

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

...Petitioner

VERSUS

1. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi - 110001
...Respondent No. 1

2. Ministry of External Affairs
Through its Joint Secretary,
Gulf Division,
South Block,
New Delhi - 110011
...Respondent No. 2

3. National Executive Committee
Through its Chairman,
(Union Home Secretary)
North Block,
New Delhi - 110001
...Respondent No. 3

4. National Disaster Management Authority
Through its Chairman,
Safdarjung Enclave,
NDMA Bhavan,
A-1, Nauroji Nagar,
New Delhi - 110029 ...Respondent No. 4

5. Ministry of Civil Aviation
Through its Secretary,
New Safdarjung Airport Area,
Satya Sadan,
New Delhi - 110021 ...Respondent No. 5

6. Ministry of Health and Family Welfare
Through its Secretary
Nirman Bhavan,
New Delhi-110011 Respondent No. 6

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

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

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is an Indian citizen who presently resides at Sharjah,
United Arab Emirates (hereinafter "UAE") who seeks to file the present
Public Interest Litigation (hereinafter "PIL") before this Hon'ble Court

under Article 32 of the Constitution of India *inter alia*, seeking evacuation of the vulnerable Indian citizens who are stranded in United Arab Emirates and bring them safely back to India. It is clearly understood that it is immediately beyond the logistical capability of any country to evacuate 3.2 million citizens. That is neither desirable nor is it feasible. But what this Petition seeks to highlight are the conditions of the especially vulnerable non-covid medical patients, pregnant women, nervous breakdown patients, senior citizens who were visiting, cancer patients and other terminally ill patients, young children/students etc and for an appropriate Guideline/Protocol for the same in keeping with the DMA 2005, IAR 1954 and the IHR of 2005.

2. The Respondent No.1, exercising its power under Section 10(2)(l) of Disaster Management Act, issued order bearing No. 40-3/2020-DM-I (A), on 24.03.2020 and thereby announced a nationwide lockdown with effect from 25.03.2020 to prevent the spread of COVID-19. As a result of this lockdown, travel both international and domestic were suspended/closed until further orders. This left the several Indian citizens and students stranded abroad without any assistance to return to India. Although the Respondent Authorities have evacuated few

students/citizens from countries like China, Iran and Malaysia, however, the Authorities have completely ignored the plight of the citizens in the Middle East, particularly in the UAE.

3. It is submitted that initially, the nationwide lockdown was announced for a period of 21 days i.e. until 14.04.2020 but the same was subsequently extended until 03.05.2020. It is submitted that considering the present situation there is a possibility of further extension. It is relevant to state here that the Authorities of UAE have been unable to alleviate the conditions of migrant workers and as reported in various news outlets, they have asked the Respondent authorities to make arrangements for urgent repatriation. Meanwhile other countries across the world are actively engaged in the evacuation of its citizens through multiple means on a war footing. It is pertinent to mention here the Indian migrant workers stranded in the UAE are made to stay in cramped labour camps, dormitories and shared apartments with inadequate spaces to maintain social distancing. Further, the more vulnerable citizens especially the plight of terminally ill patients, pregnant women, senior citizens on visit visa, young students need immediate redressal as they have been locked out for almost 40 days out of their homeland. In

the case of the poorer blue-collar workers their condition is especially aggravated as they stare at severe financial hardships without any jobs and regular inflow of income. The Petitioner who is an Indian citizen understands the hardships faced by these vulnerable sections of the Indian diaspora and destitute workers stranded in UAE is filing the present Writ Petition as Public Interest Litigation seeking urgent and immediate evacuation of such marginalized sections of Indian citizens and the migrant workers from such unlivable conditions and their safe return to India.

4.

5. The Petitioner is a citizen of India and has no personal interest in the present litigation, but is agitating the present issue in wider public interest. There is absolutely no personal interest of the Petitioner. There

are no civil or criminal or revenue litigations, save except the ones which have been mentioned in the present petition, involving the Petitioner which could have a nexus with the issues involved in the present petition. The relevant notifications have been annexed with the present petition.

6. The brief facts leading to the institution of the present Writ Petition are as follows:
 - i. That the Central Government in exercise of its powers conferred under Section 8A of the Aircraft Act, 1934 published the Aircraft Public Health Rules 1954 on 17.10.1955.
 - ii. That on 23.05.2005, the World Health Organisation's ("WHO") Secretariat in close consultation with WHO member states adopted International Health Regulations, 2005 ('IHR 2005') with a aim to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.

- iii. That the IHR 2005 was framed to provide establishment of National IHR Focal Points and WHO IHR Contact Points for urgent communications between States Parties and WHO. It, among others, also provides protection to human rights and health of persons and travelers. IHR, 2005 came into force from 15.06.2007. A true copy of the International Health Regulations, 2005 dated 23.05.2005 by World Health Organisation is annexed herewith and is marked as **ANNEXURE P-1 [Page 41 to 124]**
- iv. That the Respondent no.6 drafted the Indian Aircraft (Public Health) Rules, proposing to alter the Aircraft Rules 1954 by providing the more crystalised measures as suggested by the WHO's IHR, 2005. The draft without an iota of doubt was much forward looking than the previous one and examines in detail the international dimensions of transmission and related response and surveillance. A tabulated comparative analysis of provisions of the Aircraft (Public Health) Rules, 1954 and the draft Indian Aircraft (Public Health) Rules, 2017 is annexed herewith and is marked as **ANNEXURE P-2 [Page 125 to 134]**

- v. That COVID 19 which made an innocuous start in Wuhan had by March upended the entire world causing thousands of deaths and affecting almost every country. It was soon declared to be a pandemic by the WHO. COVID -19 and spread like wildfire and left no boundary, caste, creed, religion, social status unharmed.
- vi. That due to outbreak of a communicable respiratory disease called the Novel Coronal Virus (COVID -19), caused by severe acute respiratory syndrome Coronavirus 2 (SARS-CoV-2) was identified in Wuhan, Hubei, Republic of China in December, 2019 and subsequently spread to the other parts of the world. The GCC or the Middle East was no exception.
- vii. That on 11.02.2020, the WHO issued WHO – ‘Key considerations for repatriation and quarantine of travellers in relation to the outbreak of novel coronavirus 2019-nCoV.’ in order to ensure the health and wellbeing of those involved in the repatriation. Additionally, it provided measures which aimed at bolstering national preparedness capacities to prevent the further

spread or importation of 2019-nCoV before, during, and after repatriation. A true copy of the Key considerations for repatriation and quarantine of travellers in relation to the outbreak of novel coronavirus 2019-nCoV dated 11.02.2020 issued by the WHO is annexed herewith and marked as **ANNEXURE P-3**
[Page 135 to 138]

- viii. That the WHO declared COVID- 19 as a pandemic on 11.03.2020 mainly because of its rapid spread in several countries and absence of effective vaccine, till date to cure the virus. The crucial aspect here is that the lack of cure and a virulent strain which impacted Italy and Spain soon led to thousands of infections and deaths. It was believed that the virus was being transmitted through contact with infected persons and international travel became a huge risk and concern.
- ix. That on the same day, the Respondent No.6 issued a consolidated Travel Advisory for all the people travelling to affected countries or might have come in contact with people affected with COVID -19 during their stay or transit at airports. According to the

advisory, the Government suspended all existing visas (except diplomatic, official, UN/International Organisations, employment, project visas and kept in abeyance visa free travel facilities extended to Overseas Citizens of India (OCI) card holders) till 15.04.2020.

- x. That furthermore, certain directions were issued to maintain compulsory quarantine for a minimum period of 14 days for persons arriving from or having visited China, Italy, Iran, Republic of Korea, France, Spain and Germany after 15.02.2020. Some Indian states like Kerala for instance had a 28-day quarantine period. A true copy of Consolidated Travel Advisory for Novel Coronavirus Disease (COVID - 19) dated 11.03.2020 issued by the Ministry of Health and Family Welfare, Government of India is annexed herewith and marked as **ANNEXURE P-4 [Page 139 to 141]**.
- xi. That, in continuation to the above, the Respondent No. 6 on 16.03.2020 issued Additional Travel Advisory and extended the compulsory quarantine period of 14 days for persons

arriving/transiting through UAE, Qatar, Oman and Kuwait. Furthermore, travel of passengers from member countries of European Union, the European Free Trade Association, Turkey and the United Kingdom to India was prohibited and all the airlines were directed not to board passengers to India from these nations. A true copy of Additional Travel Advisory for Novel Coronavirus Disease (COVID - 19) dated 16.03.2020 issued by the Ministry of Health and Family Welfare, Government of India is annexed herewith and marked as **ANNEXURE P-5 [Page 142]**.

- xii. That thereafter, on 17.03.2020 Respondent No. 6 issued another Travel Advisory, which was in continuation of Travel Advisory dated 11.03.2020 and 16.03.2020 and prohibited the entry of passengers from Afghanistan, Philippines, Malaysia to India. Further, a directive was issued to all airlines to not take off any flights for India from these countries after 15:00 hours Indian Standard Time. A true copy of this Travel Advisory for Novel Coronavirus Disease (COVID - 19) dated 17.03.2020 issued by the Ministry of Health and Family Welfare, Government of India

is annexed herewith and marked as **ANNEXURE P-6 [Page 143]**.

- xiii. That in continuation to the above Travel Advisories dated 11.03.2020, 16.03.2020, 17.03.2020, Respondent No. 6 issued another advisory, *inter alia*, restricted take off of all scheduled commercial passenger aircraft from any foreign airport for any airport in India. It was also directed that no incoming scheduled international commercial passenger aircraft shall be allowed to disembark its passengers (Foreign or Indian) on Indian soil. It is relevant to mention here that initially these restrictions were only till 29.03.2020, however, due to sudden rise of COVID - 19 cases in India and in view of the nationwide lockdown the same had been extended till 14.04.2020. A true copy of this advisory for Novel Coronavirus Disease (COVID - 19) dated 19.03.2020 issued by the Ministry of Health and Family Welfare, Government of India is annexed herewith and marked as **ANNEXURE P-7 [Page 144]**.

- xiv. That on 24.03.2020, the National Disaster Management Authority (hereinafter “NDMA”), in exercise of powers conferred under

Section 6(2)(1) of the Disaster Management Act, 2005 (hereinafter “DMA”) passed an order and directed all the Ministries/Departments of Government of India, State Governments and State Authorities to take measure to ensure social distancing to prevent the spread of COVID - 19. It further directed the National Executive headed by Respondent No.1 to immediately frame necessary guidelines in this regard under Section 10(2)(1) of the DMA, 2005. These guidelines were to remain in force for a period of 21 days w.e.f. 25.03.2020.

- xv. Subsequently, the Ministry of Home Affairs (hereinafter “MHA”) in exercise of its powers conferred under Section 10(2)(1) of the DMA, 2005, passed an order and directed all the Ministries/Departments of Government of India, State/ Union Territory Governments and State/ Union Territory Authorities to take effective measures to ensure social distancing to prevent the spread of COVID - 19 in the country and to ensure its strict implementation. Pursuant thereto, the Hon’ble Prime Minister of India announces a nationwide lockdown and restricted movement of citizens, other than for emergency and essential needs.

- xvi. That on 26.03.2020, the Director General Civil Aviation issued a circular and extended the restrictions imposed by Respondent no.6 on 19.03.2020 till 14.04.2020. A true copy of the Circular dated 26.03.2020 issued by the Director General and Civil Aviation is annexed herewith and marked as **ANNEXURE P-8 [Page 145]**.
- xvii. This Hon'ble Court vide order dated 01.04.2020 in Writ Petition (Civil) No. 467/2020 titled "Mustafa MH vs. Union of India" considered and accepted the submissions made by the Union of India vide its Status Report, stating that steps have been initiated to repatriate the Indian Students and pilgrims stranded in Iran on an emergent basis and all facilities were also being provided to them till such time that the logistics could be worked out. A true copy of the order dated 01.04.2020 passed by this Hon'ble Court in W.P. (C) No. 467/2020 is annexed herewith and is marked as **ANNEXURE P-9 [Page 146 to 155]**

- xviii. That on 07.04.2020, the Respondent No. 6 issued a guidance document on appropriate management of suspect/confirmed cases of COVID-19. The sole aim behind the document was to put in place mechanisms for triaging and decision making for identification of the appropriate COVID dedicated facility for providing care to COVID-19 patients. A true copy of guidance document on appropriate management of suspect/confirmed cases of COVID-19 dated 07.04.2020 issued by the Respondent No. 6 is annexed herewith and is marked as **ANNEXURE P-10 [Page 156 to 162]**
- xix. That in order to contain the spread of Covid-19 in UAE, the Authorities in UAE announced a 24-hour lockdown for two weeks starting from 05.04.2020. As per news reports, it is learnt that the UAE Authorities also asked Indian Authorities to take back its vulnerable citizens or otherwise they will impose strict action against the countries who refuse to take back their migrant workers.

- xx. That the context for the same is that UAE relies heavily on expatriate labour from South Asia and its own indigenous population is only about 19%. The raging pandemic was severely testing the medical capabilities of every nation and thousands of guest workers would compound the preparedness of host countries. In fact, UAE had offered to provide assistance in flying back the migrant workers. A true copy of a news report dated 11.04.2020 published on the website of the Hindu is annexed herewith and marked as **ANNEXURE P-11 [Page 163 to 165]**.
A true copy of the news report dated 12.04.2020 published on the website of The Week is annexed herewith and marked as **ANNEXURE P-12 [Page 166 to 168]**.
A true copy of a news report dated 13.04.2020 published on the website of the Times of India is annexed herewith and marked as **ANNEXURE P-13 [Page 169 to 170]**.
- xxi. That a news article of The New York Times dated 13.04.2020, has highlighted that migrants in the Gulf States have been kept in cramped, unsanitary dorms, deprived of income and unable to return home due to travel restrictions. It also confirmed that the

migrants are from India among other countries. A true copy of the news article dated 13.04.2020 published on website of the New York Times is annexed herewith and marked as **ANNEXURE P-14 [Page 171 to 175]**.

xxii. That, due to an increase in cases of COVID - 19, the Central Government decided to extend the nationwide lockdown till 03.05.2020 on the directives of the Respondent No.4. A true copy of the order dated 14.04.2020 passed by the Ministry of Home Affairs, Government of India is annexed herewith and marked as **ANNEXURE P-15 [Page 176]**.

xxiii. That pursuant to the above order, the Respondent No.1, on 15.04.2020 issued consolidated revised guidelines thereby extending the suspension of all transport services including air, rail and roadways till 03.05.2020. A true copy of the order passed by the MHA, Government of India dated 15.04.2020 is annexed herewith and marked as **ANNEXURE P-16 [Page 177 to 191]**.

- xxiv. That unfortunately, due to this extension, the Indian citizens stranded in UAE have been constrained in depressing and unhygienic conditions. This is in spite of the best of intentions of the host country, the labour camps are structured for migrant workers who used it primarily as quarters for sleep and rest. These migrant workers now do not have any jobs and many of them are relying on charity. Social distancing which is the only medium to stay safe from COVID - 19 has become impossible for these migrant workers as they are made to stay in cramped camps, and shared apartments where access to toilets itself could be strained.
- xxv. That another news article of Channel News Asia dated 24.04.2020, has stated that as of April 22 around 22,900 had been repatriated on 127 flights from otherwise closed airports. But, India has refused to cooperate to bring back 3.2. Million citizens in the UAE alone. The report further states that the migrant workers are kept in inadequate accommodations. This clarifies that the Government has failed to fulfill its assurance to protect and send aids to migrant workers of Indian origin. A true copy of the news article dated 24.04.2020 published on website of

Channel News Asia is annexed herewith and marked as **ANNEXURE P-17 [Page 192 to 195]**.

- xxvi. That as per news reports published on websites of India Today and Deccan Herald on 26.04.2020, the Ministry of External Affairs is consulting state governments and preparing a plan to bring back Indian Citizens stranded in foreign countries. A true copy of the news report dated 26.04.2020 published on website of India Today is annexed herewith and is marked as **ANNEXURE P-18 [Page 196 to 198]**.

A true copy of the news report dated 26.04.2020 published on website of Deccan Herald is annexed herewith and is marked as **ANNEXURE P-19 [Page 199 to 200]**

- xxvii. The Petitioner understands that the travel restrictions could be extended further. Given the prevailing conditions in UAE, the Petitioner is deeply concerned about the well-being of the Indian citizens. Left with no other effective alternate remedy, the Petitioner is constrained to approach this Hon'ble Court by way of the present petition.

7. GROUNDS

The Petitioner urges the following among other, grounds in the alternative and without prejudice to each other:

- A. Because, the Respondents have a duty to come to aid and rescue Indian citizens who are stranded abroad in such extraordinary circumstances as the present one, and can certainly quarantine those who return from abroad, impose reasonable restrictions on movement and liberty and further make them undergo such medical processes as may be necessary. The knee jerk action of the Respondents to prevent its citizen from returning back to their homeland is violative of Articles 14 & 21 of the Constitution of India.
- B. Because under Section 10 the powers and functions of the National Executive Committee is as broad as it is deep. This certainly includes the power to evolve particular protocols/guidelines to deal with the issue of evacuation and allied aspects. By way of an illustration Section 10 is being extracted for easy convenience.
- Powers and functions of National Executive Committee.*—(1) The National Executive Committee shall assist the National Authority

in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may— (a) act as the coordinating and monitoring body for disaster management; (b) prepare the National Plan to be approved by the National Authority; (c) coordinate and monitor the implementation of the National Policy; (d) *lay down guidelines for preparing disaster management plans by different Ministries or Departments of the Government of India and the State Authorities; (e) provide necessary technical assistance to the State Governments and the State Authorities for preparing their disaster management plans in accordance with the guidelines laid down by the National Authority; (f) monitor the implementation of the National Plan and the plans prepared by the Ministries or Departments of the Government of India; (g) monitor the implementation of the guidelines laid down by the National Authority for integrating of measures for prevention of disasters and mitigation by the*

Ministries or Departments in their development plans and projects;

8 (h) monitor, coordinate and give directions regarding the mitigation and preparedness measures to be taken by different Ministries or Departments and agencies of the Government; (i) evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or disaster and give directions, where necessary, for enhancing such preparedness; (j) plan and coordinate specialised training programme for disaster management for different levels of officers, employees and voluntary rescue workers; (k) coordinate response in the event of any threatening disaster situation or disaster; (l) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster; (m) require any department or agency of the Government to make available to the National Authority or State Authorities such men or material resources as are available with it for the purposes of emergency response, rescue and relief; (n) advise, assist and coordinate the activities of the Ministries or Departments of the

Government of India, State Authorities, statutory bodies, other governmental or non-governmental organisations and others engaged in disaster management; (o) provide necessary technical assistance or give advice to the State Authorities and District Authorities for carrying out their functions under this Act; (p) promote general education and awareness in relation to disaster management; and (q) perform such other functions as the National Authority may require it to perform.

- C. Because the Indian Aircraft (Public Health) Rules of 1954 (“IAR, 1954”) does not take into cognisance the WHO’s - IHR 2005 a composite compendium on movement of persons across borders during the times of a pandemic. New drafts of IAR, 1954 brought out in 2015 and 2017 by the Respondent No.6 for unknown reasons have not been notified in the Gazette and have been disturbingly gathering dust.
- D. Because though the new Drafts of 2015 and 2017 take due cognisance of the WHO’s IHR 2005, the same has not been notified even now. Therefore, *perforce* reliance has to be placed on the presently available IAR of 1954. The aforesaid paradox in law, has

the consequence of ignoring best practices as evolved by the WHO to effectively counter a pandemic. This dichotomy ought to be immediately corrected to align our domestic Rules with international best health practices by recourse to *inter alia* Section 35 & 75 of the DMA 2005.

- E. Because even though the entire country is being run under the DMA, 2005 with the MHA as the administrative Ministry - the evacuation and all allied processes would require the close cooperation of the Ministry of Civil Aviation (MoCA), Ministry of External Affairs (MEA), Ministry of Health and Family Welfare (MoHFW) and the various State Governments. Administrative overlap could be deleterious and the lack of coordination has been visible in the recent past. It is significant that all concerned Ministries are able to evolve a proper protocol for the same.
- F. Because it is imperative that the constitution of a Sub-Committee is urgently carried out. Under Chapter II of the DMA, 2005 and more specifically under Section 9 (1) a specific power has been provided for the Constitution of sub-committees. Section 9 (1) states that - *the National Executive Committee may, as and when*

it considers necessary, constitute one or more sub-committees, for the efficient discharge of its functions. (2) The National Executive Committee shall, from amongst its members, appoint the Chairperson of the sub-committee referred to in sub-section (1).

The Respondent No.1 is fully empowered to constitute the Sub-Committee including all the relevant Ministries mentioned including the MHA, MEA, MoCA, MoHFW and other relevant ministries/agencies/bodies and is in fact duty bound to do so.

- G. Because the aforesaid Sub-Committee in a federal structure (*India being a Union of States*) should also include high level officers of the State Governments. It is understood that too many representatives of the various States may become unwieldy and a logistical nightmare. Therefore, the top five States that have the highest emigration could be identified as a reasonable classification based on identifiable intelligible *differentia* or such other criteria as shall be fair, just and reasonable and falling within the letter and spirit of Part XI of our Constitution.

- H. Because, it is a well settled principle that Article 21 shall not stand suspended even at the time of emergency. The Hon'ble Supreme Court in **Maneka Gandhi vs. Union of India, AIR 1978 SC 597**, interpreted the right to life, widened its scope and deduced unenumerated rights such as "right to live with human dignity". The Hon'ble Apex Court propounded the theory of emanation to make the existence of the fundamental right meaningful and active. Therefore, in a similar manner the Indian citizens and other migrant workers stranded in UAE are made to live in camps and shared apartments without any space to follow social distancing, have the fundamental right to live with dignity. They also deserve to have their fundamental rights protected by the State.
- I. Because, the right to personal life and liberty are fundamental human rights which are non-derogable. The Hon'ble Supreme Court in **Sunil Batra vs. Delhi Administration, AIR 1978 SC 1675**, held that the right to life included the right to lead a healthy life so as to enjoy all faculties of the human body in the prime conditions. It includes the right to live in peace, to sleep in peace and the right to repose and health. Therefore, the Indian citizens

have the right to access their human rights and lead a healthy life so as to enjoy all faculties of the human body in the prime condition. This remains impossible for them in their current conditions.

- J. Because in accordance with the *Siracusa Principles; on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (Non Derogable Rights)* No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of the following rights. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation including the right to life. Article 21 in the Indian Constitution has been interpreted by this Hon'ble Supreme Court in a liberal and enabling manner keeping human dignity on a pedestal.
- K. Because, the Article 4 of the International Covenant on Civil and Political Rights recognises the right to life and personal liberty to be a non-negotiable right even during times of emergency. The United Nations in its circular dated 16.03.2020, has stated that States should not abuse emergency measures to suppress human

rights. India as a responsible member of the comity of nations and has historically given utmost importance to its international treaty obligations. An elaborate treatment on the subject is available in *State of West Bengal v. Kesoram Industries Limited* (2004) 10 SCC 201.

- L. Because more significantly India has not only signed the International Covenant on Civil and Political Rights but also ratified the same. Numerous judgments of this Hon'ble Court have also taken judicial notice of the same including in the nine judge Bench case of *TMA Pai*. The human rights jurisprudence which has evolved in this country has been inspired by not only the Indian Constitution but also by numerous international law developments and *jus cogens*.

- M. Because, the nationwide lockdown has suspended all international air travels since the last week of March has made it impossible for the Indian citizens stranded abroad to return to India. As pointed earlier the total restriction to return to their own country is violative of rights guaranteed under Article 14,19 and 21 of the Constitution of India. This curtails the liberty to return to one's own country

making us one of the few countries to fall into that unenviable category. This is not only a constitutional affront but also flies in the face of DMA 2005.

- N. Because, the number of COVID - 19 cases are increasing and the only way to prevent its spread is by social distancing. However, the present living state of the migrant workers of Indian origin in UAE is unfortunate with limited space and no form of social distancing. In the light of this our country's response has to be grounded on well recognized principles of constitutional law as well as on principles of natural justice. The doctrine of proportionality would mean a fair and just approach to evacuation and allied activities. It does not mean that we simply abandon our citizens to the winds of destiny.
- O. Because, though some response has been made by the Respondents, they have failed to provide adequate care and requisite support to the stranded migrant workers and other vulnerable citizens in UAE. They are constrained and even with the help of multiple cultural organizations the numbers are massive. Moreover, it is submitted that due to no work the migrant workers are in severe financial

distress and have no means of sustenance. In fact no tangible support has been offered or provided to these workers by the Respondent Authorities.

- P. Because the UAE Authorities recognizing their responsibility have offered help and support to evacuate the stranded citizens. It has also offered to fly back these citizens to India after completion of their medical test. This would require proactive engagement between the two countries for the benefit of the Indian citizens.
- Q. Because the blanket ban on all commercial carriers since 22.03.2020, to contain the spread of contagion has aggravated the distress of all the migrant workers of Indian origin stranded in the UAE and it is in direct violation of Article 21 of the Constitution. Moreover, the lockdown is an exigent administrative measure that cannot continue *ad infinitum* and the same cannot be a justification for the continued suppression of Part III - Fundamental Rights under the Constitution.
- R. Because this Hon'ble Court in a similar situation, in W.P (C) No.467/2020, titled - "*Mustafa MH vs. Union of India*", vide its

order dated 01.04.2020, has recorded the submissions made by the Respondents vide its Status Report that various special flights were plied by the Respondents herein to ensure safe repatriation of the Indian Students and pilgrims in Iran, and while recording the said submission by the Union of India, this Hon'ble Court directed that the same may be done at the earliest possible and if any person is so aggrieved they may file a fresh petition or revive the said proceedings. Thus, the Petitioner is seeking directions from this Hon'ble Court on equity.

- S. Because the Respondents can carry out screening and quarantine of these citizens, as has been carried out in other instances of evacuation of Indian citizens abroad during this pandemic. The arrangements made by the Respondents herein of special flights to bring back Indian Students stranded in China, Japan, Italy and Iran, may also be implemented in the present case.
- T. Because the purpose and scope of the International Health Regulations (2005) of the WHO is to *“to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and*

restricted to public health risks, and which avoid unnecessary interference with international traffic and trade”. Because the IHR (2005) are not limited to specific diseases but apply to new and ever- changing public health risks, they are intended to have long-lasting relevance in the international response to the emergence and spread of disease. The IHR (2005) also provides the legal basis for important health documents applicable to international travel and transport and sanitary protections for the users of international airports, ports, and ground crossings.

- U. Because it becomes crucial that any protocol which is evolved keeps in mind the objectives laid down in the WHO International Health Regulations of 2005 (IHR 2005) as it specifically deals with cross border movement of persons; especially in the time of pandemics and epidemics. The IHR 2005 has also developed a highly developed body of rules and norms with reference to international disease surveillance and responses. The presence of medical teams with qualified doctors is mandatory at the points of embarkation and disembarkation.

- V. Because it is crucial that the Indian Aircraft Public Health Rules of 1954 has to evolve with the times, and with the same objective in mind - Drafts were brought forth in 2015 and 2017 with due cognizance of the International Health Regulations (WHO 2005). However for reasons not clearly discernible the same was never notified in the Gazette. A Protocol which has evolved has to keep in mind the staggered airlifting of thousands of people and the prevailing public health challenges brought forth by the pandemic.
- W. Because, in accordance with Section 9 of DMA, 2005, the National Executive Committee/Respondent No. 1 has the power to constitute one or more sub-committee if required. This Hon'ble Court in *Joint Council of Bus Syndicate and Others vs. Union of India and Others National Insurance Co. Ltds. and Others, 1992 Supp (2) SCC 125*, had upheld the constitution of the Tariff Advisory Committee which is a Statutory Committee under Section 64U of the Insurance Act, 1938. Further, this Hon'ble Court provided directions for this Committee to execute its functions effectively. This case law is being highlighted to demonstrate that this is the way forward to evolve a protocol for evacuation and allied

activities. This would also mean that we would be then moving away from *ad hoc* and knee jerk approaches to clearer procedures and protocols. The relevant portion of the judgment is reproduced herein below:

“8. [...]In case after such a hearing is granted, the Committee is satisfied that alterations are warranted, appropriate reduction of the tariff should be undertaken. We make it clear that the tariff as a result of this exercise would not be permitted to be enhanced. The exact procedure of hearing in terms of our direction we do not intend to prescribe but we leave it open to the Committee to adopt a fair way of hearing the parties and we hope and trust that a fair and reasonable hearing would be extended to the parties or such of them who appear on such occasion or occasions. The Committee may break itself into groups for convenience of movement and quick disposal of the matter. After the hearing is over at the different centres, the entire Committee should meet and take its decision after appropriate deliberations.

- X. Because, the Hon’ble Supreme Court has always upheld the Statutory Committee’s independence to carry out its functions. This Hon’ble Court in ***Sector 14 Residents Welfare Association and Others vs. State of Delhi and Others, (1999) 1 SCC 161***, had handed over the functions of P.K. Kaul Committee to Bhure Lal Committee which was a statutory committee. In addition, this

Committee was given full authority to issue appropriate directions to the various organisations who were mentioned as being responsible for implementation of different items of works as per the action plan. It also made clear that if any organisation fails to carry out the directions so issued; the concerned/accountable persons would have to satisfy the Hon'ble Supreme Court for their failure to implement the directions issued. The Hon'ble Apex Court had also held that the Bhure Lal Committee's directions shall be final and binding on all subject to orders of the Hon'ble Supreme Court.

- Y. This Hon'ble Court in *T.N. Godavarman Thirumulpad vs. Union of India and Others*, (2009) 17 SCC 755, had accepted the draft notification of the Central Empowered Committee, which contained the term/tenure of the Committee and the members of the Committee. The Hon'ble Court directed that a formal notification shall be issued in this regard within a week. It further directed that once the notification is issued; the functions and responsibilities of the Empowered Committee shall be exercised by the statutory committee.

Z. Because, in an English case in 1932 when Chief Justice Lord Hewart had raised certain complaints and criticisms against the formation of Donoughmore Committee, formed by the British Government; the Donoughmore Committee rejected those criticisms and accepted the reality that a modern State cannot function without delegation of vast powers to the executive authorities, though there must be some control on them.

AA. Sir John Donaldson, M.R. , in *R. vs. Lancashire CC, All ER* (page 945c) had held that “...has created a new relationship between the courts and those who derive their authority from the public law, one of partnership based on common aim, namely, the maintenance of the highest standards of public administration”

Therefore, powers can be delegated for more efficient execution of the functions and in the present scenario, it is only reasonable to form sub-committee(s), when the issue is of a pandemic level. However, it cannot be exercised *ultra vires* the Constitution and the statutory mandate has to be clear.

8. The Petitioner has not filed any similar petition before any other Hon'ble Court or this Hon'ble Court seeking the reliefs prayed for herein. This Hon'ble Court has the jurisdiction to entertain the present Writ Petition.

9. That the Petitioner does not have any alternative efficacious remedy before any other court of law given the fact that directions are sought with respect to different State Governments.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court maybe pleased to:

- A) Issue a writ in the nature of mandamus or any other writ and/or direction, directing the Respondents to undertake immediate and urgent steps to evacuate the persons desirous of returning to India in the wake of COVID 19 in a transparent, non- arbitrary, phased manner;

- B) Issue a writ in the nature of a mandamus or any other writ and/or direction ensuring that the Respondent No.1 evolves a proper

protocol under the Indian Aircraft Public Health Rules of 1954 for appropriate and non-arbitrary evacuation;

- C) Issue a writ in the nature of a mandamus or any other writ and/or direction to ensure that the Protocol is in consonance with the WHO International Health Regulations of 2005 and;
- D) Issue a writ in the nature of a mandamus or any other writ and/or direction to the Respondent No. 3 Chairman of the National Executive Chairman to notify the newly draft Rules 2017 pertaining to the Indian Aircraft Public Health Rules of 1954 in accordance with the law;
- E) Issue a writ in the nature of mandamus or any other writ and/or direction directing the Respondent No.1 to constitute a sub-committee under Section 9 of Disaster Management Act, 2005 to ensure the evacuation of citizens stranded in UAE and allied aspects including their safe return to India;
- F) Issue a writ in the nature of mandamus or any other writ and/or direction, directing the Respondents to provide items of essential

needs to the Indian Citizens stranded in UAE through the Indian Mission abroad;

- G) Issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstance(s) of the case and as a consequence to findings that may be rendered by Committees constituted by this Hon'ble Court.

AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVERY PRAY

DRAWN BY:

FILED BY

KURIAKOSE VARGHESE
(ADVOCATE)

KMNP LAW AOR
ADVOCATE FOR THE PETITIONER

DRAWN ON: 27.04.2020
FILED ON: 28.04.2020