself, be a cogent reason for denying the fundamental right of a person to approach this Court for the enforcement of his fundamental right which may, prima facie, appear to have been infringed....

17. The content of Para 6 of the Reply is denied. It is vehemently denied that this Petition deserves dismissal for bypassing the effective alternate remedy that is available under the J&K PSA Act, 1978, of filing representation before the Advisory Board. It is reiterated the

non-supply of material to the detenu has, at the very inception, impaired the detenu's constitutional right of effective representation as enshrined under Article 22 (5) of the Constitution of India vitiating in sequel thereto the proceedings carried out by the Advisory Board on 24.02.2020.

18. The content of Para 7 is a matter of record and merits no reply.

19. The content of Para 8 is vehemently denied. It is denied that the Respondent No. 2 has carefully applied his mind and being satisfied that it is necessary to detain the detenu with a view to prevent him from acting in a manner prejudicial to public order, ordered the detention of the detenu. The contents of the preliminary objection are adopted herein and the same may be treated as a part and parcel of the present paragraph. It is reiterated that the Respondent No. 2 has shockingly relied on material not attributable to the detenu and thus the order of detention suffers from manifest non-application of mind on part of the Respondent No.2 rendering the same legally unsustainable and liable to be quashed.

20. The content of Para 9 is denied save and except what is a matter of record. It is unequivocally denied that the material forming the basis of the order of detention was served upon the detenu. It is submitted that in the light of non-supply of material no effective representation could be made by the detenu herein. The contents of the preliminary objections pertaining to non-supply of material are reiterated but not repeated herein for the sake of brevity.

21. The content of Para 10 is denied. It is denied that the detenu was made aware about the reference before the Advisory Body and despite being aware purposefully failed to make a representation before the said Advisory Board. It is reiterated the non-supply of material to the detenu has, at the very inception, impaired the detenu's constitutional right of effective representation as enshrined under Article 22 (5) of the Constitution of India vitiating in sequel thereto the proceedings carried out by the Advisory Board on 24.02.2020.

22. The content of Para 11 merits no reply.

23. The content of Para 12 save and except what is a part of a judicial pronouncement is denied. It is submitted that the Respondents have misconstrued the concept of subjective satisfaction and have wrongly submitted that matters which have been considered by the detaining authority are not matters susceptible to judicial review. This issue is *not res integra* and this Hon'ble Court in the matter of *Khudiram Das vs The State Of West Bengal & Ors* (1975 AIR 550) has conclusively held that:

'...But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The Courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a

condition precedent for the exercise of the power conferred on the executive, the court can always examine whether the requisite satisfaction is arrived at by the authority: if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. *Emperor v. Shibnath Bannerji* (2) is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose: such a case would also negative the existence of satisfaction on the part of the authority. The existence of 'improper purpose', that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner of Police did in *Commissioner of Police v. Gordhandas Bhanji*(3) and the Officer of the Ministry of Labour and National Service did in *Simas Motor Units Ltd. v. Minister of Labour and National Service*(1) the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it

is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded on materials which are of rationally probative value'. Alachindar v. King. (2). The grounds on which the satisfaction is based must be, such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Pratap Singh v. State of Punjab (3). If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider.'

24. The content of Para 13 being wrong and misleading is denied. It is denied that the gravamen of the challenge by the detenu relates to the fact that the detenu had been in custody for past six months, had no access to any form to public speech and expression and therefore there could be no material to come to the conclusion that the detenu may act in any manner which is prejudicial to maintenance of public order. The challenges as made in the Petition are reiterated herein
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and same may be read as a part and parcel of the present para. It is vehemently denied that the dossier and the grounds of detention provide a *live and proximate* to the activities of the detenu and the possibility of such activities being prejudicial to maintenance of public order. *Per contra* it is submitted that nothing in the material provided which includes the social media posts of the detenu even remotely alludes to the apprehension of any indulgence in activities prejudicial to maintenance of public order. It is further submitted that it is the specific challenge of the Petitioner in the underlying Petition that the grounds provide no material particulars and/or provide any proximate link or nexus with the object of detaining the detenu on apprehension of maintenance of public order under the J&K Public Safety Act.

25. The content of Para 14 save and except, what is a matter of record is denied. It is submitted that the opposition of the abrogation of Article 370 of the Indian Constitution falls squarely within the realm of freedom of speech and expression guaranteed to every citizen of this country. The said right assumes greater significance when the right pertains to a person who being a former Chief Minister and former Leader of opposition (State Assembly) is expected, by the rigors of the Constitution itself, to question and assail any decision of the dispensation in power. It is appalling to observe the statement of the Respondent No. 2 that the geographical proximity of the U.T of J&K with the Republic of Pakistan is deemed to be an overarching feature that can contextually modify the concept of

‘public order’. Needless to add that the Republic of Pakistan is in close geographical proximity to three other states of India (Gujarat, Punjab & Rajasthan) as well and by the extended logic of the Respondent No.2, the ‘public order’ in such states would also be contextually modified. Clearly such a travesty cannot be countenanced under the scheme of Indian law and any suggestion thereto is to be out rightly rejected as being fallacious and contrary to law.

26. The content of Para 15 save and except, what is a matter of record is denied. It is denied that the mere presence of the detenu coupled with the decision to abrogate Article 370 would pose an imminent (wrongly written as ‘eminent’ in the Affidavit under Reply) threat to maintain public order. The factual data about the loss of lives in the erstwhile State of J&K is utterly irrelevant for the purposes of the present controversy. Apart from irrelevancy of the said data, the usage of the same for arriving at a subjective satisfaction has the effect of vitiating the satisfaction entered because the same goes beyond the grounds as urged in the impugned grounds of detention dated 05.02.2020.

27. The content of Para 16 save and except, what is a part of judicial pronouncement is denied. The judgment as relied upon by the Respondent is inapplicable in the facts of the present case and the same is clearly distinguishable. The same will be demonstrated in detail during the course of arguments before this Hon’ble Court. However, it is pertinent to add that the ratio of *Kamarunissa* pertains

to serving of a detention order on a person while in custody in relation to a distinct criminal offence coupled with the likelihood (that is based on cogent material) of the same person to indulge in prejudicial activities if released on bail. The ratio of *Kamarunissais* wholly inapplicable to the fact scenario of the detenu's case.

28. The content of Para 17 being wrong and misleading is hence denied.

It is reiterated that there exists no material whether prior or after the incarceration of the detenu that would enable the Respondent No. 2 to enter satisfaction that the activities of the detenu are likely to prejudice maintenance of public order. The judgments as relied upon by the Respondent are distinguishable and/or are applicable in favour of the detenu and the same shall be demonstrated during the course of arguments before this Hon'ble Court.

29. The content of Para 18 is wrong and misleading and hence denied. It

is reiterated that the detention order is vague and without any necessary material particulars making the same arbitrary and fanciful.

It is reiterated that neither the order of detention nor grounds thereof have provided any material particulars with respect to the activities of the detenu that enabled the Respondent No. 2 to enter satisfaction that the detenu is likely to engage in activities that may prejudice maintenance of public order.

30. The content of Para 19 is wrong elucidation of law and a

misconstruction and selective quoting of the ratio of *State of Bombay*

v Atma Ram Sridhar. The same shall be demonstrated during the

course of arguments before this Hon'ble Court. The reliance on case of *State of NCT of Delhi v Sanjeev* is also wholly misplaced as the said case deals with a case of externment and not preventive detention.

31. The contents of Para 20 and 21 are repetitive in nature and the same having been addressed hereinbefore are denied.

Sar Abdullah PTA
DEPONENT

VERIFICATION

I, the deponent herein above, do hereby verify and affirm that the contents of the foregoing Affidavit are true and correct to the best of my knowledge and belief and the legal advice received by me and based on the documents annexed herein. No part of it is wrong and nothing material has been concealed therefrom.

Verified at New Delhi on this the ____ day of March, 2020

—

Sar Abdullah PTA
DEPONENT



Omar Abdullah

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Omar Abdullah

August 4, 2019

To the people of Kashmir, we don't know what is in store for us but I am a firm believer that what ever Almighty Allah has planned it is always for the better, we may not see it now but we must never doubt his ways. Good luck to everyone, stay safe & above all PLEASE STAY CALM.

1.1K

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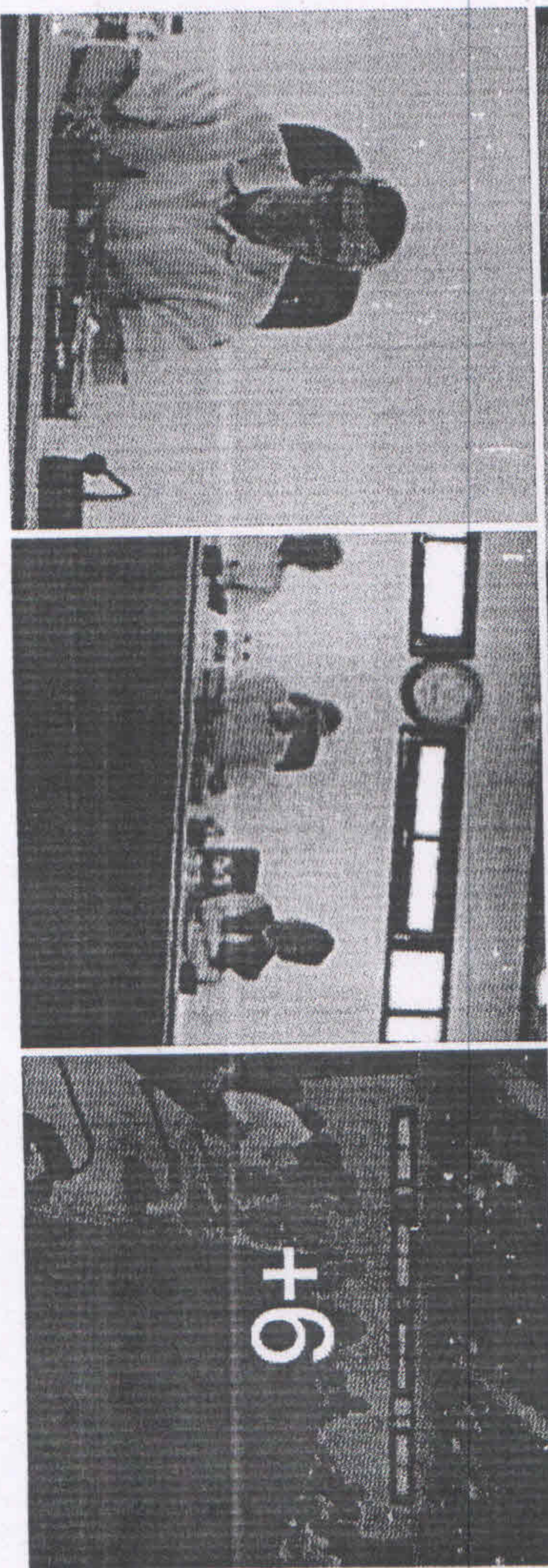
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Omar Abdullah
August 4, 2019

Addressed Political Affairs Committee (PAC) meeting at Nawai-Subh this morning. Comprehensively discussed prevailing situation concerning the state.



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Omar Abdullah
August 4, 2019

Gupkar Declaration
August 4 2019

The representatives of following political parties held an all parties meeting at the Gupkar Residence of Dr. Farooq Abdullah President JKNC to deliberate upon the prevailing political situation triggered by massive deployment of security forces, advisories issued, abandonment of Amarnath Yatra midway, and forced removal of tourists from the Valley.

The meeting was presided over by Dr. Farooq Abdullah, was attended by, Ms. Mehbooba Mufti, President JKPD, Patron PDP Muzaffar Hussain Beg, Abdul Rehman Veeri GS PDP, Sajad Ghani Lone Chairman JKPC, Imran Reza Ansari, Abdul Ghani Vakeel, Taj Mohiudin Vice President JKPC, MY Tarigami CPIM, Vice President JKNC Omar Abdullah, MPs of NC, Justice Hassnain Masoodi, Mohamad Akbar lone, provincial president jknc Nasir Sogami, Shah Faesal, PUF, Ali Mohammad Sagar GS JKNC, Muzaffar Shah ANC, Uzair Ronga PUF, Suhail Bukhari PDP.

It was unanimously resolved

1. That all the parties would be United in their resolve to be protect and defend identity, autonomy and special special status of the JK agains all attacks and onslaughts whatsoever.
 - 2 That modification, abrogation of articles 35a, 370, unconstitutional delimitaion or trifurcation of the state would be an aggression against the people of Jammu Kashmir and Ladakh.
 3. That the Parties participating in the meeting resolved to seek audience with the President and Prime Minister of India and the leaders of other political parties to apprise them of the current situation and make an appeal to them to safeguard the legitimate interests of the people of state with regard constitutional guarantees given to the state the constitution of Our country.
- They will also apprise them of the unwholesome consequences bound to

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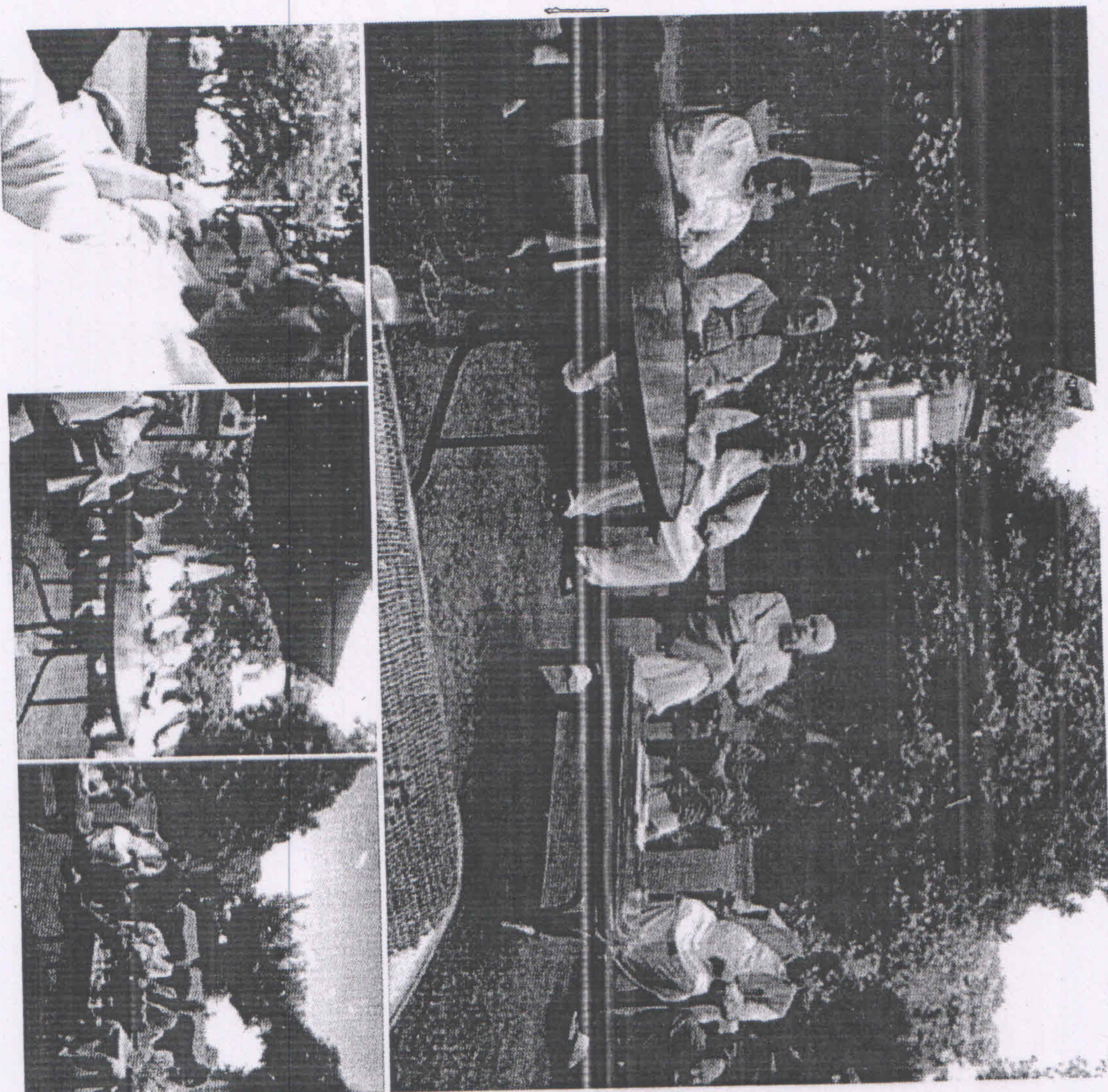


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They will also apprise them of the unwholesome consequences bound to follow the unconstitutional violation of these guarantees. The representatives of the political parties resolved to remain together and stand united in their struggle for safeguarding identity autonomy and special status of the state.



938

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How do I request a verified badge on Facebook?

[Mobile Browser Help](#) [Computer help](#) [Mobile help](#)

The verified badge  appears next to a Facebook Page or account's name in search and on the profile. It means Facebook has confirmed that an account is the authentic presence of the public figure, celebrity, or global brand it represents.

What are the requirements to apply for a verified badge?

We look at a number of factors when evaluating Facebook accounts to determine if they're in the public interest and meet our verification criteria.

In addition to following Facebook's terms of service, your account also needs to be:

- **Authentic:** Your account must represent a real person, registered business or entity.
- **Unique:** Your account must be the unique presence of the person or business it represents. Only one account per person or business may be verified, with exceptions for language-specific accounts. We don't verify general interest accounts (example: Puppy Memes).
- **Complete:** Your account must be active and have an about section, profile photo and at least one post.
- **Notable:** Your account must represent a well-known, often searched person, brand or entity. We review accounts that are featured in multiple news sources, and we don't consider paid or promotional content as sources for review.

Keep in mind that if you provide false or misleading information during the verification process, we will remove your verified badge and may take additional action to delete your account.

If your account doesn't meet the criteria for a verified badge, there are other ways to let people know it's authentic. For example, you can link to it from an official website, Instagram profile or Twitter account.

How do I request a verified badge?

You can submit a request by filling out a contact form.

If your account represents a person, you'll need a copy of your official government-issued photo identification (example: passport, driver's license, national identification card) to validate your request. If your account represents an organization, you'll need a copy of a phone or utility bill, a

certificate of formation, articles of incorporation, or tax exemption documents. Please also include a few sentences explaining why the account should receive the verified badge, and relevant URLs that help illustrate the account's notability.

You'll receive a notification once we review your request. Please don't submit more than one request for your account. For denied requests, you can submit a new request after 30 days.

Can I buy a verified badge?

Never engage with anyone offering to sell you a verified badge. We don't sell verified badges, and any accounts found doing so will have their badges removed.

We also reserve the right to remove the verified badge from accounts at our discretion.

Verified badge requirements for law enforcement, city governments, politicians and elected officials

There are some additional requirements for verified Pages for law enforcement agencies, city governments, politicians, and elected officials.

Law enforcement:

- Everyone who manages the Page must turn on two-factor authentication for their profiles.

City government:

- The Page name must include the word "Government" to avoid confusion with a physical location.

Politician:

- The Page name can include a government title or abbreviation, such as senator, representative, MP, mayor, etc.
- The Page name can't include "for Parliament," "for [your Country]," etc.
- The Page category must be set to Politician.

Elected official:

- The Page name must include a government title or abbreviation, such as senator, representative, MP, mayor, etc.
- The Page category must be set to Government Official.
- The Page's About section must clearly state that it's a government Page.

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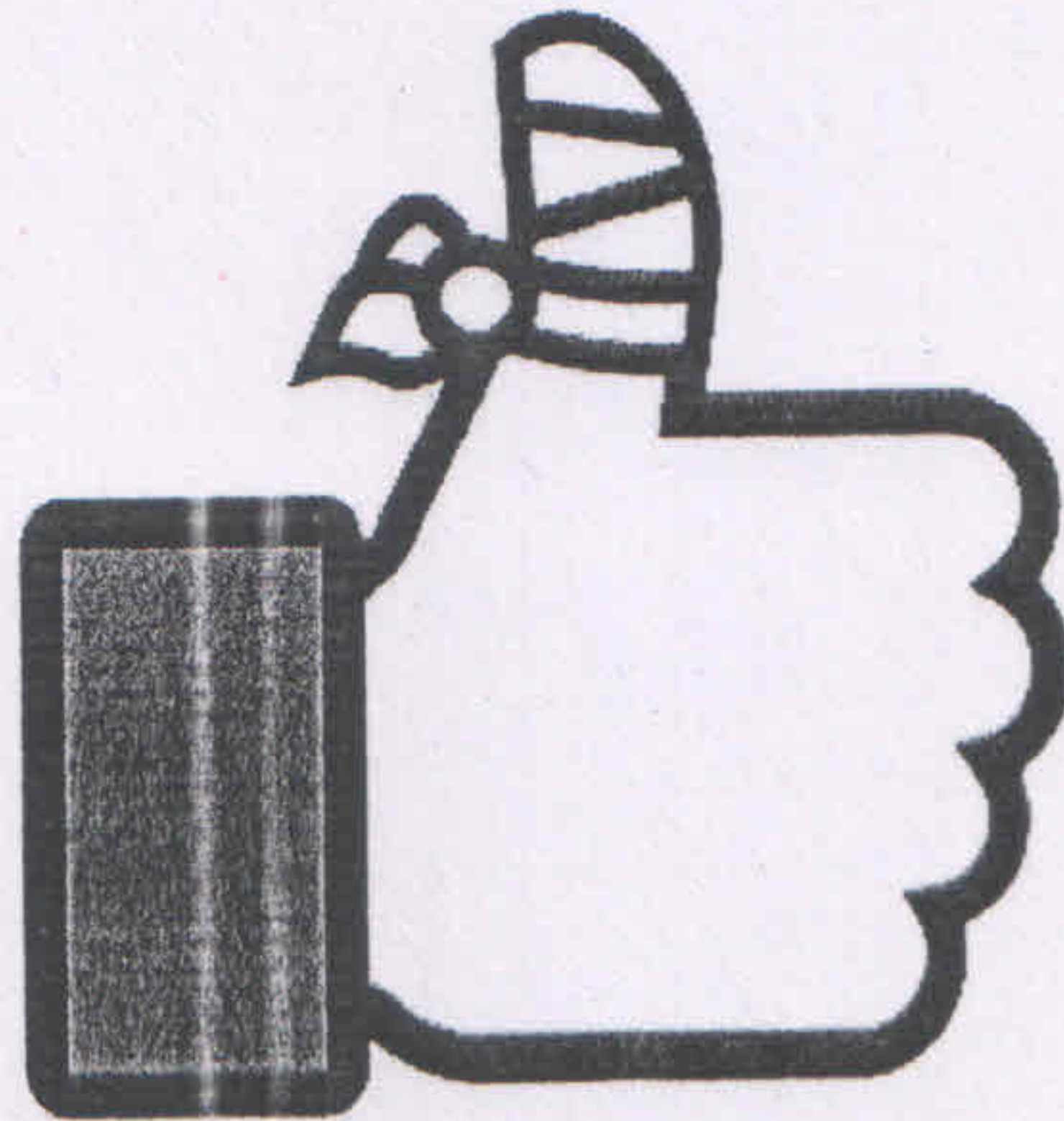
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