

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL JURISDICTION

WRIT PETITION (C) NO. OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

**IN THE MATTER OF:**

THOMAS MATHEW KADAVIL

PETITIONER

VERSUS

1. UNION OF INDIA  
THROUGH ITS JOINT SECRETARY,  
MINISTRY OF HOME AFFAIRS  
NORTH BLOCK, NEW DELHI-110001. RESPONDENT NO. 1
2. MINISTRY OF CIVIL AVIATION  
THROUGH ITS DEPUTY SECRETARY  
RAJIV GANDHI BHAVAN,  
B-BLOCK, SAFDARJANG AIRPORT ZONE,  
NEW DELHI-110003. RESPONDENT NO. 2
3. MINISTRY OF EXTERNAL AFFAIRS  
THROUGH ITS SECRETARY  
SOUTH BLOCK, CABINET SECRETARIAT,  
RAISINA HILL, NEW DELHI-110001. RESPONDENT NO. 3

**A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION  
OF INDIA**

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

THE HUMBLE PETITION OF THE  
PETITIONER ABOVE NAMED

**MOST RESPECTFULLY SHOWETH:**

1. The present Writ Petition is being filed before this Hon'ble Court in the nature of a Public Interest Litigation, by the Petitioner - a social activist, journalist, respected civil society leader and a strong advocate for the rights of migrants and their families. With thirty years of experience in Saudi Arabia and Kuwait, the Petitioner is well placed to intervene and spearhead social movements relating to Migration. Over his many years of experience in humanitarian work, the Petitioner fostered and developed relationships with migration governance stakeholders including but not limited to labor authorities, justice departments, embassies, media, international organizations, migration departments in governments, etc. It is pertinent to mention that State of Kuwait has offered to provide special chartered flights ferry Indians back home. Since there is ban on International flights arrivals in India, State of Kuwait is pursuing India to allow special chartered flights, however, India declining owing to precautionary measure to combat COVID-19. The Petitioner is inter- alia praying to direct Respondent No. 1 & 2 herein to permit chartered flights from Kuwait to land in Indian airports and receive all the repatriated amnesty beneficiaries from Kuwait.

1A. The Petitioner is acting in bonafide interests for the welfare and wellbeing of the citizens at large, of which some are abroad and are facing hardships due to the outbreak of novel COVID-19. The Petitioner has no vested personal interest in the subject matter of the petition. Further, the Petitioner hereby undertakes to bear costs, if any, imposed by this Hon'ble Court arising out of this Petition. That the petitioners have not instituted any similar petition before this Hon'ble Court or any other court of Law.

The Petitioner submits that this Petition is maintainable under Article 32 of the Constitution of India. The E-mail ID of the Petitioner is [kadavilans@gmail.com](mailto:kadavilans@gmail.com) and Mobile Number is +965 9752 2614. The annual income of the Petitioner is Rs. 24, 00,000/- and Aadhar Card No. (No Aadhar Card) and PAN Card No. (No PAN Card) and Passport No. of the Petitioner is Z2814544. A true copy of the identity proof of the Petitioner is annexed herewith and marked as **ANNEXURE P-1 (PAGES TO )**.

1B. That there is no civil, criminal and revenue pending against the Petitioner which could have legal nexus with the issues involved in the Public Interest Litigation. Further, the Petitioners approached Office of the Hon'ble Prime Minister with respect to the underlying concerns of the present Petition. The Petitioner has not received any response from the Office of PM for his representation and due to extreme urgency of the present case in light of the prevailing National crisis, the Petitioner has no other alternate efficacious remedy, thereby calling for immediate intervention of this Hon'ble Court, which is necessary in the interest of

justice, requiring immediate orders with respect to the prayers sought in the present Petition.

2. That the Respondent No. 1 is the Union of India through Ministry of Home Affairs, Respondent No. 2 is the Ministry of Civil Aviation represented by its Secretary and Respondent No. 3 is the Ministry of External Affairs represented by its Secretary who are bound to act within the framework of the Constitution and to uphold its virtues. The Respondents herein fall under the definition of a “state” as enumerated under Article 12 of the Constitution, thereby being bound to protect the fundamental rights of the citizens of India.
3. That the present petition is being filed in the interest of justice for, fundamental and statutory rights, dignity of the public at large. Some of the people being represented in the present PIL may not be aware of their legal rights being infringed and may not have the economic means to approach this Hon’ble court.
4. That the petitioners have not instituted any similar petition before this Hon’ble Court or any other court of Law. There is no civil, criminal or revenue litigation involving the Petitioner which has or could have a legal nexus with the issues involved in the present Public Interest Litigation. Further, there is no personal gain, private motive or oblique reason in filing the present Petition.

#### **PUBLIC INTEREST AT LARGE**

5. The National lockdown commenced from 24.03.2020, extended and is set to operate till 17.05.2020. However, COVID-19 pandemic is an unprecedented event and with the number of cases slowly rising in India,

the said lockdown is, in all likelihood, to be extended further by a number of weeks or months.

6. The Ministry of Home Affairs passed an Order bearing No. 40-3/2020, wherein under Clause 6 (c) the list of exceptions for operations of airways has been enumerated. Out of the said exceptions, one pertains to operations for rescue evacuation and relief for citizens.
7. Thereafter, on 03.04.2020, The Ministry of Home Affairs amended the abovementioned Notification No. 40-3/2020.DM.I (A) and settled that there are various exceptions to the provisions of lockdown, out of which one pertains to “*relief and evacuation*” purposes, for which the concerned transport authorities including Air, railways and roadways will continue operations. Thus, the issue in hand squarely falls under the ambit of the exceptions and is not violative of any governmental order or direction. A true copy of the amended Order bearing No. 40-3/2020 dated 03.04.2020 issued by the Ministry of Home Affairs, Government of India is annexed herewith and marked as **ANNEXURE P-2 (PAGES TO )**.
8. That the Petitioner has sent a representation to the Hon’ble Prime Minister of India requesting to intervene to open the airports to receive all the repatriated Indians from Kuwait who are availing the facility of ongoing Amnesty. A true copy of the representation made by the Petitioner to the Hon’ble Prime Minister of India dated 16.04.2020 is annexed herewith and marked as **ANNEXURE P- 3 (PAGES )**. A true copy of the article dated 17.04.2020 published by Economic times with regard to “*amnesty*” scheme announce by State of Kuwait is annexed herewith and marked as **ANNEXURE P-4 (PAGES TO )**.

9. Majority of the Indian citizens stranded in these camps are not getting decent food, accommodation and medical facilities because the unprecedented crisis brought by COVID-19. In present situation, most of the countries are prioritizing the health and safety of their own citizens over the citizens of other countries, thereby leading to immense mental trauma being faced by such Indian nationals which is only adding to the hardships already being faced by them.
10. It is pertinent to mention that State of Kuwait has offered to provide special chartered flights ferry Indians back home. Since there is ban on International flights arrivals in India, State of Kuwait is pursuing India to allow special chartered flights, however, India declining owing to precautionary measure to combat COVID-19. Indians fall under the category of residency law violators are reportedly around 40,000 of which about 25,000 belong to the runaway /absconding from the work category. The wrong policies and human trafficking resulted such a large numbers of undocumented irregular Indian expatriates in Kuwait. Hundreds of Indians, who wish to make use of the benefit of amnesty, could not reach the Amnesty Felicitation Centers (AFC) as the Indian Embassy in Kuwait did not issue the emergency certificates on time. According to a news article published by *The Times Kuwait* migrants take their own lives as Covid 19's psychological impact worsens. A true copy of the news article published by *The Times Kuwait* titled as 'Migrants take their own lives as Covid 19's psychological impact worsens' dated 28.04.2020 is annexed herewith and marked as **ANNEXURE P-5 (PAGES TO )**.

11. That the Office of the Director General of Civil Aviation, Government of India, vide its Circular No. 4/1/2020-IR, dated 02.05.2020, decided that all scheduled international commercial passenger services shall remain closed till 2359 hours GMT of May 17<sup>th</sup>, 2020. However, the said restriction will not apply to international all-cargo operations and flights specifically approved by DGCA. A true copy of the Circular No. 4/1/2020-IR, dated 02.05.2020, issued by the Office of the Director General of Civil Aviation, Government of India is annexed herewith and marked as **ANNEXURE P-6 (PAGES TO )**.
12. That the said pandemic is an unprecedented event and with the number of cases slowly rising in India, the said lockdown is, in all likelihood, to be extended further by a number of weeks or months. Amidst such uncertainty, Indians shall not to be left stranded in foreign countries for indefinite period of time, for every moment they stay there, their chances of contracting the virus and succumbing to the same exponentially increase.
13. That the Petitioner has sent a reminder to the Hon'ble Prime Minister of India requesting to intervene to open the airports to receive all the repatriated Indians from Kuwait who are availing the facility of ongoing Amnesty. A true copy of the representation made by the Petitioner to the Hon'ble Prime Minister of India dated 01.05.2020 is annexed herewith and marked as **ANNEXURE P- 7 (PAGES )**.
14. That several emigrants are staying abroad in congested and crammed up spaces such as hostels and bachelor accommodations, thereby rendering

them in a distressing situation wherein the risk of contracting the virus increases exponentially.

15. That various countries are taking expeditious initiatives to repatriate citizens of other Nations in order to decrease the burden of the outbreak and solely protect the interests of their own Nationals.

### **GROUND**

- I. BECAUSE the State of Kuwait has offered to provide special chartered flights ferry Indians back to home. Since there is ban on International flights arrivals in India, State of Kuwait is pursuing India to allow special chartered flights, however, Respondents are declining permission to chartered flights from Kuwait owing to precautionary measure to combat COVID-19.
- II. BECAUSE that State of Kuwait has started processing “amnesty” scheme with regard to Migrant Workers due to the difficulties being faced by Kuwait on account of the COVID-19 outbreak. The migrant workers had been given time till 30.04.2020 in order to make arrangements for leaving Kuwait, failing which they would be subjected to imprisonment. However, even after completing technicalities, the distressed migrant workers are unable to return to India solely because of the stringent travel restrictions imposed by the Respondents herein. The said restrictions will ultimately lead to imprisonment of thousands of Indian emigrant workers, thereby grossly violating their basic Human Rights, which ought to be protected by the Respondents herein.
- III. BECAUSE the National lockdown commenced from 24.03.2020, extended on 14.04.2020 and is set to operate till 17.05.2020. However,



COVID-19 pandemic is an unprecedented event and with the number of cases slowly rising in India, the said lockdown is, in all likelihood, to be extended further by a number of weeks or months. Amidst such uncertainty, Indians shall not be left stranded in foreign countries for indefinite period of time, for every moment they stay there, their chances of contracting the virus and succumbing to the same exponentially increase.

IV. BECAUSE every foreign country, during such times of crisis and distress, prioritizes its own citizens over foreigners, which is precisely why a large number of Indians are unable to get proper accommodation and food, along with medical facilities.

V. BECAUSE currently, majority of the countries are not sufficiently equipped to cater to the exponentially increasing number of COVID-19 positive patients. In such challenging times, it has become difficult for these countries to accommodate their own citizens, therefore leaving little or no space for Indian citizens.

VI. BECAUSE vide Clause 6 (c) of the Ministry of Home Affairs Order bearing No. 40-3/2020, dated 24.03.2020, it is very well settled that there are various exceptions to the provisions of lockdown, out of which one pertains to “relief and evacuation” purposes, for which the concerned transport authorities will continue operations, thereby meaning that the current situation in hand squarely falls under the exceptions given thereunder as safeguarding the interests of Indian citizens is of prime importance.

VII. BECAUSE that most of the Indian migrant workers are having blue collar jobs with daily wages and are stranded in extremely “inhuman”

situations, wherein they have scarcity of clean water, food and safe shelter. Consequentially, the migrant workers have no source of income and are stranded in foreign lands with no survival and sustenance amenities.

VIII. BECAUSE there are alarming reports of spread of COVID-19 in “labor camps” and private apartments, wherein Indian citizens are stationed in crammed up spaces. Moreover, due to lack of funds and social cover, the foreign countries are unable to provide proper quarantine centers for Indian citizens and despite making numerous requests to the concerned Indian Mission/Consulate, no proper arrangement or financial aid has been provided thereof.

IX. BECAUSE with every passing day, poor Indians stranded in countries with inadequate facilities and infrastructure inch closer to death, as the rate of spread of the virus and mortality rate escalates with every moment, thereby making every passing second call for the Respondent No.1 to act more swiftly and discharge its first and foremost duty- to protect and safeguard the lives of its citizens, whether within the territory of India or outside.

X. BECAUSE, this Hon’ble Court has always upheld the virtues of the Constitution and interest of it’s citizens regardless of jurisdictional issues, in times of extreme urgency. That in the case of Francis Coralie Mulin vs. Administrator, Union Territory of Delhi & Ors. 1981 1 SCC 608 held as under:

*“6. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore, be interpreted in a broad and expansive spirit so as to*

*invest it with significance and validity which may endure for years to come and enhance the dignity of the individual and the worth of human person...”*

XI. BECAUSE each and every citizen is entitled to the Right to Life as enshrined under Article 21 of our Constitution, within which comprises the right to a decent standard of living. The same has been upheld by this Hon’ble Court in the case of Vincent Panikurlangara v. Union of India (AIR 1987 SC 990), wherein it was stated as under:

*“maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority- perhaps the one of the top.”*

Further, in the case of **Paschim Banga Khet Mazdoor Samity (AIR 1996 SC 2426)**, this Hon’ble Court held that:

*“it is the Constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done.”*

XII. BECAUSE the fundamental rights of citizens, particularly those under Articles 14 and 21 of the Constitution of India stands severely jeopardized due to the utter confusion regarding the evacuation procedure of the Respondent No. 1, thereby adding on to the hardships being faced by them.

XIII. BECAUSE Section 35 of the Disaster Management Act enables the Central Government to take measures, sub-section (2), sub-clause (g) empowers the Central Government to take steps requiring coordination with agencies of United Nations, international organizations and governments of foreign countries for the purposes of fulfilling the objectives of the Act. Therefore, it is amply clear that the duty of the Government would extend not only to its citizens within the territorial boundaries of the country, but also to those stranded outside. In furtherance of this, the Central Government may be directed by this Hon'ble Court to undertake positive steps to fulfill the mandate of the Disaster Management Act.

XIV. BECAUSE, Section 36 of the Disaster Management Act provides for 'responsibilities of ministries or departments of government of India', clause (g) of the same states that it would be the responsibility of every Minister of Government of India to make available its resources to National Executive Committee or State Executive Committee for the purposes of responding promptly and effectively to any threatening disaster, clause (iii) of the same provides for evacuation, rescue, temporary shelter or other immediate relief. Therefore, by virtue of Section 36 (g) (iii), the Government of India is duty bound to ensure adequate measures are taken in order to ensure rescue of such persons along with temporary shelter, or other immediate relief as may be required.

XV. BECAUSE the life of various Indian migrant workers are in danger, who in the wake of lockdown in Kuwait have been quarantined in Labour accommodation camps / Amnesty Facilitation Centers which are

notoriously overcrowded, and lack in adequate water and sanitation meaning that workers are inevitably less able to protect themselves from the virus. Workers' proximity to one another in cramped camps also does not allow for any type of social distancing. Despite making several requests to concerned Mission/Consulates/authorities, no appropriate financial or sustenance aid has been accorded to the citizens in that regard.

### **PRAYER**

In the facts and circumstances of the case, as mentioned above, it is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to:

- (i) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to Direct Respondent No. 1 & 2 herein to permit chartered flights from Kuwait to land in Indian airports and receive all the repatriated amnesty beneficiaries from Kuwait and/or,
- (ii) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to Respondent No. 1 and 3 to provide necessary support and medical facilities through Indian Mission in Kuwait to stranded Indian citizens in Amnesty Felicitations Camps / Labour Camps in Kuwait and/or;
- (iii) Issue a writ in the nature of Mandamus or any other appropriate Writ, Order or Direction to Respondent No. 1 & 3 to seek reports from Indian Missions/consulates at Kuwait for the purpose of repatriation, rehabilitation, medical support and wellbeing of Indian Citizens and

the list of Indian Citizens who are availing the Amnesty declared by  
State of Kuwait ; and/or

- (iv) Pass any other or further orders as may be deemed fit and proper in  
the circumstances of the case.

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

**DRAWN BY:  
SUBHASH CHANDRAN K.R.  
ADVOCATE**

Filed by:

**(DEEPAK PRAKASH)  
ADVOCATE FOR THE PETITIONER**

Drawn on: 03.05.2020  
Place: New Delhi  
Dated: 04.05.2020

