

BEFORE THE HON'BLE SUPREME COURT OF INDIA,

AT NEW DELHI

PUBLIC INTEREST LITIGATION

CIVIL WRIT PETITION NO. OF 2019

In the Matter of;

Pawan Prakash Pathak ...Petitioner

Versus

Union of India & ors. ...Respondent

(Paper Book, for Index please see inside)

Writ Petition along with the affidavit;

&

I.A NO. 2019 Exemption Application;

&

I.A NO. /2019 Application for further filling
additional documents.

&

I.A No. 2019 to appear and argue in person

&

I.A No. 2019 for Interim Relief

Petitioner

(In Person)

Pawan Prakash Pathak

BEFORE THE HON'BLE SUPREME COURT OF INDIA,
AT NEW DELHI
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SYNOPSIS AND LIST OF DATE & EVENTS

Education is perhaps society's most critical responsibility. Educational institutions impart knowledge to students, lay emphasis on their physical well-being and prepare them for social challenges. But unfortunately, many educational institutions and teachers are not yet fully equipped to understand the mental health issues of students.

Psychological concerns in children are on the rise, especially behavioural issues and suicides. 12 per cent of Indian students between the age of 4 and 16 suffer from psychiatric disorders and 20 per cent show signs of mental disorders, out of which 2-5 per cent have serious concerns like autism or bi-polar disorder. Shockingly, every one hour a student commits suicide in India.

Suicides are preventable. There are a number of measures that can be taken at population, sub-population and individual levels to prevent suicide and suicide attempts. These include:

1. Reducing access to the means of suicide (e.g. pesticides, firearms, certain medications).
2. Reporting by media in a responsible way.
3. Introducing alcohol policies to reduce the harmful use of

alcohol.

4. Early identification, treatment, and care of people with mental and substance use disorders, chronic pain and acute emotional distress.

5. Training of non-specialized health workers in the assessment and management of suicidal behaviour.

6. Follow-up care for people who attempted suicide and provision of community support.

That there is no law or rules and regulations governing the private coaching institutes and with the growth at alarming rate in private coaching institutes there are reported incidents were no building bye-laws or local safety laws and precautions were kept in mind and classes are being runned as an profiteering bunnies unit in violation of the fundamental right of the students.

24.05.2019- Surat fire tragedy at coaching institute claiming 22 life of the students.

Hence the instant writ petition.

BEFORE THE HON'BLE SUPREME COURT OF INDIA,

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WRIT PETITION (C) OF 2019

PUBLIC INTEREST LITIGATION

In the Matter of;

Pawan Prakash Pathak

[REDACTED]

[REDACTED]

[REDACTED]

...Petitioner

Versus

1. Union of India
Through Secretary,
Ministry of Human Resource and Development,
Lal Bahadur Sastri Smriti, Maulana Azad Rd,
Bal Bhawan, Man Singh Road Area,
New Delhi, Delhi 110001
2. Ministry of Housing and urban Affairs
Through Secretary,
Nirman Bhawa, New Delhi-01 ...Respondents

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF
MANDAMUS OR ANY OTHER APPROPRIATE WRIT FOR
ISSUING DIRECTIONS, ORDERS OR TO FRAME A POLICY
TO REGULATE COACHING INSTITUTES IN THE INTREST
OF STUDENTS.

To

The Hon'ble Chief Justice OF India and His Lordship's
Companion Justices of the Hon'ble Supreme Court of India.

The Humble petition of the Petitioner abovenamed.

MOST RESPECTFULLY SHEWETH :

1. The present Writ Petition under Article 32 of the Constitution of India is being filed by the Petitioner to enforce fundamental rights of the student's at large taking coaching classes for school curriculums, entrance exams, Professional courses, and other pre-examination coaching for govt. or private jobs. Also, to regulate the coaching institutes in reference of advertisements, exorbitant fees charged from the students, teacher-student ratio in classrooms, and infrastructure of the institute. That the petitioner is a law abiding citizen of this country and filling the instant writ petition for the issuance of a writ of mandamus of any other appropriate writ to respondent to frame guidelines or policy to regulate the pvt. coaching institutes or pass any other appropriate guidelines or constitute committee to look into the instant issue keeping in mind the recent fire tragedy occurred at Takshashila Arcade in Surat on 24.05.2019 where 22 students died in the devastating fire that engulfed the four storey building at Gandhinagar, Surat.

1A. That the petitioner has not made any similar representation of this nature before any court, tribunal or any state instrumentalities.

1B. That petitioner has not filled any other petition seeking similar relief either before this Hon'ble Court or any other Court or tribunal.

1C. That there is no Civil, criminal or revenue litigation, involving the petitioner, which has or could have a legal nexus with the issues involved in this PIL nor

with any other pending litigation.

1D. That there is no personal interest in filling this PIL and it is bonafide and in large public interest so that the students can undertake the requisite training from the qualified teacher, and under the apt circumstances in order to achieve the desired knowledge. Hence the instant PIL.

ARRAY OF PARTY;

2. The Petitioner is a citizen of India, practicing Advocate enrolled with Delhi Bar Council, with annual income of about Rs. 2,50,000/- per annum, R/o 231 1st floor, Ashram, New Delhi-14 The email address of the Petitioner is jqdelhi@gmail.com and mobile no. +91-8600545332. A true copy of the Provisional Identity Card issued by the government of India is attached herewith at page No. which is a self attested and true copy.

FACTS OF THE CASE:

3. That the education has been defined by various scholars in their own words of wisdom and good sense of understanding;
"Education is the process of training man to full his aim by exercising all the faculties to the fullest extent as a member of society" - Socrates

"Education means the bringing out of the ideas of universal validity which are latent in the mind of every man"- According to John Dewey

"Education is a process of living through, a continuous reconstruction of experiences".
4. That the education serves as the backbone for the development of nations. The countries with the effective

impressive need oriented, saleable and effective system of education comes out to be the leaders of the world, both socially and economically. 'it is the only education which can turn a burden of population into productive human resource'.

5. That the coaching classes seem to be running a parallel education system and it won't be wrong to say above par excellence in comparison with government schools, but the issue is that these organizations are not governed or regularized by the states through law or any statute except few states like Bihar. If regularized by the government, they will have to fall in line as far as certain basic facilities, fees charged and faculty enlisted are concerned.

There will be initial resistance to all the new regulations, curtailing the freedom that coaching classes are used to up to the present but after the initial teething troubles, the petitioner is of view that regularization of coaching classes will create a better scenario for the students, their parents and the those who run the coaching classes.

6. That the **Coaching** is a form of development in which a person called a *coach* supports a learner or client in achieving a specific personal or professional goal by providing training and guidance. The learner is sometimes called a *coachee*. Occasionally, *coaching* may mean an informal relationship between two people, of whom one has more experience and expertise than the other and offers advice and guidance as the latter learns; but coaching differs from mentoring in focusing on specific tasks or objectives, as opposed to more general goals or overall development. That the coaching institutes are running without the adequate infrastructure, resources, misrepresentations regarding results and achievements, exorbitant fees, unqualified teachers/ assistants and in a unorganized and arbitrary manner.

7. That the coaching institutes are increasing at a rapid pace and there is no direct or indirect control over the mushrooming of the private coaching institutes in states like Delhi, Gujrat, Mumbai & Pune and to mention few over crowded area where the situation has gone beyond the control of state like in Delhi in Mukherjee Nagar, Laxmi nagar, Preet Vihar etc.

8. That according to a study conducted in 2015, Global Industry Analysts, the global private tutoring market is projected to surpass \$102.8 billion by 2019. GIA figures state that United States, Europe, and Asia-Pacific (notably Hong Kong, Japan, Singapore, South Korea, and China) are responsible for more than 90% of the global private tutoring market and most importantly South Korea alone is going to reach \$19.5 billion - roughly 20% of the entire market. In addition, India is leading the way in online tutoring by offering professional linguistic and academic coaching's.

9. That few days back, there was too much noise about Delhi University cut-off demanding a full score of 100% that with the increase in competition and number of students the quality of our education by state is declining constantly. Some ridiculed the population, some blamed it on competition. As the world is coming closer, the need to be better than the rest is touching the sky. According to ASSOCHAM's survey, a whopping number of close to 87% of primary school children and up to 95% of the higher secondary attend private coaching classes.

Most of these classes run in metros like New Delhi, Mumbai, Kolkata, Hyderabad, Bangalore, and Chennai for civil services, law, C.A. or medical coaching urban towns like Jaipur, Chandigarh and Kota for engineering, Pune for Designing or

Management etc. That it is not surprising to know that the proportions of kids relying on tuitions have increased by 100% and in between 2006 to 2013, secondary school enrollments have also gone up by 92%.

With the increasing peer pressure, majority of parents are forced to rely on private tuitions for in addition to attending classes in school. Over 86% of parents think that they are ill-equipped or lack time to teach their children on their own and here's where coaching classes come handy according to various reports and newspaper cuttings. The statistics reveal that the middle-class parents have been spending 1/3rd of their monthly on their wards' private tuitions.

Amidst the general support with school education, youngsters are also engaging with coaching centers for competitive entrance examinations for professional courses or government exams. However, it does not mean that people's disposable incomes have risen or the coaching centers have become affordable. It is just the demand and supply forces that are working.

The idea is clear that the number of classes have increased rise tremendously, and this in turn has been promoting the culture of outstation students settling at these educational hubs. Over five Lakhs of private tutors are active in Delhi-NCR currently and with competition for increased admission intake into the best colleges intensifying, the demand for private tuition is rising continuously.

The survey further reveals that many of the best teachers of reputed schools and colleges have left their jobs and taken up private coaching; for the simple reason that there the monthly income of good tutors is equal to the annual salaries of school teachers.

The private tutors charge anything between Rs 1,000 and Rs

4,000 per hour per student on one-to-one basis, while group tuition costs Rs 1,000 to Rs 6,000 per month. The survey revealed an estimate of 78 per cent of parents spend Rs 1,000 to 3,000/-per month on tuition for a primary ward and above Rs. 5000 for the tuition of secondary level childrens.

10. That factors behind the rise in coaching institute;

- Exam Anxiety- The exam phobia is a major attributor for enrolling in coaching classes as it is seen as the most common solution amongst children who want to excel academically.

- Extra Push - Even the best of the best students have room for improvement, keeping this thought in mind even school teachers sometimes recommend classes as they have little time for individual attention.

- A sign of caliber- Signing up for tuition to score higher grades is also seen as a signal of high -intellect these days, it's a matter of pride now days.

It is not an astonishing fact anymore that private tutorials are expanding at an alarming rate in the tier-2 and 3 cities as more and more set of parents are spending staggering chunks of their incomes on it. The business is not only booming, it is picking up at a very high profitability. However, private tutoring further disadvantages children from lower family incomes and serves the needs of only those, whose pockets can mint money.

11 . That prior to filling of this Public interest litigation In a knee-jerk reaction to the massive fire incident in Surat on 24.05.2019 where 22 students were killed in fire tragedy where fire broke out in premises where coaching classes were conducted without any due procedure or legality, municipal corporations across Ahmedabad and Vadodara issued orders to close all coaching centres in these cities till further orders, while Rajkot

civic body went a step further and directed its officials to seal all such premises where fire-fighting equipment was not in place. The Gandhinagar administration, meanwhile, will begin inspection of all coaching centres and libraries on 25.05.2019. That after such incidents where life of students are reduced to ashes, the state and its machineries come into action against such violations of local building bye-laws, fire-safety norms etc.

12. That these institutes come under the purview of state as defined under Article 12 of the constitution of India, the criteria of public importance and public duty is performed by these organizations and institutes while using the resources of the state and for this reason it is covered under the definition of State and strict action should be initiated against these institutes violating local building bye-laws of the state and safety norms. In Mohini Jain's case;

Hon'ble Court said; "that state must have a responsibility to discharge its duty of providing educational institutions in all places of the state's territory to educate all its citizen" and also court ordered that state must administrate the proper providing of educational institutions by itself or by giving to private education institutions to educate its citizens. And also if the private institutions charge capitation fee then it is considered as a violation of article 14. As per 2015 research India occupies 92nd position in among 142 countries. Even the small nations are maintaining a proper educational system, till now India trying to reach its proper providing of education.

13. That Right To Education - Article 21(A):

This article says state shall provide free and compulsory education to all children of the age of six to fourteen years. In Shyam sundar case Court tells that the government institutions for being reluctant with the enforcement of Article 45 and held that every child who is deprived of the right, Court can issue the

writ against the appropriate authority for the enforcement of their deprived rights and tells that "right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of their economic, social and cultural right to education.

In J.P.Unnikrishnan's case AIR 1993 SCR (1) 594

The administration activities in educational department in India was not much active. It must be developed by the proper planning by the executives. Though it was planned it does not exercise it properly, due to the corrupted hands in administration level. This situation must be deserted to the development of India in education system.

14. That the board/ committee may be constituted for regulation of private coaching centers and for matters connected therewith like to provide for the control and regulation of private coaching institutes of the State for providing better academic support in preparation of different competitive examinations and curriculum and admission into specialized institutions etc and few points to be taken into consideration;
 - a) Recognition to be given to these institutes which comply with the prescribed norms of the state;
 - b) Regularization of fee structure for different courses.
 - c) Minimum qualification of teachers
 - d) Physical Infrastructure –
 - (1) Within the basic structure of the coaching institute, minimum one sq. meter. area should be for each student.
 - (2) Other facilities – Under this, the following facilities shall be made available by every coaching institute: -
 - (i) Sufficient furniture (bench/desk etc.);
 - (ii) Sufficient lighting arrangement (electrification);

- (iii) Facility of drinking water;
- (iv) Facility of toilets;
- (v) Facility of sanitation and cleanliness;
- (vi) Arrangement for fire extinguisher;
- (vii) medical treatment facility;
- (viii) Facility of parking of cycles/vehicles;
- e) Lecturer and student ratio;

Question of law;

1. Whether the private coaching institutes/ organizations perform the public function as stated under Article 12 of the Constitution of India?
2. Whether direction can be made to the concerned ministry for formulation of policy on this subject matter?
3. Whether there is violation of basic fundamental rights by the coaching institutes or not?

GROUNDS;

1. Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development

benefits. Yet millions of children and adults remain deprived of educational opportunities, many as a result of poverty and hence it is the state responsibility to ensure that any institute or organization involved in imparting education is being governed by the state or body and ensured that basic safety measures have been adopted.

2. The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education. In addition to these access to education provisions, the right to education encompasses the obligation to rule out discrimination at all levels of the educational system, to set minimum standards and to improve the quality of education.
3. Constitutional right of safety: every person has a constitutional right to safety and this right is not buried in some obscure constitutional amendment; it is found in Article 21, Article 19 read with the preamble of the constitution of India.
4. Principal of absolute liability; According to the rule of absolute liability, if any person is engaged in an inherently dangerous or hazardous activity, and if any harm is caused to any person due to any accident which occurred during carrying out such inherently dangerous and hazardous activity, then the person who is carrying out such activity will be held absolutely liable. The exception to the strict liability rule also wouldn't be considered. The rule laid down in the case of *MC Mehta v UOI* was also followed by the Supreme Court while deciding the case of Bhopal Gas Tragedy case. To ensure that victims of such accidents get quick relief through insurance, the Indian Legislature passed the Public Liability Insurance Act in the year 1991.

5. 'Doctrine of Parens patriae': The State regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves. It is stated that parens patriae is the inherent power and authority of a State to provide protection to the person and property of persons non Sui juris, such as minor, insane, and incompetent persons. Also "The State has a legitimate interest under its parens patriae powers in providing care to its citizens who are unable to care for themselves." The Directive Principles as well as the Fundamental Rights enshrined in our Constitution make it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert these rights, the State comes into picture and protects the rights of such Citizens.

6. That the definition in Article 12 is only for the purpose of application of the provisions contained in Part III. Hence, even though a body of persons may not constitute 'State' within the instant definition, a writ under Article 226 may lie against it on non-constitutional grounds or on grounds of contravention of some provision of the Constitution outside Part III, e.g., where such body has a public duty to perform or where its acts are supported by the State or public officials. In *Ujjain Bai v. State of U.P*, the Supreme Court observed that Article 12 winds up the list of authorities falling within the definition by referring to "other authorities" within the territory of India which cannot, obviously, be read as *ejusdem generis* with either the Government or the Legislature or Local authorities. The word "State" is of wide amplitude and capable of comprehending every authority created under the statute and functioning within the territory of India. There is no characterization of the nature of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws.

The preponderant considerations for pronouncing an entity as a State agency or instrumentality are:

- financial resources of the state being the Chief finding source;
- the functional character being governmental in essence;
- plenary control residing in government; prior history of the same activity having been carried on by the government and made over to the new body;
- some element of authority or command. Whether the legal person is a corporation created by a statute, as distinguished from under a statute, is not an important criterion although it may be an indicium

PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased:

- (i) To issue a writ of mandamus or any other appropriate writ to the respondents to regularize the private coaching institutes;
- (ii) To protect the fundamental right of the students by framing a guideline or passing the direction to the concerned department to look after the safety measures needs to be adopted by these coaching institutes;
- (iii) To regularize the private coaching institute by regulation/ scheme for private coaching institutes and minimum standards for operation of such institutes;

Or to pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case. For such act of kindness, the petitioner shall as induty bound, ever pray.

Petitioner

(In Person)

PAWAN Prakash Pathak

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BEFORE THE HON'BLE SUPREME COURT OF INDIA,

AT NEW DELHI

PUBLIC INTEREST LITIGATION

CIVIL WRIT PETITION NO. OF 2019

In the Matter of;

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Versus

Union of India & ors. ...Respondent

AFFIDAVIT

I, Pawan Prakash Pathak, aged 26 Years, s/o Chandra Prakash

Pathak, [REDACTED] do hereby solemnly affirm as under:

1. I am the Petitioner/applicant in the above mentioned Petition and familiar with the facts and circumstances of the case and competent to swear this Affidavit.

2. I state that the contents of the present writ Petition from Page No. to , and para No. to and Synopsis & List of Dates and events from Page No. to and events and all the information filled therein, are read over to me and are true and correct to the best of my knowledge and belief and which I believe to be true and correct and nothing material has been concealed there from.

3. I further state that all the Annexure i.e A1 bearing page number from ____ to ____ to the Petition are true copies of their respective originals.

4. I further that I have not filed any similar petition before this Hon'ble Court or any Court of India.

5. I further state that I have no personal gain, private motive or oblique reason in filling the instant public interest litigation.

6. I further state that the petitioner has no pending litigation of any nature against him nor have any private interest in the issues involved in the PIL.

Deponent

Verification

Verified at New Delhi on this _____ that the contents of the above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed there from.

Deponent

BEFORE THE HON'BLE SUPREME COURT OF INDIA,

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CIVIL WRIT PETITION NO. OF 2019

In the Matter of;

Pawan Prakash Pathak ...Petitioner

Versus

Union of India & ors. ...Respondent

Application for permission to appear & argue in person.

To

**The Hon'ble Chief Justice of India and His Lordship's
Companion Justices of the Supreme Court of India.**

Most respectfully showeth;

1. That the above application seeking permission to appear and argue has been filled by the petitioner in person seeking issuance of writ of mandamus or any other appropriate writ to be issued against the respondents for regularizing the private coaching institutes.

2. That the instant writ petition is filled by the petitioner and seeks permission to appear and argue the instant matter in person and for the same the instant application has been filled. That the petitioner is well aware of the facts and circumstances of the case and being a practicing advocate enrolled with Delhi Bar Council having enrolment no. D/6911/2017. It is respectfully submitted that the petitioner does not require any assistance from the Advocate on record or any other advocate.

Prayer;

It is therefore, most humbly and respectfully prayed that the;

- a) Allow the instant application of the petitioner, by may granting the permission to appear and argue the instant writ petition

- b) Or any other order, direction which this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

Filled in person

Adv. Pawan

Chamber No.462,

Delhi High Court

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BEFORE THE HON'BLE SUPREME COURT OF INDIA,

AT NEW DELHI

PUBLIC INTEREST LITIGATION

CIVIL WRIT PETITION NO. OF 2019

In the Matter of;

Pawan Prakash Pathak ...Petitioner

Versus

Union of India & ors. ...Respondent

Application for Interim Relief

TO

HON'BLE THE CHIEF JUSTICE AND
HIS HON'BLE COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER
ABOVENAMED –

MOST RESPECTFULLY SHEWETH:

1. The Petitioner has filed the above writ petition in wide public interest.

2. The Petitioners have stated the relevant facts elaborately in the Writ Petition. For the sake of brevity, the same are not repeated in the present application. The Petitioners however crave leave to refer to and rely on the same at the time of the hearing of the present application as if the same formed part of the present application.

3. That in the wake of the recent surat tragedy where fire in the coaching institute claimed life of 22 students, which raises the serious concern over the state machinery against the safety of the students taking private coaching from unregulated institutes and organization, and it is due to the failure of the state machinery that private coaching institutes have mushroomed in every state and there is no law or state body to govern these coaching institutes and same is being run as a profiteering business unit.

4. The Petitioner has a prima facie case and the purpose of filing the present petition is to secure safe environment for the students taking private coaching institutes throughout the India.

PRAYER

It is, therefore, most respectfully prayed that pending final orders this Hon'ble Court may graciously be pleased to:

- (i) To grant Interim relief by directing the respondents to take immediate step to secure the right to life of students by carrying out the initial drive against such institutes where the basic safety laws and building bye-laws are violated and to take proper measure against same.

- (ii) Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Through

Adv. Pawan

Chamber No.462

Delhi High Court

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