



**COMPILATION OF
SELECTED CASES ON
SOCIO LEGAL ISSUES FILED
DURING CORONA CRISIS**

**PREPARED BY
TEAM PROBONO INDIA**

FEBRUARY 2021



ProBono India
SocioLegally Yours !

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***Bombay HC quotes
Oscar Wilde to rule
Covid patients have 'right to
decent burial too'***

February 2021

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Team ProBono India has made all efforts to summarize the cases from original cases retrieved from AIR, SCC, Manupatra and other leadings databases. For some cases, team has tried to summarize cases from the available sources as they could not find original ones.



भारतीय विधि संस्थान (मानित विश्वविद्यालय) THE INDIAN LAW INSTITUTE (DEEMED UNIVERSITY)

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FOREWORD

The Covid-19 pandemic exposed key obstacles for law enforcement like public health restrictions, resource management, communication and service patterns. Local and state law enforcement are on the front lines when dealing with pandemics and enforcing response measures even though they have the chance of enduring Covid-19 due to greater risk of exposure and infection. The Covid-19 pandemic caught the public and members of law enforcement unprepared. Being interested in international human rights, and humanitarian and refugee laws, and as a member of editorial boards of various reputed national and international journals, I would like to appreciate **Dr. Kalpeshkumar L. Gupta** and the whole team for taking such efforts that would help people understand the efforts that the front line members take to keep our world a better place to live in.

During the pandemic the socio-legal issues that the country faced were numerous. The courts in India wherever they find that any instance of injustice or violation of human rights is going unheeded and unaddressed, tried to solve the issue with great efforts. This technique is an offshoot of the Social Action Litigation (SAL)/Public Interest Litigation (PIL) which has seen phenomenal growth in the last few decades and the time of corona made the growth visible more significantly. The public-spirited individuals and organizations approached the courts of law for the redressal of many socio-legal issues related to peoples' sufferings and the judges obliged to take responsible action. This judge-called Access to Justice Approach might have motivated its initiators i.e., judges, to make use of it by taking to cognizance of the similar kind of the injustices which they were already dealing within a number of SAL/PIL cases. Therefore, instead of waiting for someone to invoke court's jurisdiction, the judges began moving their own jurisdictions, though quite cautiously, for addressing the instances of human rights abuses, atrocities, injustices etc. being perpetrated on the helpless individuals and the masses. In fact, one can find that in the cases, the judge is genuinely impelled by his constitutional empathy. He would pick up the case on his own for its disposal only when

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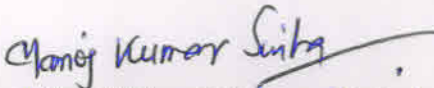
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his human sensitivity as judge is deeply aroused due to a constitutionally unpalatable scenario. This, somewhat may remind an Indian citizen of the inquisitive kind of adjudication which is the hall mark of the legal systems of the civil law family. Needless to state that in the more cases, the judges play a pivotal role. This has been observed that some cases, by their genesis, have great potential to impact the life of a single individual or the lives of the community at large.

This **Compilation of Selected Cases on Socio Legal Issues Filed During Corona Crisis** is a welcome addition of its own kind to the legal literature on court-oriented basic rights jurisprudence. This happens to be the third book of case compilation by the Team ProBono India. The onerous task of bringing this compilation project to its ultimate conclusion has been accomplished by a dedicated team of enthusiastic twenty two law students, ably led by their ever-energetic mentor Dr. Kalpeshkumar L. Gupta (Founder, ProBono India). The coming together of these students under the banner of their guide-teacher demonstrates that apart from the loaming in classroom setting, legal knowledge realizes its true meaning and potential when the students employ their professional skills to educate and liberate the common people, Interestingly, the students did not know one another before joining this project but Dr. Kalpeshkumar L Gupta cemented them into one solid block. Even with numerous unpredictable challenges thrown by the Covid-19, the term work, perseverance and determination of the group made them to achieve yet another milestone.

I hope that this compilation would encourage enthusiastic law students and faculty to take more projects of this nature. I wish all the best to the compilers of this book.


(Prof. (Dr.) Manoj Kumar Sinha)
Director

PREFACE

Optimism is the faith that leads to achievement. Nothing can be done without hope and confidence.

- Helen Keller

If you would like to know how it feels to find the loopholes in the law during this Coronavirus pandemic, remember when the Titanic was sinking, and the band continued to play? We, all lawyers, are the band. It is hard to fight for justice when you really can't figure how to fight for it. During the initial stage of lockdown, there was a time when we couldn't describe our country's issues. Domestic violence to safety issues, being the primary concerns. All the cases written in this book are not created with imagination; they are bare truth of the world. The whole purpose of this case compilation was to break barriers of accessing the cases during lockdown for the future generation. It is only the belief that led the world to survive this pandemic. We believed that we will survive, we will bring justice, and here we stand with justice served.

The compilation is based on ideology, and various individuals came together to help showcase the importance of passion and patience. **Dr. Kalpeshkumar L Gupta (Founder, ProBono India)** the pioneer in the field of the law came up with the idea of this compilation, and with the help of various enthusiastic volunteers, this project has been successfully completed. The process of coming together, learning, and then sharing knowledge is what helps knowledge grow in the true sense, and this project forwards this form of learning.

The case compilation has been titled as "**Compilation of Selected Cases on Socio Legal Issues Filed During Corona Crisis**". The topic was chosen as it is one of the prominent issues that judiciary in India is dealing with during the Covid-19 lockdown. The compilation is the result of hard work and determination of twenty two law students pursuing law in different corners of India. In truth, credit of the current level of success goes to each and every member who helped this work become a reality. The enthusiasm and compassion of these students under the guidance of the pioneer Dr. Kalpeshkumar kept the project alive and developing while it was in the process of development. Sir kept us motivated and determinate through the period of the compilation of this project.

The project began with me being appointed as a student coordinator of this exemplary compilation under the banner of ProBono India which was indeed a pleasure and a learning experience for me. It was a sheer pleasure for me to work and share this project with the like-minded and talented group of people. Here's an introduction to my beloved team:

- **Tuhupiya Kar** (South Calcutta Law College, Kolkatta)
- **Manisha Singh** (Maharishi Dayanand University, Rohtak)
- **Amrith R** (School of Excellence in Law, TNDALU, Chennai)
- **Manan Khandelwal** (School of Law, Christ University, Bangalore)
- **Kotta Naga Anjaneya Chaitanya** (School of Law, Christ University, Bangalore)
- **Ayanava Bhattachary** (School of Law, Christ University, Bangalore)
- **Kaushik Chandrasekaran** (School of Law, Christ University, Bangalore)
- **Ashray Vinayaka** (Government Law College, Mumbai)
- **Shagun Kashyap** (Hidayatullah National Law University, Naya Raipur)
- **Poulomi Chatterjee** (Bennett University, Greater Noida)
- **Rishi Raj** (Symbiosis Law School, Noida)
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- **Ankitkumar R. Gojariya** (V.T. Choksi Sarvajanik Law College , Surat)
- **Rakshita Shah** (V.T. Choksi Sarvajanik Law College , Surat)
- **U. Swaathi Shree** (School of Excellence in Law, TNDALU, Chennai)

A journey of about five months ended on February 10, 2020, as we concluded our compilation and the hustle came to an end. The idea that Dr. Kalpeshkumar wanted all of us to understand that “Whether tales are told by the light of a campfire or by the glow of a screen, the prime decision for the teller has always been what to reveal and what to withhold. Whether in alone or with images, the narrator should be clear about what is to be shown and what is to be hidden.” With the idea of teamwork, it was the importance of working with

minimal resources, and achieving the most is what he wanted to teach us. I am thankful to the team and Dr. Kalpeshkumar for the never-ending support and hard work.

We hope our effort inspires great creations!

On behalf of the Team ProBono India,

Pooja Lakshmi

(Coordinator)

ABBREVIATION

| | |
|---------------------|---|
| ADV. | Advocate |
| AGA | Additional Government Advocate |
| AIR | All India Reporter |
| AIIMS | All Indian Institute of Medical Sciences |
| AYUSH | Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homoeopathy |
| CCI | Child Care Institutions |
| CCTV | Close Circuit Television |
| CGIL | Confederazione Generale Italiana del Lavoro (General Confederation of Labour) |
| CiCWL | Children in Conflict With Law |
| CIC | Crisis Intervention Centre |
| CJI | Chief Justice Of India |
| CNCP | Children in Need of Care and Protection |
| CPC | Civil Procedure Code |
| CrI | Criminal |
| CrPC | Criminal Procedure Code |
| CRL. REV. P. | Criminal Review Petition |
| COVID | Corona Virus Disease |
| CRISIL | Credit Rating Information Services of India Limited |
| DCW | Delhi Commission for Women |
| DLSA | District Legal Services Authority |
| DSLISA | Delhi State Legal Services Authority |
| DMA | Disaster Management Act |
| DPSP | Directive Principles of State Policy |
| FIR | First Information Report |
| GDP | Gross Domestic Product |
| GO | Government Order |
| GNCTD | Government of National Capital Territory of Delhi |
| HC | High Court |

| | |
|----------------|--|
| Hon'ble | Honorable |
| ICMR | Indian Council of Medical Research |
| IPC | Indian Penal Code |
| ICT | Information and Communication Technology |
| J. | Justice |
| J&K | Jammu and Kashmir |
| LED | Light Emitting Diode |
| LNJP | Lok Nayak Jai Prakash Narayan |
| MANU | Manupatra |
| MCOA | Maharashtra Control of Organized Crime Act |
| MOU | Memorandum of Understanding |
| MPID | Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act |
| NALSA | National Legal Services Authority |
| NDPS | Narcotic Drugs and Psychotropic Substances Act |
| NCT | National Capital Territory |
| NeGP | National e-Governance Plan |
| NHRC | National Human Rights Commission |
| NGO | Non Governmental Organization |
| NIMHANS | National Institute of Mental Health and Neurosciences |
| No. | Number |
| NOC | No Objection Certificate |
| Ors | Others |
| PUCL | People's Union for Civil Liberties |
| PCA | Police Complaint Authority |
| PIL | Public Interest Litigation |
| PM | Prime Minister |
| POCSO | Protection of Children from Sexual Offences Act |
| POTA | Prevention of Terrorism Act |
| PMLA | Prevention of Money Laundering Act |
| Re. | Reply |
| Retd. | Retired |

| | |
|--------------|--|
| RBI | Reserve Bank of India |
| RERA | Real Estate Regulatory Authority |
| SC | Supreme Court |
| SCC | Supreme Court Cases |
| SCR | Supreme Court Reporter |
| SLP | Special Leave Petition |
| SDRF | State Disaster Relief Fund |
| SOP | Standard Operating Procedure |
| SMS | Short Message Service |
| TADA | Terrorist and Disruptive Activities (Prevention) Act |
| UNO | United Nations Organization |
| UOI | Union of India |
| U. P. | Uttar Pradesh |
| V. | Versus |
| WP | Writ Petition |
| Yrs. | Years |

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CASE NO. 1

IN RE: GUIDELINES FOR COURT FUNCTIONING THROUGH VIDEO CONFERENCING DURING COVID-19 PANDEMIC

(WRIT PETITION (CIVIL) NO. 5/2020)

ENSURING SOCIAL DISTANCING IN ORDER TO PREVENT THE TRANSMISSION OF THE VIRUS IN COVID-19.

ABSTRACT

The following is a case summary of the case dealing in the matter of Guidelines for Court Functioning through Video Conferencing during Covid-19 Pandemic. This is a Writ Petition which has been filed in light of the Covid-19 Pandemic which strikes the urgent need for the Courts of India to take recourse to online arbitration methods. The guidelines issued by the Supreme Court of India for achieving the purpose of proper Court Functioning through Video Conferences are not to be taken as a discretionary decision of the Supreme Court but rather to be considered more of a duty which demands the cooperation of all courts, judges, litigants, parties, staff and other stakeholders who are working to keep the wheels of justice running in motion.

The present case is a Suo Motu Writ Petition invoked with regard to the public interest by the Supreme Court of India. This PIL has been filed in the midst of the outbreak of the Coronavirus pandemic in several countries, worldwide, including India. The Supreme Court of India neither wants to compromise with the health of the citizens of India nor does it want to compromise with the quality of justice that is to be provided to the aggrieved parties. The reason being which the Indian Judiciary has incorporated the Information and Communication Technology systems through the e-Courts Integrated Mission Mode Project as part of the National e-Governance Plan (NeGP). It has been incorporated with the certain belief that this robust infrastructure in place would help reduce the conventional impediment that often surrounds the use of virtual courtrooms. The ICT enabled infrastructure has been incorporated throughout the existing courts of India including at the level of district judicial system which constitutes the initial interface of the court system with the citizens even at the local level.

The Author of the case-summary of the Suo Motu case that is named as In Re: Guidelines for Court Functioning through Video Conferencing during Covid-19 Pandemic which has been compiled has made an informed attempt to curate a short summary in the form of a brief for the sake of academic purposes. The Author being a law student is in support of the judgment of the Court that it has passed in the interest of Justice, Equity and Good Conscience.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|---|
| Case No | : | Writ Petition (Civil) No. 5/2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Decided on | : | April 6, 2020 |
| Judges | : | Justice S. A. Bobde, C.J.I, Justice D.Y. Chandrachud and Justice L. Nageswara Rao |
| Legal Provisions Involved | : | Article 142 of the Constitution of India, 1950 |
| Case Summary Prepared by | : | Tuhupiya Kar Student of South Calcutta Law College, Kolkata |

2. BRIEF FACTS OF THE CASE

The Supreme Court of India has issued the order in regard to the directions In Re: Guidelines for Court Functioning through Video Conferencing during Covid-19 Pandemic on the April 6, 2020 by taking recourse to the power conferred on it by Article 142 of the Constitution. The Bench of Judges that presented the final draft of the order and guidelines constituted of the following Judges: S.A. Bobde, C.J.I, D. Y. Chandrachud and L. Nageswara Rao JJ.

On April 3, 2020, Hon'ble Justice D. Y. Chandrachud, the Chairperson of the Supreme Court E-Committee, had had a meeting with the Computer Committees of the various High Courts to understand the extent of the actual practicality of the order which had to be drafted with regard to the guidelines for hearing trials via using video conferencing technologies. It was suggested in the meeting that the *use of technology must be institutionalized even after the lockdown is lifted and normalcy returns.*

The matter is with regard to the urgent need for an order penning down the guidelines for the functioning of the court through the medium of video conferencing has certainly become a necessity at such dire situations. The recent spread of the Coronavirus (Covid-19) in India

and many other countries asks every citizen's duty to contain the spread of the virus by doing whatever they can in their power.

The Supreme Court and the High Courts of India have thereby relented to the Covid-19 and have adopted several measures to reduce the number of people and their physical appearance or presence in the Courts. Steps have been taken to reduce the number of conventional operations in Courts and resort to the use of modern technology and AI to go digital especially with regard to the Court Proceedings.

The modern technology with the continuous advancements in speed and connectivity has to a great degree reduced the obstacles in the path of providing justice to the people through the access of Virtual world. The pandemic situation has made the Indian Courts greatly resilient to accepting the changes brought in the judiciary system of the country by the advancements in technology. In fact, the Indian Judiciary has incorporated Information and Communication Technology (ICT) systems through the e-Courts Integrated Mission Mode Project (e-Courts Project) as a part of the National e-Governance Plan (NeGP). ICT enabled infrastructure is also available across all courts including the district level courts which constitutes the primary interface court system with the citizens of India.

The use of technology backed by judicial recognition and support found precedent of this Court in the case, *State of Maharashtra v. Praful Desai (2003) 4 SCC 601*. In the case, the Court held that in the arena of technology virtual courts are similar to that of the physical courts.

“Faith is belief without evidence and reason; coincidentally that’s also the definition of delusion.” – Richard Dawkins

The Supreme Court also held that the term ‘evidence’ would be inclusive of the electronic evidence also and that evidence may be recorded in virtual courts via the use of video conferencing that can be later on kept as recorded evidence or evidence in recorded form.

Section 3 of the Indian Evidence Act, 1872, defines the word and concept of ‘Evidence’ as follows:

1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; (oral evidence);

- 2) *All documents including electronic records produced for the inspection of the Court; (documentary evidence)*

The Supreme Court of India in the case *State of Maharashtra v. Praful Desai* had held the following statement :

‘Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place...Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence... In fact, he or she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing, both parties are in the presence of each other... Recording of such evidence would be as per “procedure established by law”.

Hence, the presence of the Petitioner or the Respondent over video conferencing for the purpose of recording evidence would undoubtedly result in the ‘presence’ as is envisaged under section 273 of the Criminal Procedure Code.

3. ISSUES INVOLVED IN THE CASE

- I. Is dispensation of justice possible through sheer reliance on technology forming the base for virtual court rooms during the Covid-19 outbreak or should the use of physical court rooms continue at the instance of risking social distancing?

4. LEGAL ASPECTS INVOLVED IN THE CASE

The Supreme Court of India has passed the order and judgement with regard to the matter of guidelines for Court functioning through video conferencing under the power conferred on it by Article 142 of the Constitution of India. Article 142(1) of the Constitution of India reads as follows:

“The Supreme Court in the exercise of its jurisdiction may pass such decree as is necessary for doing complete justice in any cause or matter pending before it, and

any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.”

Article 142 (1) states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary and efficient for doing justice to the Country of India and its respective citizens. This Article brings within its purview the measures adopted by the Supreme Court and the High Courts throughout the territory of India to respond to the call and need for social distancing without hampering the quality of justice provided by the judiciary system of India.

Article 142 vests unconditional independent jurisdiction for the purpose of passing any order which to be issued in the interest of the general public to do complete justice as when and where required. It is provided that such order passed by the Indian jurisdiction shall not be contrary to any other provisions of the law in existence.

In the case *Academy of Nutrition Improvement v. Union of India* (2011) 8 SCC 274 the Supreme Court of India reiterated that “ *The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to doing complete justice ... and are in the nature of supplementary powers ... (and) maybe put on a different and perhaps even wider footing than ordinary inherent powers of a Court to prevent injustice. The advantage that is derived from a constitutional provision couched in such a wide compass is that it prevents ‘clogging or obstruction of the stream of justice’.* ”

5. JUDGEMENT IN BRIEF

The Supreme Court Directed the following :

- All the decisions taken by the Supreme Court and High Courts of India with regard to the purpose of reducing the requirement of the physical presence of all the stakeholders within the court premises and at the same time to maintain the proper functioning of the courts shall be considered to be lawful;

- The Supreme Court and the High Courts of India are to take the necessary measures as required for the robust and proper functioning of the judicial system through the use of video conferencing tools and technologies keeping in view the exceptional abnormalities of the judicial system and the dynamic public health situations in every state that's prevalent during the present Covid-19 pandemic;
- Every High Court is further empowered to determine the measures that are to be taken for the suitable execution that would ultimately suit the transition of the systematic functions of the Indian judiciary to the use of video conferencing technologies;
- It is further instructed that the aforementioned Courts (existing High Courts throughout the territory of India) shall install and maintain a helpline number so that the complaints with regard to the quality or audibility of feed during a court proceeding over video conferencing shall be immediately communicated during such ongoing trial or latest by the end of the trial procedure failing which no grievance related to it shall be entertained later on.
- The District Courts are directed to adopt the mode of Video Conferencing as would be prescribed by the High Courts of the respective states.
- Courts are directed to ensure that the litigants who do not have access to the means required for attending video conferences are provided with the conferencing facilities. The Court may also appoint an amicus-curiae (an impartial adviser to a court of law appointed for a particular case) provided with all the video conferencing facilities to approach such litigant.
- It is to be seen that video conferencing is the only platform available for hearing arguments irrespective of trial or appellate stage.
- No evidence via video conferencing shall be recorded without the prior mutual consent of both the parties. If it is found necessary to record evidence in a Courtroom the presiding officer shall ensure and determine a safe distance between any two persons present in the Courtroom.
- The presiding officer is vested with the sole power to restrict the entry of persons in the courtroom especially from the time when the advocates have started to address their arguments to the presiding Judge in the courtroom.
- The presiding officer shall not restrict the entry of any of the appearing parties to the courtroom until and unless such party is suffering from an infectious disease or illness.

- The presiding officer shall have the power to restrict the number of litigants if many to a few. It is also left to the sole discretion of the presiding judge to have the power to adjourn the court proceedings for a particular time or for a particular day, when and where it is not possible to restrict the numbers from entering into the courtroom once the presentation of the arguments by the respective advocates has already begun.

It is further reiterated by the Supreme Court that the above directions have been issued in a bid to ensure that the judiciary will be efficient in rising and standing up to the challenges to face the unique challenge presented by the outbreak of the coronavirus (Covid-19).

6. COMMENTARY

This order is introduced in the light of the ‘new normal’ which has been created by the devastating pandemic, Covid-19. It is not an easy time for anybody especially the Indian Judicial System. India despite being a developing country has come a long way in the advancement of technology but the real challenge to tackle would be at the district level which is formed by the nodal points of nearly 6.5 lakh villages which, constitutes an almost 70% of the total population of India. As once quoted by Mahatma Gandhi, “if the village perishes India will perish too.”

As the entire nation is currently under lockdown with the objective of reducing the risk of the virus’s spread with ease only in some exceptional sectors the Indian Judiciary has also taken it upon itself to observe social distancing as much as possible and in a bid to do so it has shut down its regular court functioning and is resorting to hearing cases of only urgent matters via video conferencing.

It will certainly be a great challenge to administer justice at the district level especially in rural areas where modern video conferencing technology is not as prevalent as in the urban areas. Communication through the mode of online video conferencing has never been the way of interaction even for the youth living in villages. The village people have always known life in the simplest of the forms. But measures have been taken as is evident from the order ‘*In Re: Guidelines for Court Functioning through Video Conferencing during Covid-19 Pandemic*’ and the online trial processes have been thought through with the hope that the prevalent pandemic will not hamper the delivery of a quality justice at any cost whatsoever.

7. IMPORTANT CASES REFERRED

- *State of Maharashtra v. Praful Desai, MANU/SC/0268/2003 : (2003) 4 SCC 601.*
- *Academy of Nutrition Improvement v. Union of India (2011) 8 SCC 274.*

CASE NO. 2

K. RAMAKRISHNA

V.

UNION OF INDIA OF INDIA & ORS

(WP (PIL) NO: 101 OF 2020)

STRANDED MIGRANT WORKERS AND PROVISION OF SHELTER, FOOD AND TRANSPORTATION.

ABSTRACT

The following is a case summary of the infamous *K. Ramakrishna v. Union of India & Ors. WP (PIL) No: 101 of 2020*. Movement of Migrant workers is one of the serious problems among the issues arising in the pandemic of COVID-19. It leads to many health relating problems. In 2020, an initiative was taken by K. Ramakrishna, S/o K. Rangaiah for the very first time on the behalf of the petitioner regarding the problems faced by migrant workers in the State of Andhra Pradesh. The Petitioner moved the Supreme Court exercising his constitutional right under Article 226 of the Constitution of India because the restriction on movement was infringing the fundamental rights of the workers. It was fairly long case which saw the appearance of many learned advocates and senior advocates. Adv. Sri Chalasani Ajay Kumar argued on the behalf of the petitioner whereas Smt. M. Indrani, Advocate argued on the behalf of respondents which were, the Ministry of Home Affairs and Ministry of Human Resource of Union of India, Home Department and Labor Department of the State of Andhra Pradesh. The author of this summary has made an informed attempt to curate a short summary in the form of a case brief for academic purposes. The author personally admires the attempts of the K. Ramakrishna.

1. PRIMARILY DETAILS OF THE CASE

| | | |
|-----------------|---|---------------------------------------|
| Case No. | : | WP (PIL) No. 101 of 2020 |
| Jurisdiction | : | High Court of Andhra Pradesh |
| Case filed on | : | April 2020 |
| Case decided on | : | May 22, 2020 |
| Judges | : | Justice Jitendra Kumar Maheshwari, CJ |

| | | |
|---------------------------|---|--|
| | | Justice Lalitha Kanneganti |
| Legal Provisions Involved | : | Article 14, 19, 21 and 226 of the Constitution of India, 1950 Section 151 of Code of Civil Procedure, 1908 |
| Case Summary Prepared by | : | Manisha Singh Student of Maharishi Dayanand University, Rohtak |

2. BRIEF FACTS OF THE CASE

In the Lockdown due to pandemic of COVID-19 the large population of workers and labors seem to moving towards their home by walking on foot. Due to Unemployment during this period they have to face misery to the extent that they don't have money to eat even enough food. Therefore, by alarmed by this situation and its impact on the humanity, a petition was filed by K. Ramakrishna, S/o, K. Rangaiah, filed a Public Interest Litigation (PIL) in Amravati High Court of Andhra Pradesh in April 2020, against the Union of India under Article 226 of Indian Constitution charging that the action of respondents is not allowing the Migrant Workers settled in Vijayawada and Guntur Districts and in the other parts of the Andhra Pradesh and also from other States, to return their hometowns and Villages after conducting necessary COVID-19 test and to arrange for their safe travels by providing necessary transportation and not providing them food and accommodation facilities to them is illegal and violative of their fundamental rights guaranteed under Articles 14, 19 and 21 of Part III of the Constitution of India. Hence, Petition praying the court to issue the writ of Mandamus, to direct the respondents to provide necessary food material and also give some immediate financial assistance to the Migrant workers and also permit them to return their hometowns and Villages after conducting necessary COVID-19 testings and to arrange their safe travels by providing necessary transportation. Petition under Section 151 CPC praying that in the circumstances stated in the support of the writ petition, the High Court may direct the Respondents to provide necessary essential food material, immediate financial aid in cash and facility for safe accommodation to the Migrant Workers who stranded in Vijayawada, Guntur and other parts of the Andhra Pradesh, due to extension of National Lockdown declared in connection with COVID-19, pending disposal of petition. The writ petition coming on for hearing and therefore the order of the High Court dated April 23, 2020, April 27, 2020 and May 15, 2020 made the final decision on May 22, 2020.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the restraining movement of workers to their hometowns during pandemic of COVID-19 was legal or not?
- II. Whether Government was liable to give facilities of food, safe travel and financial assistance to the workers?

4. ARGUMENTS OF THE PARTIES

Petitioner

It was argued restraining the migrant workers from necessities and to return their hometowns is violation of their fundamental right of right to equality guaranteed under Article 14 of the Constitution.

- It was argued that denial from basic necessities (food, water) is also the violation of Human Right.
- Article 19(1)(d) provides the fundamental right to move freely throughout the territory of the India. But the restraint of migrant workers to their hometowns and villages is violative of this right.
- Every citizen has fundamental right of life and liberty, provided by Article 21 of Indian Constitution, on contrary, the restraining of migrant workers from moving home leads to violation of said right and is illegal.

Defendant

- It was argued that Coronavirus is a communicable disease and in order to keep safe peoples and to protect them it is necessary to maintain social distancing.
- It is necessary to abstain the travel of peoples from one place to another to follow the social distancing.
- It was argued that as there is declaration of Lockdown by the Government due to COVID-19 that's why movement was obstructed in order to obey the instructions of the Government.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- **Article 14 of Indian Constitution**

Article 14 of the Indian Constitution clearly states that the state/country shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This law is applicable to all citizens and foreigners. The restriction of only migrant workers violates this fundamental right.

- **Article 19 clause (1) sub-clause (d) of Indian Constitution**

Article 19(1)(d) guarantees to all citizens of India the right “to move freely throughout the territory of India”. However, the state may under clause (5) of Article 19 impose reasonable restrictions on the freedom of movement on two grounds: - in the interest of general public and for the protection of the interest of Scheduled Tribes.

In *State of Uttar Pradesh v. Kaushalya*, AIR 1964 SC 416, the Supreme Court held that the right of movement of prostitutes may be restricted on ground of public health and public morals. Same Principle was followed by the court in *Kamala China v. State*, AIR 1963 Punj. 36.

- **Article 21 of Indian Constitution**

According to Article 21 of the Constitution of India no person can be deprived of his life and personal liberty by the state except procedure established by law. Article 21 is not merely the physical act of breathing but also gives a fundamental right of life to live with dignity. The meaning of words “personal liberty” came up for consideration of the Supreme Court for the first time in *A.K. Gopalan v. Union of India*, AIR 1950 SC 27. By Qualifying the word ‘liberty’ the Court said, the import of the word ‘personal liberty’ is narrowed down to the meaning given in English law to the expression ‘liberty of the person’. Article 19 and 21 deals with different aspects of ‘liberty’. Article 21 is guarantee against deprivation (total loss) of personal liberty while Article 19 affords protection against unreasonable restrictions (which is only partial control) on the right of movement. Freedom guaranteed by Article 19 can be

enjoyed by a citizen only when he is a freeman and not if his personal liberty is deprived under a valid law.

- **Article 226 of Indian Constitution**

Article 226 of Indian Constitution confers the power on the High Court to issue prerogative writs (Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition) for the enforcement of the Fundamental Rights throughout the territory limits. In *T.C. Bassapa v. Nagappa*, AIR 1954 SC 440, by speaking on the scope of power of High Court in Article 226, Supreme Court held that Article 226 is couched in Comprehensive Phraseology & it confers a wide power on the High Courts to remedy injustice wherever it is found.

6. JUDGEMENT IN BRIEF

The Court held that in four districts viz., Krishna, Guntur, Srikakulam and Chittoor, on the roadside near by the Toll Plaza or some other appropriate place at the highway, a temporary camp be established to provide shelter to the migrant workers, offering drinking water and adequate facilities. The same facilities shall also be made available in other districts. A coordination team to be appointed including Red Cross Workers, Social Workers or Voluntary Organizations, Para Legal Volunteers, Village.

Volunteers and an employee each from the Departments of Revenue, Police, Health and local Administration. The said team shall ascertain the whereabouts of such migrant workers and make them ready for adequate facilities providing food to them. Within eight hours, their registration may be made for their shifting to the places where they intend to go with the assistance of the Software.

Company, namely Acrux IT Services Pvt. Ltd., Units 201-204, APNRT Tech Park, NSR Villas Road, Vijayawada-Guntur Highway, Mangalagiri-522 502 (Contact No.8897335973), to provide assistance, particularly, in Guntur and Krishna Districts by their team and, if possible, in two other districts. Otherwise, the Government shall make arrangement of data entry operators' team with a computer system for the registration of the migrant workers in all the Districts. The said team must work at least in two shifts of eight hours each, i.e., at least sixteen hours a day, thereby the entries may be recorded immediately or as early as

possible, and register them for transportation state-wise. As per the entries so made, arrangement by way of Government buses, private buses for the shifting of workers may be made by the State Government. While making such arrangement, technicalities with private buses may be ignored for this purpose with an aim and object as to how far immediate steps may be taken for shifting the workers to their destination. The higher officials of the State of Andhra Pradesh and the State where those workers are required to be shifted shall coordinate with each other and shift those workers, making requisite facilities of quarantine or otherwise, but for this reason, there should not be any hurdle in shifting of those workers. The Principal Secretary and the Commissioner, Transport Department shall take up this responsibility in coordination with the officers at every district level. The District Collector shall supervise the things by appointing a team consisting of Joint Collector, Revenue Divisional Officer and Tahsildar, who shall visit the camps everyday and remain there at least for one hour to understand their problem. It is further directed that the Secretary, District Legal Services Authority of every District shall also visit those camps an hour a day and shall coordinate with the Government officials that includes Joint Collector, Revenue Divisional Officer, Tahsildar and the officials of Transport and other Departments to make things available to those migrant workers, that includes water, food and other necessities; thereby, those workers may be shifted to their destination.

7. COMMENTARY

This was a landmark judgement in the favour of migrant worker's interests in the pandemic of COVID-19. As a result of this, migrant workers get enough food, water, free of cost travelling and facilities from the State Governments. They are facilitated by Governments by assisting and also by exempting them from some liabilities. So, it was a very effecting and welcome move in the favour of Migrants by the Indian Judiciary securing their fundamental rights.

8. IMPORTANT CASES REFERRED

- *A.K. Gopalan v. Union of India, AIR 1950 SC 27*
- *Kamala China v. State, AIR 1963 Punj. 36.*
- *State of Uttar Pradesh v. Kaushalya, AIR 1964 SC 416.*

CASE NO. 3
COURT ON ITS OWN MOTION
V.
UNION OF INDIA
(CIVIL WRIT PETITION No. 6100 of 2020)

**A VIDEO OF A TODDLER TRYING TO WAKE UP HIS DEAD
MOTHER LYING ON A RAILWAY PLATFORM.**

ABSTRACT

The case to be discussed in the following note is *Court on its own motion v. Union of India*. This was a *suo moto* case, taken up by the Patna High Court, in cognizance of the article in the newspaper called “Times of India” dated May 28, 2020 Patna edition. The news article gave details about a video which went viral in social media, in which a child was trying to wake up his dead mother at Muzaffarpur Railway Station. The child was seen removing a shawl covering his mother’s body. According to some reports, the woman died of thirst and hunger on the train. However, the railways said she was not only ill, but also mentally unstable and was not keeping well. The court said that if the contents of the news items are correct, then the incident was rather shocking and unfortunate. It also said that it had no reason to disbelieve the news article, for; the paper has a national reputation having wider circulation. The court said that this incident had warranted its intervention in exercise of their jurisdiction under Article 226 of the Constitution of India and hence it was taking *suo moto* cognizance.

1. PRIMARY DETAILS OF THE CASE

| | | |
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| Case No | : | Civil Writ Petition Case No. 6100 of 2020 |
| Jurisdiction | : | Patna High Court |
| Case Filed on | : | May 2020 |
| Case Decided on | : | June 3, 2020 |
| Judges | : | Justice Sanjay Karol, C.J. and Justice S. Kumar |
| Legal Provisions Involved | : | Article 226 of Constitution of India, 1950 |

| | | |
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| Case Summary Prepared by | : | Amrith. R Student of School of Excellence in Law, TNDALU, Chennai |
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2. BRIEF FACTS OF THE CASE

- The case to be discussed in the following note is *Court on its own motion v. Union of India*.
- This was a *suo moto* case, taken up by the Patna High Court, in cognizance of the article in the newspaper called “Times of India” dated May 28, 2020 Patna edition. The news article gave details about a video which went viral in social media, in which a child was trying to wake up his dead mother at Muzaffarpur Railway station.
- The child was seen removing a shawl covering his mother’s body. According to some reports, the woman died of thirst and hunger on the train. However, the railways said she was not only ill, but also mentally unstable and was not keeping well.
- The court said that if the contents of the news items are correct, then the incident was rather shocking and unfortunate. It also said that it had no reason to disbelieve the news article, the paper has a national reputation having wider circulation. The court said that this incident had warranted its intervention in exercise of their jurisdiction under Article 226 of the Constitution of India and hence it was taking *suo moto* cognizance.
- The court said that the Petition will be registered as ‘Court on its own motion on the basis of News Report.
- The court added 8 respondents to the case, namely:
 - I. Union of India through the Principal Secretary, Disaster Management, New Delhi
 - II. The State of Bihar through its Chief Secretary, Patna
 - III. The Department of Health & Family Welfare through its Principal Secretary, Government of Bihar, Patna
 - IV. The Department of Disaster Management through its Principal Secretary, Government of Bihar, Patna
 - V. The Inspector General of Police, Bihar
 - VI. The Department of Social Justice, Government of Bihar through its Principal Secretary, Patna
 - VII. The Department of Home through its Secretary, Government of Bihar, Patna
 - VIII. The Indian Railways through its Principal Secretary, New Delhi

- The court had taken up the matter in the morning and hence it had asked the advocate for the State, Additional Advocate General, S. D. Yadav, to obtain all instructions on all the issues before 2.15 p.m.. that day. The court also said that the Registrar General shall telephonically or electronically inform the nominated counsel and ensure that after registration, a complete paper book is supplied to them through electronic mode.
- The court said that it had understood that Hon'ble the Supreme Court of India had taken cognizance of matters pertaining to the migrants. The court asked the Additional Advocate General IX, S. D Yadav to ascertain from the nominated Standing Counsel for the State of Bihar in the Supreme Court, as to whether Hon'ble Supreme Court had taken cognizance of this particular incident or not.
- The court also requested Ashish Giri, learned Counsel, who was also present in the Virtual Court, to assist in the matter as Amicus Curiae.
- The court said that the Registrar List shall ensure that not only all the learned counsels of all the Respondents are informed of the posting of the matter for 2:15 P.M. that day, but shall also ensure that the link for joining the proceeding through Video Conferencing is forwarded to them. The Court Master was also directed to ensure compliance of the matter.

3. ISSUES INVOLVED IN THE CASE

The court wanted to ascertain certain facts and get specific information on an immediate basis for the purposes of this case from the Additional Advocate General IX regarding the following issues:

- I. Whether post-mortem of the dead-body was conducted? If yes, what was the cause of death? Did the lady actually die of hunger?
- II. Was the lady travelling alone with her sibling? If not, who all were her companions?
- III. What action stands taken by the law enforcing agencies?
- IV. Were the relatives of the deceased informed of the incident?
- V. Were the last rights of the deceased performed as per the custom, tradition and the instructions issued by the government? and
- VI. Above all who is now taking care of the children/sibling(s), who unfortunately lost their mother in these times of distress?

4. ARGUMENTS OF THE PARTIES

- In the afternoon session when the matter was taken up at 2:30 pm., S.D. Yadav, learned Additional Advocate General-IX informed the court that for ascertaining information of overlapping of issues, the learned Advocate General had himself spoken with the Standing Counsel for the State of Bihar in the Supreme Court as also the learned Solicitor General of India. However, no information could be ascertained as the matter listed on the Board, had yet not reached.
- Yadav further stated that the news report was partially incorrect. The deceased was in fact mentally unstable and had died a natural death during the course of her journey from Surat (Gujarat), which fact was reported by her companions i.e., her sister and brother-in-law (sister's husband, namely Md. Wazir). The deceased, who had been deserted by her husband, had only one child.
- Md. Wazir brought the factum of her death to the notice of the Railway Authorities and after recording of his statement, the dead body was allowed to be taken home. No post mortem was conducted. Also, no FIR was registered. However, the District Administration facilitated by providing an Ambulance up to the place of destination.
- The AAG also submitted that the orphaned child is in safe custody and guardianship of the sister of the deceased. Yadav further stated that even though the child is safe and secure, yet, he shall personally pursue the matter with the authorities who would again reach out to the family, enquiring any need of assistance.
- The AAG also clarified that his statement is based on the instructions so received and the recorded statement of Md. Wazir.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The court had taken up the matter and filed a petition on its own, as a *suo moto* cognizance because it had understood the gravity of the situation. The Court had taken up the case as it had jurisdiction to do so, under Article 226 of the Constitution of India.

6. JUDGEMENT IN BRIEF

Taking into consideration the aforesaid statements of the Additional Advocate General, the Court said that at that stage, it was awaiting instructions from the Standing Counsel in the

Supreme Court. Hence, the Court said that it was prudently refraining from issuing any further directions on the said matter, more so when the child is in safe custody.

- However, the Court said that whatever was so stated by the Additional Advocate General, as also the complete facts, should be made known to the Court, on the personal affidavit of the concerned Principal Secretaries before the next date that the court authorized, which was June 3, 2020.

7. COMMENTARY

The case is of paramount importance considering the fact that migrant laborers faced a lot of struggles during the lockdown imposed to control the outbreak COVID-19 pandemic. However, we witnessed distressing images. From herding together inside an oil truck, to getting crushed by trains on rail tracks; from getting sprayed by harmful chemical bleaches used to sanitize buses which could expose them to dangerous cancers, to walking and cycling thousands of kilometers, hungry and starving, to reach their home; from bags perched on their heads and children on their arms, walking down the highways at these desperate times, to succumbing to the pangs of hunger on roads; from dying in road accidents, getting collided by trucks and buses, to facing the wrath of the police and the heat; from pregnant migrant lady workers walking and delivering babies on highways, to being forcefully evacuated from the banks of rivers where they had got shelters; from gathering together expectantly in Mumbai to return to home, to being regretfully fled away by the police and government authorities... their miseries are endless. Visuals of hundreds of workers wearing *gamchas*, carrying heavy backpacks and wailing children, and walking on national highways, boarding tractors, and jostling for space atop multi-coloured buses became defining images for India in the past one and a half month.

This *suo moto* case of the Patna High Court was of massive importance because it conveyed the right message that the judiciary would not tolerate the apathy shown by the concerned public authorities towards the migrants and made sure that they brought a motion on their own so as to enquire into the matter and speedily dispose it off.

CASE NO. 4

MOHAMMED ARIF JAMEEL AND ANR.

V.

UNION OF INDIA AND ORS.

(WRIT PETITION NO. 6435/2020)

**LACK OF FOOD SECURITY TO DAILY WAGE WORKERS,
MIGRANT WORKERS, AND HOMELESS PERSONS.**

ABSTRACT

The present Writ Petition has been filed to seek necessary direction from the Hon'ble High Court of Karnataka with regard to migrant workers stranded post the lockdown announced to control the spread of COVID-19. The Application raises issues of lack of food security to daily wage workers, migrant workers, and homeless persons, transportation of intra-state migrant workers to their home district and inter-state migrant workers to their home states, in light of the restriction of movement in the country. The outbreak of the Novel Coronavirus has led to the imposition of a complete lockdown in the country from March 22, 2020. This has led to the shutdown of the cities, villages and towns being sealed off and State borders closed, leaving the migrant worker stranded without the capacity to earn or go back to their villages. This Petition is primary to address the provision of shelter, ration, security, and transportation to these migrant workers left awestruck within the State of Karnataka, especially the city of Bengaluru. The Applicant seeks the direction of this Hon'ble Court to issue directions to the State Government and other authorities of the State to resolve the plight of the migrant workers, being in a vulnerable condition and financially unstable.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|--|
| Case No | : | Writ Petition No. 6435/2020 |
| Jurisdiction | : | Karnataka High Court |
| Case Filed on | : | March 2020 |
| Case Decided on | : | Pending |
| Judges | : | Justice Aravind Kumar and Justice M I Arun |
| Legal Provisions Involved | : | The Constitution of India, 1950 |

| | |
|--------------------------|---|
| | Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1976. Food Safety and Standards Act, 2006. Disaster Management Act, 2005. |
| Case Summary Prepared by | : Manan Khandelwal Student of School of Law, Christ University, Bangalore |

2. BRIEF FACTS OF THE CASE

Petitioners

The All India Central Council of Trade (AICCTU) and People's Union for Civil Liberties (PUCL), Moinuddin N, Dr. Rajeev Ramesh Gothe, S Chandrasehkaraiiah

Respondents

State Government of Karnataka, Central Government, Bruhat Bengaluru Mahanagara Palike (BBMP), Karnataka State Legal Services Authority (KSLSA) and Food and Civil Supplies and Consumer Affairs Department.

- The outbreak of the COVID-19 pandemic had led to the Central Government imposing a complete lockdown in the country since March 22, 2020, extending up to May 3, 2020, stranding several migrant workers across the State of Karnataka and depriving them on their livelihood as they are mainly daily wage earners. The Union and State Government had received many distress messages and calls from migrant workers, both inter-state and intra-state, panned across the State of Karnataka who was desperately in need of transportation facilities to return to their home villages. The Ministry of Home Affairs had issued an order restricting the movement of the migrant workers, directing the State Governments to provide adequate facilities of temporary shelters and food to migrant workers, the poor and needy people. This Petition has been filed to address issues faced by the migrant workers not receiving food, water, and ration and several issues attached to the plight faced by the migrant workers. Deprivation of food and source of earning during the lockdown for the daily wage earners, poor and needy people, has stripped their dignity as human beings. The focus of this Petition has been to request the Hon'ble High

Court of Karnataka to issue an order, direction or Writ to the Central and State Government to resolve the issues faced by the migrant workers.

3. ISSUES INVOLVED IN THE CASE

- I. Whether lack of food, transportation and essential facilities to the migrant workers in districts all across the State of Karnataka is in violation of their Fundamental Rights?.

4. ARGUMENTS OF THE PARTIES

- **Petitioner:**

Issue 1: The learned counsel of behalf of the Applicant has suggested the State to consider the provision of face mask and sanitizers to the mentioned category of persons. The learned counsel had also argued on the reduction of congestion and gathering in the ration shops by providing food grains by delivery at their doorsteps, attracting Section 12(2)(a) and Section 30 of the Food Safety and Standards Act, 2006.

Issue 2: The learned counsel focused on the stranded migrant on the streets, deprived of any source of income, and livelihood and denial of relief by the State Government due to lack of methods to identify the migrant workers. Such concerns raise the issue of the migrant workers being stripped of their dignity as human beings, which is a protected Fundamental Right under Article 21 of the Constitution of India. The PUCL further argued that they had received complaints from migrant workers who have not received ration and has taken up to provide a comprehensive statement of the said migrant population to the State. The learned counsel argued that the unavailability of shelters to migrant workers and homeless persons scattered all across the streets of Bengaluru poses the possibility of aggravation of COVID-19 cases due to the lack of social distancing measures among them. Counsel for Bengaluru Water Supply and Sewage Boards stated that wages to all migrant workers who had left the work have also been fully paid. Assurance is also provided that, State Government will take action for violation of provisions of Payment of Wages Act, 1936, and Minimum Wages Act, 1948.

Issue 3: The learned counsel on behalf of the Applicant argued that the lack of public transport facilities during lockdown has deprived the migrant workers to go back to their homes. It is argued that this is a violation of Article 19(d) of the migrant workers

restricting their right to move wherever and however they wish. The denial of transport to the migrant workers to their home villages, freely and safely, is argued to affect the right to life enshrined under Article 21. The State is under a positive obligation to remove the hindrances affecting the enjoyment of the fundamental rights of Article 19(1)(d) and Article 21. Imposing measures such as social distancing and wearing a face mask being made compulsory is proportionate but the complete denial of movement of the migrant workers is disproportionate. Further, the policy for transportation of migrant workers is in violation of Article 14 and Article 15 as there is a difference in treatment of intra-state & inter-state migrant workers and discrimination of transport facilities available to migrant workers based on the region from where they are situated. The learned counsel for the Applicant has argued for the provision of free transport to migrant workers leaving the State as well. Several issues connected with transportation are:

- i. Lack of public transport facilities during the lockdown has forced the migrant workers to walk long distances to railway stations and bus stands, and sometimes directly to their home villages.
- ii. Lack of water and food facilities for the migrant workers in the bus stands, keeping them waiting for a long time without food or water.
- iii. Information and communication gap between the State Government and migrant workers with respect to bus availability, location of temporary shelters, bus timings, and other relevant information.
- iv. Lack of clarity and information on the procedure for online registration of workers in order to travel back, leading to the formulation of crowds outside various police stations.
- v. Lack of train facilities to various destination states from railway stations in Karnataka outside Bengaluru.

It was contended that there is an absence of a fair and transparent policy for choosing the migrants for travel from Karnataka through the Shramik Special Trains. The learned counsel for the Applicant that the State Government has not replied to the complaints of the migrant workers or provided assurance to them so as to avoid unrest among them and avoid dealing with them altogether.

- **Respondent:**

Issue 1: The learned Additional Government Advocate (hereinafter referred to as AGA) has argued that the State Government had already released the quota of ration for April and May 2020 to all the ration cardholders. The learned AGA had argued that the directions provided by the apex court in the *Swaraj Abhiyan* case contemplate that the State Government will have to provide ration to the citizens on the production of identity proof in case of drought. The learned AGA also highlighted the presence of the Indira Canteen Facilities for such individuals, who can acquire meals at subsidized prices. Social distancing norms are being followed so that there is no congestion or crowding, and food grains are distributed in an orderly fashion in the ration shops. The Learned AGA argued that the State Government is implementing the National Food Security Act with additional coverage of the needy section of the society. The learned Additional Advocate General states that the State Government will place on record its precise policy of providing food kits to migrants, homeless persons, sex workers, etc. who are having shelter and who are not entitled to the benefit of any of the public distribution schemes. The State Government submitted that it has formulated a policy for distribution of ration to the marginalized and vulnerable section of the society which states that no person will be provided ration unless he produces his ration card. The State Government has further submitted that the District Administration shall continuously open housing shelter camps for the homeless and financially incapable persons.

Issue 2: The learned AGA provided a chart providing detailed information of the support provided to the stranded migrant population; providing district-wise details of shelters and active relief camps set up across the State of Karnataka, with the provision of food, medical care, clean drinking water, clothing and other essentials to such migrant workers. It is further argued that the Government of India has authorized the use of SDRF funds for the purpose of providing food security, clothing, and shelter to the needy, which are being used through the district administration to provide the same in both rural and urban areas. Further, the BBMP is said to distribute ration food kits and prepared food packets. So long as they are within the State, in a federal structure, the State is duty-bound to take care of their food and shelter in times of crisis. The State Government is making continuous efforts to provide the same.

Issue 3: The learned AGA argued that the State Government has arranged bus facilities for the migrant workers to travel back to their homes. The State Government in its order dated May 1, 2020 has laid down a Standard Operation Procedure for persons leaving Karnataka. The learned AGA argued that limitation of expenditure to the migrant workers returning back to the State of Karnataka is not in violation of Article 14 and 21. While dealing with the allegation of violation of Article 19(1)(d), the learned counsel representing the Respondent argued that the State has no statutory or constitutional obligation to bear the expenses of transport for persons within the State or make arrangements for free transport. Furthermore, the Fundamental Right of free movement is not an absolute right and is subject to restrictions which may be imposed in the public interest; the case in point being control of the spread of the COVID-19 virus. Those restrictions are contained in the guidelines of the Ministry of Home Affairs with respect to migrant and stranded persons' travel. It is further argued that there is no violation of Article 15 as there is no discrimination of the migrant workers on the basis of place of birth. The transportation principle is simply based on who wish to return to Karnataka and who wish to go out of Karnataka. The issues of the place of birth or regional discrimination do not even germinate. The State has agreed to bear the cost of transportation of migrants coming back to Karnataka. The argument that the State is to bear the cost for migrants leaving Karnataka cannot be considered violative of Article 14, 19 and 21 or considered discriminatory in nature. Such an initiative is a gratuitous act and does not vest in any person to claim payment of transportation as a right. The Respondents contended that the prayer of free transport for all be rejected as there is no merit and has attracted several Supreme Court judgements dealing with a similar issue. The State Government has transported several lakh migrant workers to different states through buses and Shramik special trains.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- Article 14, 15, 19(1)(d),21,23 of the Constitution of India.
- Section 6, 8, 12-18 of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1976.
- Section 41 and 56 of Disaster Management Act, 2005. 16/4 order.
- Section 72, Karnataka Municipal Corporations under the Act, 1976.

- Payment of Wages Act, 1936
- Minimum Wages Act, 1948.
- Section 12(1)(a) and Section 30, Food Safety and Standards Act, 2006.

6. JUDGEMENT IN BRIEF

- **Issue 1:** The Court has directed the State Government to come up with a comprehensive plan with regard to the issue of food security. The court pursued that the State Government follow the directions provided in the case of *Swaraj Abhiyan v. Union of India* if they are able to take care of the food insecurity faced by the citizens who are not ration cardholders issued by the State of Karnataka. Further, the Court directed the Gram Panchayats to take care of the food security of citizens within its jurisdiction. The court however rejected the supply of food to the needy section through the Indira Canteen as it will lead to mass gatherings, threatening the community spread of the COVID-19 disease. The Hon'ble Court accepted the order of the Central Government dated March 29, 2020, directing State Governments to provide food and shelter to the migrant workers and restrict their movement for the time being. The Court also emphasized that if the State Government implements the order issued by the Ministry of Home Affairs of the Government of India dated March 29, 2020, in its true letter and spirit, it will resolve a number of issues which are raised before the Hon'ble Court and the State Government. The Hon'ble Court has directed the State Government to take immediate action to provide ration to the marginalized category of persons as per the order issued on March 30, 2020, and must take into consideration that such individuals may not have the financial capacity to pay for the same. In reference to the priority households covered under Section 3 of the National Food Security Act, 2013 acquire benefit under the said act and has no connection with the availability of the BPL cards. The Hon'ble Court further held that voluntary organizations cannot be prevented from distributing food to the weaker sections of the society so long as they are following the norms of social distancing and taking other precautionary measures. The Hon'ble High Court responding to the policy decision stated in the written submission of March 16, 2020, observes that it is imperative that the task of identification of those people who are in need of food must be undertaken by the State and other authorities/instrumentalities on a war footing. The State Governments duty to issue requisite orders and directions to all the local and urban authorities to take

proactive steps for the identification of migrant workers having shelter and homeless people stranded on the streets.

- **Issue 2:** The Hon'ble High Court directed the State Government to provide details of the active relief camps and shelters set up for the migrant workers to the Secretaries of the respective District Legal Services Authorities. The Secretaries will have to send volunteers to visit camps set up within their respective district and assess the facilities and infrastructure available to the migrant workers accommodating such camps. The Hon'ble High Court has no restriction on dealing with issues of migrant workers as per the Hon'ble Apex Court Order dated March 31, 2020. The court has directed the BBMP officer to communicate and get in touch with the Secretary of DLSA, Bengaluru Urban District and make a visit to the Mahadevapura Flyover and enquire about the issues of the migrant workers stranded there. On April 16, 2020, the Hon'ble Court being dissatisfied by the efforts of the BBMP to ascertain the number of migrant workers, homeless persons and stranded person are squatting on the streets and flyovers of the State, has directed the Additional Chief Secretary of the Urban Development Department, Government of Karnataka, to issue appropriate directions to BBMP. The court concluded its decision on May 28, 2020, by stating that in terms of the above-stated assurance, action will be initiated by State Government against employers/contractors concerned which would ensure that workers get their unpaid wages.
- **Issue 3:** The Hon'ble Court has directed the formulation of a rational policy of the State Government which will ensure that the rights of the migrant workers under Article 19(1)(d) read with Article 14 of the Constitution are not infringed. The Hon'ble Court, on the issue of transportation on May 8, 2020, pointed out that the Ministry of Home Affairs had laid down the guidelines for the transportation of migrant workers and the State Government has also stated that it has made arrangements for travel of migrant workers back to their home State. However, the Court was disappointed as there are several migrants stranded on highways and taking strides to walk back to their home. The Court has ordered the State Government to formulate a policy decision for transportation of migrant workers to other States, identify the people who have applied to travel by ten trains leaving between May 16 and May 20, 2020 and communicate the assurance to the migrants that they will be allowed to travel back home. The State Government in close connection with NGOs, Trade Unions, and officials of other States, must communicate

the assurance to the migrant workers. On the issue of the migrant requiring to pay for the train fare, the Court flaked the policy of the Karnataka government of collecting train fare in violation of the order issued by the Ministry of Railways on May 2, 2020 and the constitutional rights of the migrant workers. The migrant workers shall be deprived of their opportunity to travel back home on the basis of their incapacity to pay. The migrant workers are unable to pay due to the loss of their livelihood. The State Government was ordered to pay for the Shramik Special trains and establish an efficient train time schedule and communicate the same to the migrants, to ensure the travel of the migrant workers at a faster rate. Until the transportation of all the migrant workers who wish to travel to their home state, the State Government must continue the supply of ration to migrants who are not leaving the State.

Obiter Dicta: On the issue of transportation of migrant workers, the Court is of the opinion that the prevailing situation is a desperate time for such workers as they have been uprooted of their means of livelihood. Such times have made their wish to go back to their respective home States engraved in stone. The Hon'ble Court is of the opinion that if the migrant workers are assured by the State Government that they can go back to their home States, they will not be forced to take desperate measures like walking across the State borders to reach home. The Court emphasized that the State Government and Central Government must ensure assistance to the migrant workers in light of the contributions and sacrifices made by them for the development of infrastructure and progress of the economy of the State. The Court has suggested that the State Government see if contributions can be made from Trade Unions', Employers' Association and NGO's for the migrant workers unable to pay the train fare. With regard to the absence of assurance given to the migrant workers for the two Shramik Special trains, which left with a few vacant seats, the Court is of the opinion was that the State appears to be an exercise undertaken to exclude a large number of persons who had already registered themselves to go back to their respective States. The Hon'ble Court has suggested if the State Government utilizes its discretionary power under the Karnataka Land Revenue Act, 1964, and impose restrictions on the demolition of structures, removal of nay encroachment over the public property and, stall the proceedings for recovering overdue amounts.

7. COMMENTARY

“Labour is priceless, not gold.” - Mahatma Gandhi

The main dispute which can be crystallized from the present matter is the impact of the State Government’s action or inaction in protecting the rights of the migrant workers during the unprecedented times of the global pandemic caused by COVID-19. Interpreting the progressing of the present case, there are several obligations imposed on the state by the Constitution of India, Central and State laws. The order dated May 5, 2020, cancelling trains on the grounds that the migrants need not during this time has been controversial and debated in strides. Taking the situation into consideration, it cannot be denied that the problems faced by the migrant workers have been on the contrasting rise, with may not being paid wages, dying out of dehydration and starvation due to travelling home by walk, absence of transport facilities, deprivation of livelihood to state a few. They are deprived of a minimum wage which is stipulated and guaranteed under the Minimum Wages Act,1948. The political and economic factors have also played a crucial role in depriving the human right of the migrant workers in Karnataka. In addition to the issues referred to above, there have been several cases of police brutality, especially in the Urban Bengaluru District, due to movement during the lockdown announced by the Central and State Governments. The duty of the State Government of Karnataka was turned up a notch to resolve the problems faced by the migrant workers and violation of fundamental rights of such workers due to lack of facilities.

The duty of the Karnataka Government to protect the interests and rights of the migrant workers during the lockdown can be stated under the following provisions:

- i. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1976, lays down stringent safeguards and regulations for the working conditions of the interstate migrants.
 - Section 6 prohibits establishments from employing inter-state migrant workmen who have not been registered.
 - Section 8 enables contractors to employ only licenses inter-state migrant workmen.
 - Section 12 imposes an obligation on the contractor to provide the interstate migrant workmen with a passbook having an updated status of their employment.

- Section 13-15 states the wages and working conditions of migrant workers on par with other workmen, provision for displacement allowance, journey allowance.
- Section 16 mandates the contractor to provide suitable working conditions, medical facilities free of charge, and suitable residential accommodation to such interstate workmen.
- Section 18 imposes an obligation on the Principal employer to be held accountable in case of the failure of the contractor to do so.

These unprecedented times have forced the workers to take the road to travel home and State must not only hinder a person striving for his survival but also take proactive actions.

- ii. Section 72 of the Karnataka Municipal Corporations Act, 1976 places an obligation on the municipal authorities to carry out the resolutions of the corporation. Several resolutions laid down by the BBMP with regard to resolving the food and shelter issues but there has been delay and non-compliance with a few resolutions.
- iii. Section 41 of the Disaster Management Act, 2005 imposes an obligation on the local authorities, in case of disaster, shall carry out relief, rehabilitation, and reconstruction activities in the affected areas in accordance with the State Plan and the District Plan. Section 56 of the 2005 Act provides for punishment of the officer who fails to perform his duty as provided above.
- iv. Coming to the Constitution of India, Part III and Part IV impose responsibility on the State to provide the right to adequate means of livelihood, protection of their health, protection against abuse and exploitation, secure freedom, equality, and dignity and protection of youth against exploitation.

Fundamental Rights:

- Article 14 of the Constitution provides for equality before the law. A failure of the State Government to provide free transportation to interstate migrant workers is unjust and violation of Article 14. Persons include both intra-state and inter-state migrant workers and a policy decision to provide free transportation for the former and not the latter does not stand the test of the principle of equality. Even though such a policy is a matter of discretion, the statutory and Constitutional obligations have been violated by not allowing labour to travel back according to the order dated May 5. The Hon'ble Court in

the present matter has also laid down the importance of a rational policy for the protection of the fundamental rights of the workers under Article 14 and 19. The ground reality is there is a huge gap between the claims and promises made by the State Government by its order and written submissions to the Hon'ble High Court of Karnataka and the implementation of such policies. The clash between the migrant workers and the police force in Bengaluru on May 3, 2020, shows the mismatch of necessity and policy decisions of the State Government. The essence of Article 14 is to get rid of inhuman practices prevalent in the country and the unequal treatment of the two types of workers by the Government of Karnataka is threatening the foundation of democracy. In the case of *Maneka Gandhi v. Union of India*¹ it was held that an arbitrary action of the government is in violation of the Right to Equality protected by Article 14. The case further focused on the link between Article 19 and 21 of the Constitution which can be applicable in this case. Although, the imposition of lockdown was a decision in consonance with Article 19(2), the inability to provide transportation the migrant workers within a reasonable time is a violation of Article 19(1)(d) and Article 21 as they are being deprived of their human dignity, considering the pathetic state faced by such workers.

- Article 19 dwells upon the fundamental right to freedom with certain exceptions. However, it is pertinent to note that the decision of the State Government by order dated May 5, 2020, to disallow migrant workers to travel back home, for the purpose of construction and infrastructure development is in violation of Article 19(1)(d) of the Constitution of India. It is the duty of the Government to provide facilities for travel to the migrant workers as per the order of the Central Government and other constitutional obligations. The migrant workers have the autonomy to decide whether to stay or leave the State and the State Government cannot block transportation facilities because of its decision to progress with construction. Having knowledge of the plight of the migrant workers during the lockdown makes it necessary for providing free transport to ensure safeguard of Article 19(1)(d) and Article 21. Reference can be made to the case of *Rupinder Singh Sodhi v. Union of India*² where the court held that reasonable restriction imposed on Article 19(1)(d) must satisfy the test of proportionality. The restrictions must be minimal and should not exceed the constraints prevalent in a particular situation. A restriction of freedom of movement cannot be used as “engines of

¹ AIR 1978 SC 597.

² AIR 1983 SC 65.

oppression, persecution and harassment". In the case of *State of H.P & Ors. v. Umed Ram Sharma & Ors.*³, the Hon'ble Supreme Court has held that Article 19 and 21 are to protect not only the physical existence of life but also the quality of life.

- The impact on Article 21 and the right to life of the migrant workers has been the hardest social reality of the migrant workers. There has been a foil of Article 21 by a violation of the Right to Human Dignity and Right to Privacy of the migrants. In the case of *M. Nagaraj v. Union of India*,⁴ the Hon'ble Supreme Court laid down human dignity is inseparable and intrinsic to human existence. The dignity of a person is inalienable and can neither be given nor taken away from a person. The case of *Justice K.S Puttaswamy & Ors. v. Union of India*⁵ lays down the essence of dignity and liberty infused into the very existence of a person. The right to privacy was recognized and its jurisprudence interpreted to express the recognition of such a right for every person. It also laid down that the reflection of the concept of dignity is laid down in Article 14, Article 19, and Article 21. The Hon'ble Supreme Court stressed on the importance of life and the means of attaining a worthy life. Considering the situation of the migrant workers in the State of Karnataka, it can be deduced that they too are entitled to human dignity and privacy and the stance and actions of the Government of Karnataka are in clear violation of the poor and needy migrant workers. At para 373, the Hon'ble Court, in explaining the scope of privacy, the Court held as follows:

"373. Concerns of privacy arise when the State seeks to intrude into the body of subjects.... Similarly, the freedom to choose either to work or not and the freedom to choose the nature of the work are areas of the private decision-making process. The right to travel freely within the country or go abroad is an area falling within the right of privacy. The text of our Constitution recognised the freedom to travel throughout the country under Article 19(1)(d). This Court has already recognised that such a right takes within its sweep the right to travel abroad. A person's freedom to choose the place of his residence once again is a part of his right to privacy..."

- Article 23 of the Constitution prohibits forced labour and such a right can be attracted in the present matter. Article 21 and Article 23 have a link as a person has the freedom of

³ AIR 1986 SC 847

⁴ (2006) 8 SCC 212

⁵ (2017) 10 SCC 1

choosing the work he does and as such aims at prohibiting human trafficking and other forms of forced labour as they are contrary to basic values and violate the dignity of an individual. The importance of these two articles is that it considers human dignity pristine and recognizes its importance at any time or situation. The decision of the Karnataka Government in prohibiting the migrant workers to return back to their home states during the time of crisis, for want of supply of a workers for real-estate development, depicts the treatment as forced labour on such persons. Although the Government has to power to suspend fundamental rights at the time of a public health emergency, such powers cannot be used without criticism and oversight as that would defeat the purpose of such rights and place inevitable power in the hands of the State. In the case of *Peoples' Union for Democratic Rights v. Union of India & Ors.*⁶, The Hon'ble Supreme Court defines what force would constitute 'forced labour' and prohibits such labour. The Court expanded the meaning of 'physical force' to include:

- a) Force by another person compelling a person to provide labour or service
- b) Force exerted to a person by a legal provision
- c) Force arising out of poverty and hunger.

In paragraph 20, the Hon'ble Court while understanding the meaning of 'force' held that:

".....Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour...'"

⁶ AIR 1982 SC 1473.

Directive Principles of State Policy

- Article 38(1) provides that the State should "strive to promote the welfare of the people" and "social order in which justice, social, economic and political", shall inform all the institutions of national life.
- In article 38(2) obliges the State that it should "minimize the inequalities in income" and based on all other statuses.
- Article 39(d) proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy.
- Article 41 creates a "right to work", which is put into practice by the National Rural Employment Guarantee Act, 2005.
- Article 42 requires the state to "make provision for securing just and human conditions of work and for maternity relief".
- Article 43 provides that workers should have the right to a living wage and "conditions of work ensuring a decent standard of life", creating a constitutional right requiring the State to legislate so as to secure the participation of workers in the management of undertakings.

Such provisions and decisions incline towards the dire need for protection of the migrant workers in Karnataka and violation of several fundamental rights of such people by the policy decisions and orders of the State Government.

8. IMPORTANT CASES REFERRED

- *Alakh Alok Srivastava v. Union of India* (AIR 2018 SC 2440).
- *Bar Council of India v. Union of India*, (2012) 8 SCC 243).
- *B.P. Singhal v. Union of India* (2010) 6 SCC 331).
- *Jagdeep S. Chhokar v. Union of India*. (MANU/SCOR/24809/2020).
- *Justice K.S Puttaswamy & Ors. v. Union of India* ((2006) 8 SCC 212).
- *Maneka Gandhi v. Union of India* (AIR 1978 SC 597).
- *Peoples' Union for Democratic Rights v. Union of India & Ors.* (AIR 1982 SC 1473).
- *Rupinder Singh Sodhi v. Union of India* (AIR 1983 SC 65)
- *State of Himachal Pradesh & Ors. v. Umed Ram Sharma &Ors.* (AIR 1986 SC 847).
- *State of Rajasthan v. Sanyam Lodha*, ((2011) 13 SCC 262).

CASE NO. 5

IN RE: CONTAGION OF COVID-19 VIRUS IN PRISONS

(SUO MOTO WRIT PETITION (CIVIL) NO. 1/2020)

CONDITION OF PRISONERS DURING COVID-19.

ABSTRACT

The whole world had been shattering from past few months due to the outbreak of the pandemic called Novel Corona Virus or Covid-19. This had made the tremendous changes in the life of common man. This outbreak makes everyone to sit in the homes, because social distance is the only way to prevent the people from the attack of Novel Corona Virus. In the mean while many quarantine and isolation centres had been constructed to treat the people. This was the situation in the outside world. But in the inside world, the life of prisoners had become harder than the earlier. Since most of the prisons are over-populated, it became the huge issue all over the world. In India, the courts took the suo moto cases and tried to resolve the issue. The main task of judiciary with respect to dealing the prisoners is their right and their safety. The government needs to take the steps to save the prisoners from transmission of Covid-19 without violating their rights. This analysis describe the rights of the prisoners and the steps that needs to be taken by the government in order to prevent the contagion of Covid-19 virus in the prisons.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|--|
| Case No | : | Suo Moto Writ Petition (Civil) No. 1/2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Filed on | : | March 16, 2020 |
| Case Decided on | : | March 23, 2020 |
| Judges | : | Justice S. A. Bobde, CJ, Justice. L. Nageswara Rao |
| Legal Provisions Involved | : | Article-14, 21, 22 of Constitution of India, 1950 Section-4, 13, 37(1), 39 of Prisons Act, 1894 |
| Case Summary Prepared by | : | Kotta Naga Anjaneya Chaitanya Student of School of Law, Christ University, Bangalore |

2. BRIEF FACTS OF THE CASE

During past few months the, the world has witnessed the respiratory disease called Novel Corona Virus (Covid-19), which the outbreak was first identified in Wuhan, Hubei, China in December 2019. Medical experts have noted that there are four stages of the contagion of the Covid-19 virus, in which the final stage is epidemic level. The Government of India and the respective State Government have also issued several advisories to the citizens, regarding the prevention of the further spread of the Covid-19 virus. One of the suggestions made by the Government of India is to maintain social distancing, which is considered to be the most effective way of stopping the contagion of Covid-19 virus. The bitter truth is that our prisons are overcrowded, making it difficult for the prisoners to maintain social distancing.

There are 1339 prisons in this country, and approximately 4,66,084 inmates inhabit such prisons. According to the National Crime Records Bureau, the occupancy rate of Indian prisons is at 117.6%, and in states such as Uttar Pradesh and Sikkim, the occupancy rate is as high as 176.5% and 157.3% respectively. Like most other viral diseases, the susceptibility of Covid-19 is greater in over-crowded places, mass gatherings, etc. Studies indicate that contagious viruses such as Covid-19 virus proliferate in closed spaces such as prisons. Studies also establish that prison inmates are highly prone to contagious viruses. The rate of ingress and egress in prisons is very high, especially since persons (accused, convicts, detenues etc.) are brought to the prisons on a daily basis. Apart from them, several correctional officers and other prison staff enter the prisons regularly, and so do visitors (kith and kin of prisoners) and lawyers. Therefore, there is a high risk of transmission of Covid-19 virus to the prison inmates. The Supreme Court is in the opinion that there is an imminent need to take steps on an urgent basis to prevent the contagion of Covid-19 virus in the prisons.

3. ISSUES INVOLVED IN THE CASE

- I. What are immediate steps, which should be taken to prevent the contagion of Covid-19 virus in the prisons?

4. LEGAL ASPECTS INVOLVED IN THE CASE

Article-14 Indian Constitution states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Article 21 of the Indian Constitution states that "No person shall be deprived of his life or personal liberty except according to procedure established by law". Article 22 states protection against arrest and detention in certain cases. Section 4 of Prisons Act, 1894 states that it is the duty of state and union territories, to provide the accommodation for the prisoners. Section 13 Prisons Act, 1894 states that the Medical Officer shall have charge of the sanitary administration of the prison. Section-37(1) Prisons Act, 1894 states that The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer and Section 39 Prisons Act,1894 states that In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

5. JUDGEMENT IN BRIEF

The Supreme Court directed the Chief Secretaries/Administrators, Home Secretaries, Directors General of all the Prisons and Department of Social Welfare of all the States and the Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona Virus (Covid-19) in the country, and further to suggest immediate measures which should be adopted for the medical assistance to the prisoners in all jails and the juveniles lodged in the Remand Homes and for protection of their health and welfare. And appointed Mr. Dushyant Dave, learned Senior Counsel as the Amicus Curiae.

The Respondents shall submit a reply in writing before March 20, 2020. The reply shall contain the particulars of the steps being taken and the relevant data necessary for implementing the measures to prevent the possible spread of the Corona virus among the prisoners/juveniles. The Respondents shall further ensure that, a responsible officer of their choice duly authorised to take decision in the matter shall be made available to this Court on the next date of hearing i.e. March 23, 2020.

The Respondents may first submit their respective written reply and shall appear in Court as and when called upon to do so. They shall submit their respective responses to the Supreme

Court, learned Attorney General for India, learned Solicitor General of India, and the learned Amicus Curiae.

6. COMMENTARY

A. Some of the Legal Provisions for the welfare of Prisoners:

1. **The Basic Principles for the Treatment of Prisoners**, which was adopted by the General Assembly Resolution, 1990 clearly states that, "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings, and Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation".
2. **Article 3 of Universal Declaration of Human Rights** provides that everyone has the right to life, liberty and security of person.
3. As per the **Model Prison Manual, 2016**, Rule-7.84 states that every case, or suspected case, of infectious diseases shall immediately be segregated and the strictest isolation shall be maintained until the Chief Medical Officer considers it safe to discontinue the precautions. The Medical Officer shall give written instructions as to the clearing, disinfecting or destroying of any infected clothing. And also Rule-2.16.2 (h) states that there shall be Isolation rooms for accommodating patients with infectious and contagious diseases, in the prison hospitals.

B. Role of Judiciary:

1. In the case of *D. Bhuvan Mohan Patnaik and Ors. v. State of Andhra Pradesh*, The court held that Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess, and even a convict is entitled, to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.
2. In the case of *Sunil Batra v. Delhi Administration and Ors.*, the court held that Visits to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity.

3. In the case of *Nilabati Behara v. State of Orissa*, the court held that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions.
4. In *Ram Murthy v. State of Karnataka*, the court found nine major issues in prison, which need an immediate attention. Those are: over-crowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, Streamlining of Jail Visits and finally management of Open-air prisons.
5. In the Case of *D. K. Basu v. State of West Bengal*, the court held that fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity for prisoner as well.
6. In the case of *Jogindar Kumar v. State of U.P*, the court opined that the horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests.
7. In *A. K. Gopalan's* case, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in *Maneka Gandhi case* and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution.

8. In the case of *Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Ors.*, the court held that Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of the Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.
9. In the case of *Charles Sobraj v. Supdt. Central Jail, Tihar, New Delhi*, the court held that imprisonment does not spell farewell to fundamental rights.

C. Legal Rights of Prisoners:

1. The prisoners have the right to family visits.

In the case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & others*, the question arose was, whether the appellant has right to interviewed with family and friends. The court held that he right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. And also stated that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. And therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just.

2. Right to Speedy Trial:

In the case of *Hussainara Khatoon and other v. Home Secretary, State of Bihar*, court held that the State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources, to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. It is also the constitutional obligation of this Court, as the

guardian of the fundamental rights of the people, an sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment' of additional Judges and other measures calculated to ensure speedy trial.

3. Right to Legal Aid:

Article-39A of Indian Constitution states that, The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

In the case of *Madhav Hayawandan Rao Hoskot v. State of Maharashtra* the court held that If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Article 142, read with Articles 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice.

4. Right Against Solitary Confinement:

In the case of *Sunil Batra v. Delhi Administration and Ors.* petitioners were served with an order of detention. The question arises was whether, solitary confinement imposed on Batra was valid or not? In this case the court held that Article 21 forbidden deprivation of personal liberty except in accordance with procedure established by law and curtailment of personal liberty to such an extent as to be a negation of it would constitute deprivation. However, Sub-section (2) of Section 30 permitted solitary confinement, when a prisoner under sentence of death. The Classification according to sentence for security purposes was valid. Therefore, Section 30(2) did not violate Article 14 and requirements of Section 30(2) did not appear to be unreasonable.

The *Ratio Decidendi* of this case was a convict is entitled to precious right guaranteed by Article 21.

Similarly in the case of *Mukesh Kumar v. Union of India*, (which is popularly known as Nirbhaya Rape case), the petitioners after rejection of Mercy petition, he filed a case for the reviewing the rejection, in which he mention that from past one and half year he has been in solitary confinement which is in violation of principles laid down in the Sunil Batra Case. As a response to the same, the Director General of prison in his affidavit stated that, for security reasons, the Petitioner was kept in one ward having multiple single rooms and barracks and the said single room had iron bars open to air and the same cannot be equated with solitary confinement/single cell. It was stated that the prisoner/Petitioner who was kept in the single room comes out and mixes up with the other inmates in the prison on daily basis like other prisoners as per rules. Considering the averments in the affidavit filed by the Director General, Prisons, the contention of the Petitioner that he had been kept in solitary confinement in violation of the principles of Sunil Batra case could not be countenanced. This could not therefore be a ground for review of the order rejecting the Petitioner's mercy petition.

The *Ratio Decidendi* of the case was 'Quick consideration of the mercy petition and swift rejection of the same cannot be a ground for judicial review of the order passed under Article 72/161 of the Constitution.

D. Condition of prisoners rights during Covid-19

During this pandemic situation most of the prisoners' rights has been suspended to curb the transmission of the virus. Most of the important rights like right to meet the family members and to give the interview, right to speedy trial have been suspended. But if one considers the current pandemic situation, meeting the family members, who are coming from outside to Prison can lead to transmission of Covid-19 virus into the prison. Due to which many state governments came up with rules, which prohibits the family members to visit the prisons.

And also many states came up with their own rules and regulation to curb the transmission of the Novel Corona Virus. For example the Director General of Prisons, Kerala has set up isolation cells within prisons across Kerala. Those suffering with Covid-19 symptoms such as cold and fever are being moved to these isolation cells. All the new inmates who will be admitted to the prisons in Kerala will be isolated in the isolation cells in the admissions block for six days before permitting their entry into the regular prison cells. Similarly, an isolation ward has been set up in the Tihar Jail, Delhi and all the 17,500 inmates of the said Jail were

checked for Covid-19, and it was found that none displayed any symptoms relating to Covid-19. The authorities of the Tihar Jail have also decided that new inmates will be screened and put in different wards for three days.

But still in many of the Jails the Novel Corona Virus is spreading rapidly. For instance in Odisha, the Berhampur Circle jail was reported with 43 positive cases inside the jail. Due to which other prisoners went on hunger strike demanding to transfer the positive tested prisoners to other jails. By considering the fact that, Indian Jails were over-populated, it became the duty to the states, union territories and concerned authorities to take required action.

Moreover the rights like speedy trial became one of the issue for the prisoners during this pandemic situation, because the courts are working virtually, which is so difficult for the prisoner to get the speedy justice. And also the courts are working on the basis important matter. This may affect the mental health of the prisoners.

The United Nations Office on Drugs and Crime had come up with two rules during this pandemic based on Nelson Mandela rules as the prison reforms. Those are:

- “The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge, without discrimination on the grounds of their legal status.”
- “In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions.” This is with respect to alternative of imprisonment.

As a result to the pandemic most of the countries had decided to release the prisoners in order to reduce the strength of prisons. Recently the Afghanistan government decided to release nearly 10,000 prisoners, which included the aged prisoner, prisoners suffering from critical illnesses to reduce the population of prisoners. Similarly the Sri Lanka government released 2961 prisoners as a part of providing legal redress. Myanmar announced the release of 24,896 prisoners on the basis of the Presidential Amnesty.

7. IMPORTANT CASES REFERRED

- *K. Gopalan v. Government of India*, AIR 1966 SC 816
- *Charles Sobraj v. Supdt. Central Jail, Tihar, New Delhi*, AIR 1978 SC 1514
- *D.Bhuvan Mohan Patnaik and Ors. v. State of Andhra Pradesh*, AIR 1974 SC 2092
- *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610
- *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & others*, AIR 1981 SC 746
- *Hussainara Khatoon and other v. Home Secretary, State of Bihar*, AIR 1979 SC 1369
- *Jogindar Kumar v. State of U. P.*, 1994 SCC (4) 260
- *Madhav Hayawandan Rao Hoskot v. State of Maharashtra*, AIR 1979 SC 1360
- *Maneka Gandhi v. Union of India and Ors.* AIR 1978 SC 597
- *Mukesh Kumar v. Union of India*, AIR 2020 SC 694
- *Nilabati Behara v. State of Orissa*, AIR 1993 SC 1960
- *Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Ors.* AIR 1996 SC 2426
- *Ram Murthy v. State of Karnataka*, AIR 1997 SC 1360
- *Sunil Batra v. Delhi Administration and Ors.* AIR 1980 SC 1579

CASE NO. 6
COURT ON ITS OWN MOTION
V.
UTs of J&K AND LADAKH
(WRIT PETITION (C) PIL NO. (UNNUMBERED) OF 2020)
RISING DOMESTIC VIOLENCE AMID LOCKDOWN-
MEASURES AND DIRECTIONS.

ABSTRACT

Covid-19 has been one of the most challenging times that any of us had to endure during our lifetimes. While there have been a variety of challenges regarding a vaccine and preventing further infections, another saddening aspect of this pandemic has emerged which is being experienced by women at large, who have to deal with instances of rape, molestations and domestic violence owing to lockdowns. With the sorry state of affairs being highlighted by various organizations and studies, Jammu and Kashmir had a really bad cluster of rape and molestation cases along with eve-teasing which was reported leading to the J&K High Court deciding to take *Suo Moto* cognizance of the same and passing an order to ensure that certain necessary steps are taken for the prevention of the same by the government by ensuring ease of access to resources among other things along with it requiring the concerned authorities to submit a report regarding what was done to further the same at a later date.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|---|
| Case No | : | Writ Petition (C) PIL No. (unnumbered) of 2020 |
| Jurisdiction | : | High Court of Jammu and Kashmir |
| Case Filed on | : | April 2020 |
| Case Decided on | : | N/A |
| Judges | : | Justice Gita Mittal, CJ, Justice Rajnesh Oswal |
| Legal Provisions involved | : | Protection of Women from Domestic Violence Act, 2005 |
| Case Summary Prepared by | : | Ayanava Bhattachary Student of School of Law, Christ University, Bangalore |

2. BRIEF FACTS OF THE CASE

- With it being *suo moto* cognizance cases the parties involved were the HC and respondents being the Secretaries of the UT of J&K and Ladakh along with the Social Welfare Department.
- Taking into account the global trend wherein the various countries have all faced the same issue of women being victims of violence due to imposition of lockdown and losing access to relief facilities and friends the court wanted to ensure that the same can be prevented by the concerned authorities to ensure lesser no of crimes against women are committed during this period.
- In the order dated 16.04.2020 the court took into account the instances of the same issue worldwide as well as what has been advised by the UNO. Also in the order, the court has laid down a list of 8 measures that it wants the government to take and further demanded a report regarding what was done and what measures are already in place for the same from the concerned authorities.

3. ISSUES INVOLVED IN THE CASE

The Court identified the problem of domestic violence and crimes against women arising out of the various factors that come into play that lead to these issues and they are as follows:

- I. The inability of women and children from the economically weaker sections of Indian society to accessing on-line platforms for assistance. Any measure for assistance to victims of domestic violence must provide for women and children from this group.
- II. Shelters and help lines for women must be considered an essential service for every state with specific funding and broad efforts made to increase awareness about their availability.
- III. The fact that the victim has to go against intimate domestic partners or her family members.
- IV. The lack of enforcement, as well as an alternative source of residence, also impedes women filing complaints with officials or the police.
- V. Even at the best of the time, women and girls face tremendous barriers in accessing means to meet for help and securing justice. Illiteracy, financial incapacity; ignorance of available assistance; family and societal barriers; fear of formal institutions like

police; insufficient legal aid; lack of information, etc impede women and girls from accessing resources.

4. ARGUMENTS OF THE PARTIES

With this being a *suo moto* cognizance case and it is an order rather than a case per-se there weren't any arguments raised. Though the reason that the court felt the need to take up this matter can be understood by the UNO guidelines regarding the same

- to dedicate funding in Covid-19 response plans for domestic violence shelters;
- ensure increased support to call-in lines, including text services so reports of abuse can take place discreetly;
- provide online legal support and psychosocial services for women and girls; which Services in many cases are run by civil society organizations, which now also need financial support;
- Shelters should be designated as essential services and kept open, which may mean providing childcare to the staff so they can work;
- Ensure that these services are accessible, so they should be integrated into other essential service spaces, like grocery stores and pharmacies

5. LEGAL ASPECTS INVOLVED IN THE CASE

The main law that's been the basis for this order is the Protection of Women from Domestic Violence Act, 2005 which primarily intends to prevent domestic violence on women in all forms from her intimate partner and other family members. 'Domestic Violence' not only includes actual abuse but also the threat of abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives are also covered within the meaning of domestic violence.

- **Physical Abuse** - Bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force
- **Sexual Abuse** – Conduct that abuses, humiliates, degrades or otherwise violates the dignity of woman.
- **Verbal and Emotional Abuse** - Insults, ridicule, humiliation and repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

- **Economic abuse** - Deprivation of all or any economic or financial resources to or prohibition or restriction to continued access to resources or facilities to aggrieved person or her children or disposal of her *stridhan* or any other property jointly or separately held by the aggrieved person. (Section 3)

A duty is cast upon the government under Section 11(a) of the enactment to take all measures to give wide publicity to the provisions of the law through public media including the electronic and the print media. With this being the basis the court also based its order a variety of instances from other countries where measures were taken to further the same objectives or advise was given to try to protect the basic rights of a person and special needs of women in abusive households in challenging times like this

6. JUDGEMENT IN BRIEF

- The rationale behind the judgment the fact that all crisis disproportionately impacts women. Thus internationally it has been observed that while the pandemic is having a tremendous negative impact on societies and economies, the adverse social and economic consequences of the pandemic for women and girls are devastating. With nearly 60% of women around the world working in the informal economy, earning less, saving less are at greater risk of falling into poverty because of the Covid-19 pandemic. As markets fall and businesses close, millions of women's jobs have disappeared. At the same time as the women are losing paid employment, women's unpaid care work has enhanced exponentially, as a result of school closures and the increased needs of elder people. These currents have been observed to combine as never before to defeat women's rights and deny women's opportunities. As the lockdown is implemented, societies as a whole are having reduced access to resources. There is an increase in stress due to loss of jobs and strained finances. Lack of income, unemployment, insecurity about the future or the fate of children creates tensions amongst the adults leading to abuse of all kinds. This is exaggerated in families with prior histories of such behaviour. Women and children are found to be especially vulnerable to such domestic violence which has seen a worldwide spike this has made this order a much need one and thus in the furtherance of justice, equity and good conscience this order was passed.

- With the Obiter Dicta being that the court took judicial notice of the fact that the plight of victims of domestic violence in the Union Territories of Jammu and Kashmir as well as Ladakh must be no different as that of similarly placed victims in other jurisdictions. There should be no hesitation in holding that to ensure adequate means and tools to address domestic violence to victims in these two Union Territories, women's leadership and adequate contributions must also be at the heart of the COVID-19 planning and implementation measures in light of the huge number of calls being received by the authorities of the valley which are majorly about domestic violence.

7. COMMENTARY

India has long been a country which has had its share of hardship with dealing with the evolving times and the uphill journey of dismantling a patriarchal setting of its society. But what had been a huge issue to the image of the country has been the alarmingly increasing cases of crimes against women, such as rape, molestations, eve-teasing, bride burning, dowry deaths, honor killings and so many others, with the 2012 Nirbhaya Rape case attracting huge domestic and international outcry and even having Delhi labeled as the rape capital of the world. Post this incident numerous cases of rape and other heinous crimes have been highlighted with many studies saying that India was one of the worst countries to be born as a woman in, this even took a toll on our tourism industry, with that being said the times of Covid-19 has forced people to stay at home for a long duration of times which has in many cases led to the increase in disputes among co-habitants or in the case where the husband is abusive has led to an astronomical increase in the number of cases of domestic violence. With factors such as lack of financial independence, inability to access resources of relief this has caused the cycle of abuse to continue. Taking note of the difficulties of women, the Secretary-General of the UN has called for all governments to make the prevention and redress of violence against women a key part of their national response plans for COVID-19. The court further said that The position as obtains in India on the issue of domestic violence is similar as is being experienced in countries all over the world including Argentina, Canada, France, Germany, United Kingdom and the United States of America where there are increasing reports of domestic violence during the crisis and heightened demands for emergency services. Studies have shown that innovative actions are being taken that should be examined and replicated.

Some examples are listed below as mentioned in the order-

- In Argentina, for example, pharmacies have been declared safe spaces for victims of abuse to report;
- In France, reports of domestic violence have risen by about 30% since the government announced a national lockdown. Grocery stores are housing pop-up-counselling services. Victims are being asked to access pharmacies and inform pharmacists about the abuse directly or using a code word: mask 19 if they are accompanied by their abuser. France's government also recently announced that it had reserved 20,000 hotel rooms for victims of domestic violence.
- In Spain, where lockdown rules are extremely strict, and many people are being fined for breaking them, the government has told women they will not be fined if they leave home to report abuse.
- Canada and Australia have integrated funding for violence against women as part of their national plans to counter the damaging fallout from Covid-19. Prime Minister Justin Trudeau of Canada has set aside tens of millions of dollars to support women's NGOs, shelters and sexual assault centres across Canada.
- In China, the hashtag #AntiDomesticViolence During Epidemic has taken off as part of advocacy with links to online resources- helping to break the silence and expose violence as a risk during the lockdown.
- In Antigua and Barbuda, online and mobile service providers are taking steps to deliver support such as free calls to helplines.
- In Columbia, the government has guaranteed continued access to virtual gender-based violence services, including legal advice, psychosocial advice, police and justice services, including hearings
- In the UK, Mandu Reid, leader of the Women's Equality Party, has called for special police powers to evict perpetrators from homes for the duration of the lockdown, and for authorities to waive court fees for the protection orders.
- A prosecutor in Trento, Italy, has ruled that in the situation of domestic violence the abuser must leave the family home and not the victim, a decision hailed as "fundamental" by the trade union CGIL.
- Within India, the police in Uttar Pradesh has launched a new domestic violence helpline as cases surge.

- In Greece, officials said they were stepping up a campaign to help women deal with problems emerging from the issue of confinement.
- The Government in Wales has declared its Live Fear Free helpline will remain open 24/7 and reminded people that if someone is in immediate danger, they should contact '999'. All lead domestic abuse service providers and charities in Wales are ensuring that support

Taking inspiration from the above and keeping in mind the UNO guidelines as well the following measures were advised by the court keeping in mind the various steps and initiatives by other countries along with the suggestions of the UNO:

- Creation of dedicated funding to address issues of violence against women and girls as part of the COVID-19 response by the Union Territories of the Jammu and Kashmir and Ladakh;
- Increased availability of call-in services to facilitate discreet reporting of abuse;
- Increased tele/online legal and counseling service for women and girls;
- Designated informal safe spaces for women say grocery stores and pharmacies, where they can report domestic violence/abuse without alerting the perpetrators.
- Immediate designation of safe spaces (say for instance empty hotels/education institutions etc) as shelters for women who are compelled to leave their domestic situation. These shelters must be treated as accessible shelters.
- Giving urgent publicity to information regarding all of the above measures as also the availability of the facilities for seeking relief and redressal against the issues of domestic violence.

Thus seeing the nature of the order and the timing that this comes it can be considered a very proactive step by the high court and a much-needed one at this point with the Kashmir Valley facing its challenges and this pandemic just being an added burden one can only hope that the above is well implemented the due relief reaches the aggrieved parties.

8. IMPORTANT CASES REFERRED

- *Vikas Bhutani v. State & Anr. Crl. Rev. P. 579/2017 & Crl.M.A.12671/2017*

- *Vijayanand Dattaram Naik and 4 Ors v. Vishranti Vijayanand Naik and Anr CRIR/60/2018*
- *Ajay Kumar v. Lata @ Sharuti & Ors. Criminal Appeal No(S). 617 of 2019/ (SLP(Crl.) No(s). 652 of 2019)*

CASE NO. 7

SUO MOTO WRIT PETITION

(WRIT PETITION NO. 7492/2020)

RIGHT TO DECENT BURIAL IS FUNDAMENTAL RIGHT.

ABSTRACT

The Madras High Court in a landmark judgement dated April 20, 2020 affirmed that the right to a decent burial comes within the ambit of Article 21 of the Constitution of India. A division Bench of the Madras High Court comprising of Justices M. Sathyanarayanan and M. Nirmal Kumar took up a *suo moto* public interest litigation petition, with the permission of Chief Justice Amreshwar Pratap Sahi. The Court took *suo moto* cognizance of a media report by a Tamil visual media channel named “Puthiya Thalamurai” that elucidated in detail how Dr. Simon Hercules a doctor from Chennai who succumbed to Covid-19 was denied the right to having a burial by some members of the public over the fear of the spread of Covid-19. Referring to *Francis Coralin Muller v. Union of India* and *Kharak Singh v. State of Uttar Pradesh*, the Court opined that a multitude of judgements hold that constitutional protection of life and personal liberty under Article 21 extends to any deprivation on the limbs and faculties by which life is enjoyed.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|--|
| Case No | : | Writ Petition No 7492/2020 |
| Jurisdiction | : | Madras High Court |
| Case Filed on | : | April 20, 2020 |
| Case Decided on | : | April 20, 2020 |
| Judges | : | Justice M Satyanarayan, Justice M Nirmal Kumar |
| Legal Provisions Involved | : | Article 21, 226 of Constitution of India, 1950 |
| Case Summary Prepared by | : | Kaushik Chandrasekaran Student of School of Law, Christ University, Bangalore |

2. BRIEF FACTS OF THE CASE

Dr. Simon Hercules was a 55 year old neurosurgeon and a citizen of the State of Tamil Nadu. He also headed a reputed private hospital on Poonamallee High Road, Chennai. He was tested positive for the Covid-19 virus and succumbed to the deadly virus on April 19, 2020. Approximately 200 local residents opposed burial of the surgeon's body by the Chennai Corporation at the Christian Kilpauk cemetery. Consequently, the Chennai Corporation took the body to a burial ground at Velangadu in New Avadi Road where again a mob again attempted to prevent the burial. Additional Commissioner of Police (South) Prem Anand Sinha in a media statement dated April 19, 2020 asserted that some locals threw stones, damaging the ambulance and even injuring public servants. This act led to huge public uproar with many news channels reporting the same. On April 20, 2020 a division Bench of the Madras High Court comprising of Justices M. Sathyanarayanan and M. Nirmal Kumar took up a *suo motu* public interest litigation petition, with the permission of Chief Justice Amreshwar Pratap Sahi.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the right to decent burial comes under the ambit of Article 21 of the Constitution?

4. LEGAL ASPECTS INVOLVED IN THE CASE

Article 21 – No person shall be deprived of his life or personal liberty except according to procedure established by law

The Supreme in a multitude of decisions has expanded the ambit of Article 21, including within it a multitude of rights. The Supreme Court held in *Hussainara Khatoon v. Home Secretary State of Bihar (1980) 1 SCC 81* that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach Supreme Court under Article 32 for the purpose of enforcing such right and the Supreme Court in discharge of its constitutional obligation has the power to give necessary directions to the State. In *M. H Hoskot v. State of Maharashtra AIR 1978 SC 1548* the Supreme Court has invoked Article 39A and held that state under Article 21 should provide free legal aid to a prisoner who is

indigent and or otherwise disabled from securing legal assistance where the ends of justice call for such service. The Supreme Court has shown its great concern in cases of maltreatment of prisoners. As far as mode of punishment is concerned in *Prem Shankar v. Delhi Administration AIR 1980 SC 1535* the Supreme Court held that handcuffing is a prima facie is inhuman in nature therefore it must be the last refuge as there are other ways for ensuring security. Similarly, in *D K Basu v State of West Bengal AIR 1997 SC 610* the Supreme Court held that any form of torture or cruel inhuman or degrading treatment during the investigation, interrogation or otherwise is violative of Article 21 of the Constitution. In *Sheela Barse v. State of Maharashtra (AIR 1983 SC 378)* the Supreme Court has given directions to prison authorities to ensure rights of women against torture and maltreatment in police lockup. The Supreme Court in *Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 5* held that the concept of “right to life and personal liberty” guaranteed under Article 21 of the Constitution includes the “right to live with dignity” which in turn includes right to livelihood. Right to education is considered as third eye of man without which no one can lead good, decent and dignified life. Earlier right to education was a part of directive principles of state policy. However as per the changing needs of society Supreme Court in *Mohini Jain v. State of Karnataka AIR 1992 SC 1858 and Unni Krishnan v. State of Andhra Pradesh AIR 1993 SC 2178* rule that right to education is fundamental right because it directly flows from right to life.

Article 226 – Power of High Court to issue writs

5. JUDGEMENT IN BRIEF

The Madras High Court referred to a April 19, 2020 news report by “Puthiya Thalamurai” a Tamil visual media channel that elucidated in detail how Dr. Simon Hercules was denied the right to having a burial by some members of the public over the fear of the spread of Covid-19, twice firstly at the Christian Kilpauk cemetery and secondly at the Velangadu burial ground in New Avadi Road. The Bench also noted that public personnel suffered injuries. The Court referred to the Covid-19 guidelines issued by the Union Ministry for Health & Family Welfare that emphasised on the need for the public to follow the Covid-19 guidelines due to the increasing social stigma against Covid-19 positive cases of frontline personnel. It also referred to a notification dated March 16, 2020 by Union Ministry for Health & Family Welfare that set the procedure to be followed regarding the management of dead bodies. The

Bench opined that since these guidelines are published by a competent authority and are available in the public domain, the public is mandated to respect the same and act within the confines of law. Referring to *Francis Coraline Muller v. Union of India (1981) 1 SCC 608* in which the Supreme Court of India held that the right of life enshrined under Article 21 of the Constitution is a life with dignity and *Kharak Singh v. State of UP (AIR 1963 SC 1295)* that further elucidated that the constitutional protection of life and personal liberty under Article 21 extends to any deprivation on the limbs and faculties by which life is enjoyed, thus the Court noted that the right to a decent burial comes under the ambit of Article 21. The Court found that in the present case, Dr. Simon Hercules was denied of dignified and safe burial. In this regard it noted

“In the considered opinion of the Court the scope and ambit of Article 21 includes, right to have a decent burial. It prima facie appears that as a consequence of above said alleged acts, a person who practiced a noble profession as a doctor and breathed his last, has been deprived of his right, to have a burial, in a cemetery earmarked for that purpose and that apart, on account of law and order and public order problem created, the officials who have performed their duties, appeared have sustained grievous injuries.”

The Court also referred to Sections 129-132 of the CrPC to reiterate the power of police to deal with public that act contrary to law and hoped that further incidents will not occur in the future.

6. COMMENTARY

The then Chief Justice Dipak Misra in his judgement in *Common Cause v. Union of India* albeit in different context observed:

“In a certain context, it can be said, life sans dignity is an unacceptable defeat and life that meets death with dignity is a value to be aspired for and a moment for celebration”.

Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The ‘procedure’ mentioned in Article 21 has been read into the ‘due’ procedure by the Supreme Court in *Maneka Gandhi v. Union of India AIR 1978 SC 597* which means that procedure must be

fair, just and reasonable. Over the period of time, the Supreme Court has interpreted Article 21 to include various rights within its fold. The Supreme Court in *Kharak Singh v. State of Uttar Pradesh* AIR 1963 SC 1295

held -

“Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.”

It has framed the “*right to life*” as more than mere existence and as a right that includes living with dignity. In *P. Rathinam v. Union of India* (AIR 1994 SC 1844) the Supreme Court held that the word ‘life’ in Article 21 means right to live with human dignity and the same does not merely connote continued drudgery. The Article takes within its fold “*some of the finer graces of human civilization, which makes life worth living*”, and that the expanded concept of life would mean the “*tradition, culture and heritage*” of the person concerned. Right to dignity is not only available to a living man but also to his body after his death was articulated by the Supreme Court in *Parmanand Katara (Pt.) v. Union of India* (1995) 3 SCC 248. This was a petition that challenged the method of execution of the death sentence by hanging under the Punjab Jail Manual as inhuman and violative of Article 21 of the Constitution. The petitioner pointed out the Jail Manual which required the body of a condemned convict to remain suspended for a period of half an hour after hanging as violative of right to dignity. Although the Supreme Court rejected the challenge to the method of execution by hanging, it accepted the contention of the petitioner suspending the body for a period of half an hour after death as a violation of its right to dignity. The Supreme Court held:

“We agree with the petitioner that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death”. We make it clear and hold that the jail authorities in the country shall not keep the body of any condemned prisoner suspended after the medical officer has declared the person to be dead. The limitation of half an hour mentioned in para 873 is directory and is only a guideline”.

Further, in *Ashray Adhikar Abhiyan v. Union of India* (AIR 2002 SC 554), the court accepted the various steps taken by the Police and the local body for providing a decent burial to a homeless dead person, according to the religious faith to which he belonged. The petition was disposed of on the basis of sworn affidavits by the Deputy Municipal Health Officer of the Municipal Corporation of Delhi and the Deputy Commissioner of Police (Headquarters), Delhi. In *S. Sethu Raja v. The Chief Secretary*, d W.P.(MD) No.3888 of 2007, the Madras High Court directed authorities to bring back the petitioner's son's dead body from Malaysia. "By our tradition and culture, the same human dignity (if not more), with which a living human being is expected to be treated, should also be extended to a person who is dead". It went on to state: "There can be no dispute about the fact that the yearning of a father to perform the obsequies for his son who died in a alien land, is as a result of the traditional belief that the soul of a person would rest in peace only after the mortal remains are buried or burnt. "Traditions and cultural aspects are inherent to the last rites of a person's dead body. Right to a decent funeral can also be traced in Article 25 of the Constitution which provides for freedom of conscience and free profession, practice and propagation of religion subject to public order, morality and health and to the other fundamental rights under Part III of the Constitution. The very idea of transformative constitutionalism has not just been expounded by recent judgements of the Supreme Court like *Justice K S Puttaswamy v. Union of India* (2017) 10 SCC 1 and *Nav Tej Singh Johar & Ors. v Union of India* (2018) 10 SCC 1, but through the very history of the Constitution itself. Remnants of transformative constitutionalism can be traced back to the "Act of State" doctrine laid down by the Privy Council in the case of *State of Gujarat v. Vora Fiddali Badruddin Mithirbarwala* (1964) 6 SCR 461. Juristic opinion on the nature of the Constitution however, is of conflicting nature with ambiguity over the conservative and evolutionary nature of the Constitution. Supporters of the conservative nature believed in the inherent nature of the Constitution that is primarily the mandate of continuity. On the other hand, many jurists believed in the evolutionary nature of the Constitution that is not to continue the legacy of British Imperialism but to act as an element of transformation and evolution. The approach of transformative constitutionalism, like any other judicial approach has been subject to great discourse and debate among jurists, lawyers, and judges alike. One view is that the Court will overstep its jurisdiction legitimized by constitutional mandate. Reference can be made to the public outcry after *Young Indian Lawyers Association v. State of Kerala* (2019) 11 SCC 1 wherein which jurists condemned the use of abstract principles like constitutional morality and transformative

constitutionalism. The Supreme Court of India with a multitude of actions before expounding the nature of transformative constitutionalism itself like the introduction of the PIL, *suo moto* cognizance and the wide interpretation of Article 21 through a multitude of judgements has asserted its role as an arbiter of justice. Thus, despite their flaw, transformative constitutionalism is of substantive importance as its merits outweigh the demerits acting as a beacon of hope in the dark path of justice. The decision of the Madras High Court affirming the right to a decent burial is a legitimate decision in line with constitutional jurisprudence.

7. IMPORTANT CASES REFERRED

- *Francis Coralin Muller v. Union of India (1981) 1 SCC 608*
- *Kharak Singh v. State of Uttar Pradesh AIR 1963 SC 1295*

CASE NO. 8
SUO MOTU
V.
STATE OF GUJARAT
(WRIT PETITION (PIL) NO. 42/2020)
ROLE OF STATE IN COMBATING COVID-19.

ABSTRACT

This judgement is a dialogic judicial review exercised by High Court of Gujarat of the actions taken by the state authorities to contain Covid-19. This judgement dealt majorly with two issues firstly problems of Migrant workers employed in different areas of Gujarat in different industries and secondly problems associated with affordable healthcare for economically poor strata of Covid-19 patients. Ancillary issues such as Cost of Interstate Migration, grievance redressal mechanism for Migrant workers, Subsistence money for the daily wage workers, Procurement of N-95 masks, establishment of Covid-19 facilities, problems faced by doctors were also dealt in this judgement. The Hon'ble court in this judgement establishes writ jurisdiction of the private authorities with the help of various special enactments like Epidemic Disease Act, 1897 and Disaster Management Act, 2005. Court observes the public duty done by the hospitals and hence under the ambit of article 226 of the Constitution of India. In the interest of public, the court directs state authorities in relation to both the issues.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|---|
| Case No | : | Writ Petition (PIL) No. 42/2020 |
| Jurisdiction | : | High Court of Gujarat |
| Case Filed on | : | March 13, 2020 |
| Case Decided on | : | May 29, 2020 |
| Judges | : | Justice Vikram Nath, CJ & Justice J. B. Pardiwala |
| Legal Provisions Involved | : | Article 12, 19 (1) (g) and 21 of the Constitution of India, 1950 Section 2(1) of the Epidemic Diseases Act, 1897 Real Estate (Regulation and Development) Act, 2016 Interstate Migrant Workers Act, 1979 |
| Case Summary Prepared by | : | Ashray Vinayaka Student of Government Law College, Mumbai |

2. BRIEF FACTS OF THE CASE

The case was voluntarily taken and filed by the case according to *suo motu* cognizance basis for Supervision of the actions taken by the state government and other authorities. The Hon'ble court takes cognizance of various news reports and other reports to keep a check on the actions of the government functionaries involved in alleviating Covid-19 pandemic. This *suo moto* case observes

- Issues related to transportation and other plights of interstate and intrastate migrant workers
- Issues related to Management of Hospitals, Staff, medicines and related objects.
- Issues related to Payment of Aanganwadi workers and 10th and 12th board examinations.

The High court of Gujarat took this case at a very pertinent time. At this time the Covid-19 cases were on a steep rise in the State of Gujarat. The High Court ensured that there shall not be any irregularity or mismanagement through the orders passed in this case

3. ISSUES INVOLVED IN THE CASE

- I. Whether the funds of Real Estate Regulatory Authority (RERA) can be used for the benefit of migrant workers?
- II. Whether private hospitals have a public duty to provide affordable medication?

4. ARGUMENTS OF THE PARTIES

Defendant

With respect to using fund of RERA for the benefit of construction workers, it was submitted that under section 75(1) & 75(2) of the Real Estate (Regulation and Development) Act, 2016 the funds only be utilized for payment of salaries and other allowances of the Chairperson and other members as well as for other administrative expenses that may be required to be incurred by the authority for discharging its functions and purposes provided under the Act. Therefore, there is a statutory dictum for using the funds under the RERA Act and it is difficult for the RERA authority to go beyond the statute and utilize the funds for the benefits

of construction workers. However it is pertinent to note that a onetime benefit of 1000/- has been transferred through Direct Benefit Transfer mode.

With respect of the travelling charge/displacement allowance of interstate migrant workers, it was submitted that Section 14 & 15 of the Interstate Migrant Workers Act, 1979 does not apply to them because most of the migrant workers have come on their own however it was added that the States of U.P., Odisha and Tamil Nadu have informed that they will deposit the payment for travelling charges to the Railways directly. No migrant worker has been denied travel to his home town on account of non-payment of travel charges. Further it was submitted that other measures like setting up a helpline number are instituted. It is important to note that through order dated May 15, 2020 the Supreme Court have granted interim protection to employers from their obligations to make full payments.

With respect to exorbitant amount charged by private hospitals, it was submitted that Covid specialised hospitals have been established in four mega cities where free treatment including free meal is provided. In addition to that 50% of the beds in 42 private hospitals have been requisitioned for the patients referred by Municipal Corporation and charged according to ceiling rate fixed by the Municipal Commissioner. With regard to Private laboratories it was submitted that the State has decided to conduct testing in government labs, so that patients can avoid unnecessary expenditure. The private laboratories shall be allowed to perform the tests, if and when, the capacity of Government labs is exhausted. It is relevant to note that MOUs were entered into with 23 hospitals for various services related to Covid-19 treatment. However some hospitals have refused to enter into the MOU.

In regard to raising the honorarium of *aganwadi* workers, it was submitted that the honorarium has been increased and details were provided about payment of arrears.

With respect to 10th and 12th board examinations it was submitted that the examinations have already been conducted.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The judgement talks about the article 19(1)(g) of the Constitution of India, freedom to practice any profession or to carry on any occupation, trade or business and the reasonable restrictions imposed on them. It deliberates upon the reasonability with the help of various articles in Directive Principles of State Policy (DPSP).

The judgement explains the power conferred on the state authorities under various provisions of the Disaster Management Act, 2005 and Section 2(1) of the Epidemic Diseases Act, 1897, Gujarat Epidemic Disease, Covid-19 Regulations, 2020 to alleviate the pandemic.

Health as a fundamental right under Article 21 of the Constitution of India and the concept of Public duty under Article 12 was discussed in the judgement and to clarify the obligations on the medical profession the judgement also touches upon IMC (Professional Conduct, Etiquette and Ethics), Regulations 2002, Clinical Establishments (Registrations and Regulation) Act, 2010.

6. JUDGEMENT IN BRIEF

The Hon'ble court observed the need to issue stern directions against those hospitals which refused to enter into MoU. The court directed the State Government to initiate appropriate legal proceedings against all those private/corporate hospitals who are not ready and willing to honour the understanding arrived at with regard to treating the Covid-19 patients including those who are not agreeable or willing to cooperate and enter into an MoU. Further the court directed the State Government to institute prosecution against all responsible persons of the concerned hospitals for the offence punishable under Section 188 of the Indian Penal Code and Sections 57 and 58 respectively of the Disaster Management Act.

The State Government was also directed to issue a Notification making it mandatory for all the multi-speciality private/corporate hospitals in the city of Ahmadabad and on the outskirts to reserve 50% of their beds (or such other capacity, as the State Government may deem fit and proper on the basis of the increase in the number of cases). This should include all categories of beds to treat the Covid-19 patients with specific guidelines and SOPs which the State Government may deem fit.

Further the Hon'ble court, in regard to the condition of civil hospital, Ahmedabad, issued the following directions to transfer the doctors who were not performing, to improve the working conditions of the resident doctors, to establish accountability of senior officers, to increase the number of ventilators and oxygen beds and to take punitive action against the ward boys for negligence.

The Hon'ble court directed the railway authorities to waive off one-way charges of the migrant workers or in alternative, for the state government to bear the charges. Also relying on the report of high-power committee and the order by the apex court, the Hon'ble court extended the bail of those accused who were already on temporary bail for forty-five days.

This judgement is an example of the dialogical judicial review exercised by Gujarat High Court. The court further listed down the names of eight hospitals which were not included in the list of hospitals contacted by state authorities for Covid-19. The judgement also discussed the hospital management model adopted by Maharashtra during the pandemic which can be used as an example for Gujarat. The judgement observes that one of the hospitals is listed in the previous list but is missed in the latest update and seeks a reply on this to ensure a fair system.

The Hon'ble court also proposed the state government to issue directions to the terms of permanent parking of an ambulance near a quarantine facility. All the general physicians shall open their clinic or serve in Covid facility, the private hospital shall not demand fees in advance from the patients, Creation of different Covid care centres to separate high risk patients from asymptomatic patients, Creation of a computerized control centre for grievance redressal of common public, Procurement of medicines and other devices.

The Hon'ble court held that Health is a state of complete physical, mental and social well being. The term 'health' implies more than mere absence of sickness as held by the Supreme Court. The Apex Court in India has played a decisive role in realization of the right to health by recognising the right as a part of the fundamental right to life and issuing suitable directions to the State authorities for the discharge of their duties. The Court has recognised that maintenance of health is a most imperative constitutional goal whose realisation requires interaction of many social and economic factors.

The court held that the writ of mandamus would lie against a private individual and the words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State and they may cover any other person or body performing public duty. The judgement deliberating upon the practice of appointment of a commission to investigate and provide evidence in claims made on behalf of weaker sections of the society observes that the court goes beyond the adversarial procedure in the interest of public. Placing its reliance on *Bandhua Mukti Morcha v. Union of India & Others*, the Hon'ble court observed "*If the Supreme Court were to adopt a passive approach and decline*

to intervene in such a case because relevant material has not been produced before it by the party seeking its intervention, the fundamental would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned." The Hon'ble court further added that there is a certain evidentiary value to the report of the commission as well and the high court has the jurisdiction to form a commission under article 226 of constitution of India.

Defining the term "Public Function" , the Hon'ble court observes that, *A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. The court observes that the Public function need not be exhaustive domain of the state Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. "*

The Hon'ble court established an analogy between education institutions and Medical institution to direct that profiteering and commercialization shall not be the object of these professions. Relying on TMA Pai, The Court made it clear that it is a noble occupation which would not permit commercialization or profiteering and, therefore, such educational institutions are to be run on 'no profit no loss basis'. Through this analogy the Hon'ble court observes that Hospital performs a public function and have a public duty as envisaged under Article 12 of the Indian constitution.

The Hon'ble High Court establishing jurisdiction upon the Private hospitals held that if a private body has a public duty imposed on it, the high court has the jurisdiction to entertain writ petition. The High Court placing its reliance on *UOI v. Mool Chand Khairati Ram Trust* held that *"the poor cannot be deprived of the treatment by the best physician due to his economic disability in case he requires it. It is the obligation on the medical professionals, hospitals, the State and all concerned to ensure that such a person is given treatment and not deprived of the same due to poverty. That is what is envisaged in the Constitution also."*

7. COMMENTARY

The World Health Organisation declared Covid-19 a global pandemic on March 11, 2020. Understanding the need of urgent judicial review of actions of state authorities, the Hon'ble court took *suo moto* cognizance of this issue and registered the case on March 13, 2020.

With respect to judicial review of executive actions, the appellate courts in India have been criticised for framing the issues in binary form i.e., either the usurpation of power or complete abandoning and leaving it on the executive. However, in this case the Hon'ble court had exercised dialogical judicial review of the notifications/orders of the state authorities handling the Covid-19 pandemic. The court created a line of extent of review by the judiciary. The court relied upon *State of Himachal Pradesh v. A. Parent of a Student of Medical College, Shimla* wherein the Apex court held that no doubt that court cannot even indirectly enter into a supervisory role over law-making activities of the executive and the legislature but when the court finds that the executive is remiss in discharging its obligation under the constitution, so that the poor and the underprivileged continue to be subjected to exploitation and injustice, the court can certainly and must intervene and compel the executive to carry out its constitutional obligation.

In the present case, the court has observed that the name of one hospital was exempted from the list of Covid-19 facility. The court remarked the possibility of foul play and directed to show the reason of such exemption secondly the court on its own listed eight corporate hospitals which were not included in the Covid facility list. The court directed the state authorities to provide reasons for not including them. It is relevant to note here that the court has not usurped the role of the executive instead it entered into a dialogue with the executive to overcome the shortcomings.

8. IMPORTANT CASES REFERRED

- *Bandhua Mukti Morcha v. Union of India & Others* (1984) 3 SCC 161
- *CESC Limited v. Subhash Chandra Bose & ors*, AIR 1992 SC 573
- *Janet Jeyapaul v. SRM University Limited* (2015) 16 SCC 530
- *State of Himachal Pradesh v. A. Parent of a Student of Medical College, Shimla* (AIR 1985 SC 910),
- *T.M.A.Pai Foundation & Ors v. State of Karnataka & Ors* (2002) 8 SCC 481
- *UOI v. Mool Chand Khairati Ram Trust* (2018) 8 SCC 321

CASE NO. 9

IN RE CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION HOMES

SUO MOTO WRIT PETITION (CIVIL) No. 4/2020

CASE ON ISSUANCE OF DIRECTIONS FOR THE INTEREST OF CHILDREN WHO FALL WITHIN THE AMBIT OF JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN ACT), 2015.

ABSTRACT

“Children are the world's most valuable resource and its best hope for the future.”

- John F. Kennedy.

This petition was listed *Suo Moto* because of the Covid-19 pandemic which swept the country and consequent impacts on lives of humankind. There are children who are kept in Child Care Institutions (CCIs), Children in Need of Care and Protection (CNCP) or Children in Conflict with Law (CiCWL) in Observation Homes. There are also kids in foster and kinship care who are held. It was thought, in these situations, that the needs of these children should be investigated. The rights of these children, all of whom fall within the framework of the Juvenile Justice (Care and Protection of Children) Act, 2015, should be protected and some guidelines have been given by the Supreme Court to avoid the same. This case is therefore based on the theme of the Supreme Court's issue of directions for the interests of children falling within the framework of Juvenile Justice Act, 2015 in three subsequent judgments of this petition.

1. PRIMARY DETAILS OF THE CASE:

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|-----------------|---|--|
| Case No. | : | Suo Moto Writ Petition (Civil) No. 4/2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Filed on | : | 2020 |
| Case Decided on | : | a. 03-04-2020, b.11-06-2020, c. 15-12-2020 |

| | | |
|---------------------------|---|--|
| Judges | : | a. Justice L. Nageswara Rao and Deepak Gupta b. Justice L. Nageswara Rao, Justice Krishna Murari and Justice S. Ravindra Bhat c. Justice L. Nageswara Rao, Justice Hemant Gupta and Justice Ajay Rastogi |
| Legal Provisions Involved | : | The Juvenile Justice (Care and Protection of Children) Act, 2015- Section 109, proviso to Section 12 Juvenile Justice Model Rules, 2016- Rule 66 (1) |
| Case Summary Prepared by | : | Shagun Kashyap Student of Hidayatullah National Law University, Raipur |

2. BRIEF FACTS OF THE CASE:

The Covid-19 pandemic in India is part of the worldwide pandemic of Coronavirus Disease 2019 caused by severe acute respiratory syndrome Coronavirus 2 (SARS-CoV-2). The Supreme Court took cognizance on its own on the condition of children protection homes across the country amid the coronavirus pandemic which has claimed over 50 lives in India as on April, 2020.

As the pandemic Covid -19 was intensifying in India, in 2020, it was found important to take urgent measures to prevent the spread of the virus to Child Care Institutions (CCIs). These include Children in Need of Care and Protection (CNCP), and Children in Conflict With the Law (CiCWL) in Observation Homes. These directions also apply to children in foster and kinship care. This petition was listed *Suo Moto* because of the above-mentioned facts, it was felt that the interest of these children should be looked into. Interest of these children all of whom fall within the ambit of Juvenile Justice (Care and Protection of Children) Act, 2015 should be protected and to prevent the same, some directions were issued and more are expected to be released in 2021. Directions were formulated on April 3, 2020 on the basis of then available information and understanding of Covid-19 precautions and response. However, these are also evolving with the progress of the pandemic. Later, on June 11, 2020, it appeared that 35 out of 57 children in a Protection Home at Royapuram, Chennai got infected with Covid-19 and subsequently hospitalized. The remaining children shifted to an

adjacent building. The Secretary, Health and Family Welfare Department, State of Tamil Nadu and secretary to Social Welfare Department were directed to submit a report giving details of the reasons for the spread of Covid-19 in the said Protection Home. To seek information from the State Governments in relation to the care and protection of children in conflict with law, a questionnaire was circulated to State Governments and the Juvenile Justices Committees of the High Courts were also supplied with the questionnaire. On December 15, 2020, certain directions relating to Education of the Children were also laid down by the Supreme Court.

3. ISSUES INVOLVED IN THE CASE:

- I. What are the immediate steps which should be taken to prevent the spread of Coronavirus in children in Protection Homes?

4. LEGAL ASPECTS INVOLVED IN THE CASE

The *Suo Moto* has its genesis in the concept of “Epistolary Jurisdiction”, which emerged in the late seventies through judicial activism in order to make the judicial process more accessible to poor, socially and economically disadvantaged sections of the Society. *Suo Moto* cases are instances wherein the High Courts and the Supreme Court of India using their inherent powers initiate a hearing by taking cognizance of any matter on its own, without anybody filing any appeal or writ petition. The Article 32 and Article 226 of the Indian Constitution enable the Supreme Court and High Courts respectively to issue any directions to do or refrain to do an act. By virtue of these two Articles and also the emergence of Public Interest Litigation has allowed these Courts to take up *Suo Moto* cases.

This case is crucial in understanding the impact of Covid-19 on children living in Protection Homes and the directions laid down by the Hon’ble Supreme Court for their welfare and protection. One such direction was to the Juvenile Justice Boards and Children Courts to take measures for organizing online video sessions for conducting inquiries and to consider taking steps to release children alleged to be in conflict with law, residing in Observation Homes, on bail unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015 which relates to bail of juvenile as it states: The provisions in regard to bail to a juvenile are contained in **Section 12 of the Juvenile Justice Act** are quoted in extension:

"12. Bail of juvenile-

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety [or placed under the supervision of a Probation Officer or under the care of any fit institution of fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

This clause has been used in depth in cases of *Ashish Kumar Mishra v. State of U.P. & Others* and *Mata Prasad v. State of Rajasthan & Others*. Also, it was directed to the Governments to take measures to work with Persons in Charge of CCIs and District Child Protection Units to plan staffing rotations or schedules to reduce in-person interaction by CCI staff, ensuring diligent performance of all government functionaries and take strict action against any dereliction of duty as per **Rule 66(1) of Juvenile Justice Model Rules, 2016** which relates to staff discipline and reads as-

“Any dereliction of duty, violation of rules and orders shall be viewed seriously and strict disciplinary action shall be taken or recommended by the Person-in-charge against the erring officials.”

5. JUDGMENT IN BRIEF:

After filing of the Petition, several measures were directed by the Hon’ble Supreme Court for the protection and health, safety concerns of the children in various protection homes.

Directions were given to Child Welfare Committees, Juvenile Justice Boards, Children Courts, Governments, for Children under foster and kinship care, Child Care Institutions, Children in Need of Care and Protection and Children in Conflict with Law, etc. also a questionnaire was prepared and circulated in the State Government and other state authorities of Chennai on suspicion of spread of Covid-19 in a shelter home of that State. Also, certain directions relating to Education of these children during the pandemic was laid down by the Hon'ble Supreme Court. The directions in brief are listed here under-

i) Some measures to be taken by Child Welfare Committees :

- a) Regular inquiries/inspections and also whether a child or children should be kept in the CCI considering the best interest, health and safety concerns.
- b) Gatekeeping or preventive measures need to be considered and families counselled to ensure that institutionalization is the last resort. Focus should be on prevention of separation when possible.
- c) As far as possible, online help desks and support systems for queries to be established at the state level for children and staff in CCIs.
- d) It is important to consider that violence, including sexual and gender-based violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease, CWCs can monitor regularly through video conferencing, WhatsApp and telephonically to ensure prevention of all forms of violence.

ii) Some measures to be taken by Juvenile Justice Boards and Children Courts :

- a) In this regard, JJBs and Children's Courts are directed to proactively consider whether a child or children should be kept in the CCI considering the best interest, health and safety concerns. These may include:
 - Children alleged to be in conflict with law, residing in Observation Homes, JJB shall consider taking steps to release all children on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, Juvenile Justice Act, 2015.
 - Video conferencing or online sittings can be held to prevent contact for speedy disposal of cases.

- Ensure that counselling services are provided for all children in Observation homes.

b) It is important to consider that violence, including sexual violence may be exacerbated in contexts of anxiety and stress produced by lockdown and fear of the disease. JJBs would need to monitor the situation in the Observation Homes on a regular basis.

iii) Some measures to be taken by Governments :

It is directed that all State Governments shall:

1. Circulate information to all CCIs about how to deal with Covid-19 immediately, with instructions that awareness about Covid-19 is spread in a timely and effective manner.
2. Begin preparing for a disaster/emergency situation that may arise. Work with Persons in Charge of CCIs and District Child Protection Units to plan staffing rotations or schedules to reduce in-person interaction by CCI staff, where feasible. Begin developing a system for how to organise trained volunteers who could step in to care for children, when the need arises.
3. Ensure that all government functionaries perform their duties diligently, and that strict action would be taken should there be any dereliction of duty. As per Rule 66 (1), Juvenile Justice Model Rules, 2016, any dereliction of duty, violation of rules and orders, shall be viewed seriously and strict disciplinary action shall be taken or recommended by the Person-in-charge against the erring officials.
4. Make provisions to ensure that counselling is made available, and that there are monitoring systems in place to prevent violence, abuse, and neglect including gender-based violence, which may be exacerbated in contexts of stress produced by lockdown.
5. Ensure adequate availability of good quality face masks, soap, disinfectants such as bleach, or alcohol-based disinfectants, adequate food, drinking water, and other necessities such as clean clothes, menstrual hygiene products, etc.

iv) Some directions to CCIs (Child Care Institutions):

The Person in Charge of the CCI and all other staff working in the CCI shall proactively and diligently take all necessary steps to keep the children safe from the risk of harm arising out

of Covid-19, in furtherance of the fundamental principle of safety enshrined in the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015).

1. The Health Ministry has set up new National Helpline on Covid-19, which are 1075 and 1800-112-545. In case of any queries or clarifications related to Coronavirus pandemic, call on this number. In addition, Childline 1098 continues to be operational.
2. In the case of staff or children with symptoms, call the helplines above mention and or a local doctor. Go to the hospital only if you receive such advise by doctor/helpline, or if symptoms are severe.
3. Staff or any other individual found to be exhibiting symptoms of Covid-19 should not be permitted to enter the CCI.

In order to prevent children and staff members in CCIs from getting infected by Covid-19, Persons in Charge of CCIs shall know and make known how Covid-19 spreads, take necessary steps to practice, promote and demonstrate positive hygiene behaviours and monitor their uptake, practice social distancing, etc. Some responsive measures like conduction of regular screening, health referral system should be followed along with necessary quarantine in certain circumstances.

v) Some measures to be taken for children under foster and kinship care :

- a) Families that are fostering children should receive information about how to prevent Covid-19.
- b) Follow up should be made on their health and psychosocial well-being status, and they should be informed of what to do in case of symptoms.

vi) Guidance on measures to ensure wellbeing of Children (CNCP (Children in Need of Care and Protection) and CiCWL (Children in Conflict with Law)

- a) It is important to acknowledge that for children, it is natural to feel stress, anxiety, grief, and worry during an ongoing pandemic like Covid-19 disease. They may express psychological distress (anxiety, sadness) by acting out in a different way. Some may become silent while other may feel and express anger and hyperactivity.

b) Encourage and support children to take care of their bodies - taking deep breaths, stretching, doing yoga/meditation, eating healthy, well-balanced meals, exercising regularly, getting plenty of sleep, etc.

c) Work with social service systems to ensure continuity of critical services that may take place in CCIs, such as health screenings, or therapies for children with special needs. Consider the specific needs of children with disabilities, and how marginalized populations may be more acutely impacted by the illness or its secondary effects.

vii) To seek information from the State Governments in relation to the care and protection of children in conflict with law, a questionnaire was circulated to the State Governments and the Juvenile Justices Committees of the High Courts.

viii) a) The State governments were directed to provide the necessary infrastructure, stationary, books, printers along with the other equipment that is necessary for children to quantitatively attend online classes on the basis of the recommendation made by the District Child Protection Units.

b) The State Government shall also ensure that the required number of tutors are made available for teaching the children in various Child Care Institutions. Extra classes, if necessary, should also be taken for the children to help them in preparing for the final examinations to be held in 2021. The District Child Protection Units are also directed to make an assessment of the children who are restored to their families or guardians or foster homes during the lockdown by taking the assistance of other statutory bodies like the Child Welfare Committees and Juvenile Justice Boards.

c) The District Child Protection Units are directed to enquire about the financial position of the parents or guardians of the children. If it is found that the children are not being sent to school in view of the financial disability of their parents or guardians, the District Child Protection Units are directed to recommend to State governments to grant financial aid to the parents or guardians concerned. On such recommendation being made by the District Child Protection Units, the concerned authorities of the State governments are directed to release an amount of Rs. 2,000/- per month for each child, to the parents or guardians of the children in distress, which shall be used for the purpose of the education of the children.

6. COMMENTARY:

The role of children in nation building cannot be over emphasized. This is so because children are important to nation building and must be valued, they are the future leaders. We should ensure proper development of our children and their protection, welfare. The worth we place on our children determines the kind of investment we place on them. We shall not have the great nation of our dream in this country unless we have a positive change of attitude by investing heavily in the development of children.

Due to the Covid-19 pandemic that swept the country and consequent impacts on human life and specifically on security and health, safety issues of children in different protection homes, this petition was classified as *Suo Moto*. A detailed order was passed by this Court in this *Suo Motu Writ Petition* dealing with all issues pertaining to children in conflict with law and others. Several directions were given to the State Governments for taking preventive measures to protect children from the spread of Covid-19, questionnaire was prepared and circulated in the State Government and other state authorities of Chennai on suspicion of spread of Covid-19 in a shelter home of that state. Also, certain directions relating to Education of these children during the pandemic was laid down by the Hon'ble Supreme Court. The National Commission for Protection of Child Rights (NCPCR) which works under the aegis of Ministry of Women and Child Development, Government of India is also contributing to this cause. In my opinion, this is one of the most comprehensive judgements which sets a path, leads by example and provides executory directions as well to follow-up in order to ensure successful implementation of the petition and the directions laid down.

7. IMPORTANT CASES REFERRED:

- *Ashish Kumar Mishra v. State of U.P. Criminal Appeal No. 2581 of 2004*
- *Mata Prasad v. State of Rajasthan & Others D. B. Civil Special Appeal (Writ) No. 487 of 2008*

CASE NO. 10

ALL INDIA COUNCIL OF HUMAN RIGHTS

V.

UNION OF INDIA & ORS

(WRIT PETITION (C) 2973/2020)

PROTECTION FROM DOMESTIC VIOLENCE.

ABSTRACT

The present case arises out of the civil writ petition which was filed in order to provide legal aid to the victims of domestic violence and child abuse. the petitioner approached the Hon'ble Court with the issue of whether respondents are undertaking their responsibility of taking suitable steps as required under DMA, 2005 during the lockdown. The outbreak of the Novel Coronavirus sealed off cities, villages and towns and it was hard for victims to come forward and inform the authorities or take the right step to protect themselves. The Applicant seeks the Hon'ble Court to take the right actions which are required during this crisis to protect the victims. The case discusses about the actions taken by the respondents to protect the victims who are in a vulnerable condition and financially unstable. The court gives directions to ensure that the victims are given proper legal aid.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|--|
| Case No | : | Writ Petition (C) 2973/2020 |
| Jurisdiction | : | High Court of Delhi |
| Case Filed on | : | April 18, 2020 |
| Case Decided on | : | April 24, 2020 |
| Judges | : | Justice C Hari Shankar and Justice D N Patel |
| Legal Provisions Involved | : | Section 34, Disaster Management Act 2005 |
| Case Summary Prepared by | : | Pooja Lakshmi, Student of Bennett University, Greater Noida |

2. BRIEF FACTS OF THE CASE

Public Interest Litigation was filed to issue a Writ of Mandamus to the respondents for exercising the powers laid on them under the section 34 of DMA, 2005. The application prayed for:

- The appointment of Nodal officers who are capable of attending the distress cause of the victims of domestic violence and child abuse.
- Activating helpline numbers and publicizing it widely- the numbers should include WhatsApp number, telephonic number of concerned government representatives and NGOs who are capable of assisting the victims with immediate effect.
- Creating awareness drive about the issues of child abuse and domestic violence extensively through the possible channels like news channels, newspapers, radio, SMS alerts, websites, WhatsApp alerts, telecalling and other social media such as Facebook, Twitter, etc. and ensuring that immediate help is available to the victims.
- Reducing or exempting the lockdown norms for individuals who are trying to report child abuse or domestic abuse. i.e., no action to be taken against the person who steps out of the house to report an abuse or violence under the domestic violence act of 2005,
- Offering free video counseling or tele counseling to the victims from eminent psychologist or psychiatrist. The same to be advertised on social media platforms like Twitter and Facebook for creating awareness in the society. Regular SMS can be sent to create awareness among the people who don't use social media.
- Establishing temporary Shelters and Rape Crisis Centre's in local areas as well as colony.
- Organizing announcements with the help of police personnel (already deployed in those areas- around the colony or society) to maximum extent possible. The announcement must cover about the consequences of the abuse and regarding the help that is available for the victims who are scared to come out.
- Identifying the hotels and places within the area to relocate the victims. It should be the duty of authorities to keep them safe from their homes where they suffered violence. The victim should be convinced to leave their homes immediately and stay in the safer place provided to them by the officials.
- Providing police protection to the victims of child abuse or domestic abuse, if needed.

- Identify an additional way which will help the victims who are not capable of finding ways to escape and devise the new techniques for outreach on an emergency basis.
- Popularizing the use of code word or sign language within the victims of child abuse or domestic violence which will help them to report their problem to the nearest pharmacy, hospital or grocery stores which are open during the lockdown.
- Passing further orders which are deemed fit by the honorable high court with respect to the facts and circumstances of the case.

The following prayers were proposed by the petitioners as the numbers of domestic violence and child abuse cases were increasing in the time of lock down due to less awareness and the victims were given less opportunity to report the same. As to avoid the circumstances which will lead to violence or abuse, the petitioners preferred the following methods as taking these measures will give a protection for the women and children who are abused in their own homes.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the respondents were taking suitable steps as required under DMA, 2005?

4. ARGUMENTS OF THE PARTIES

Plaintiff

Domestic violence against women and children has increased in the lockdown period. The petitioner submitted reports related to the same in front of the learnt counsel through Annexure P-1 of memo of this writ petition stating the World Health Organisation guidelines (March 26, 2020) relating to the Covid-19 and violence against women. The order passed in the High Court of Jammu and Kashmir (April 18, 2020) was also referred as the Hon'ble Court took *Suo Moto* cognizance with respect to upsurge in the domestic violence cases against the children and women and appointed amicus curie as well as issued notices to the secretaries regarding the same.

This status reports filed by the Union of India on behalf of respondent number 1, 2, 4 and 6 as well as the Government of NCT of Delhi was discussed by the learnt counsel of the petitioner. It was pointed out that the adequate number of police officers for the large population of Delhi should not be 17, but more than that and there is a requirement for mass

campaigning and outreach as there was no effort taken till date for the same. In a country with numerous social media and news providing agencies, only two newspapers namely, The Indian Express and The Pioneer, published the helpline numbers. Which makes the remedies available on the web sites regarding domestic violence or child abuse are of no help to the poor people who are illiterate as they have no access to web sites and other online remedies. The following measures were suggested by the learned counsel for the petitioners to the respondents as a remedy for the domestic violence and child abuse happening around the country:

- The most important measure that is to be taken to increase the number of protection officers.
- Electronic media and print media should support and publicize the information in a wide range to provide awareness to the citizens.
- The helpline numbers should be widely published in several newspapers and other social media platforms as well as posters and other methodologies which can be easily adapted to get outreach.
- Immediate action should be taken against the complaints that are filed and protection offices must be issued with emergency passes.
- A dedicated team which includes women should be formed and made available at the time of emergency.

Defendant

On behalf of Union of India, learned Additional Solicitor General stated that respondents have met the required standards as per the need of the hour. The Ministry of Women and Child Development to Chief Secretaries/ UTs and District Collectors/ Administrators of all States/ District Magistrates of all districts issued an advisory regarding One Stop Centers and Women Helplines (WHL-181) to remain operational during the Covid-19 lockdown period. The Ministry of Home Affairs advisories also stated that women's homes will be provided to the victims with the support of necessary staff and exempt from Covid-19 lockdown was also granted. Many other valid points were also covered which included,

- Sensitizing the Officers for ensuring effective implementation of the Protection of Women from Domestic Violence Act, 2005.
- The Ministry of Women and Child Development conducted four hours long webinar which included sessions of the experts from All India Institute of Medical Sciences

("AIIMS") and National Legal Services Authority ("NALSA") on psychological and legal counselling to provide guidance to the vanguard functionaries for assisting the women who are affected by difficult circumstances including child abuse and domestic violence.

- The Ministry of Health and Family Welfare in collaboration with "NIMHANS" started a helpline (080 – 46110007) to provide psychological support to the victims.
- A website [<http://ncwapps.nic.in/onlinecomplaintsv2/frminstructions.aspx>] was opened for registering the complaints of women who faced or are facing domestic violence and also launched a special WhatsApp number – 721773537 to report the same.
- The Ministry of Information and Broadcasting ordered all private satellite TV channels and FM Radio channels to give adequate exposure to the ERSS [121] on women safety and persons in distress.
- A meeting was conducted under the guidance of Chairmanship of Smt. Smriti Zubin Irani, the Hon'ble Minister for Women and Child Development for protection of the victims of domestic abuse/violence.
- For women in distress, Delhi Commission for Women set up 3 government run women institutions and gave recognition to fourteen NGO-run Women Shelter homes.
- The tele helpline number and WhatsApp helpline number for women were published in the two leading newspapers, namely, The Pioneer and The Indian Express newspaper.
- The provision of institutional services as well as Sakhi-one stop centre for women were also publicised widely
- Protection Officers under Section of the Protection of Women from Domestic Violence Act, 2005 were also appointed.

The Union of India submitted the status report stating that all adequate measures have been taken for the safety of the victims of domestic violence.

Mr. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA) submitted the one toll-free helpline number 1516 to help vulnerable sections of the society and the WhatsApp number (9667992802) for any victim of domestic violence. The victims can approach DSLISA through SMS or missed call. After receiving a message or a missed call, competent legal aid and advice contacts the victim. The DSLISA has given extensive publicity of the helpline number through radio jingles and newspaper advertisements. to

create awareness to curb out the domestic violence incidents against women, they are taking the help of nearby chemist shops and mother dairy booths for distribution of pamphlets. Mr. Rajshekhar Rao, learned counsel for Delhi Commission for Women (DCW) submitted various measures taken by them regarding the complaints of domestic violence. These measures include, providing immediate assistance at the time of emergency, offering advice to the callers, providing the mobile helpline (MHL) through mobile helpline counsellors. The DCW has also introduced a WhatsApp Helpline Number (9350-181-181). Necessary steps are taken to publicize and help vulnerable women. the aggrieved person is accompanied to the police station, hospital, etc. in serious assault/sexual assault cases, Crisis Intervention Centre (CIC) through rape crisis cell counsellors.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Section 34 discusses about the Powers and functions of District Authority at the time of threatening disaster situation or disaster. For assisting, protecting or providing relief to the community, during threatening disaster situation or disaster, the District Authority has the following rights—

They can give directions release and use of resources available with any the local authority in the district and Department of the Government, control and restrict vehicular traffic and entry of any person as per the needs of affected area, carry out rescue operations, remove debris and conduct search, provide essential services, healthcare and essential provisions, establish emergency communication systems and make arrangements for unclaimed dead body disposal in the affected area. They can take the assistance of any Department of the Government of the State, body under that Government at the district level, experts and consultants in the relevant fields or any authority to take necessary actions. These actions may include the procurement of exclusive or preferential amenities to construct or demolish structures which are hazardous to public and can aggravate the effects of the disaster. They have the right to assure that the non-governmental organizations act in a non-discriminatory manner and carry out their activities. They have full authority to take the necessary step to reduce the effect of the disaster and protect the victims.

6. JUDGEMENT IN BRIEF

In view of the facts mentioned by both the parties, reasons and the reports filed by the respondents, court found that adequate steps have been taken by the respondents. According to the analysis of the case, the court finds that no reason is found to further monitor the case. The steps taken by the respondents can be modified to look into the present need of the society. The suggestion that the petitioner gave, regarding temporary appointment of Protection Officers is envisioned under the Protection of Women from Domestic Violence Act, 2005 can be looked by the respondents till the regular appointment of Protection Officers are made.

The details of the application and steps taken by DSLSA, about the help lines, WhatsApp number, radio jingles, etc. were mentioned in the report of the defendants. Furthermore, the facts that DSLSA is taking the help of Mother Dairy booths, Chemist Shops, Anganwadi workers are the mentioned. Regarding the matters related to counseling, Nodal Officers are appointed and it is assured that the tele-counselling is provided. The respondents informed that the Protection Officers are issued with transit passes. Looking to declaration canvassed by the counsel for the petitioner it is found that on using certain helplines, the complainant is not getting suitable response at times. The brief note of petitioner stated these facts on the judgement day via email which helped the court to direct the respondent authorities to verify the facts. It was ordered to change the person who is working or responding on helpline but not taking the needful action. The order also stated that the possible remedies of the common difficulties of the complainants should be trained to the person who is responding on the helpline.

The suggestions given by the petitioner, the appointment of temporary Protection Officer was considered by the court and court directed the respondents to look into the same. Effective implementation of the provisions in the Protection of Women from Domestic Violence Act, 2005 is to be monitored by the respondents and prompt actions should be taken. All the help lines and WhatsApp numbers, etc. are to be kept functional and should respond to the calls or messages they receive properly. The court also mentioned that if the affected persons face any difficulties in reaching the Nodal Officers, the DSLSA should be available to provide the effective legal aid. With these points the court disposed of the civil writ petition.

7. COMMENTARY

It is important to prevent violence from occurring and to give a faith in the women so that they can survive the violence against them and lead a beautiful life. In my opinion, the court has given the right judgement as to provide legal aid. The court provided executory directions as well to follow-up in order to ensure successful implementation of the petition and the directions laid down. To administer justice is a great challenge but it is the duty of a country to protect its citizens from being a victim of domestic violence or child abuse. If you get to intertwine with any victim, you should take the right step as it is our duty to protect our world.

*The more that we choose not to talk about domestic violence,
the more we shy away from the issue, the more we lose.*

- Russell Wilson

CASE NO. 11
IN RE: PROBLEMS AND MISERIES OF MIGRANT
LABOURERS

SUO MOTO WRIT PETITION (C) NO. 6 OF 2020

MIGRANT LABOURERS CASE.

ABSTRACT

The following is a case summary of the *In Re: Problems and Miseries of Migrant Labourers*, also commonly known as the “*Migrant Labourers Case*”. This case was taken by the Hon’ble Supreme Court of India as a *Suo Moto* case under Article 32 of the Constitution of India. In this case, the Supreme Court of India took *Suo Moto* cognizance of the poor conditions of migrant labourers and their exodus to their hometowns from major metropolitan cities following a nationwide lockdown imposed by the government to arrest the spread of the disease Covid-19. The migrant workers, in the light of the lockdown, had to take hardships upon themselves in order to ensure their survival as well as protection from the disease of Covid-19. Even after, extensive measures and efforts by the government, the labourers had to face hardships and oppressions. Extensive media reports about the same inspired the Hon’ble Supreme Court of India to take the matter in its own hands and utilise its power under Article 32, thus taking this case on its own motion i.e. *Suo Moto*.

In this case, the Supreme Court of India, issued guidelines and directions for the central government and the state government to ensure that migrant workers don’t continue facing issues and problems due to Covid-19 and implementation of nationwide lockdown. Case summary is attempted to highlight the importance of the well-being, safety and security of labourers who are the wheel-turners of our economy. The migrant workers leave their hometowns in search of livelihood to big urban cities and turn the wheels of our economy and serve us in our daily lives. However, during the lockdown, this socio-economically weak section of our society had to suffer a lot of hardships. Therefore, while summarising the case, the author also aims to highlight the responsibility of the state in the guardian role for citizens and its duty to provide for the needs of all sections of the society especially the ones who are repressed.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|---|
| Case No | : | Suo Moto Writ Petition (C) No. 6 of 2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Filed on | : | May 26, 2020 |
| Case Decided on | : | July 31, 2020 |
| Judges | : | Justice Ashok Bhushan, Justice Sanjay Kishan Kaul and Justice M. R. Shah |
| Legal Provisions Involved | : | Constitution of India- Article- 21, 32 Epidemic Diseases Act, 1897 Disaster Management Act, 2005 Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act, 1979 Unorganised workers Social Security Act, 2008 Construction workers (Regulation of Employment and Conditions of Service) Act, 1996 |
| Case Summary Prepared by | : | Rishi Raj Student of Symbiosis Law School, Noida |

2. BRIEF FACTS OF THE CASE

The case is a *Suo Moto* cognizance taken by Supreme Court of India based on news reports under Article 32 of the Constitution. Tushar Mehta, the Solicitor General of India appeared for the Government of India along with Advocate-Generals and Additional Advocate Generals for the State Governments. Furthermore, learned counsel Kapil Sibal, Colin Gonsalves and Dr Manish Singhvi and Indira Jaising also appeared in the case and made their submissions.

The Hon'ble Supreme Court of India took the case on its motion based on the media reports. On March 24, 2020, the Hon'ble Prime Minister of India in his address to the nation announced a 21-days nationwide lockdown which put restrictions on travel and movement of people in the country other than essential services like pharmacy, petrol pumps, food shops and other important essential services. The lockdown was further extended by the government for 3 phases culminating on May 31, 2020. During this period, migrant and daily wage workers who worked in big metropolitan cities for livelihood maimed by lockdown due

to non-payment of daily wages as the economy took to a standstill. In order to ensure survival, migrant labourers began to return to their hometowns and villages. This exodus had a two-fold impact. Firstly, due to ban on public transport migrant workers took to means like walking and cycling in order to reach their destination and many of them had to face adversities leading to fatalities too, due to walking for long hours without food and water. Secondly, the exodus also created a chance of spread of the disease Covid-19 in the country at a faster pace.

The Central and State Governments enacted measures to keep a check on this situation, however, its implementation had inadequacies and fallacies which lead to lapses on many levels. Thus, on May 26, 2020, the Hon'ble Supreme Court of India in its power under Article 32 of Constitution of India, decided to take this case upon its own motion also known as *Suo Moto* cognizance of the issues faced by migrant workers, thus implementing its role of guardian of fundamental rights bestowed upon it by the Constitution. The court was inspired by media reports as well as several letters and representations that were made before it highlighting the crisis of migrant labourers. The bench consisting of Justice Ashok Bhushan, Justice Sanjay Kishan Kaul and Justice M.R. Shah took upon the case seeking replies from both central and state governments of the measures taken by them for protection of migrant workers as well as their smooth movement to their hometowns. Furthermore, the court also issued guidelines for the government and administration to make sure the well-being of migrant workers.

3. ISSUES INVOLVED IN THE CASE

- I. What are the problems faced by migrant workers during the nationwide lockdown and what are the measures taken by the Central and State Governments to ensure the prevention of the same?
- II. Were measures taken by both Central and State Governments adequate to provide for the needs of Migrant Workers?
- III. What other measures can be taken to provide migrant workers with a safe passage?

4. ARGUMENTS OF THE PARTIES

- **Government of India**

- a) The government of India was represented by Solicitor General of India, Tushar Mehta

- b) He submitted before the court that 3700 Shramik special trains were operated from May 1 which helped in the transportation of 50 lakh migrant workers. Furthermore, another 41 lakhs were transported using road transport.
- c) Food and water were being provided to migrant laborers from the originating states.
- d) States also took too necessary screening and quarantining of workers to ensure protection from the spread of Covid-19.
- e) The fare of the transport was shared by state governments and central government and no migrant worker had to pay for the transportation arrangement. The State of Bihar reimbursed the fare it had charged earlier.

- **State Governments and Administrations of Union Territory**

The State of U.P.

- The State of U.P. was represented by P. S. Narsimha Rao.
- The State through counsel submitted that the state had made an advance payment of Rs. 51 Crores for payment of a fare of the migrant workers.
- The State further provided the workers with Rs 1000 and a kit containing food and water for migrant workers.

State of Maharashtra

- The State of Maharashtra was represented by Advocate Rahul Chitins.
- He submitted on behalf of State of Maharashtra 12 lakh workers were transported back to their home states and 5 lakhs were transported free of cost through buses plied by Maharashtra State Road Transport Corporation.
- Furthermore, the state of Maharashtra has made adequate arrangements for food and shelter of migrant workers.

State of NCT of Delhi

- Shri Sanjay Jain, Additional Solicitor General of India, appeared on behalf of NCT of Delhi.
- He submitted before the Hon'ble court that 3 lakh migrant workers were transported to their native places using 237 Shramik special trains.
- Another 6.5 lakh workers have registered themselves using the web portal of Government of Delhi.

State of Bihar

- Shri Ranjit Kumar appeared on behalf of the state.
- He submitted that 28 lakh migrant workers returned to the state of Bihar by both roads and trains.
- The state also has provided migrant workers stranded outside the state Rs. 1000 each.
- **Human Rights activists and Advocates**
 - i) Kapil Sibal submitted that the guidelines as envisaged under Section 12 of the Disaster Management Act were not being followed. He further stated that there seemed to be no national or state level plan devised for the exodus of the labourers.
 - ii) Colin Gonsalves pointed it out that all migrant workers don't have smart phones and hence may face technical difficulties during registration.
 - iii) Indira Jaising also submitted that the number of trains must be increased as there is a total of 4 Crore migrant workers.
 - iv) K.V. Viswanathan highlighted the NLS migrant mazdoor programme under which 180 migrants were airlifted from Mumbai to Jharkhand. The programme is initiated by alumni of National Law School of India University, Bengaluru.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal aspects in this case involved are as follows-

1) Constitution of India

- Article 14, Constitution of India- Equality before the Law and Equal protection of Laws
- Article 21, Constitution of India- Right to Life and Personal Liberty
- Article 23 and 24, Constitution of India - Right against Exploitation
- Article 226, Constitution of India - This article empowers the High Courts to take cases into cognizance on their own also known as – *Suo Moto Cognizance*.
- Article 32, Constitution of India- This article empowers the Hon'ble Supreme Court of India to take cases into cognizance on their own also known as – *Suo Moto Cognizance*

2) Disaster Management Act, 2005

Section 12- The National executive authority constituted under Section 8 of the Act shall make guidelines for minimum standards of relief.

Section 51- Assigns punishment to people who do not comply or fail to comply by any order made by central or state government officials.

3) Epidemic Diseases Act, 1897

Section 2- Powers of the state government to make rules and guidelines in case of spread of an epidemic disease.

Section 2A- Powers of the central government to make rules and guidelines in case of spread of an epidemic disease.

6. JUDGEMENT IN BRIEF

- Vide order dated May 28, 2020 the Hon'ble Supreme Court of India gave the following directions to Central Government, State Government and Union Territory administrations-
 - i) No fare to be charged to migrant workers either by bus or by train. Furthermore, the fare of trains shall be shared by railway and the states.
 - ii) The stranded migrant workers shall be provided with food free of cost by States/UTs and this shall be publicized to them.
 - iii) The States shall take care of necessities of migrant workers, including water and meal during transportation as well as in the camps.
 - iv) The migrant workers who are found walking on the highways must immediately be taken care of by the State/Union Territories. They must be provided with transport, food and water.
 - v) The process of registration of migrant workers must be simplified and publicised. Furthermore, it should be completed at the earliest.
 - vi) The receiving state shall provide transport, health screening to migrant workers free of cost.
- Vide order dated June 9, 2020, the court further suggested the following-
 - i) The court suggested that prosecution by states against migrant workers under Section 51 of Disaster Management Act and Epidemic Diseases Act must be

withdrawn for violation of lockdown guidelines as the action of workers was by force of circumstances.

- ii) The court further instructed police and paramilitary forces to keep a check on excesses of power and force on migrant workers.
- iii) The High Court being Constitutional courts have also taken notice of cases of migrant labourers. The High Court are well within their rights to take cognizance of violation of fundamental rights of migrant workers.
- iv) The court further issued the following guidelines vide the said order-
 - The states must take necessary steps for identification of migrant workers.
 - In the event of additional demand, the railway shall provide trains for the same to the said states.
 - The State and UTs will notify the workers of all the schemes. The State shall establish a counselling centre and help desks at the block and district level for the same.

7. COMMENTARY

The present case is *In Re: Problems and Misereries of Migrant Labourers* also known as the migrant labourer's case was a *Suo Moto* case taken up by the bench of Supreme Court consisting of Justice Ashok Bhushan, Justice Sanjay Kishan Kaul and Justice M.R. Shah. The case reflects to issue of disparities and exodus of migrant workers and problems faced by them due to lockdown announced by the Government to curb Covid-19. The case comes in the ambit of Article 21 i.e Right to Life and Personal liberty. Migrant workers are an essential part of the state as well as economy of India. The society and people often take the jobs done by migrant workers and labourers as menial. However, they turn the wheels of our economy and make our daily lives easy. The sudden announcement of lockdown without any planning and arrangements as well without prior information and devising of scheme lead to chaos in the labourer's community. The state must have been cautious and taken into account the adversities of the migrant labourers. In the case of *Charan Lal Sahu v. Union of India* the Hon'ble Supreme Court of India held that State is at the position of parent or guardian of the individuals. The court borrowed this doctrine from the United Kingdom common law system. Furthermore, in the case of *Jeeja Ghosh v. Union of India* held that each human has a right to human dignity. In the current case it is also mentioned that migrant workers had to also face excess by police and paramilitary forces as well as prosecution for violation of lockdown

guidelines. This is in my opinion arbitrary action by the State. The migrant workers were dependant on daily wages for their livelihood. The lockdown and furthermore, the placing of prosecution on them is unjust and against the Article 21 value of Right against cruel and unusual punishment as envisaged in the case of *Triveniben v. State of Gujarat*.

Another issue of pertinence is that Supreme Court and High Courts are constitutional courts. They are guardians of fundamental rights of citizens as held in the case of *Romesh Thapar v. State of Madras*. However, initially when plea was filed by Advocate Alakh Alok Srivastava on the said issue, the court refused to interfere in the issue stating that issuance of guidelines would lead to confusion. In my opinion, the Supreme Court and High Courts must have taken the issue in due time. This move could have helped saving the migrant workers from miseries.

8. IMPORTANT CASES REFERRED

- *Charan Lal Sahu v. Union of India, 1990 AIR 1480*
- *Jeeja Ghosh v. Union of India, (2016) 7 SCC 761*
- *Romesh Thapar v. State of Madras, 1950 AIR 124*
- *Triveniben v. State of Gujarat, (1989) 1 SCC 678*

CASE NO. 12

SHASHANK DEO SUDHI

V.

UNION OF INDIA

(WRIT PETITION (C) No. 10816/2020, I.A. No. 48265/2020 & 48266/2020)

DIRECTIONS FOR FREE TESTING OF COVID-19.

ABSTRACT

The following is the case summary of an important case titled *Shashank Sudhi Deo v. Union of India & Ors.* This case is a turning point in the pandemic that had let the poor and vulnerable families, economically backward people and the beneficiaries of the Ayushman Bharat for free Covid-19 testing in both the government & private labs and hospitals. This case will have a major impact in developing the Public Health Law that might bring uniformity in any tests in the future and ultimately good health and well-being of the people is always the motto of a healthy and wealthy country.

In this case, under the extraordinary civil jurisdiction, a writ petition was filed under Article 32 as a Public Interest Litigation in the Supreme Court of India. The petitioner prayed for modification of the order dated April 8, 2020 and another I.A. was filed for impleadment and issuing certain directions for free testing of Covid-19 in all the hospitals and labs.

The order was given by Hon'ble Justices Mr. Ashok Bhushan and Mr. S. Ravindra Bhat and therefore, allowed for modification of the previous order dated April 8, 2020 and issued certain directions for free Covid-19 testing and to implement the same by the government by making necessary changes that deems fit and to spread awareness regarding the same.

1. PRIMARY DETAILS OF THE CASE

| | | |
|-----------------|---|--|
| Case No. | : | Writ Petition (Civil) No(s). 10816/2020, I.A. No(s).48265/2020 & 48266/2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Decided on | : | April 13,2020 |

| | | |
|---------------------------|---|---|
| Judges | : | Justice Ashok Bhushan and Justice S. Ravindra Bhat |
| Legal Provisions Involved | : | Article 32 of Constitution of India, 1950 Order 1 Rule 10 of CPC,1908. |
| Case Summary Prepared by | : | C. M.Vaishnavi Student of Parul University, Vadodara |

2. BRIEF FACTS OF THE CASE

The applicant filed an Interim Application for the modification of the order dated April 8, 2020. The second Interim Application was filed by Mr. Bijon Kumar Mishra seeking impleadment and directions to ensure that the testing of Covid-19 patients is done free of cost in all the Private and Government hospitals and labs. The PIL was filed under Article 32 in the Hon'ble Supreme Court of India. The PIL was basically for the modification of order dated April 8, 2020 which had already provided directions for free Covid-19 testing of those people who were already covered under the Ayushman Bharat scheme.

The discussion took place in such a way that could cover all the possible issues from the perspective of people who were in actual need of free Covid-19 testing but couldn't afford them, the ones who could afford the fee fixed by ICMR, the private labs and the manner in which their expenses are refunded by the government. Finally, an order for modification was allowed and the government authorities were asked to spread the awareness about reasonable Covid-19 testing to the people.

3. ISSUES INVOLVED IN THE CASE

- I. Can the Covid-19 test be made free of cost in private hospitals and labs to all the people?
- II. Whether the free testing of Covid-19 in all the hospitals is available only to those who are covered under the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana?
- III. Whether the government is authorized to issue any guidelines for reimbursement to the laboratories in return of free Covid-19 testing?

4. ARGUMENTS OF THE PARTIES

Petitioner

The Petitioner contends that there are majority of the people in the society who at present are unable to afford Rs.4500/- for Covid-19 testing. He even states that it is the responsibility of the government to test each and every individual. In that context, even if a single person in the family is tested positive, then the whole family needs to be mandatorily tested. Since, the government is already doing free Covid-19 tests which makes the government hospitals over-crowded and therefore, such persons may be allowed to test in private labs free of cost.

Respondent

1. Mr. Mukul Rohatgi, appearing on behalf of several laboratories contended that already the ICMR has fixed Rs.4500/- on a moderate side in order to cover the expenses of labs for conducting Covid-19 test. Also, the people who are covered under the Pradhan Mantri Jan Arogya Yojana (Ayushman Bharat) are being tested free of cost in the labs. If the labs don't charge any fee for the tests, then it would become impossible for the labs to carry the tests because of financial constraints and other relevant factors. In addition to, the kits that are used in the testing are imported from outside and they involve substantial expenses.
2. Shri. Tushar Mehta, learned Solicitor General of India appearing on behalf of the Government contends that the Government is taking all necessary steps for conducting Covid-19 test. As on April 13, 2020, 157 Government labs and 67 private labs were conducting Covid-19 test and all the government hospitals and labs were conducting Covid-19 test free of cost. Moreover, as per the protocol of ICMR, any infected person can avail free Covid-19 test in government labs and hospitals on the recommendation of a medical practitioner. He submits that the ICMR has fixed the amount of Rs.4500/- for testing in private labs after considering all the relevant factors. Furthermore, under the Ayushman Bharat scheme, about 10.7 Crore poor and vulnerable families are covered which means that there are almost 50 crores beneficiaries who can take up free Covid-19 testing in private labs as well. He further submits that the Ministry of Family Welfare has issued various orders under which the free testing of Covid-19 in private labs for the people covered under the Ayushman Bharat scheme is one of them.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- This is an important case which involved Article 32 of the Constitution of India, concerning free access to majority of the population in respect of Covid-19 testing. This decision has permitted free testing not only for the families who were covered under the Ayushman Bharat scheme but also to those who belong to economically weaker sections of the society, workers belonging to low income groups in informal sectors, beneficiaries of Direct Benefit transfers and others for whom the government deems fit in availing the benefit of free Covid-19 testing apart from the above-mentioned categories. The importance of Article 32 is not only in terms of mandating authorities from performing the acts prescribed by the court but it has also played an important role from the perspective of Public Interest Litigation and also for the modification of the order dated April 8, 2020.
- Article 32 states that :-
 - (1) *“The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.*
 - (2) *The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*
 - (3) *Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).*
 - (4) *The right guaranteed by this article shall not be suspended except as otherwise provided by this Constitution.”*
- The second legal aspect that is involved in this case is impleadment which enables the court to add any person as party at any stage of the proceedings, if the person whose presence before the court is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions in issue. Order 1 Rule 10 of the Code of Civil Procedure provides:

“The court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue in any suit or proceeding, if the party having the interest which is likely to be so affected is not represented by any pleader.”

6. JUDGEMENT IN BRIEF

Rationale

The judges said that sufficient cause was made by the learned counsel of the parties in clarifying and modifying the order dated April 8, 2020. The court clarified that the order was intended to make free Covid-19 testing in private labs for economically weaker sections who were unable to afford the fee prescribed by the ICMR and it was not for those who could afford the payment. The affidavit filed by ICMR on April 12, 2020 stated that according to the directive issued by the National Health Authority under the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana, the fee of testing will be free of cost in private laboratories to those who are covered under the schemes like Ayushman Bharat which was already stated in the order of April 8, 2020. The court was also of the view that looking at the plight of the persons belonging to economically weaker sections of the society, the government may consider as to whether any other categories of persons belonging to economically weaker sections of the society can be extended the benefit of free Covid-19 testing. The court further stated that in framing of schemes and its implementation, the Government are the best experts.

The order of April 8, 2020 was clarified and modified in the following manner:

- The persons eligible under the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana can avail free testing of Covid-19 and it can be extended to any other category of economically weaker sections of the society as prescribed the Government hereinafter for free Covid-19 testing.
- The Government of India, Ministry of Health and Family Welfare may consider as to any other categories of weaker sections of the society such as workers belonging to the low income groups in the informal sectors, beneficiaries of Direct Benefit transfer apart from those already covered under Ayushman Bharat Pradhan Mantri Jan Arogya

Yojana are also eligible for free Covid-19 testing and issue appropriate guidelines within a period of one week.

- The private labs can continue charging the fee for Covid-19 testing from those persons who are capable of paying the fee as fixed by ICMR.
- The Government of India, Ministry of Health and Family Welfare may issue necessary guidelines for reimbursement to private labs and necessary mechanism to defray expenses who undertake free Covid-19 testing.
- The Central Government should publicize the schemes so that all those eligible can take up free Covid-19 testing

And therefore, the application for modification was allowed.

7. COMMENTARY

In my view, the decision of the Supreme Court is very fair because it hasn't only let the people for free Covid-19 testing but has also created an equal footing in terms of accessibility and affordability among them. The best part that any case would have is the lawyers taking up good initiatives like this. It is always necessary to witness and to have a check on whether a particular law provides defects and in order to remove the lacunae, people should take up the initiative. This case has helped in establishing uniform civil code and has also created an anticipation of good Public Health Law in the upcoming future. Cases like these are very important because it concerns wide sections of the society in general. The decision hasn't gone wrong in terms of people who were capable of affording the Covid-19 test at the cost of Rs.4500/- In the perspective of several laboratories, reimbursement is a good option but one thing that we need to keep in mind is that if the laboratories start doing Covid-19 test with almost free of cost, then it might become difficult for them to sustain in the market and ultimately they might end up in performing the tests which will finally act as a burden for the people. Secondly, the financial constraints that the government has in reimbursing all the laboratories is one that makes this process difficult. Here, the labs have not abstained themselves from doing free Covid-19 testing which shows that they had given preference to Humanity over money and profits. This case is much appreciable in all the aspects starting from the initiative of Mr. Shashank Sudhi Deo, the arguments of the learned counsels of the parties were more favorable, the decision of the judges and the productive implementation of the Government in such crisis. Dr. B.R. Ambedkar has said, *"How much ever good the Constitution may be but if the implementers are bad, we cannot okk achieve the purpose of*

democracy but even if the laws are bad and the implementers are good, then it will conclusively benefit all.”

CASE NO. 13

JAGDEEP S. CHHOKAR & ANR.

V.

UNION OF INDIA

(WRIT PETITION (C) NO. 10947 OF 2020)

VIOLATION OF FUNDAMENTAL RIGHTS OF MIGRANT LABOURS DURING COVID-19 LOCKDOWN.

ABSTRACT

During the Covid-19 associated lockdown, the poverty and vulnerability of the millions of migrant workers were made visible. While on one hand, the government managed the pandemic in a commendable manner and even came forward to support businesses, the migrant worker, who is the very essence of these institutions, remained largely ignored. A large number of migrant workers who wished to go back to their native villages to live with their families which led to uncontrollable chaos at various bus terminals and which also lead to tragic deaths of many such migrant workers who were left with no option but to travel hundreds of kilometers to their native places by foot. Also, migrant workers who have been stranded for no fault of their own, with zero earnings and no financial support were charged very high train fares for their journey to native places and railways. Henceforth, this case has been discussed for the enforcement of fundamental rights of the migrant workers as enshrined under Article 14, 19 and 21 of the Constitution of India.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|--|
| Case No | : | Writ Petition (C) No. 10947 of 2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Filed on | : | April 27, 2020 |
| Case Decided on | : | May 5, 2020 |
| Judges | : | Justice N.V. Ramana, Justice Sanjay Kishan Kaul & Justice B.R. Gavai |
| Legal Provisions Involved | : | Article 14, 19 & 21, Constitution of India, 1950 |

| | | |
|--------------------------|---|---|
| Case Summary Prepared by | : | Snigdha Agarwal IMS Law College, NOIDA |
|--------------------------|---|---|

2. BRIEF FACTS OF THE CASE

- The case to be discussed in the following note is *Jagdeep S. Chhokar & Anr. v. Union of India*.
- A PIL has been filed in public interest is being filed under Article 32 of the Constitution of India for allowing migrant workers across the country to return to their hometowns and villages after conducting necessary Covid-19 tests.
- It adds those who test negative for Covid-19 must not be forcefully kept in shelters or away from their homes and families against their wishes.
- The plea by activist Jagdeep S Chhokar, former director in-charge of Indian Institute of Management, Ahmedabad, and Gaurav Jain, a lawyer, also seek a direction to the Centre to allow safe travel and transportation for such workers, who were amongst the worst affected category of people due to the lockdown.
- The petition, settled by Advocate Prashant Bhushan, said there is a large number of migrant workers who wish to go back to their native villages, and this was evident from the sudden rush in the wake of the initial 21-days national lockdown announced on March 24, that led to uncontrollable chaos at various bus terminals.
- Mr. Prashant Bhushan, learned counsel has submitted that the migrants have to pay 15% of the ticket fare which is not possible for them to bear at this time. The migrant workers are worst affected by the nationwide lockdown and should not be forcefully kept away from their families and homes, against their wishes.
- The PIL also claimed thousands of migrant workers, who didn't join mass exodus on initial national 21-day lockdown, were being harassed by local residents and also being beaten up at some places leading to "humiliation and inexplicable sufferings".
- The petitioners in their joint plea, contended that the fundamental right of the migrant workers enshrined under Article 19(1)(d) (right to move freely throughout the

territory of India) and Article 19(1)(e) of the Constitution (right to reside and settle in any part of the territory of India) cannot be suspended for an indefinite period.

- As per the PIL, forcing these workers to stay away from their families and living in unpredictable and arduous conditions, as the same is an unreasonable restriction beyond what is envisaged under Article 19(5) of the Constitution.
- It further added that as this extension of lockdown is casting an unreasonable and heavier burden on the migrant workers who are stranded in cities of their migration as compared to those who are living with their own families at their own residences, the same is also violative of Article 14 of the Constitution of India.

3. ISSUES INVOLVED IN THE CASE

I. Should Government allow migrant workers across the country to return home with necessary transportation?

4. ARGUMENTS OF THE PARTIES

- When this and other petitions were taken up, the government bragged on affidavit of its Rs 1.70 lakh crore financial package that it had announced under the Pradhan Mantri Garib Kalyan Yojana (incidentally 36 hours after the lockdown and hence not mitigating in any way the anxieties of the poor when the lockdown was announced).
- Even Rs 1.70 lakh crore constituted just 1% of the GDP of India. One of the benefits touted by the government was the 10% increase in the minimum wages each rural family is entitled to under MNREGA. But this in fact was the wage rate increase as a regular adjustment against inflation and in no way an additional resource.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The court had taken up the matter where a petition was filed under Article 14, Article 19 & Article 21 claiming liberty to movement of the migrants and stranded people due to lockdown.

6. JUDGEMENT IN BRIEF

- Taking into consideration the aforesaid statements, it was submitted by Mr. Tushar Mehta, learned Solicitor General that after the filing of this writ petition, the claimed relief has been granted as because the government has issued an order dated March 29, 2020 allowing the movement of the migrant workers, pilgrims, tourists and students who had stuck at different places.
- The further orders as of May 1, 2020, the facility for movement of migrant workers, pilgrims, students which has been mentioned above along with all possible efforts to mitigate their hardships has been made.
- As that of the complaint made by Mr. Prashant Bhushan about the 15% of the ticket fare being charged from the migrants, Mr. Tushar Mehta submitted that regarding the fair charge, needed steps will be taken by the Railways Authority and the State Governments.
- Union of India along with the suggestions and help of the Railways and the concerned State Governments is taking appropriate steps with regard to the ticket fare and the movement of the migrants.
- As of the request being made in the prayer of allowing the migrants' movement after testing them for Covid-19, the order dated April 29, 2020 issued by the Government of India, Ministry of Home Affairs sub- clause (iv) under Clause 17 on movement of persons, the Government of India had allowed the movement by directing all States/Union Territories to designate nodal authorities and develop standard protocols for receiving and sending such stranded persons.
- As in order dated May 1, 2020 that has been issued by the Railway Ministry, the 'Shramik Special' trains are to be run for the migrant workers, tourists, students and others who had been stuck in one place or the other due to lockdown.
- As about charging 15% of Railway tickets' amount from workers, it is not for this Court to issue any order under Article 32 regarding the same, it is the concerned State/Railways to take necessary steps under the relevant guidelines as mentioned by the court.

- Other difficulties being mentioned by Mr. Prashant Bhushan will be seen by the related State Government Authorities as the court can't expand the scope of writ petition.

7. COMMENTARY

The case has its own significance on the humanitarian basis considering the fact that the petitions filed seeks various reliefs for migrant labour who were bearing the worst brunt of the lockdown. The lockdown left crores of migrant workers stranded without jobs, money or food, particularly in metros across the country. Consequently, most of them wanted to and did attempt to return to their villages. Huge crowds thronged train and bus stations as well as interstate borders. Workers were willing to even walk home, hundreds and thousands of kilometres, in desperation, when they saw that there was no question of motorised transport being allowed. News of migrants dying either of road accidents or because of any other reason daily which is again because of none other than this lockdown comes as a shocking thing and as a question on the facilities and actions by the government and the people for them as citizens.

This case was of massive importance because it pleaded for necessary arrangements for testing of Covid-19 that should have been made for all those migrant workers who wish to travel to their native places, either in the state of their departure or in the state of their arrival.

CASE NO. 14

PINTU S/O. UTTAM SONALE

V.

THE STATE OF MAHARASHTRA

(WRIT PETITION (CRL) NO. 3206 OF 2020)

ELIGIBILITY OF POCSO ACCUSED FOR EMERGENCY PAROLE.

ABSTRACT

The present case arises out of the Criminal Writ Petition No. 3206 of 2020 where the petitioner approached the Hon'ble Division Bench praying that he be released on emergency (Covid-19) Parole. The petitioner was convicted for the offence punishable under section 376 of the IPC and Section 3, 4, and 5 of the POCSO Act. The prayers of the petitioner before the Division Bench were taking recourse to the recent amendment brought about to Rule 19 (1) of the Maharashtra Prisons Rules, 1959 effected vide Government Notification dated May 8, 2020. The question arises whether the parole can be granted under special act or not? Earlier two judgments were delivered by the Hon'ble court which contradicts each other these were Vijendra Malaram Ranwa and Sardar s/o. Shawali Khan. The question was still pending whether the POCSO accused is eligible for the emergency parole or not?

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|---|
| Case No | : | Criminal Writ Petition No. 3206 of 2020 |
| Jurisdiction | : | High Court of Judicature at Bombay |
| Case Filed in | : | 2020 |
| Case Decided on | : | November 6, 2020 |
| Judges | : | Justice K K Tated, Justice G S Kulkarni and Justice N R Borkar |
| Legal Provisions Involved | : | POCSO Act, 2012 |
| Case Summary Prepared by | : | Sunny Kumar Student of Chanakya National Law University, Patna |

2. BRIEF FACTS OF THE CASE

The present case arises out of the Criminal Writ Petition No. 3206 of 2020 where the petitioner approached the Hon'ble Division Bench praying that he be released on emergency (Covid-19) Parole. The petitioner was already convicted for the offence punishable under Section 376 of the IPC (Indian Penal Code) and Section 3, 4, and 5 of the POCSO (Protection of Children against Sexual Offences Act, 2012) Act. The prayers of the petitioner before the Division Bench were taking recourse to the recent amendment brought about to Rule 19 (1) of the Maharashtra Prisons Rules, 1959 effected vide Government Notification dated May 8, 2020. By this amendment sub-rule (C) of Rule 19(1), came to be incorporated so as to make a provision for release of convicted prisoners on emergency parole, which was in pursuance of the notification issued by the State Government under the Epidemic Diseases Act, 1897. The question arises whether the parole can be granted under special act or not? Earlier two judgments were delivered by the Hon'ble court which contradicts each other which were *Vijendra Malaram Ranwa v. State of Maharashtra &Anr*⁷ and *Sardar s/o. Shawali Khan v. The State of Maharashtra & Anr*⁸.

The Hon'ble Apex Court took *Suo Motu* Writ Petition (C) No. 1 of 2020 in the light of the health crises arising out of Corona Virus (Covid-19) raised a concern inter alia with the State of the inmates of 'prisons' and 'remand homes' so that care can be taken for protection and welfare of the prisoners to restrict transmission of Covid-19. Furthermore, the Apex court accordingly directed the State/Union Territories to constitute a High Powered Committee which is comprising of Chairman of the State Legal Services Committee, the Principal Secretary (Home/Prison), Director General of Prison, to decide which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. The Hon'ble court totally left it to the discretion of the High Power Committee to determine the category of prisoners who should be released on parole or on interim bail depending upon the nature of the offences, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

In the light of the above directions of the Hon'ble Apex Court, the State Government on dated March 25, 2020 constituted a High Power Committee. Subsequently, the High Power

⁷Cri.LD-VC WP no.112/2020-Nagpur Bench dt.14.07.2020

⁸Cri.WP no.520/2020 (Aurangabad Bench) dt.09.09.2020

Committee held its meeting on dated March 25, 2020 interalia determining “*which class of prisoners can be released on parole or on interim bail*” for such period as may be thought appropriate and “*the category of prisoners who should be released*”.

As a result the committee interalia laid down the following norms, that

- i. The convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.
- ii. The aforesaid directions shall not apply to under trial prisoners or convicted prisoners booked for serious economic offences / bank scams and offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc., (which provide for additional restrictions on grant of bail in addition to those under Cr.Pc) AND also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.”

However, we must write it down that in paragraph 5(1) of the High Committee referred that an exception should be made to grant interim bail to the under trial who fell in the following categories of offences:-

(1) Indian Penal Code

- (a) IPC – Chapter VI –Offenses against State– IPC 121 to 130
- (b) IPC – 303
- (c) IPC – 364(A), 366, 366(A), 366(B), 367 to 374
- (d) IPC – 376(t) to (e)
- (e) IPC – 396
- (f) IPC 489(a) to (e)
- (g) Bank Frauds and Major Financial Scams

(2) Special Acts

- (a) MCOC, TADA, POTA, UAPA, PMLA, Explosives Substances Act, Anti -

Hijacking Act

(b)NDPS (Other than personal consumption)

(c)MPID

(d) POCSO

(e) Foreigners in Prison.”

3. ISSUES INVOLVED IN THE CASE

I. Whether the provisions of ‘emergency parole’ cover prisoners convicted under the provisions of the Protection of Children against Sexual Offences Act, 2012” ?

4. ARGUMENTS OF THE PARTIES

Petitioner

- The council for the petitioner argued that the petitioner was once released on parole for attending marriage on March 10, 2019 and he surrendered on time i.e. on April 20, 2019.
- The learned council argued that the petitioner is not convicted under the provisions of MCOC, PMLA, MPID, NDPS, UAPA, the condition as laid down by the High Powered Committee stands satisfied.
- Furthermore, the Petitioner also argued that the petitioner has already undergone 6 years and 9 months of actual imprisonment and including remission he has undergone 8 years of imprisonment.
- It was also submitted that the petitioner has undergone his substantial part of sentence and his conduct in jail was good.

Respondent

- The learned council on behalf of the Respondent argued that the petitioner have been already convicted under the POCSO Act.
- Furthermore, the council submits that the POCSO Act is a special Act within the meaning of rule 19 (1) (C) of the said rules.
- Moreover, the Council submits that the Petitioner is not entitled for the relief of emergency parole.

5. LEGAL ASPECTS INVOLVED IN THE CASE

It is like a crystal clear that both judgments were contradicting to each other. On the above backdrop the Division Bench hearing the present criminal writ petition observed that there is a conflict in these two decisions of the Division Bench and a reference of the petition to a full bench was necessitated. In pursuance of the above order of the Division Bench, Hon'ble Chief Justice was pleased to constitute the present Full Bench. By order dated November 3, 2020 the Hon'ble bench have framed the following questions:-

- (i) Which of the interpretation of Rule 19 (1) sub-rule (C) as brought about by the Maharashtra Prisons (Mumbai Furlough and Parole (Amendment) Rules, 2020, either as made in decision of the Division Bench in *Vijendra Malaram Ranwa v. State of Maharashtra & Anr* or the decision of the Division Bench in *Sardar s/o Shawali Khan v. The State of Maharashtra & Anr*, is the correct interpretation?
- (ii) Whether the provisions of 'emergency parole' as brought about by the amendment to Rule 19 (1) by insertion of sub rule (c) by the Maharashtra Prisons (Mumbai Furlough and Parole (Amendment) Rules, 2020 would cover prisoners convicted under the provisions of the Protection of Children against Sexual Offences Act, 2012".

6. JUDGEMENT IN BRIEF

The Division Bench in the judgment of *Vijendra Malaram Ranwa*⁹, while dealing with the case where the petitioner was convicted of offences under Section 6, 10, 12 of POCSO Act and Section 77(1) and 77(2) of the Indian Navy Act. The Hon'ble court observed that here should not be any impediment for releasing the petitioner on parole.

Furthermore, another Division in the Judgment of **Sardar s/o. Shawali Khan' case**¹⁰ the Hon'ble bench was dealing where the petitioner was convicted under the Terrorist and opined that Disruptive Activities (Prevention) Act (for short 'TADA'), however the petitioner would not be entitled to the benefit of amended sub-rule was not mentioned in the proviso, nonetheless considering the nature of the Special Acts as set out in the proviso a list of which was not exhaustive, other special enactments which are similar in nature can be considered

⁹Supra 1

¹⁰Supra 2

and authority would have power to observe that the TADA convicted would not get benefit of the Government Notification dated May 8, 2020.

In the judgment of *Shubham s/o. DevidasGajbhare's*¹¹ case, while the bench was dealing where the petitioner was convicted for the offence punishable under Section 363, 366A and 376A of the Indian Penal Code. The Hon'ble Bench in its order on dated October 13, 2020 considering Rule 19 (1)(C) as also provisions of Rule 4(21) of the 1959 Rules observed that as there was a conviction for sexual offences against minor then benefit of furlough cannot be given to such prisoners. On this interpretation the Division Bench upheld the orders passed by the Superintendent of Prisons, rejecting the application of the petitioner for emergency parole.

In the judgment of *Kalyan s/o. Bansidharrao Renge*¹² the division was dealing with the petitioner where he was convicted for the offence punishable under Section 376(2)(g) of the Indian Penal Code and who was awarded rigorous imprisonment for 10 years. The Hon'ble bench observed that the petitioner deserved to be released on emergency parole.

Section 19(1) of the Bombay Furlough and Parole Rules, 1959, deals with emergency parole, it needs to be noted that sub-rule (A) provides for release on emergency parole in case of death and marriage of the persons as specified. Sub-rule (B) provides for emergency parole for the reason of death and for the reason of marriage of the persons so specified and the 'Authority' approving emergency Parole in the relevant case shall decide whether to grant parole under police escort or with other conditions.

Meanwhile, Subsection (C) was inserted by the amendment vide notification dated May 8, 2020 provides for emergency parole in view of declaration of epidemic by the State Government under the Epidemic Diseases Act, 1897. Rule C (i) states that convicted prisoners whose maximum punishment is 7 years or less who can apply to be released on emergency parole which can be granted for 45 days and for further period as specified. Furthermore, Rule C (ii) speaks of emergency parole to be granted for convicted prisoners whose maximum sentence is above 7 years, who can be released on emergency parole by the Superintendent of Prison, if the convict had returned to prison on time on last two releases.

¹¹Cri.WP.no.1135/2020(Aurangabad Bench), October 13, 2020

¹²Cri.WP no.ASDB-LD-VC-265/2020, order dated August 28, 2020

However, the “proviso” below Rule C(ii) provides that the directions in Rule C(ii) “shall not apply to convicted prisoners convicted for serious economic offences or bank scams or offences under Special Acts other than IPC like MCOC, PMLA, MPID, NDPS, UAPA, etc.”

The Hon’ble court observed that the proviso to certain Special Acts is certainly not exhaustive and it would include within its ambit other similar Acts where the offences are serious. The court has increased its ambit which also includes MCOC, PMLA, MPID, NDPS, UAPA which is required to read *ejusdem generis*. Furthermore, the Hon’ble bench also observed that the prisoners who are proviso would not be covered within the ambit of sub-rule (C) (ii). It would be for the prison authorities to consider the seriousness of such offences under the Special Acts.

Furthermore, the Hon’ble court also observed that when the accused is sentenced for seven years and above under the provisions of the POCSO Act, it is certainly a conviction for a serious offence affecting the society at large.

Moreover, the Hon’ble court also rejected the arguments on behalf of petitioner where it was argued that POCSO Act is not found in the special Acts as referred in the proviso, the prisoners convicted under the POCSO Act can avail benefit of emergency parole. Furthermore, it was also argued that the notification itself is contrary to Rule 19

Hon’ble Court also observed that the purpose being to grant benefit of this rule to a limited category of prisoners. However, certain exception were included in it, that sub-rule C(ii) would not be applicable when the category of prisoners is of prisoners convicted for serious economic offences or bank scams or offences under the Special Acts. Furthermore, the Hon’ble court also clarifies it that Special Acts like POCSO and/or TADA are certainly required to be read in the proviso so as to make sub-rule (C) (ii) inapplicable to the category of convicts falling therein.

It was held by the Hon’ble Court that the decision of the Division Bench in Sardar s/o. Shawal Khan (Supra) is the correct interpretation of Rule 19(1) sub rule (C) of the 1959 Rules. Moreover, it was also clarified that the decision of the Division Bench in Vijendra Malaram Ranwa (Supra) would not lay down the correct position in law on the interpretation of the said rule.

Furthermore, the Hon'ble court also observed that the Rule 19(1) by incorporation of sub-rule (C) also covers prisoners convicted under the provisions of the Protection of Children against Sexual Offences Act, 2012

7. COMMENTARY

After the Nirbhaya rape case, major criminal amendments took place. The year 2012 was the landmark year in the history of Criminal Justice of India. In this year, a new major law was enacted to deal with the offences related to the sexual crimes against the children. The scope of POCSO was extended to a great extent. This Act has special provisions to deal with the offences against the Children.

After the Nirbhaya case, many others laws were also made. The Justice Verma Commission was formed to give recommendations to improve the rape laws of the Country.

But, it is a harsh reality that still the condition has not been improved. The ground reality is something else. According to the data revealed by the NCRB, In India 88 rape cases took place on a daily basis. While, the Conviction rate is still below of 30 %.

8. IMPORTANT CASES REFERRED

- *Kalyan s/o. Bansidharrao Renge (Cri.WP no. ASDB-LD-VC-265/2020, order dt. August 28, 2020)*
- *Sardar s/o. Shawali Khan v. The State of Maharashtra & Anr (Cri.WP no. 520/2020 (Aurangabad Bench) dt September 9, 2020)*
- *Shubham s/o. Devidas Gajbhare's (Cri.WP. No. 1135/2020 (Aurangabad Bench) dt. October 13, 2020)*
- *Vijendra Malaram Ranwa v. State of Maharashtra & Anr (Cri.LD-VC WP no.112/2020-Nagpur Bench dt. July14, 2020)*

CASE NO. 15

RASHTRIYA SHRAMIK AGHADI V.

THE STATE OF MAHARASHTRA AND OTHERS (WRIT PETITION NO. 4013 OF 2020)

“NO WORK, NO WAGE” AMID COVID-19.

ABSTRACT

The whole world had been shattering from past few months due to the outbreak of the pandemic called Novel Corona Virus or Covid-19. This had made the tremendous changes in the life of common man. This outbreak made everyone to sit in the homes, because social distance is the only way to prevent people from attack of Novel Corona Virus. However the people who suffered most were the daily wage labourers, who due to no work, had no resources to feed themselves as well as their families and were also willing to work in pandemic. One such group was that of Contract labourers who worked for the temple trust named Shri Tuljabhavani Mandir Sansthan in Tuljapur. These labourers were willing to offer their services as security guards and health workers but were not allowed to do so by the authorities. The main plight faced by them was that they were not paid due to their inability to work during the lockdown. The main task of Judiciary here was to understand the plight of the labourers and find a solution to this issue and direct the respected authorities to take actions.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|---|
| Case No | : | Writ Petition No. 4013 of 2020 |
| Jurisdiction | : | Bombay High Court |
| Case Filed on | : | February 27, 2020 |
| Case Decided on | : | June 9, 2020 |
| Judges | : | Justice S.V. Gangapurwala, Justice Shrikant D. Kulkarni and Justice Ravindra V. Ghuge |
| Legal Provisions Involved | : | Article 226, 227 of Constitution of India, 1950 |
| Case Summary Prepared by | : | Akansha S Jain |

2. BRIEF FACTS OF THE CASE

The petitioners are a union of contract labourers. They work for the temple trust named Shri Tuljabhavani Mandir Sansthan in Tuljapur. They had filed a grievance petition before the Court. Petitioners' grievance is that after the lockdown had been effected, members of petitioner union were still willing to offer their services as security guards and health workers but they were precluded from performing their duties on account of clamping of lockdown for the purpose of containment of Covid-19. Payments made by the contractors to the above-stated people for the month of March 2020 are slightly lesser than the gross salary and for the month of April, 2020 a paltry amount is paid.

The Court observed that the workers were receiving a meagre amount of their salary for April. Besides, the Trust also made deductions from their salary for the month of March. Proceedings containing these grievances are also pending before the Assistant Commissioner of Labour. Those concern the Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition) Act, 1970

3. ISSUES INVOLVED IN THE CASE

- I. Whether the petitioners are willing to offer their services as security guards and health workers? Are they allowed to do so?
- II. Whether the amount of salary paid during the month of January and February and the amount to be paid for further months appropriate?

4. ARGUMENTS OF THE PARTIES

- The counsel for the petitioner has presented a ready reference chart to the Court. It showcased the unfair deductions made in the monthly salaries of the workers. It proved the grievances made by the union.
- The counsel for the respondent challenged the sustainability of the petition. He submitted that since the issue is pending before another body, the Court should not take up the same.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Article 226, empowers the High Court to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, Certiorari or any of them.

What are these Writs?

Habeas Corpus - A simple dictionary meaning of the writ of Habeas Corpus is "a writ requiring a person under arrest of illegal detention to be brought before a judge or into court, especially to secure the person's release unless lawful grounds are shown for their detention".

Mandamus - A writ issued as a command to an inferior court or ordering a person to perform a public or statutory duty.

Prohibition - A writ of prohibition is issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction in cases pending before it or acting contrary to the rules of natural justice.

Quo warranto - This simply means "by what warrant?". This writ is issued to enquire into the legality of the claim of a person or public office. It restrains the person or authority to act in an office which he/she is not entitled to; and thus, stops usurpation of public office by anyone. This writ is applicable to the public offices only and not to private offices.

Certiorari- Literally, Certiorari means "to be certified". The writ of certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court, tribunal or quasi-judicial authority.

The High Court is conferred with this power under Article 226 of the Constitution of India for enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose.

Article 227 determines that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction (except a court formed under a law related to armed forces).

The High Court can under Article 227 –

- Call for returns from such courts,
- Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts.
- Prescribe forms in which books, entries and accounts be kept by the officers of any such courts.
- Settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts.

6. JUDGEMENT IN BRIEF

- This matter was taken up through Video Conferencing by Vidyo App during the nationwide lock-down on account of Covid-19 pandemic. By this petition, the petitioner Union has made a grievance that after the lock-down has been effected and though the members of the Petitioner Union, are willing to offer their services as security guards and health workers, they are precluded from performing their duties on account of the clamping of lock-down for containment of Covid-19 pandemic. The Court rejected the argument of the respondent. It stated that it cannot turn a “Nelson’s eye” because of Covid-19 pandemic. It further observed that the petitioners are able-bodied persons. They are willing to offer their services as contract labourers in the security and house-keeping wing of the Trust. Yet, they are unable to work due to the closure of temples for containing the pandemic. In such a case, even the principal employer is unable to provide them with work.
- The Court held that prima facie, the concept of “no work, no wages” is not applicable in the present case. The Court cannot turn a blind eye to the plight of the workers in such difficult times.
- The counsel for the respondent was unable to disapprove the arguments of the petitioner. Hence, the Court directed the petitioner to add the contractors as additional respondents. Further, the Court gave the suitors liberty to serve the contractors.

- The District Collector of Osmanabad is also instructed in the capacity of the President of the Trust. He is to ensure that full wages except food and conveyance allowance is being paid out. The wages are for the months of March, April, and May 2020. The disbursement of wages is now subject to the decision of the Assistant Commissioner. He will take the decision after the complete lifting of the lock-down amid Covid-19.

7. COMMENTARY

“No human masterpiece has been created without great labour.” – Andre Gides

This case is of supreme importance as it consists of the plight of contract laborers who due to nationwide lockdown due to Covid-19 suffered various struggles like non-payment of wages. Court has not turned Nelson’s eye to an extraordinary situation on account of Corona virus/Covid-19 pandemic. Able bodied persons, who are willing and desirous to offer their services in deference to their deployment as contract laborers in the security and housekeeping are unable to work since the temples and places of worships in the entire nation have been closed for securing the containment of Covid-19 pandemic. Even the principal employer is unable to allot the work to such employees in such situation. I am of the opinion that the principle of "no work- no wages" cannot be made applicable in such extraordinary circumstances. The Court cannot be insensitive to the plight of such workers, which has unfortunately befallen on them in account of the Covid-19 pandemic.

8. IMPORTANT CASES REFERRED

- *Ambica Mills Company, Ltd. v. S. B. Bhatt, 1961 AIR 970, 1961 SCR (3) 220*
- *Anthony Sabastin Almeda v. R. M. Taylor, AIR 1956 Bom. 737, (1956) 58 BOMLR 899, ILR 1957 Bom. 15, (1957) ILLJ 452 Bom.*
- *B. N. Elias & Co. (Private), Ltd. v. Authority of Payment of Wages Act, AIR 1960 Cal 603, 1961 (3) FLR 334, (1961) IILLJ 297 Cal*
- *Codialabail Press vs Monappa (K.), (1963) ILLJ 638 Kant*
- *In Union of India v. Babu Ram, AIR 1988 SC 344, (1988) IILLJ 98 SC, 1987 Supp (1) SCC 71*

CASE NO. 16

AMIT BHARGAVA

V.

THE STATE (NCT OF DELHI)

(WRIT PETITION (CRL) NO. 3016 OF 2020)

HOME QUARANTINE MUST STAND LIMITED TO 14 DAYS.

ABSTRACT

The present case arises out of the Writ Petition (Crl) No. 3016 of 2020, where the petitioner approached the Hon'ble Court praying to issue an appropriate writ, direction or order quashing the Home Quarantine Notice & Second Home Quarantine Notice arbitrary, as they have imposed a quarantine period of over 30 days from the date of contact on the Petitioner, which is not contemplated by law. It was also prayed by the learned counsel to Issue an appropriate writ, direction or order quashing Warning Notice dated April 20, 2020 issued by the District Magistrate (South), Govt. of NCT of Delhi as being violative of the principles of natural justice and the principle of *audi alteram partem*.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|---|
| Case No | : | Writ Petition (Crl) No. 3016 of 2020 |
| Jurisdiction | : | High Court of Delhi |
| Case Filed on | : | 2020 |
| Case Decided on | : | May 11, 2020 |
| Judges | : | Justice C Hari Shankar |
| Legal Provisions Involved | : | National Disaster Management Act, 2005, Epidemic Disaster Act 1897 and Indian Penal Code, 1860. |
| Case Summary Prepared by | : | Raju Kumar Student of Chanakya National Law University, Patna |

2. BRIEF FACTS OF THE CASE

The petitioner came in contact with a person on dated March 24, 2020, who was a home delivery pizza boy and later on who was tested positive for Covid-19 virus, on dated April 14, 2020. The petitioner was placed under home quarantine, vide notice on dated April 15, 2020, for the period from March 24, 2020 till April 20, 2020, that is for the period of 28 days. Later on, second notice vide dated April 17, 2020, the period of home quarantine of petitioner, was re-notified as April 14, 2020 to April 28, 2020.

On dated April 20, 2020 a warning notice was issued on the name of Petitioner which states that he has to be under quarantine up to April 2, 2020. Furthermore, it also states that “you are not following the norms of house Quarantine effectively and posing as a potential threat to the people living around you.” Furthermore, the notice also warns the petitioner in the following words “It is pertinent to mention here that if any violation of aforesaid direction shall be reported, then strict action shall be taken for violation of relevant provisions of National Disaster Management Act 2005, Epidemic Disaster Act, 1897 and Indian Penal Code, 1860”

3. ISSUES INVOLVED IN THE CASE

- I. Whether the court has authority to order to formulate a policy to enable people, in home quarantine, to access private laboratories, for Covid-2019 test?
- II. Whether the quarantine period can be accessed for more than 14 days or not?

4. ARGUMENTS OF THE PARTIES

Petitioner

- The learned counsel on behalf of the petitioner argued that the warning notice, dated April 20, 2020 was completely false on facts and there had been no violation, by her client, of the home quarantine imposed on him.
- It was argued by the petitioner side that even after the expiry of the period of home quarantine i.e. on April 28, 2020, his client was directed by the respondent to continue to remain quarantined till the notice of quarantine, affixed on his premises, was removed.
- The learned counsel on behalf of the petitioner argued that the period of quarantine was not in conformity with the applicable guidelines on the issue,

specifically, the “Guideline for Home Quarantine” issued by the Directorate General of Health Services (DGHS) on March 14, 2020 and the Delhi Epidemic Diseases, Covid-2019 Regulations, 2020.

Respondent

- The respondent placed reliance on Sections 73 and 74 of the Disaster Management Act, 2005 and on Regulation 19 of the 2020 Regulations.
- It was argued on behalf of the respondent that 'Janta Curfew', was observed on dated March 22, 2020 to tackle with Covid-19. The entire country is facing a lock-down of 21 days which is further extended beginning from March 25, 2020. It is high time for the people of India to support the government, and to file frivolous petition before the Hon'ble Court. It was also argued that the Home Quarantine should be a voluntary act of the petitioner for his own safety and for the benefit of society too.
- The learned counsel on behalf of the respondent argued that the Government employees falling under essential services like police, medical and health, food and civil supplies, labour and employment, finance, etc., are working day and night to deal with crisis risking their life, and at this juncture any litigation for personal gains for popularity or frivolous should be dealt with firmly by this Hon'ble Court.
- The counsel for the respondent argued that, Restrictions imposed by the Government on citizens under the Epidemic laws are neither arbitrary nor infringes any fundamental rights.
- The counsel argued that as per the existing Acts/ Rules the Home Ministry has delegated the powers under Disaster Management Act, 2005, (Section 10 sub-section 2 clauses (i) and (l)) to Secretary to act in such a way to contain or control the outbreak.
- The counsel argued that in the present case for safer side as per regulation and protocol the Petitioner was kept under Home Quarantine from the date of positive test of Covid-19 of the delivery boy. Prior to that the petitioner was under lockdown but was not in quarantine as such he was in touch with others.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- National Disaster Management Act, 2005 (Section 73 and 74)
- Epidemic Disaster Act, 1897
- Indian Penal Code, 1860 (Section 270)
- Code of Criminal Procedure, 1973 (Section 144).

6. JUDGEMENT IN BRIEF

For the first issue involved in this case i.e., whether the court has authority to order to formulate a policy to enable people, in home quarantine, to access private laboratories, for Covid-2019 test. The Hon'ble court relied on the judgment of *State of Himachal Pradesh v. Satpal Saini*¹³ and observed that the said prayer is not maintainable as this Court, in exercise of its power under Article 226 of Constitution of India, does not direct framing of policies.

In the present case the Hon'ble court observed that there can be no doubt in law, that, while tackling the challenge, civil and constitutional rights of citizens cannot be compromised. However, it was also observed by the Hon'ble court that while examining whether, in a particular case, such compromise has or has not taken place. The court has to adopt an approach which is not hyper-legalistic, but is pragmatic and practical.

Furthermore, the Hon'ble court also states that, it is incumbent, on each one of us, to contribute our efforts in this direction, and to forbear from rushing to Court, at the drop of a hat. Of course, were the efforts, to battle the Covid-2019 pandemic, to actually breach any Civil or Constitutional rights of citizens, it would be the duty of the Court to step in and remedy the situation.

For the second issue involved in the present case i.e. whether the quarantine period can be accessed for more than 14 days or not? The Hon'ble Court observed that *the period of 14 days, stipulated in the afore-extracted provisions in the Guidelines of March 14, 2020 and the 2020 Regulations is not mandatory, but is intended to serve as a general guideline.*

Furthermore, the Hon'ble Court also observed that in the light of the present case, the court is unwilling to hold that in each and in every case, the period of home quarantine must stand

¹³(2017) 11 SCC 42

limited to 14 days and no more. Moreover, the court also observed that at the same time, keeping a person under unjustified home quarantine also has deleterious civil consequences.

7. COMMENTARY

Article 21 of the Indian Constitution protects the life and personal liberty of an individual. It states that no person shall be deprived of his life or personal liberty except according to the procedure established by the law. Many international conventions also protect the personal liberty of an individual.

The detention should not be ‘arbitrary’. There are two aspects of the arbitrary action. The first one is that an arrest will be considered as ‘arbitrary’ if it is unlawful. Which means that the action is not in accordance with the procedure laid down by the law. The second one is that an arrest is ‘arbitrary’ if it is unlawful or unjust. Which means that the provisions of the law are not according with the principle of natural justice. A detention is ‘arbitrary’ if the purpose is incompatible with respect for the right to liberty and security of person.

The present case is the landmark judgment against the arbitrary action of the State. In the above mentioned case the Hon’ble Court has rightfully protected the interest of the petitioner by restricting the arbitrary action of the state. This case is also a classical example on the issue that while tackling the challenges, civil and constitutional rights of citizens cannot be compromised.

8. IMPORTANT CASES REFERRED

- *State of Himachal Pradesh v. Satpal Saini, (2017) 11 SCC 42)*

CASE NO. 17

AMIT BATHLA

V.

CENTRAL BOARD OF SCHOOL EDUCATION

(WRIT PETITION (C) NO 566 OF 2020)

HOME QUARANTINE MUST STAND LIMITED TO 14 DAYS.

ABSTRACT

The case focuses upon the X and XII CBSE Board examination that were supposed to be conducted from the July 1 to the July 15. A group of parents filed a writ petition under Article 32 of the Constitution of India praying that the order of CBSE be quashed. They filed such a petition because of the fear for the health of their children during such a pandemic which was clearly ignored by the board while fixing the dates. The court after hearing the notions if both the parties held that the examination be cancelled.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|---|
| Case No | : | Writ Petition (C) No 566 of 2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Filed on | : | June 2020 |
| Case Decided on | : | June 26, 2020 |
| Judges | : | Justice A M Khanwilker, Justice Dinesh Maheshwari and Justice Sanjiv Khanna |
| Legal Provisions Involved | : | Article 32 of Constitution of India, 1950 |
| Case Summary Prepared by | : | Anju Esther Balakrishnan Student of Benett University, Greater Noida |

2. BRIEF FACTS OF THE CASE

The respondents who were the CBSE came out with a notification in November 2019 which directed all the school under the board that the concerned subjects must contain Theory and Practical/Internal Assessment Components. However, given the situation of the pandemic on

April 2020, it was directed by the board to promote the students of grade IX and XI to the next grades respectively based on the school-based assessments alone and it was also decided that exams for classes X and XII will not be held if it was located outside India. Controller of Examination of CBSE, Respondent No. 1, sent a notification which provided the dates regarding the class XII examination from July 2020. However, the Ministry of Home Affairs sent out a circular which clearly mentioned that no examinations will be permitted in the centres under the containment zones. It was identified by the respondent that there were almost 3000 examinations centres in India, however, due to the pandemic the examinations would be conducted in almost 15,000 centres this time. The petitioners, who were the parents of the students appearing in the examinations, filed a Writ under Article 32 of the Constitution with a prayer to quash the notifications of the Board to conduct the examination from the 1st to the 15th of July 2020. This writ mentions about the concern of the safety of millions of students who could be exposed to the pandemic as well as demonstrates the discriminatory and arbitrariness of the respondents in issuing the notice as it was mentioned by AIIMS that July would be the period where the pandemic would be at its peak.

The petitioners who were distressed parents filed out the writ petition on the above-mentioned facts along with other suggestions that would help during the pandemic. They suggested that the examinations scheduled in July 2020 should be cancelled and that the marks should be allotted on the basis of internal assessments. The average of the exams that were already written by the students along with the internal assessments marks of the remaining paper should be the used in order to examine and pass the students.

Thus under Article 32 of the Constitution, the writ petition of the nature of Certiorari and Mandamus seeks to quash the notification of the CBSE and for the time being provide an immediate stay of the notification until a judgment is provided.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the petitioners could quash the circular approved by the CBSE regarding the dates of the examination of class XII students which was fixed on the July 1, 2020?
- II. Why the CBSE remained uncaring towards the situations as well as the health of the students as they could become carriers or victims of the virus themselves?

- III. Could the Hon'ble Court provide other means to conduct the examination that does not need the physical presence of the students?

4. ARGUMENTS OF THE PARTIES

The plaintiffs who were the parents of the students who had to write the examination argued about the date of the examination as they believed that it was not safe to conduct an examination during such a pandemic. As mentioned in the facts as well as the issue above, there was a report from the health department that there was a chance that there could have been a rise in the cases related to the pandemic during July, the month of the examination. They clearly felt that the board was not considering the health and safety of the students as well as their family as there was a high risk of exposure to the virus. Along with which the climatic conditions could affect the students who had to write the exams for three hours continuously with masks and gloves. They argued with the fact that many other professional institutions had postponed their examinations due to the guidelines provided by the health department. The State Board examination was cancelled for many states thus making the parents worried about the fact that inly the CBSE students would have to go and give the examinations during such a period. It was also mentioned by the Ministry of Home Affairs that examinations would not be permitted in containment zones so if by chance the exam centre decided by the board would be in such a zone then there are chances that only those children would not be able to attend the examination. It was also not practical for every parent to afford a private vehicle in order to drop their kids at the centre and hiring public transport would not only be a risk but also a trouble to get due to the lockdown. The petitioners argued that the respondents despite knowing the gravity of the situation and the issues that the pandemic can cause have no genuine concern by putting the lives of the students at risk.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The writ petition was filed by the parents under Article 32 of the Constitution of India, which deals with the Right to Constitutional Remedies. It provides the citizens with the right to move to the Supreme Court. The court has the right to issue orders or writs, here, Certiorari and Mandamus for the enforcement of rights. Certiorari is a writ in order to re-examine the order passed by the lower courts while Mandamus is writ which commands the lower courts to perform a particular duty.

6. JUDGEMENT IN BRIEF

The Court decided that the examinations of X and XII which were scheduled from the 1st of July to the 15th would be cancelled and the assessment of performance for these exams would be done based on an assessment scheme decided by a competent part in the Board. Results based on the examinations would be given out by the July 15 so that the students would be able to apply and seek admissions for their higher educations. However, an optional examination would be conducted from 1st to the 15th of July in order to provide the students with an opportunity to improve their performances and the mark obtained in this test would be considered the final. It was decided that evaluations would be conducted depending upon the students. The students who completed all their examinations would be evaluated on their performance for the same meanwhile for students who completed more than three subjects an average would be taken from the best three performing subjects. In case they took the exam for only three then the average of the best of two would be taken. The result of those students who took part in one or two subjects would depend upon their internal project assessments as it was only a few in number. It was stated by the court that all petitions and proceeding, in this court or any other court, of the CBSE pertaining to the matter of the conduction of the exam would thereby be disposed according to this order.

7. COMMENTARY

The petitioner demand was comprehensible as they were worried about the safety of their children as well as themselves as there was a high chance that the students could become carriers from the virus. The writ petition filed under Article 32 was valid depending upon the situation at that time. The CBSE was not considerate about the students and the possible danger that they could expose them and their family to. However, I believe that it was not the intention of the Board to risk the health of their students and instead they believed in conducting the exam in a fair manner as it was conducted in the previous years. But it was their duty to understand that it was a different situation this time as there was a pandemic which causes panic and worry in the people. Their actions led to causing more tension to the students, their family and everyone associate with such examinations. Though as students who wrote the board exams we might believe that the mode of examination was too easy and unfair we must still accept instead of making the students go and write exams in their centres, like how we did, this was the safer and healthier option in such a serious situation.

CASE NO. 18

IN RE: THE PROPER TREATMENT OF COVID 19 PATIENTS AND DIGNIFIED HANDLING OF DEAD BODIES IN THE HOSPITALS ETC.

(SUO MOTU WRIT PETITION (CIVIL) NO. 7 OF 2020)

HANDLING OF COVID-19 SITUATION BY HOSPITALS.

ABSTRACT

The cognizance of *Suo Motu* Writ Petition has been taken on the basis of media reports and programmes aired in several channels presenting horrific scenes from LNJP hospital, which is a Covid dedicated hospital. The India TV, in its programme on June 10, 2020, has shown certain videos which indicate the pathetic condition of the patients admitted in the hospital and the deplorable condition of the wards. The patients are in the wards and the dead bodies are also in the same wards. Dead bodies are seen also in the lobby and waiting area. The patients were not supplied with any oxygen support or any other support, no saline drips were shown with the beds and there was no one to attend the patients.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|---|
| Case No | : | Suo Motu Writ Petition (Civil) No. 7 of 2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Filed on | : | June 11, 2020 |
| Case Decided on | : | December 18, 2020 |
| Judges | : | Justice Ashok Bhushan, Justice Subhash Reddy and Justice M R Shah |
| Legal Provisions Involved | : | Article 32, 131 of Constitution of India, 1950 |
| Case Summary Prepared by | : | Tatsat Bhatt Student of L. J. School of Law, Ahmedabad |

2. BRIEF FACTS OF THE CASE

The cognizance of *suo motu* writ petition has been taken on the basis of media reports and programmes aired in several channels presenting horrific scenes from LNJP hospital, which is a Covid dedicated hospital. The India TV, in its programme on June 10, 2020, has shown certain videos which indicate the pathetic condition of the patients admitted in the hospital and the deplorable condition of the wards. The patients are in the wards and the dead bodies are also in the same wards. Dead bodies are seen also in the lobby and waiting area. The patients were not supplied with any oxygen support or any other support, no saline drips were shown with the beds and there was no one to attend the patients. Patients are crying and there is no one to attend them. although there are Covid-19: Guidelines on Dead Body Management issued by the Government of India, Ministry of Health & Family Welfare, Directorate General of Health Services on March 15, 2020 which are in the nature of directives, we notice that there is no proper adherence to the guidelines nor the hospitals are giving due care and concern to the dead bodies. The patients' relatives are not even informed for several days of the death of the patient as has been reported in the media. It is also brought to our notice that the details of cremation as to when the dead body will be cremated are not even informed to their close relatives. Due to which the families of the patients are not even able to see the dead bodies or attend their last funeral rites. All these facts, which have been brought to the notice of the Court by the media reports, clearly indicate a very sorry state of affairs of the patients of Covid-19 in the Government hospitals in the NCT of Delhi as well as in other States.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the Hospitals are taking utmost precaution while treating Covid-19 patients or not?
- II. Whether there is a proper dignified handling of dead bodies of Covid-19 patients or not?
- III. Whether there are proper fire safety precautions taken to avoid any other mishap or not?

4. ARGUMENTS OF THE PARTIES

On the affidavit filed by Delhi Government, the Court noticed that in the entire affidavit, apart from general statement that all steps are being taken, the affidavit does not indicate any mechanism for proper supervision of the functioning of the hospital and steps for improvement. The affidavit tries to give an impression to the Court that everything in the Government hospital in NCT, Delhi is well and all steps are being taken by the Government of NCT of Delhi.

“When the Government does not endeavour to know any shortcomings or lapses in its hospitals and patient care, the chances of remedial action and improvement becomes dim.”

The Court further, said that the necessary guidelines on all aspects of patients’ care, hospital management, testing, infrastructure are in place as has been highlighted by Union of India in its affidavit. However, the main concern is the faithful and strict implementation of the said guidelines which can be only ensured by constant supervision, monitoring and taking remedial steps with regard to improvement of infrastructure, staff, facilities, etc.

The following directions were issued by the Supreme Court on July 19, 2020:

On reasonable rates for Covid related facilities/test etc

- Centre should issue appropriate guidelines/directions to all the States/Union Territories with regard to prescribing reasonable rates of various Covid related facilities/test etc., which need to be uniformly followed by all concerned. In case, with regard to any particular State/Union Territory, there is any difference, the same may be specifically noticed and directed accordingly.

On continuous supervision and monitoring of government hospitals, Covid dedicated hospitals and other hospitals taking care of covid management

- The Ministry of Health and Family Welfare, Union of India, shall constitute Expert Committees consisting of
 - a) Senior Doctors from Central Government hospitals in Delhi,
 - b) Doctors from GNCTD hospitals or other hospitals of Delhi Government,
 - c) Doctors from All India Institute of Medical Sciences, d) Responsible officer from Ministry of Health and Family Welfare.

- The Expert Committee shall inspect, supervise and issue necessary directions to all Government hospitals, Covid hospitals and other hospitals in NCT of Delhi taking care of Covid patients. The Expert Committees shall ensure that at least one visit in each hospital be done weekly.
- The above team may in addition to normal inspection shall also conduct surprise visits to assess the preparedness of the hospitals. The expert team as indicated above after visiting may issue necessary instructions for improvement to the hospital concerned and also forward its report to the Government of NCT of Delhi and the Union of India, Ministry of Health and Family Welfare.
- States shall also constitute an expert team of Doctors and other experts for inspection, supervision and guidance of Government hospitals and other hospitals dedicated to Covid-19 in each State who may inspect, supervise the hospitals in the State and issue necessary directions for the improvement to the concerned hospital and report to the Government. Chief Secretary of each State shall ensure that such Committees are immediately constituted and start their work within a period of seven days.

On transparency in patient care

- Footage from the CCTV Cameras shall be made available by the hospitals in NCT of Delhi to the inspecting/supervising expert team or to any other authority or body as per directions of the Union of India, Ministry of Health and Family Welfare for screening the footage and issuing necessary directions thereon.
- The Chief Secretaries of all States shall take steps regarding installation of CCTV Cameras in Covid dedicated hospitals where Covid patients are taking treatment to facilitate the management of such patients and for the screening of the footage by designated authorities or bodies so that remedial action may be suggested and ensured.

On permitting attendant for Covid-19 Patient

- All Covid dedicated hospitals shall permit one willing attendant of the patient in the hospital premise, who can remain in an area earmarked by the hospital
- All Covid dedicated hospitals shall create a help-desk accessible physically as well as by telephone from where well-being of patients admitted in the hospitals can be enquired.

On Discharge Policy

- The Union of India, Ministry of Home Affairs may issue appropriate directions in exercise of power under Disaster Management Act, 2005 to all States/Union Territories to uniformly follow the revised discharge policy dated May 8, 2020 with regard to discharge of different categories of patients as categorised in the revised discharge policy.

Later, as this case was in process, by way of order dated November 27, 2020 passed in this proceeding Supreme Court took *suo motu* cognizance of the incident which happened in Rajkot, Gujarat on November 26, 2020 resulting in death of Covid patients in the Covid Hospital. The Court has also taken notice of earlier incidents of fire in Covid Hospitals.

The Union of India in its affidavit dated November 30, 2020 has brought on record the letter dated November 28, 2020 issued by Ministry of Home Affairs, Government of India. The Government of India issued advisory to all the States to prevent the recurrence of fire incident in Covid Hospitals and Nursing Homes. The Union of India has called for the status of implementation of guidelines issued in reference to preventing recurrence of fire accidents in Hospitals, status of 'No Objection Certificate', report regarding inspection and re-inspection of Hospitals and Nursing Homes. In pursuance of the orders issued by Union of India to all the States, status reports were sent to the Union of India which has been compiled in Affidavit dated December 11, 2020. Although different States and Union Territories have taken measures and conducted inspections, found out shortcomings regarding prevention of occurrence of fire in the Hospitals and Nursing Homes, further, audits and inspections are required to be taken. Few States have also filed their separate affidavits enumerating their steps taken by them in compliance of the advisory and requirement for. The Union of India has directed the States and Union Territories to update their respective local building bye laws/fire services synchronising them in line of "Model Bill on maintenance of fire and emergency service, 2019", circulated by Ministry of Home Affairs on September 16, 2019. The State of Gujarat has filed separate affidavit bringing on record the directions issued by the State and the details of inspection undertaken and audit of few dedicated Covid hospitals. It has further stated that a nodal officer for fire safety has been appointed in dedicated covid hospitals (Government and Private hospitals). We with regard to above, the court issued following directions:-

- 1) All States/Union Territories should appoint one nodal officer for each covid hospital, if not already appointed, who shall be made responsible for ensuring the compliance of all fire safety measures.
- 2) In each district, State Government should constitute a committee to carry fire audit of each Covid hospital at least once in a month and inform the deficiency to the management of the hospital and report to the Government for taking follow up action.
- 3) The Covid hospital who have not obtained NOC from fire department of the State should be asked to immediately apply for NOC and after carrying necessary inspection, decision shall be taken. Those Covid hospitals who have not renewed their NOC should immediately take steps for renewal on which appropriate inspection be taken and decision be taken. In event, Covid Hospital is found not having NOC or not having obtained renewal, appropriate action be taken by the State.

The State of Gujarat has also brought on record the notification appointing Justice D.A. Mehta to undertake enquiry with regard to fire in Shrey Hospital, Navrangpura, Ahmedabad, in addition to enquiry in to the incident of fire in Uday Shivanand Hospital, Rajkot. The State to extend all cooperation to the Enquiry Commission so that Enquiry report be submitted at early date and the appropriate remedial action be taken by the State.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Due to unprecedented Pandemic, everybody in the world is suffering, one way or the other. It is a world war against Covid-19. Therefore, there shall be Government Public Partnership to avoid world war against Covid-19. Right to Health is a fundamental right guaranteed under Article 21 of the Constitution of India. Right to Health includes affordable treatment. Therefore, it is the duty upon the State to make provisions for affordable treatment and more and more provisions in the hospitals to be run by the State and/or local administration are made. It cannot be disputed that for whatever reasons the treatment has become costlier and costlier and it is not affordable to the common people at all. Even if one survives from Covid-19, many times financially and economically he is finished. Therefore, either more or more provisions are to be made by the State Government and the local administration or there shall be cap on the fees charged by the private hospitals, which can be in exercise of the powers under the Disaster Management Act.

Despite the Guidelines and SOPs issued, for lack of implementation the Pandemic has spread like wild fire. A strict and stern action should be taken against those who are violating the Guidelines and SOPs, whoever he may be and whatever position the violator is occupying. People should understand their duty and follow rules very strictly. It is the duty of every citizen to perform their fundamental duties as guaranteed under the Constitution of India. By not following the Guidelines/SOPs issued by the State from time to time, such as, not wearing the masks, not keeping social distances, to participate in the gatherings and the celebrations without maintaining social distances, they are ultimately not damaging themselves but they cause damage to the others also. They cannot be permitted to play with the lives of the others and they cannot be permitted to infringe the rights of other citizens, like Right to Health guaranteed under Article 21 of the Constitution of India.

6. JUDGMENT IN BRIEF

- i. Various directions with regard to measures to be taken to contain the Covid-19. State to issue necessary directions with regard to following measures so as to effectively monitor and supervise the implementation of various SOPs and guidelines:
- ii. More and more police personnel shall be deployed at the places where there is likelihood of gathering by the people, such as, Food Courts, Eateries, Vegetable Markets (Wholesale or Retail), sabzi mandies, bus stations, railway stations, street vendors, etc.
- iii. As far as possible, unless must, no permission shall be granted by the local administration or the Collector/DSP for celebration/gathering even during the day hours and wherever the permissions are granted, the local administration/DSP/Collector/Police In-charge of the local police station shall ensure the strict compliance of the Guidelines/SOPs. There should be a mechanism to check the number of people attending such function/gathering, such as, the particulars with respect to how many persons are going to attend the celebration/gathering, timings during which the celebration/gathering is to take place etc.
- iv. There shall be more and more testing and to declare the correct facts and figures. One must be transparent in number of testing and declaring the facts and figures of the persons who are Corona Positive. Otherwise, the people will be misled and they will be under impression that everything is all right and they will become negligent.

- v. Whenever directions are issued under the Disaster Management Act directing the corporate hospitals/private hospitals to keep 50% or any other percentage free municipal beds, it must be strictly complied with and there shall be constant vigilance and supervision.
- vi. There shall be free helpline numbers to redress the grievances of common man, when there is non-compliance of the directions by the private hospitals/corporate hospitals
- vii. Curfew on weekends/night be considered by States where it is not in place.
- viii. In a micro containment zone or in an area where number of cases are on higher side, to cut the chain, they should be sealed and there should be complete lockdown so far as such areas are concerned. Such containment areas need to be sealed for few days except essential services. The same is required to break the chain of virus spread.
- ix. Any decision to impose curfew and/or lockdown must be announced long in advance so that the people may know and make provisions for their livelihood, like ration etc.
- x. Another issue is a fatigue of front row health care officers, such as, Doctors, Nurses as well as workers. They are already exhausted physically and mentally due to tireless work for eight months. Some mechanism may be required to give them intermittent rest.

One more issue has been raised before us regarding gathering organised by Political parties. The Political parties organise different proceedings in connection of election as well as in reference to election of different level including the General Election which are to take place in few States next year. The Election Commission of India has issued broad guidelines for conduct of General Elections/Bye-Elections during Covid-19 in August, 2020. With regard to campaign of political parties following are the guidelines issued by Election Commission of India: -

“13. CAMPAIGN BY THE POLITICAL PARTIES/CONTESTING CANDIDATES

1) Door to Door Campaign: - Subject to any other restriction(s) including extant Covid-19 guidelines, a group of 5(five) persons including candidates, excluding security personnel, if any, is allowed to do door to door campaigning.

2) Road Shows: -The Convoy of vehicles should be broken after every 5(five) vehicles instead of 10 vehicles (excluding the security vehicles, if any). The interval between two sets of convoy of vehicles should be half an hour instead of gap of 100 meters. (In supersession of Para 5.8.1 of Returning Officer’s Handbook 2019)”

3) *Election Meetings: - Public gatherings/rallies may be conducted subject to adherence to extant Covid-19 guidelines. District Election Officer should take following steps for this purpose.*

(a) District Election Officer should, in advance, identify dedicated grounds for public gathering with clearly marked Entry/Exit points.

(b) In all such identified grounds, the District Election Officer should, in advance, put markers to ensure social distancing norms by the attendees.

(c) Nodal District Health Officer should be involved in the process to ensure that all Covid-19 related guidelines are adhered to by all concerned in the district.

(d) District Election Officer and District Superintendent of Police should ensure that the number of attendees does not exceed the limit prescribed by State Disaster Management Authority for public gatherings.

(e) DEO should depute Sector Health Regulators to oversee that Covid-19 instructions/guidelines are being followed during these meetings.

(f) The political parties and candidates concerned should ensure that all Covid-19 related requirement like face masks, sanitizers, thermal scanning etc. are fulfilled during each of these activities

(g) Non-Compliance of Instructions: - Anybody violating instructions on Covid-19 measures will be liable to proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005, besides legal action under the IPC and other legal provisions as applicable, as specified in Order No.40-3/2020- DM-I(A) dated July 29, 2020 of Ministry of Home Affairs. District Election Officer should bring this to the notice of all concerned.

4) Allocation of public spaces must be done using Suvidha app in the manner already prescribed by Commission.”

All the States/Union Territories to issue necessary directions to ensure compliance of aforesaid guidelines and guidelines although were issued by General Election/Bye Election, that can be implemented by different States with suitable modifications with reference to Elections of other organisations to ensure safety of people in general from Covid-19. Further four weeks' time to be allowed to all the States and Union of India to file affidavit bringing on record various measures as indicated in this order for consideration and further directions. It is to be listed after four weeks.

7. COMMENTARY

The ongoing viral media reports clearly highlight the plight of patients of Covid-19 and further the manner in which their dead bodies are treated. These incidents are a clear indication that there exists a void in our legal system. These incidents have been an eye-opener as to the ill preparedness of our health care infrastructure to deal with an epidemic, it also highlights where the state is lacking in fulfilling its duty under the constitution to improve public health. It is clear that states need to do more to improve the basic health facilities and to invest more into the healthcare system at the grass-root level. As evident from previous judicial precedents by the higher courts, it is established that Right to a Dignified Death, which includes respectful handling of dead bodies, infected or not, providing proper cremation or burials etc. within its scope. It is, therefore, the duty of the court to ensure that no violation of such rights as declared in its past judgment are allowed. On that account, the intervention of the highest court in the matter was not only proper but necessary to make sure that the core constitutional values related to Right to Life are upheld. One cannot deny that, there are enough guidelines to address the bigger issues. The above Order passed by the Apex Court on December 18, 2020 is sufficient enough to control the widespread of Covid only when the same is implemented and the compliance of the said guidelines is guaranteed. With this said, it is the duty of every citizen to perform their fundamental duties as guaranteed under the Constitution of India. By not following the Guidelines/SOPs issued by the State from time to time, such as, not wearing the masks, not keeping social distances, to participate in the gatherings and the celebrations without maintaining social distances, they are ultimately not damaging themselves but they cause damage to the others also. They cannot be permitted to play with the lives of the others and they cannot be permitted to infringe the rights of other citizens, like right to health guaranteed under Article 21 of the Constitution of India. There is a need to help and guide our people to implement the guidelines and the SOPs issued by the Government, either the Union or the State, such as wearing of masks, keeping the social distance etc. In many States, despite the huge fine recovered, such as, Rs. 80 to 90 Crores in the State of Gujarat alone, people are not following the guidelines and the SOPs. There must be a strict implementation by the authorities so as to ensure that the SOPs and the guidelines issued from time to time are strictly adhered to and followed by the people.

CASE NO. 19

GAJENDRA SHARMA

V.

UNION OF INDIA AND ANR

WRIT PETITION (CIVIL) NO. 825 OF 2020

WAIVER OF INTEREST ON LOAN AMOUNT DURING MORATORIUM PERIOD.

ABSTRACT

The economic impact of the 2020 coronavirus pandemic in India has been largely disruptive. India's growth in the fourth quarter of the fiscal year 2020 went down to 3.1% according to the Ministry of Statistics and Programme Implementation (MSPI). The Chief Economic Adviser to the Government of India said that this drop is mainly due to the coronavirus pandemic effect on the Indian economy. Notably India had also been witnessing a pre-pandemic slowdown, and according to the World Bank, the current pandemic has "magnified pre-existing risks to India's economic outlook".

The World Bank and rating agencies had initially revised India's growth for FY 2021 with the lowest figures India has seen in three decades since India's economic liberalization in the 1990s. However, after the announcement of the economic package in mid-May, India's GDP estimates were downgraded even more to negative figures, signalling a deep recession. (The ratings of over 30 countries have been downgraded during this period). On May 26, CRISIL announced that this will perhaps be India's worst recession since independence. State Bank of India research estimates a contraction of over 40% in the GDP in Q1 the contraction will not be uniform, rather it will differ according to various parameters such as state and sector. On September 1, 2020, the MSPI released the GDP figures for Q1 (April to June) FY 2021, which showed a contraction of 24% as compared to the same period the year before.

1. PRIMARY DETAILS OF THE CASE

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| Case No. | : | Writ Petition (Civil) No. 825 of 2020 |
| Jurisdiction | : | Supreme Court of India |

| | | |
|---------------------------|---|---|
| Case Filed On | : | May 4, 2020 |
| Case Decided on | : | November 27, 2020 |
| Judges | : | Justice Ashok Bhushan, Justice Subhash Reddy and Justice M R Shah |
| Legal Provisions Involved | : | Article 21 and 32 of Constitution of India, 1950 |
| Case Summary Prepared by | : | Kaushik R. Ukani V. T. Choksi Sarvajanic Law College, Surat |

2. BRIEF FACTS OF THE CASE

The present writ petition was filed by the petitioner under Article 32 of the Constitution. The petitioner availed a home loan of Rs. 37,48,000/- from ICICI Bank. However, after the outbreak of Covid-19, The Government of India announced a nationwide lockdown. The Reserve Bank of India (RBI) on March 27, 2020 vide its notification issued certain measures to mitigate the burden of debt servicing brought about by disruptions on account of Covid-19. The petitioner, however, claimed that due to lockdown, all means of livelihood have been curtailed by the Government. Furthermore, the petitioner asserted that RBI's notification mandated that interest must be charged even during the moratorium period. Aggrieved by this, the petitioner contended that imposition of such interest is ultra vires and hence filed the present writ in the Supreme Court.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the notification issued by the RBI is *ultra vires* and violate "Right to Life" of the petitioner as guaranteed by Article 21 of the Constitution?

4. ARGUMENTS OF THE PARTIES

Petitioner

- Shri Rajiv Dutta, learned senior counsel submitted that:
- Reserve Bank of India has by the notification made it clear that interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. Furthermore, the above action of imposition of interest during the moratorium period is completely devastating and causes hindrance and obstruction in Right to Life guaranteed by Article 21 of the Constitution. The additional interest burden for three

months' moratorium period is also equally divided in all future EMIs, which is to increase the monthly bill of the customer. The notification qua payment of interest violates the principle of natural justice as the Government on one hand ceased the working of the individuals and on other hand asking to pay the loan interest during moratorium.

Respondent

- Shri Tushar Mehta, learned Solicitor General submitted that:
- the Central Government is fully conscious of the difficulties faced by the various sectors and the stakeholders of various sectors and the Finance Ministry, after the outbreak of Covid-19, has taken several measures of reliefs dealing with the potential problems faced by several sectors and in several spheres of all financial worlds.
- In pursuance of circular dated October 23, 2020 as a follow-up towards the implementation of the aforesaid decision, the State Bank of India has informed that as on November 13, 2020, as per provisional, unaudited information received so far from various lending institutions, such lending institutions have released ex-gratia amount of an aggregate exceeding Rs. 4,300 Crores in over 13.12 Crore accounts of borrowers covered under the Scheme.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Article 32

- It is one of the fundamental rights listed in the Constitution that each citizen is entitled. Article 32 deals with the 'Right to Constitutional Remedies', or affirms the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred in Part III of the Constitution. It states that the Supreme Court "shall have power to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part". The right guaranteed by this Article "shall not be suspended except as otherwise provided for by this Constitution".
- The Article is included in Part III of the Constitution with other fundamental rights including to Equality, Freedom of Speech and Expression, Life and Personal Liberty,

and Freedom of Religion. Only if any of these fundamental rights is violated can a person approach the Supreme Court directly under Article 32.

- During the Constituent Assembly debates in December 1948, a discussion on this fundamental right (in the draft, it is referred to as Article 25), Dr B R Ambedkar had said, “If I was asked to name any particular Article in this Constitution as the most important — an Article without which this Constitution would be a nullity — I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it...” He said the rights invested with the Supreme Court through this Article could not be taken away unless the Constitution itself is amended and hence it was “one of the greatest safeguards that can be provided for the safety and security of the individual”.
- Others in the drafting committee also said that since it gives a person the right to approach the Supreme Court as a remedy if fundamental rights are violated, “it is a right fundamental to all the fundamental rights” guaranteed under the Constitution.
- The Constituent Assembly debated whether fundamental rights including this one could be suspended or limited during an Emergency. The Article cannot be suspended except during the period of Emergency.

Can High Courts be approached in cases of violation of fundamental rights?

- Both the High Courts and the Supreme Court can be approached for violation or enactment of fundamental rights through five kinds of writs:
 - *Habeas Corpus* (related to personal liberty in cases of illegal detentions and wrongful arrests)
 - *Mandamus* — directing public officials, governments, courts to perform a statutory duty;
 - *Quo warrant* — to show by what warrant is a person holding public office;
 - *Prohibition* — directing judicial or quasi-judicial authorities to stop proceedings which it has no jurisdiction for; and
 - *Certiorari* — re-examination of an order given by judicial, quasi-judicial or administrative authorities.
- In civil or criminal matters, the first remedy available to an aggrieved person is that of trial courts, followed by an appeal in the High Court and then the Supreme Court. When it comes to violation of fundamental rights, an individual can approach the

High Court under Article 226 or the Supreme Court directly under Article 32. Article 226, however, is not a fundamental right like Article 32.

What have been the Supreme Court's recent observations on Article 32?

- In the case of the journalist Siddique Kappan, the court asked why the petitioners could not go to the High Court. It has sought responses from the Centre and the UP government, and will hear the case later this week.
- In another case last week invoking Article 32, filed by a Nagpur-based man arrested in three cases for alleged defamatory content against Maharashtra Chief Minister Uddhav Thackeray and others, the same Bench directed him to approach the High Court first.
- Relief under Article 32 was also sought in a petition filed by Telugu poet Varavara Rao's wife, P Hemalatha, against the conditions of his detention in jail since 2018. The Supreme Court directed the Bombay High Court to expedite the hearing on a bail plea filed on medical grounds, pending since September. It observed that once a competent court had taken cognisance, it was under the authority of that court to decide on the matter.
- In another matter, the Bench of CJI Bobde, Justice A S Bopanna and Justice V Ramasubramanian had issued a contempt notice to the Assistant Secretary of the Maharashtra Assembly who, in a letter to Republic TV Editor-in-Chief Arnab Goswami, had questioned him for approaching the top court against the breach of privilege notice. The court had then said that the right to approach the Supreme Court under Article 32 is itself a fundamental right and that "there is no doubt that if a citizen of India is deterred in any case from approaching this Court in exercise of his right under Article 32 of the Constitution of India, it would amount to a serious and direct interference in the administration of justice in the country".

And what have been its observations over the years?

- *In Romesh Thappar v. State of Madras (1950)*, the Supreme Court observed that Article 32 provides a "guaranteed" remedy for the enforcement of fundamental rights. "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 court observed.

- During the Emergency, in *Additional District Magistrate, Jabalpur v. S Shukla (1976)*, the Supreme Court had said that the citizen loses his right to approach the court under Article 32.
- Constitutional experts say that it is eventually at the discretion of the Supreme Court and each individual judge to decide whether an intervention is warranted in a case, which could also be heard by the High Court first.

Right to Life under Article 21

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

- This fundamental right is available to every person, citizens and foreigners alike.
- Article 21 provides two rights:
 - Right to Life
 - Right to Personal Liberty
- The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees.
- The Supreme Court of India has described this right as the ‘heart of fundamental rights’.
- The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the State only. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc.
- Any private individual encroaching on these rights of another individual does not amount to a violation of Article 21. The remedy for the victim, in this case, would be under Article 226 or under general law.
- The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning.
- The chief goal of Article 21 is that when the right to life or liberty of a person is taken away by the State, it should only be according to the prescribed procedure of law.

Interpretation of Article 21

- Judicial intervention has ensured that the scope of Article 21 is not narrow and restricted. It has been widening by several landmark judgements.
- A few important cases concerned with Article 21:
 - *A K Gopalan Case (1950)*: Until the 1950s, Article 21 had a bit of a narrow scope. In this case, the SC held that the expression ‘procedure established by law’, the Constitution has embodied the British concept of personal liberty rather than the American ‘due process’.
 - *Maneka Gandhi v. Union of India Case (1978)*: This case overturned the Gopalan case judgement. Here, the SC said that Articles 19 and 21 are not watertight compartments. The idea of personal liberty in Article 21 has a wide scope including many rights, some of which are embodied under Article 19, thus giving them ‘additional protection’. The court also held that a law that comes under Article 21 must satisfy the requirements under Article 19 as well. That means any procedure under law for the deprivation of life or liberty of a person must not be unfair, unreasonable or arbitrary.
 - *Francis Coralie Mullin v. Union Territory of Delhi (1981)*: In this case, the court held that any procedure for the deprivation of life or liberty of a person must be reasonable, fair and just and not arbitrary, whimsical or fanciful.
 - *Olga Tellis v. Bombay Municipal Corporation (1985)*: This case reiterated the stand taken earlier that any procedure that would deprive a person’s fundamental rights should conform to the norms of fair play and justice.
 - *Unni Krishnan vs. State of Andhra Pradesh (1993)*: In this case, the SC upheld the expanded interpretation of the right to life. The Court gave a list of rights that Article 21 covers based on earlier judgements.

6. JUDGEMENT IN BRIEF

The Apex Court held:

- The Supreme Court after analysing the arguments submitted by both the parties and taking in considerations the affidavits filed, observed that the pandemic has not only caused a serious threat to the health of the people but has also cast its shadow on the economic growth of the country as well as other countries in the entire world. The

Supreme Court observed that the Central Government was fully conscious of the difficulties faced by the various sectors and the stakeholders of various sectors. The counsel for petitioner expressed its satisfaction with the measures taken by the Government of India redressing grievances of the petitioner. The 3 judge bench issued directions to the respondents to ensure that all steps be taken to implement the decision dated October 23, 2020 of the Government of India, Ministry of Finance so that benefit as contemplated by the Government of India percolates to those for whom the financial benefits have been envisaged and extended. Thus, the Supreme Court disposed the writ petition.

7. COMMENTARY

In this case another time Supreme Court Judgement believe that constitutional morality higher than any other, and as per Doctrine of Natural Justice and Article 21 which include right to livelihood which is part of protection of life and personal liberty, and in Covid-19 situation all economic activity has been stopped then how borrower pay installments? And it is a part of large public interest and Supreme Court also satisfy the Doctrine of “*Locus Standi*” because the petitioner is Advocate who filed petition on behalf of Gajendra Sharma and Others.

8. IMPORTANT CASES REFERRED

- *A.K. Gopalan v. State of Madras, AIR 1950 SC 27*
- *Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802*
- *Francis Coralie v. Union Territory of Delhi, AIR 1981 SC 746*
- *Kharak Singh v. State of UP, AIR 1963 SC 129*
- *Maneka Gandhi v. Union of India, AIR 1978 SC 597,*
- *Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180*
- *R.C. Cooper v. Union of India, AIR 1970 SC 564*
- *Sodan Singh v. New Delhi Municipal Corporation, 1989 4 SCC 155*

CASE NO. 20
KUSH KALRA
V.
UNION OF INDIA
(WRIT PETITION (C) NO. 1213 OF 2020)

**PASTING POSTERS OUTSIDE THE HOUSES OF COVID-19
POSITIVE PATIENTS.**

ABSTRACT:

Covid-19 has already caused much havoc in human life. It had been quite a blow to humans in their professional as well as personal lives. While everyone was fighting their own battle, the trauma of Covid-19 positive patients was nothing less. On one hand they were fighting such fatal disease and on the other hand they had to face the trauma and stigma of being “positive”. Home isolation and big posters outside the house of such patients rather became a matter of negative publicity compromising the dignity of individual and circulation of their names in any WhatsApp Group provided a topic for gossip in the neighbourhood. The writ herein talks about the same whereby petitioner questions the act of affixing poster outside houses and circulating names of patients by state authority for it being violative of right to privacy and human dignity; and right to equality. Below discussed is an interesting judicial pronouncement, *Kush Kalra v. Union of India & Others, Writ Petition (Civil) No. 1213/2020*, by the Supreme Court of India, wherein vide Judgment dated December 9, 2020, The Hon’ble Court looked into an important question relating to pasting of posters against the houses of Covid-19 patients.

1. PRIMARY DETAILS OF THE CASE

| | | |
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| Case No | : | Writ Petition (C) No 1213/2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Filed on | : | October 14, 2020 |
| Case Decided on | : | December 9, 2020 |
| Judges | : | Justice Ashok Bhushan, Justice R Shubhash Reddy and Justice M. R. Shah. |

| | | |
|---------------------------|---|--|
| Legal Provisions Involved | : | Article 21, 32 of Constitution of India, 1950 Disaster Management Act, 2005 |
| Case Summary Prepared by | : | Ankit R Gojariya, Student of V.T. Choksi Sarvajanik Law College, Surat |

2. BRIEF FACTS OF THE CASE

The Petitioner questioned the decision taken by the various States and Union Territories to affix posters outside the residences of persons who have been tested Covid-19 positive and are required to undergo home isolation. Many arguments in this regard were advanced by the Petitioner.

It was prayed by the Petitioner inter alia to issue directions to stop publishing the names of Covid-19 Positive persons/patients by the officials of the States and the Union Territories. It was further prayed to stop freely circulating their names in welfare associations of colonies and apartment complexes as the same constitutes serious violation of fundamental rights, right to privacy and dignity.

3. ISSUES INVOLVED IN THE CASE

- I. Whether State and Union Government are under a mandate to paste posters outside the house of Covid-19 positive patients?
- II. Whether such pasting violates any fundamental right?

4. ARGUMENTS OF THE PARTIES

Petitioner

1. Affixing posters outside residences of Covid-19 positive persons amounts to unprecedented violation of the right to privacy which is a Fundamental Right guaranteed under Article 21 of the Constitution of India importance of which has been recognized in *Justice K. S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1*.
2. When posters are affixed and names are circulated publicly, the private life of an individual is subjected to public scrutiny which destroys the very ethos of one's

dignity sparing the patient with inhuman and indignifying experience whereby their illness becomes topic of idle gossip.

3. Covid-19 positive persons cannot be denigrated merely because they have contracted the illness whereby the Constitution itself does not and can never permit discrimination on the ground of illness and physical suffering.
4. Covid-19 with its malefic effects is the most harrowing experience, both physically and mentally. To add to this is the traumatizing experience of living in isolation and the severe curtailment of freedom. A Covid-19 positive person is already subjected to restrictions by the State in the form of isolation which amounts to curtailment of rights under Article 19 of the Constitution. The State cannot be permitted to affix posters outside residences and circulate names which leads to further curtailment of the rights of such persons guaranteed by Article 21 of the Constitution.
5. The practice of affixing poster has rather proved counter-productive. In order to avoid drawing undue attention in case of testing positive, persons are shying away and deliberately choosing not to test themselves to shield themselves from the public embarrassment and stigmatization.

Respondent

1. Learned Solicitor General submits on behalf of the respondent that in the guidelines which have been issued by the Ministry of Health and Family Welfare for home isolation, there are no guidelines for pasting of posters outside the residence of Covid-19 positive persons. He has referred to the guidelines dated July 2, 2020 issued on the subject (Revised guidelines for Home Isolation of very mild/presymptomatic/asymptomatic Covid-19 cases).
2. Shri Mehta submits that the Department of Family Welfare has also issued a D.O. letter dated November 19, 2020 to Additional Chief Secretaries/Principal Secretaries/Secretaries (Health) All States/UTs that the Government of India, Department of Health and Family Welfare, Ministry of Health and Family Welfare Guidelines do not contain any instruction or guidance regarding affixing posters or other signage outside the residences of those found Covid-19 positive.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- Article 21 which guarantees right to life and personal liberty also includes right to privacy as held in *Justice K. S. Puttaswamy (Retd.) v. Union of India* case. Circulating names of Covid-19 positive patients is certainly in violation of this right.
- Article 15 which prohibits discrimination on various grounds.
- Article 32 writ jurisdiction of Supreme Court of India.
- The judgement explains the power conferred on the state authorities under various provisions of the Disaster Management Act, 2005 and Section 2(1) of the Epidemic Diseases Act, 1897, Gujarat Epidemic Disease, Covid-19 Regulations, 2020 to alleviate the pandemic.

Right to Privacy India

As already discussed Article 21 of the Constitution of India states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The right to life enshrined in Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It therefore includes all those aspects of life which makes a man’s life more meaningful, complete and worth living and right to privacy is one such right. The first time this topic was ever raised was in the case of *Kharak Singh v. State of UP* where the Supreme Court held that Regulation 236 of UP Police regulation was unconstitutional as it clashed with Article 21 of the Constitution. It was held by the Court that the right to privacy is a part of right to protection of life and personal liberty. Here, the Court had equated privacy to personal liberty.

In *Govind v. State of Madhya Pradesh, Mathew*, accepted the right to privacy as an emanation from Art. 19(a), (d) and 21, but right to privacy is not absolute right. “Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a fundamental right, the fundamental right must be subject to restriction on the basis of compelling public interest”. Surveillance by domiciliary visits need not always be an unreasonable encroachment on the privacy of a person owing to the character and antecedents of the person subjected to surveillance as also the objects and the limitation under which the surveillance is made. The right to privacy deals with ‘persons not places’.

In *Maneka Gandhi v. Union of India & Anr.* (1978) in this case SC, seven Judges Bench said 'personal liberty' in Article 21 covers a variety of rights & some have status of fundamental rights and given additional protection under Article 19. Triple Test for any law interfering with personal liberty: (1) It must prescribe a procedure; (2) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation and (3) It must withstand test of Article 14. The law and procedure authorising interference with personal liberty and right of privacy must also be right just and fair and not arbitrary, fanciful or oppressive.

In *Naz Foundation Case* (2009) Delhi HC gave the landmark decision on consensual homosexuality. In this case Section 377 IPC and Articles 14, 19 & 21 were examined. Right to Privacy held to protect a "private space in which man may become and remain himself". It was said individuals need a place of sanctuary where they can be free from societal control- where individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their nature.

It is now a settled position that Right to Life and Liberty under Article 21 includes Right to Privacy. Right to Privacy is 'a right to be let alone'. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. Any person publishing anything concerning the above matters except with the consent of the person would be liable in action for damages. Position however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

International Concepts of Privacy

Article 12 of Universal Declaration of Human Rights (1948) states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attack upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks."

Article 17 of International Covenant of Civil and Political Rights (to which India is a party) states "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honour and reputation"

Article 8 of European Convention on Human Rights states “Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or for the protection of the rights and freedoms of others.”

The Privacy Bill, 2011

The bill says, “every individual shall have a right to his privacy — confidentiality of communication made to, or, by him — including his personal correspondence, telephone conversations, telegraph messages, postal, electronic mail and other modes of communication; confidentiality of his private or his family life; protection of his honour and good name; protection from search, detention or exposure of lawful communication between and among individuals; privacy from surveillance; confidentiality of his banking and financial transactions, medical and legal information and protection of data relating to individual.”

The bill gives protection from a citizen's identity theft, including criminal identity theft (posing as another person when apprehended for a crime), financial identify theft (using another's identity to obtain credit, goods and services), etc.

The bill prohibits interception of communications except in certain cases with approval of Secretary-level officer. It mandates destruction of interception of the material within two months of discontinuance of interception.

The bill provides for constitution of a Central Communication Interception Review Committee to examine and review the interception orders passed and is empowered to render a finding that such interception contravened Section 5 of the Indian Telegraphs Act, 1885 and that the intercepted material should be destroyed forthwith. It also prohibits surveillance either by following a person or closed circuit television or other electronic or by any other mode, except in certain cases as per the specified procedure.

As per the bill, no person who has a place of business in India but has data using equipment located in India, shall collect or processor use or disclose any data relating to individual to any person without consent of such individual.

The bill mandates the establishment of a Data Protection Authority of India, whose function is to monitor development in data processing and computer technology; to examine law and to evaluate its effect on data protection and to give recommendations and to receive representations from members of the public on any matter generally affecting data protection.

The Authority can investigate any data security breach and issue orders to safeguard the security interests of affected individuals in the personal data that has or is likely to have been compromised by such breach.

The bill makes contravention of the provisions on interception an offence punishable with imprisonment for a term that may extend up to five years or with fine, which may extend to Rs. 1 lakh or with both for each such interception. Similarly, disclosure of such information is a punishable offence with imprisonment up to three years and a fine of up to Rs. 50,000, or both.

Further, it says any persons who obtain any record of information concerning an individual from any officer of the government or agency under false pretext shall be punishable with a fine of up to Rs. 5 Lacs.

6. JUDGEMENT IN BRIEF

- After hearing all the parties, the Court observed that the Union of India has not issued any guidelines for pasting or affixing of posters or other signage outside the residence of Covid-19 positive persons.
- It was also observed that the guidelines pertaining to Covid-19 are referable to exercise of powers by the authority under the Disaster Management, 2005 and the same do not contain any requirement of pasting of posters against the houses of Covid-19 patients.
- It was held in unequivocal terms by the Court that the State Governments and Union Territories can resort to the exercise of posting posters against the houses of Covid-19 patients only when any direction is issued in this regard under the Disaster Management Act, 2005.
- In view of the above, it was concluded by the Court that “No State or Union Territory is required to paste posters outside the residence of Covid-19 positive persons, as of now.” The writ petition is disposed of accordingly.

7. COMMENTARY

"Without privacy there was no point in being an individual"
- Jonathan Franzen

The present case and judgement is related to, is there any violence of fundamental right or not! more specifically i.e. infringement to right to privacy or not !

In my view privacy- like eating and breathing-is one of life's basic requirement and to share ,to circulate, to paste in public or to publicise a name of patient with illness is like to criticise a patient for his/her illness. It is very clear to violence of fundamental right under Article 21 and Article 15. The Constitution of India can never permit discrimination on ground like illness or any disease. Moreover the Epidemic Disease Act, 1897 and the NDM Act, 2005 have no provision to permit the publication of any personal data of the person in a public database until it is harmful to public. The Supreme Court judgement is clear that currently, there is no requirement of pasting posters against the houses of the Covid-19 patients and on the other hand, it did not close that option also, neither was it held that the pasting of posters was a violation of fundamental rights nor illegal per se.

How Government is breaching Right To Privacy?

During this pandemic, it was observed that individuals' right to privacy has violated widely in various forms. Karnataka was among India's primary states to publish lists of Covid-19 patients and individuals who self-quarantined in late March. The State Government, in line with media reports, released the data on its website which included the names and addresses of the individuals staying indoors. Some people also posted the lists on social media that could spot and quarantine people through. A plea was filed before the High Court in Kerala alleging that the personal details of Covid-19 patients were leaked by hospitals that treated these patients to private companies. Hospitals sell their patient's details to other private entities and so those private players use this information for their benefit. People from different states have lodged lawsuits about these kinds of issues. One of the petitioners stated in his plea that after giving his contact number to a government hospital, he was contacted by a private entity. Because of this incontrovertible evidence, he charged in his petition that hospitals treating Covid-19 patients were revealing details of those patients to private companies, breaching their privacy rights.

The Epidemic Diseases Act, 1897 and also the National Disaster Management Act, 2005 show that no provision in these Acts permits or legitimizes the publication of personal data of the persons in a public database. As such, the Executive's action to upload private information of quarantined individuals within the public domain is prima facie infringement of the fundamental right to privacy. The Govt. Executives' justification for such public disclosure is that harmonized data sharing has become an essential instrument in the ongoing fight against coronavirus. The release of data about people to the general public does not serve any useful purpose.

Also, the central government took a huge hit and launched an Aarogya Setu app without any legislation passed by the parliament allowing the creation and the government made the app mandatory for people working in public and private offices, for all train travelers and for people living in areas considered high-risk for the spread of the virus. MHA guidelines also indicated that the authorities will ensure that everyone in Containment Zones uses the Aarogya Setu app. There is even a threat of fines and prison terms for people who refuse to install the app that makes this application mandatory, which contravenes the Information Technology Act, 2000. Also, the privacy policy does not clarify how secure your data is. No mention is made of any cyber security parameters and it does not explain how it complies with IT Act, 2000 and IT Rules 2011. The app still doesn't tell us who, in terms of government departments, will all access my records.

A clause in the official policy says "exempts the govt from liability in the event of 'any unauthorized access to the user's information or modification thereof'. This means there is no liability for the Govt., whether the users' personal information is leaked or not. It also raised concerns about how much data the app collects. It asks its users to share their name, phone number, age, gender, profession, and country details that have been visited in the last 30 days. Leader of Congress Rahul Gandhi alleged that the mobile application of Aarogya Setu was a "sophisticated surveillance system outsourced to a private operator without institutional supervision". But a representative of the government rejected the allegations that the Aarogya Setu app is outsourced to the private sector. Another interesting thing happened on Twitter, an ethical hacker claimed that "90 million Indians' privacy is at stake" because of "security issues" with the Indian app and tagged Rahul Gandhi, saying you were right. Once again, the Centre Government gave the same answer that there was no data or security breach and that this ethical hacker has proved that no personal information of any user is in danger. Is that Center Government's response satisfactory for those whose privacy is at risk?

Do drastic times imply drastic measures?

Using those methods can raise legitimate concerns about the invasion of people's privacy. Some arguments would be that it is necessary to take these steps during this condition even if it breaches any citizen's rights and the government has the right to try and do so because it is an emergency. Everyone should know it's not an emergency it's a pandemic and emergency provisions and emergencies did not match this situation unless the central government applied an emergency under Article 352 of the Constitution of India, 1950, and even in an emergency, the government could not violate the fundamental rights of Indian citizens. The right to privacy is therefore a fundamental right, and this right cannot be violated by anyone. The right to privacy must not be sacrificed to the full for the benefit of public health. Even in health emergencies, governments need to ensure that their citizens' privacy rights are not infringed disproportionately. They must also be sure of other fundamental rights such as the right to free movement, which the government has restricted. The Govt. should be allowed to behave in the best interests of its citizens, even if it means a short-lived suspension of privacy rights. A pandemic doesn't need to mean a complete reform of human rights. The State must make every effort to retain as much of the rights of its people as it can. Collecting information isn't an issue for anyone but removing that data in public without their consent is a problem. Every citizen should support the government at this pandemic time, but the government should also understand what steps they take and it does not infringe any citizen's fundamental rights. They have to take these things together to achieve a free Corona India.

8. IMPORTANT CASES REFERRED

- *Francis Coralin Muller v. Union of India, (1981) 1 SCC 608*
- *Justice K. S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.*
- *Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295*

CASE NO. 21

DR. AKB SADBHAVANA MISSION SCHOOL OF HOMEOPHARMACY

V.

THE SECRETARY, MINISTRY OF AYUSH & ORS. (CIVIL APPEAL NO. 4049 OF 2020)

HOMEOPATHY PRACTITIONERS CAN GIVE MEDICINES TO MITIGATE COVID.

ABSTRACT:

Below discussed is a Special Leave Petition¹⁴ (hereinafter referred as appeal) whereby specific direction of Kerala High Court¹⁵ (hereinafter referred as writ petition) stating that qualified homeopathy practitioners can only prescribe such medicines as immunity booster and not treat the Covid-19 positive patients failing to which they shall be liable under Disaster Management Act, 2005 was challenged. The Apex Court concluded that there is no case for the High Court to observe the same and thus the impugned judgement needs a modification to that extent.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|--|
| Case No | : | Civil Appeal No. 4049/2020 |
| Jurisdiction | : | Supreme Court of India |
| Case Filed on | : | November 11, 2020 |
| Case Decided on | : | December 15, 2020 |
| Judges | : | Justice Ashok Bhushan, Justice R. Subhash Reddy and Justice M. R. Shah. |
| Legal Provisions Involved | : | Article 136 of Constitution of India, 1950 Homeopathy Central Council Act, 1973 s.33 r.w.24, regulation 6 of Homeopathic Practitioners (Professional |

¹⁴Dr. AKB Sadbhavana Mission School of Homeo Pharmacy v. The Secretary, Ministry of Ayush, Civil Appeal No. 4049 of 2020.

¹⁵Adv. M. S.Vineeth v. The Secretary, Ministry of AYUSH, Writ Petition (Civil) No.9459 OF 2020(S)

| | | |
|--------------------------|---|---|
| | | Conduct, Etiquette and Code of Ethics) Regulations, 1982, Disaster Management Act, 2005. |
| Case Summary Prepared by | : | Rakshita Shah, Student of V. T. Choksi Sarvajanic Law College, Surat. |

2. BRIEF FACTS OF THE CASE

Parties

- The appellant, who was not party in the writ petition, aggrieved by the part of Division Bench judgment of Kerala High Court dated August 21, 2020 passed in Writ Petition (C) No. 9459 of 2020 filed the said appeal.
- The High Court of Kerala in paragraph (14) of the judgement (of writ petition) stated that if any qualified doctor practising AYUSH medicine, makes any advertisement or prescribes any drugs or medicines, as a cure for Covid-19 disease, except those specifically mentioned, it is open for the respondents to take appropriate action under the provisions of the Disaster Management Act, 2005, and the orders of the Governments, both Central as well as the State, issued from time-to-time. Only those tablets or mixtures shall be given as immunity booster and not as cure for Covid-19. In this regard, Medical/Police Departments are also directed to monitor the action of AYUSH medical practitioners.
- Aggrieved by such directions issued by the High Court, appellant, filed the appeal stating that the direction issued by the High Court in paragraph 14 has made vulnerable the Homeopathic practitioners from being proceeded with under Disaster Management Act, 2005 and actions by police and other medical staff, which is demoralising the practitioners of Homeopathy and that the high court of Kerala has passed the said judgement beyond the scope of writ petition.

Writ Petition

The Writ of Mandamus was filed by, Adv. M. S. Vineeth, with a limited relief for issuing direction to the Secretary, Department of AYUSH, Government Secretariat, Trivandrum to implement the advisory dated March 6, 2020 and to ensure that the Homeopathic practitioners are immediately allowed to perform in accordance with the said advisory whereby specified homeopathy medicines be used as

- I. Preventive and prophylactic;
- II. Symptom management of Covid-19 like illness;
- III. Add on interventions to the conventional care.

3. ISSUES INVOLVED IN THE CASE:

- I. Whether High Court of Kerala has erred in passing a judgement beyond the scope of writ petition?
- II. Whether the use of homeopathy medicines is confined only to immunity boosters?

4. ARGUMENTS OF THE PARTIES:

Appellant

- Appellant contended that that the directions issued by the Division Bench of Kerala High Court in paragraph 14 to take actions against Homeopathic doctors, who prescribe any drug as a cure for Covid-19 disease should be proceeded with under the provisions of Disaster Management Act, 2005 was uncalled for and beyond the scope of the writ petition since the guidelines for Homeopathic practitioners for Covid-19 has been issued by Government of India, Ministry of AYUSH, which clearly permits medical practitioners, with permission from local health authorities and Medical Superintendent of the hospital to prescribe medicines for Covid-19 to be used as preventive, prophylactic and symptom management of Covid-19 like illnesses and add on interventions to the conventional care.
- Further, when the guidelines issued specifically permits treatment of Covid-19 patients, the High Court erred in observing that Homeopathy practitioners can only prescribe medicines as immunity booster. And thus the direction issued by the High Court in paragraph 14 has made vulnerable the Homeopathic practitioners from being proceeded with under Disaster Management Act, 2005 and actions by police and other medical staff, which is demoralising the practitioners of Homeopathy.

Respondent

- Respondent referred to advisory dated March 6, 2020 and also the guidelines issued by Government of India and submitted that Homeopathy practitioners are permitted by the Ministry of AYUSH to prescribe medicines as (i) preventive and prophylactic;

(ii) symptom management of Covid-19; (iii) add on interventions to the conventional care.

5. LEGAL ASPECTS INVOLVED IN THE CASE

❖ Homoeopathy Central Council Act, 1973

- S.33 Power to make regulations: The Central Council may, with the previous sanction of the Central Government, make, by notification in the official gazette regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations as it deems necessary.
- S.24 Professional conduct:
 - (1) The Central Council may prescribe standards of professional conduct and etiquette and a code of ethics for practitioners of Homoeopathy.
 - (2) Regulations made by the Central Council under sub-section (1) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct, and such provision shall have effect notwithstanding anything contained in any law for the time being in force.

❖ Homoeopathic Practitioners (Professionals Conduct, Etiquette and Code of Ethics) Regulations, 1982

- Regulation 6

- (1) Advertising:

Solicitation of patients directly or indirectly by a practitioner of Homoeopathy either personally or by advertisement in the newspapers, by placards or by the distribution of circular cards or handbills is unethical. A practitioner of Homoeopathy shall not make use of, or permit others to make use of, him or his name as a subject of any form or manner of advertising or publicity through lay channels which shall be of such a character as to invite attention to him or to his professional position or skill or as would ordinarily result in his self-aggrandisement provided that a practitioner of Homoeopathy is permitted formal announcement in press about the following matters, namely :- (i) the starting of

his practice; (ii) change of the type of practice; (iii) change of address; (iv) temporary absence from duty; (v) resumption of practice (vi) succeeding to another's practice.

(2) He shall further not advertise himself directly or indirectly through price lists or publicity materials of manufacturing firms or traders with whom he may be connected in any capacity, nor shall he publish cases, operations or letters of thanks from patients in non-professional newspapers or journals provided it shall be permissible for him to publish his name in connection with a prospectus or a director's or a technical expert's report.

❖ Disaster Management Act, 2005:

- Chapter X :“Offences and Penalty”

The Kerala High Court in the impugned judgement prescribes to blanket provision under this act and does not particularly resort to any specific section of the said act.

❖ Constitution of India

Article 136:

Special Leave to approach the Supreme Court

1. Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India
2. Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

The current petition has been filed under Article 136 of Constitution of India which deals with powers to Supreme Court to grant Special Leave Petition.

6. JUDGEMENT IN BRIEF:

The Apex Court has carefully gone through the impugned judgement of the writ petition; order dated March 6, 2020 and subsequent guidelines dated April 4, 2020 issued by the Secretary, Ministry of AYUSH, Government Order (G.O) dated April 21, 2020 of the

Government of Kerala; and Homeopathy Central Council Act, 1973 namely the Homeopathic Practitioners (Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982.

- In G.O. of March 6, 2020 Ministry of AYUSH, Apex Court observed that the order specifically permits use of Homeopathy for following three ways:-
 - (i) Preventive and prophylactic;
 - (ii) Symptom management of Covid-19 like illness;
 - (iii) Add on interventions to the conventional care.¹⁶
- Referring the guidelines dated April 4, 2020 Apex Court opined that Homeopathy has been envisaged by the Ministry as the therapeutic aid.¹⁷
- Referring G.O. dated April 21, 2020, Apex Court concluded that Government of Kerala approved the action plan outlining the Homeopathy Strategies for prevention and management of Covid-19 in Kerala.
- While referring to issue of advertisement by homeopathy practitioners, the Apex Court referred the regulation 6(1) “advertisement” of Homeopathy Central Council Act, 1973 namely the Homeopathic Practitioners (Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982, and opined that when such an act is specifically prohibited by statutory regulations, no need arises to take recourse to provisions of Disaster Management Act, 2005.¹⁸
- After thoroughly going through all the above mentioned provision; G.O. and guidelines, apex court concluded that directions issued by the High Court has taken a restricted view of the guidelines for taking appropriate actions against the Homeopathic Medical Practitioners, which cannot be approved. However, Apex Court consented with High Court of Kerala and observed that the latter is right in its observation that no medical practitioner can claim that it can cure Covid-19. There is no such claim in other therapy including allopathy.
- The Apex Court concluded that the Homeopathy is contemplated to be used in preventing and mitigating Covid-19 as is reflected by the advisory and guidelines

¹⁶Para-15, Dr. AKB Sadbhavana Mission School of Homeo Pharmacy v. The Secretary, Ministry of Ayush, CIVIL APPEAL NO. 4049 of 2020.

¹⁷Para-22, Dr. AKB Sadbhavana Mission School of Homeo Pharmacy v. The Secretary, Ministry of Ayush, CIVIL APPEAL NO. 4049 of 2020.

¹⁸ Para-19, Dr. AKB Sadbhavana Mission School of Homeo Pharmacy v. The Secretary, Ministry of Ayush, CIVIL APPEAL NO. 4049 of 2020.

issued by the Ministry of AYUSH and stated that the High Court directions need to be modified to that extent.¹⁹

7. COMMENTARY:

The novel corona virus has indeed created havoc. There is a lot of confusion prevalent with respect to it and in such uncertain times it is quite easy to fool ignorant and naive population. From thousands of home remedies to treat and cure “corona” to rise in quacks who dupe people, everything has contributed greatly in increasing the hardships of medical practitioners. The said judgement is certainly a welcomed one for both homeopathy as well as non-homeopathy practitioners. The court adopted a scientific approach and rightly said that the claim to cure Covid-19 cannot be made by anybody when the scientists round the globe are tirelessly working to find a solution or vaccine per se. The homeopathy does not cure the disease, but it cures the patients.²⁰

- “*Generaliaspecialibus non derogant*”- it is an established rule of interpretation that general laws do not prevail over special laws or, the general does not detract from specifics.

This can be seen in *Rogers v. United States*²¹:

*“it has come to be an established rule in the construction of statutes that a subsequent act, treating a subject in general terms and not expressly contradicting the provisions of a prior special statute, is **not to be considered as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all....**”*

Identically, it was re-iterated in *Suresh Nanda v. C.B.I*²² where the court upheld that special law provisions will prevail over general enactment.

- In the current scenario same has been perused by the Supreme Court in terms of “advertisement” which was very well defined in the Homeopathic Practitioners (Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982 and thus

¹⁹Para-23,Dr. AKB Sadbhavana Mission School of Homeo Pharmacy Vs. The Secretary, Ministry of Ayush, CIVIL APPEAL NO. 4049 OF 2020.

²⁰Para-19,Dr. AKB Sadbhavana Mission School of Homeo Pharmacy Vs. The Secretary, Ministry of Ayush, CIVIL APPEAL NO. 4049 OF 2020.

²¹ *Rodgers v United States*, (1902) U.S. 83 185

²² *Suresh Nanda vs C.B.I* [2008] SCC 3 674

Kerala High Court should have refrained from taking recourse to Disaster Management Act, 2005. This can be a righteous precedent of judicial restraint.

8. IMPORTANT CASES REFERRED

- *Dr. AKB Sadbhavana Mission School of Homeo Pharmacy v. The Secretary, Ministry of Ayush, Civil Appeal No. 4049 of 2020.*
- *Adv. M. S. Vineeth v. The Secretary, Ministry of AYUSH, Writ Petition (Civil) No. 9459 of 2020(S)*
- *Rodgers v. United States, (1902) U.S. 83 185*
- *Suresh Nanda v. C.B.I, 2008 SCC 3 674*
- *Diva Rai, Generalis Specialibus Non Derogant, ipleaders, April 22, 2020, <https://blog.ipleaders.in/generalis-specialibus-non-derogant-know-all-about-it/>*

CASE NO. 22
GUJARAT MAZDOOR SABHA & ANR
V.
STATE OF GUJARAT
(WRIT PETITION (CIVIL) NO. 708 OF 2020)
PROTECTING WORKERS RIGHT IN AN EMERGENCY
CASE.

ABSTRACT

The three judges bench of the Supreme Court comprising of Justice D Y Chandrachud, Justice Indu Malhotra and Justice K M Joseph, passed a significant judgment in *Gujarat Mazdoor Sabha v. The State of Gujarat*, which has surprisingly received little public attention. The Court in this case, quashed two notifications of the Gujarat Government which issued under Section 5 of the Factories Act, 1948, sought to exempt all factories registered under the Act from various provisions relating to weekly hours, daily hours, intervals for rest etc. for adult workers. In deciding on the validity of the notifications, the Court examined the meaning of ‘public emergency’ and held that the pandemic and the economic loss caused by the lockdown do not constitute public emergency of the nature that can justify sweeping deviations from basic labour rights. The judgment therefore, holds significance not only for labour rights but also acts as a bulwark against dangerous incursions into Fundamental Rights that the government is making in the name of the pandemic.

1. PRIMARY DETAILS OF THE CASE

| | | |
|---------------------------|---|--|
| Case No | : | Writ Petition (Civil) No 708/2020 |
| Jurisdiction | : | The Supreme Court of India |
| Case Filed on | : | April 2020 |
| Case Decided on | : | October 1, 2020 |
| Judges | : | Justice Dr. Dhananjaya Y Chandrachud, Justice K.M Joseph and Justice Indu Malhotra |
| Legal Provisions Involved | : | Article 32, 226 of Constitution of India, 1950 Section 5 of Factories Act, 1948 |

| | | |
|--------------------------|---|---|
| Case Summary Prepared by | : | U. Swaathi Shree Student of School of Excellence in Law, Chennai |
|--------------------------|---|---|

2. BRIEF FACTS OF THE CASE

- The first Petitioner is a trade union registered under the Trade Unions Act, 1926 and represents about ten thousand workers employed in factories and industrial establishments in the State of Gujarat. The second Petitioner is a federation of registered trade unions and represents a hundred thousand workmen in factories and establishments across India.
- The respondent - The State of Gujarat
- As a reaction to the Coronavirus pandemic (Covid-19) and the consequential economic crisis caused due to the absolute halt of all financial and economic activities, the Labour and Employment Department of the State of Gujarat (“Labour Department”) found it prudent to exercise the power provided to it under Section 5 of the Factories Act, 1948 (“Factories Act”). Exercising the aforesaid power, the Labour Department issued a notification dated April 17, 2020 in which it exempted all factories (registered under the Factories Act in the State of Gujarat) from complying with the provisions of “weekly hours, daily hours, intervals for rest etc. for adult workers” as provided under Sections 51, 54, 55 and 56 of the Factories Act from April 20, 2020 till July 19, 2020 and further prescribed revised working conditions to be applicable during the said period. Subsequently, upon the lapse of the aforementioned notification by the efflux of time, the Labour Department issued a new notification dated July 20, 2020 which was similar in content and extended the exemption granted to the factories from July 20, 2020 till October 19, 2020.
- Aggrieved by the said notifications and the stringent working conditions prescribed by the Labor Department, Gujarat Mazdoor Sabha, a trade union registered under the Trade Unions Act, 1926 representing about 10,000 (ten thousand) workers employed in factories and industrial establishments in the State of Gujarat; and Trade Union Centre of India, a federation of registered trade unions representing about 100,000 (hundred thousand) workmen in factories and establishments across India, filed Writ Petition (Civil) No. 708 of 2020 invoking the jurisdiction of the Hon’ble Supreme Court of India under Article 32 of the Constitution of India, 1950.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the economic and financial crisis caused as a consequence of the nationwide lockdown due to Covid-19 falls within the ambit of a ‘public emergency’ as provided in Section 5 of the Factories Act?
- II. Whether the notifications of the Labour Department issued on April 17, 2020 and July 20, 2020, is *ultra vires* of the power conferred by Section 5 of the Factories Act, 1948?

4. ARGUMENTS OF THE PARTIES

- Leading the submissions of the petitioners, Mr. Sanjay Singhvi, learned Senior Counsel, along with Ms. Aparna Bhat, learned Counsel submits that:
 - i. Section 5 of the Factories Act enables government to exempt any factory, or a class of factories, from its provisions only when a ‘public emergency’ exists;
 - ii. The explanation to Section 5 defines the expression ‘public emergency’ as a “grave emergency” which threatens the security of India or of any part of the territory by war, external aggression or internal disturbance. Applying the interpretative principle of *noscitur a sociis*, the expression ‘internal disturbance’ will have a meaning which derives content from ‘war’ and ‘external aggression’ which endangers the security of India and would not include a pandemic or a lockdown;
 - iii. Though both Section 5 and the provisions of Article 352 of the Constitution (prior to its amendment in 1978) contain a reference to the expression ‘internal disturbance’, there is a crucial difference. Art 352 was premised on the satisfaction of the President while the power under Section 5 can be exercised only upon the objective existence of the conditions prescribed;
 - iv. Even if a threat to the security of India were to exist as an objective fact, the notifications must, to be valid, ameliorate the threat;
 - v. Factories were open from April 21, 2020, which was the very next day after the first notification came into force. The purported justification of an economic chaos is a smokescreen to extract more work from the workers without paying them their overtime wages in onerous working conditions;

- vi. Section 5 contemplates an exemption only to an individual factory or to a class of factories, and not a blanket exemption that extends to all factories;
- vii. Section 65(2), and not Section 5, of the Factories Act enables suspension of Sections 51, 52, 54 and 56 to a class of factories owing to ‘exceptional pressure of work’;
- viii. Even if Section 65(2) were to apply to account for the exceptional pressure of work, a host of conditions under Section 65(3) are attracted in order to ensure labour welfare including a limit on weekly overtime and intervals between work which the notifications fail to adopt;
- ix. The notifications do not specifically exempt the application of Section 59 of the Factories Act which mandates payment of double the wages for overtime. Yet they make overtime wages proportionate to the existing wages, which also violates the spirit of the Minimum Wages Act, 1948 and amounts to forced labour violating the workers’ fundamental rights under Article 23, 21 and 14; and
- x. Three industrial accidents are reported to have occurred on May 7, 2020 at Vishakapatnam, Chattisgarh and Neyveli in hazardous industries which reopened after the lockdown with a skeletal workforce. The notifications in question will lead to similar disasters.

- Opposing these submissions, Ms Deepanwita Priyanka, learned

Counsel appearing on behalf of the State of Gujarat, has made an earnest effort to persuade this Court to hold that the notifications are not *ultra vires* the Factories Act or unconstitutional. The submissions of Ms. Priyanka have been supported by Mr. Tushar Mehta, Solicitor General of India. The submissions are summarized below:

- i. The State has issued the notifications by invoking its powers under Section 5 of the Factories Act, under which it may exempt any factory or class of factories from all or any provisions of the Act in a public emergency;
- ii. The Covid-19 pandemic is a ‘public emergency’ as defined in Section 5 of the Factories Act. It has disturbed the “social order of the country” and has threatened the even tempo of life in the State of Gujarat as well. As a result of the outbreak, emergency measures were required to be adopted to protect the existence and integrity of the State of Gujarat;
- iii. The Covid-19 pandemic has caused “extreme financial exigencies” in the State. The lockdown caused a slowdown in economic activities, leading to an ‘internal

disturbance' in the State within the meaning of Section 5. The State temporarily exempted factories and establishments from the operation of labour laws such as the Factories Act to overcome the financial crisis and to protect factories and establishments;

- iv. The notifications do not violate Section 59 of the Factories Act as they impose the condition of payment of wages for overtime work in proportion to the existing wages;
- v. Section 5 of the Factories Act confers the power of exemption to the State Government to exempt any factory or class of factories from its provisions. The State Government has the prerogative to determine whether all or only a class or description of factories were to be exempted. Listing of all classes of factories would have been an unnecessary exercise;
- vi. The notifications have not been issued under Section 65(2) of the Factories Act, which can only be invoked to deal with an exceptional pressure of work;
- vii. The notifications have been issued under Section 5 of the Factories Act to ensure the maintenance of minimum production levels in factories. No targets for production have been fixed. Hence, there is no exceptional pressure of work within the meaning of Section 65(2). The purpose of the notifications is to deal with the Covid-19 pandemic and to ensure that the core functions of the economy continue to operate;
- viii. Under the notifications, workers are only allowed to work for three additional hours than the normal work day. Factories have also been directed to compensate the workers proportionately for the extra working hours. There is no exploitation of labour and factories are also able to sustain themselves; and
- ix. The notifications are not in violation of Articles 14, 21 and 23 of the constitution.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The Hon'ble Court observed that Section 5 of the Factories Act empowers the State Governments to exempt any factory, class or description of factories from all or any of the provisions of the Act, except Section 67 when a 'public emergency' situation emerges. The Hon'ble Court further observed that the Factories Act specifically provides for: "(i) when an exemption can be granted; (ii) who can exercise the power to grant an exemption; (iii) who

can be exempted; (iv) the conditions subject to which an exemption can be granted; (iv) the provisions from which an exemption can be allowed; (v) the period of time over which the exemption may operate; and (vi) the manner in which the exemption has to be notified.”

The existence of a ‘public emergency’ is a sine qua non to the exercise of the power under Section 5 of the Factories Act. As per the explanation to Section 5 of the Factories Act, a public emergency has to be a grave emergency whereby the security of India or of any part of the territory thereof is threatened either by (i) war; (ii) external aggression; or (iii) internal disturbance.

6. JUDGEMENT IN BRIEF

- “Right to Employment & Fair Wage are part of Right to life” said by the bench.
- The Judgement was given on a petition filed by the Gujarat Mazdoor Sabha. The union had challenged the Gujarat Labour & Employment Department’s decision exemptions factories from provisions of the Factories Act 1948.
- No adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and seventy two hours in a week.
- The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed six hours and that no worker shall work for more than six hours before he has had an interval for rest of at least half an hour
- No female workers shall be allowed or required to work in a factory between 7.00 pm to 6.00 am
- Wages shall be in a proportion of the existing wages (eg. if wages for eight hours are Rs. 80, then proportionate wages for twelve hours will be Rs. 120).
- Gujarat was among the six states that had ordered longer shifts for workers post Covid-19 lockdown.
- The Government of these states – Rajasthan, Gujarat, Madhya Pradesh, Haryana, Punjab and Himachal Pradesh

7. COMMENTARY

The Importance of the Supreme Court’s judgment in Gujarat Mazdoor Sabha lies in its elevation of labour rights to the status of basic Human Rights, which majoritarian governments are, under the constitution, obliged to respect, and cannot erase with stroke of a

pen. Needless to say, going forward, these rights will need an active labour movement, and a vigilant judiciary, to guarantee their continued existence. The judgement in Gujarat Mazdoor Sabha is a good start.

8. IMPORTANT CASES REFERRED

- *S R Bommai v. Union of India (1994)2 S.C.R 644,*
- *Extra judicial Execution victim families Association v. Union of India, (2016)14 SCC 578 2,*
- *Anuradha Bhasin v. Union of India, (2020)3 SCC 637*
- *K S Puttaswamy v. Union of India,(2017) 10 SCC 1.*

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About ProBono India

Founded in October 2016 with an aim to integrate legal aid and awareness initiatives – ProBono India has ventured into different avenues viz. legal aid, legal awareness, legal intervention, legal journalism, legal activism etc. – all with the underlying objective of contributing to the positive development of the society with a strong socio-legal approach.

The activities at ProBono India include an active dissemination of legal information via the medium of its official website, rolling internship programmes for law students to help them develop a holistic personality with a socio-legal approach to their professional personality, interviews with eminent personalities working at the ground-level offering insights into their successful projects, providing a platform to promote and publish the art of research and legal writing, amongst many others.

The team of ProBono India works to promote legal activism as we believe that law and society are two sides of the same coin. Law and society are so inextricably interdependent that to both need to be equally improved in order to lead the world into the desired new order. We at ProBono India believe in a better and brighter tomorrow. We believe not just in being passengers on this drive to change – rather, we aim to drive towards the change.

Vision

Integrate Legal Aid and Legal Awareness Initiatives.

Mission

To provide the legal aid, conduct legal awareness activities, disseminate legal aid, legal awareness activities of various organizations of the world and conduct research on overall aspects of legal aid and legal awareness.



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