

To
The Hon'ble the Chief Justice of India and His Companion Judges
Supreme Court
Bhagwan Dass Road
New Delhi

Dear Judges,

It is with great anguish and dismay that we write to you as the citizens of India and senior members of the Bar. The Hon'ble Supreme Court has a pivotal constitutional role in protecting and safeguarding the fundamental rights and freedoms of the citizens of this country, and particularly the vast swathes of our population who eke out a living near or below the poverty line or minimum wages, and are even in normal times barely able to survive with dignity and respect. The Supreme Courts constitutional role and duty assumes even greater importance in the time of a crisis, such as the present when the entire country and its economy was "locked down" from 24th March by an order of the Central Government. More than 75% of the Indian work force earn their livelihoods in the informal or unorganized sector, and for them a stoppage of economic activity in the Medium, Small and Micro sectors has resulted in an immediate loss of employment, livelihood and the means of sustenance.

The "lock down" was imposed on 24th March without any consideration being paid to the plight of these poor, especially migrant labour [who number in the crores] earning their livelihood in the major cities, and for whom social distancing was and is a utopian impossibility. These poor citizens who were faced with the prospect of being cooped up in small cramped tenements/rooms or on the pavements, without any employment or livelihood or even a definite source of food and were thus compelled to start walking back to their home States, often thousands of kilometers away, with little children, family members or elderly parents. They were forced to do so as the Central Governments lock down had precluded them from taking trains or buses back to their home towns. The movement even at that juncture involved lakhs of poor, hungry and scared migrant labour. The Government, initially, sought to prevent such migrants from leaving and returning home

While hearing a public interest litigation on the plight of the migrant workers, *Alakh Alok Srivastava v. Union of India* [Writ Petition (Civil) No. 468 of 2020], the Hon'ble Supreme Court considered the Status Report filed by the Learned Solicitor General, representing the Union of India, which referred to the Government's circular dated 29th March 2020 prohibiting movement and transportation of migrant labourers and a direction to shift them to relief shelter homes and relief camps instead and the Solicitor General's statement before this Court that as of 31st March, 2020, "*no migrant person was walking on the roads in an attempt to reach his/ her home towns villages.*" The Hon'ble Supreme Court, vide order dated 31.03.2020, expressed satisfaction at the steps taken by the Union of India to combat Covid-19 and proceeded to observe that "the migration of labourers working in the cities was triggered by panic

created by fake news that the lock down would continue for more than 3 months.” As a consequence of the Court’s failure to intervene, even though the number of Covid cases were then only a few hundred at the time, the millions of migrant workers were unable to proceed to their hometowns and were compelled to remain in small cramped tenements or rooms or on the pavements, without any employment or livelihood, and even a definite source of food. Infact this enforced stay in cramped quarters only exposed such poor worker to a higher risk of Covid infection

Moreover, the Government’s statement has been clearly shown to be contrary to the facts. Several reports suggest that more than 90% of migrant workers did not receive Government rations in many States and were suffering from dire food shortage¹.

This failure to intervene in March, subsequently resulted in a massive migration of millions of workers by early May, when migrant labourers who were fed up with being virtually incarcerated for the previous 6 weeks, without employment or wages decided that they would be better off trying to go back to their homes. Significantly by this time the Covid infections in the country had crossed 50,000 and a significant number of these migrant workers were also infected with Covid. Even at this stage, the Government initially sought to obstruct their travel/movement on foot or by trucks. Subsequently the Government agreed to their movement by bus and trains [*shramik* specials]. However, even when the arrangements were made by the States to transport the migrant workers who wish to return home after having been cooped up for over 30-40 days, onerous conditions were sought to be imposed on them, such as obtaining a medical certificate after getting themselves tested at great cost to themselves. When arrangements are made to transport them by road, they were often left at the borders of the receiving states, which at times were unwilling to make any further arrangements for them to let them enter or reach their homes, or provide transport, almost as if this was not one country with a common citizenship. The right to life, liberty and freedom of movement of these hapless poor millions was rendered virtually meaningless in such circumstances.

Civil society had risen to the occasion and attempted to provide succor, food and shelter for these poor migrants. However, having regard to the millions involved and the distances to their hometowns civil society cannot, in real measure provide an adequate measure of succor or redress. As this situation had been brought about by the executive orders of the Central Government imposing a lock down, prohibiting public transport and interstate travel, it was necessarily the duty and constitutional obligation of the Government of India [with the State Governments] to ensure that these millions were expeditiously enabled during lockdown¹ itself to travel home safely. However, both in during

¹ https://www.thehindu.com/news/resources/article31442220.ece/binary/Lockdown-and-Distress_Report-by-Stranded-Workers-Action-Network.pdf

lockdown 1 and in lockdown 2 no steps were taken to redress the horrendous plight of these poor millions.

On 15th May 2020, a three-judge bench of the Hon'ble Supreme Court dismissed an application seeking immediate directions to all the District Magistrates to identify the migrant workers who are walking on roads, provide them with appropriate food and shelter facility and facilitate their travel back to their home states free of cost. Without going into the merits of the said application, it was dismissed and left it for the State Governments to sort this out. We respectfully submit that this institutional deference to statements made on behalf of the Government and the Court's apparent indifference to this enormous humanitarian crisis, would if not rectified immediately, amount to the Court having abdicated its constitutional role and duty to these teeming millions of poor, hungry migrants.

Indeed, the current migrant crisis is symptomatic of how the constitutional promises of equality, life, freedom and dignity have been totally ignored by the Government while imposing arbitrary executive measures. The Hon'ble Supreme Court's unwillingness to hold the Government to account and to provide succor to these poor millions, will severely erode its constitutional role and status as the guardian of the fundamental rights of the people. The Hon'ble Supreme Court has a glorious tradition of Public Interest Litigation (PIL) that changed the face of Indian constitutional jurisprudence forever, ranging from eradication of bonded labour, prison reforms, environmental compliances, and right to food, amongst others. Each of these PILs has resulted in far-reaching legal and policy changes positively affecting the lives of the millions of people. The Hon'ble Supreme Court's deference to the Government and its unwillingness or expressed helplessness in the face of the above situation, casts a long shadow on our Country's constitutional structure.

In the midst of the executive imposed Covid-19 lockdowns, the Hon'ble Supreme Court cannot retreat into a self-effacing deference, leaving millions of Indian citizens, especially those who are poor, vulnerable and impoverished, to the mercy of the executive, reminding us of *ADM Jabalpur* when detainees were left to the tender mercy of the executive with "Diamond bright Diamond hard" hope that something would be done.

The rights of citizens, especially the poor, are being violated with impunity by the executive in the name of addressing the pandemic. Millions have been forced to remain cooped up in slums or small tenements for weeks on end without employment or livelihood and in total denial of their rights to life and liberty.

The deference shown by the Hon'ble Supreme Court to the Government's bland assertions and the expressed helplessness of the Hon'ble Supreme Court on the grounds of "issue being policy decision" or "inability to monitor" in the face of an unfolding human disaster, where millions of migrant workers are on the road, walking thousands of kilometers to reach their homes, is a matter of involving the violation of fundamental rights of millions of our poor citizens

on account of executive action, that needs urgent attention by the Hon'ble Supreme Court on its judicial side.

The migrant workers' issues are not a "policy issue." They raise constitutional issues requiring a strict scrutiny of the executive action which has resulted in this situation. The core issues are of protection of the fundamental rights of these millions of poor migrant workers to life and liberty and their right to move freely throughout India and to return home, with safety and dignity guaranteed under Articles 14, 19(1) and 21 of the Constitution. If the Court is to fulfill its sacred constitutional role and duty, it must necessarily hold the executive accountable and require it to take steps to fulfill its obligations under the Constitution.

The Hon'ble Supreme Court has developed the jurisdiction of continuous mandamus to monitor executive action to ensure that orders of this Hon'ble Court are indeed followed. The apparent deference to executive action and the reliance on bald [and patently incorrect] statements made on behalf of the executive and the expression of helplessness on this part of the Hon'ble Supreme Court to monitor executive action, severely impairs this Courts constitutional status and duty.

This Hon'ble Court has the power bestowed by the Constitution of India under Article 142 to undertake any measure to do complete justice. The show of helplessness does no justice to the *moto* of this court "*Yato dharmastato Jaya*"

We address this letter because we believe that the Hon'ble Supreme Court's failure to protect the rights of the hapless millions of migrant workers in March and its failure to scrutinize carefully the executives actions, which resulted in them being compelling to stay in cramped unhygienic accommodation without employment and wages and often without proper food and with a much higher risk of Covid infection that severely and excessively impaired the fundamental rights of the poorest sections of our citizens. This situation was compounded by the Hon'ble Supreme Court's Courts failure to intervene in mid-May when millions of migrant workers had commenced travelling home on foot, or by trucks.

We believe that the survival of Indian democracy and the rule of law, particularly in the current Covid-19 pandemic, is dependent on the Hon'ble Supreme Court actively fulfilling its constitutional obligation of being the guarantor of the fundamental rights of citizens against State action.

The migrant workers crisis is continuing even today, with millions still stranded on roads at railway stations and state borders. We urge the Hon'ble Supreme Court to intervene and ensure that adequate transport arrangements, food and shelter are immediately provided for by the Central and State governments free of cost. At this time, we recall the words of Martin Luther King Jr. who said "*injustice anywhere is a threat to justice everywhere*".

Signed

P Chidambaram
Anand Grover
Indira Jaising
Mohan Katarki
Siddarth Luthra
Santosh Paul
Mahalaxmi Pavani
Kapil Sibal
Chander Uday Singh
Vikas Singh
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