



INDIAN BAR ASSOCIATION

(THE ADVOCATES' ASSOCIATION OF INDIA)

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Date:- 17.11.2021

Case Number before Hon'ble President of India	PRSEC/E/2021/32661
Case Number before Hon'ble Prime Minister of India	PMOPG/E/2021/0571091
Case Number before Central Vigilance Commission	188301/2021/vigilance-7

To,
Shri. Ajay Bhalla,
Home Secretary,
Government of India,
North Block, New Delhi – 110 001.
Email:- hshso@nic.in

Sub: (i) Immediate registration of case under section **51(b), 55, 54** of Disaster Management Act, 2005 and under section **153-A, 505(2), 166, 167, 409, 120(B), 34, 52** etc., of IPC against Shri. Naresh Mhaske, Mayer Thane, Editor, Reporter and Owner of News Channel Lokmat News 18 and Hindi Newspaper '**Navbharat Times**' for spreading false and misleading information with ulterior motive to incite hatred against and unvaccinated people.

(ii) Immediate steps for stopping the abovesaid offences across the country by passing appropriate directions to all Chief Secretaries of all states in India.

Ref: i) D.O. No. 40-3/2020- dated 22nd August 2020, by Home Secretary Sh. Ajay Bhalla, IAS.

ii) News aired on Marathi news channel Lokmat news 18 on 15.11.2021.

iii) News published in Daily Navbharat Times on 12.11.2021.

1. That, the National Authority and Hon'ble High Court in catena decisions made it clear that, there cannot be any discrimination between vaccinated and unvaccinated people.

2. The excerpts from relevant judgments and the information and affidavit filed by the Under Secretary of Health Ministry of India, makes it clear that no authority can discriminate between vaccinated and unvaccinated people.

2.1. That, in affidavit dated **8.10.2021** by Shri. Satyendra Singh, Under Secretary Health Ministry of India before Hon'ble Bombay high Court in **Writ Petition No. 1820 of 2021**, it is made clear that the COVID-19 vaccination is completely voluntary for all citizens of India and Ministry of Health and Family Welfare, Government of India has not formulated or suggested any policies for discrimination between citizens of India on the basis of their vaccination status. The relevant paras of the affidavit read as under;

*“9. That, it is further humbly submitted that the directions and guidelines released by Government of India and Ministry of Health and family Welfare, do not entail compulsory or forcible vaccination against COVID-19 disease implying that **COVID-19 vaccination is completely voluntary for all citizens of India. Ministry of Health and Family Welfare, Government of India has not formulated or suggested any policies for discrimination between citizens of India on the basis of their vaccination status.**”*

10. That, it is duly advised, advertised and communicated by

MoHFW through various print and social media platforms that all citizens should get vaccinated, but this in no way implies that any person can be forced to be vaccinated against her / his wishes.

11. That, as per the existing guidelines, there is no provisions for forcing any citizen to book appointment for Covid Vaccination on Co-WIN or visiting Covid Vaccination Centre for vaccination if a person above the age of 18 years visits a Covid Vaccination Centre by her / his choice for vaccination and asks for the same, it implies that she / he is voluntarily coming to the center to get the benefit of Covid Vaccination.”

A copy of above said affidavit is annexed herewith at **Annexure – “A”**.

2.2. That, the Central Government’s reply dated **09.03.2021** to an application under RTI is as under;

“RTI reply by Government of India's Health Ministry on 09.03.2021 to Shri. Anurag Sinha

प्रश्न १: कोरोना वैक्सीन लेना स्वैच्छिक है या अनिवार्य , जबरदस्ती?

उत्तर: कोरोना वैक्सीन लेना स्वैच्छिक है।

प्रश्न २: क्या वैक्सीन नहीं लेने पर सारी सरकारी सुविधाएं बंद कर दी जायगी, सरकारी योजना पेंशन?

उत्तर : आवेदन में लिखी बातें निराधार है। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।

प्रश्न ३ : क्या वैक्सीन नहीं लेने पर नौकरी नहीं मिलेगा, ट्रेन, बस, मेट्रो में चढ़ने नहीं मिलेगी?

उत्तर : आवेदन में लिखी बातें निराधार है। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।

प्रश्न ४: यदि कोई IAS,IPS स्वास्थ्य या पुलिस कर्मचारी नागरिक को धमकी दे की वैक्सीन ले नहीं तो ये कर देगे तो नागरिक क्या कर सकती क्या कोर्ट जा सकते हैं?

उत्तर : आवेदन में लिखी बातें निराधार है। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।

प्रश्न ५: क्या वैक्सीन नहीं लेने पर स्कूलों, कॉलेज, विश्वविद्यालय, गैस कनेक्शन, पानी, बिजली कनेक्शन, राशन आदि के लिए क्या वैक्सीन नहीं मिलेगे?

उत्तर : आवेदन में लिखी बातें निराधार है। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।

प्रश्न ६ : क्या वैक्सीन नहीं लेने पर नौकरी से निकला जा सकता है वेतन रोका जा सकत है, निजी और सरकारी विभाग दोनों मे?

उत्तर : आवेदन में लिखी बातें निराधार है। किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है।

A copy of which is annexed herewith at **Annexure – B.**

2.3. After referring the abovesaid information under RTI and the stand taken in parliament, the Hon'ble High Courts have passed specific judgments that no state can bring any rule or circular which discriminates a person on the basis of his vaccination status.

2.4. In Madan Milli Vs. UOI 2021 SCC OnLine Gau 1503, ruled as under;

“3. The petitioner contends that as per the RTI Information furnished by the Ministry of Health & Family Welfare, which is available in the website of the Ministry of Health and Family Welfare, Government of India, Covid-19 vaccination is not a mandatory but a voluntary. A copy of the RTI Information available in the website of the Ministry of Health & Family Welfare, Government of India, has been annexed by the petitioner as Annexure 3 to the petition. The petitioner also refers to an answer given on 19.03.2021 in the Lok Sabha to an Unstarred Question No. 3976 by the Minister of State in the Ministry of Health & Family Welfare, Government of India (Annexure 4 to the petition) stating that there is no provision of compensation for recipients of Covid-19 Vaccination against any kind of side effects or medical complication that may arise due to inoculation. The Covid-19 Vaccination is entirely voluntary for the beneficiaries.

4. By referring to the fact that the Covid-19 Vaccination is entirely a voluntary exercise at the choice of an individual as indicated in the RTI answer and the answer given in the Lok Sabha by the Minister of State in the Ministry of Health and Family Welfare, Government of India, as referred to hereinabove, the learned counsel for the petitioner has

contended that provision under Clause 11 of the Order dated 30.06.2021, issued by the Chief Secretary cum Chairperson-State Executive Committee, Government of Arunachal Pradesh, vide Memo No. SEOC/DRR&DM/01/2011-12, allowing temporary permits to be issued for developmental works in both public and private sector to only those persons who are vaccinated for Covid-19, have interfered with the rights of the citizens provided under Article 19 (1) (d) of the Constitution of India to move freely throughout the territory of India. The learned counsel for the petitioner, therefore, has argued that since the Clause 11 of the Order dated 30.06.2021, issued by the Chief Secretary cum Chairperson-State Executive Committee, Government of Arunachal Pradesh, vide Memo No. SEOC/DRR&DM/01/2011-12, by allowing to issue temporary permits for developmental works in both public and private sector only to persons who have vaccinated for Covid-19 Virus, have interfered with the fundamental rights granted under Article 19 (1) (d) of the Constitution of India and the same may be struck down by this Court in exercise of power under Article 226 of the Constitution of India.

13. In the instant case, the classification sought to be made between the vaccinated and unvaccinated persons for Covid-19 by Clause 11 of the Order dated 30.06.2021 for the purpose of issuing a temporary permit for developmental works in both public and private sector in the State of Arunachal Pradesh is undoubtedly to contain Covid-19 pandemic and its further spread in the State of Arunachal Pradesh. There is no evidence available either in the record

or in the public domain that Covid-19 vaccinated persons cannot be infected with Covid-19 virus, or he/she cannot be a carrier of a Covid-19 virus and consequently, a spreader of Covid-19 virus. In so far as the spread of Covid-19 Virus to others is concerned, the Covid-19 vaccinated and unvaccinated person or persons are the same. Both can equally be a potential spreader if they are infected with Covid-19 Virus in them. This aspect of the matter came up for consideration by this Court in WP(C)/37/2020 (In Re Dinthar Incident Aizawl v. State of Mizoram Aizawl; in which case, this Court vide Order dated 02.07.2021, in paragraph 14 thereof, had observed as follows -

*“14. It has been brought to our notice that even persons who have been vaccinated can still be infected with the covid virus, which would in turn imply that vaccinated persons who are covid positive, can also spread the said virus to others. It is not the case of the State respondents that vaccinated persons cannot be infected with the covid virus or are incapable of spreading the virus. **Thus, even a vaccinated infected covid person can be a super-spreader.** If vaccinated and un-vaccinated persons can be infected by the covid virus and if they can both be spreaders of the virus, the restriction placed only upon the un-vaccinated persons, debarring them from earning their livelihood or leaving their houses to obtain essential items is unjustified, grossly unreasonable and arbitrary. As such, the submission made by the learned Additional Advocate General that the restrictions made against the un-vaccinated persons vis-à-vis the vaccinated persons is reasonable does not hold any*

water. As the vaccinated and un-vaccinated persons would have to follow the covid proper behavior protocols as per the SOP, there is no justification for discrimination.”

14. Thus, if the sole object of issuing the Order dated 30.06.2021, by the Chief Secretary cum Chairperson-State Executive Committee, Government of Arunachal Pradesh, vide Memo No. SEOC/DRR&DM/01/2011-12, is for containment of the Covid-19 pandemic and its further spread in the State of Arunachal Pradesh, the classification sought to be made between vaccinated and unvaccinated persons for Covid-19 virus for the purpose of issuing temporary permits for developmental works in both public and private sector, vide Clause 11 thereof, prima facie, appears to be a classification not founded on intelligible differentia nor it is found to have a rational relation/nexus to the object sought to be achieved by such classification, namely, containment and further spread of Covid-19 pandemic.”

2.5. In Re: Dinthar Incident Aizawl Vs. State of Mizoram 2021 SCC OnLine Gau 1313, the Division Bench of Hon’ble Gauhati High Court vide its order dated **02.07.2021**, has categorically held as follows:

*“14. It has been brought to our notice that even persons who have been vaccinated can still be infected with the covid virus, which would in turn imply that vaccinated persons who are covid positive, can also spread the said virus to others. It is not the case of the State respondents that vaccinated persons cannot be infected with the covid virus or are incapable of spreading the virus. Thus, even a vaccinated infected covid person can be a **super spreader**. If*

vaccinated and un-vaccinated persons can be infected by the covid virus and if they can both be spreaders of the virus, the restriction placed only upon the un-vaccinated persons, debarring them from earning their livelihood or leaving their houses to obtain essential items is unjustified, grossly unreasonable and arbitrary.”

2.6. In **Osbert Khaling Vs. State of Manipur and Ors. 2021 SCC OnLine Mani 234**, it is ruled as under;

*“8.... Restraining people who are yet to get vaccinated from opening institutions, organizations, factories, shops, etc., or **denying them their livelihood by linking their employment**, be it NREGA job card holders or workers in Government or private projects, **to their getting vaccinated would be illegal on the part of the State, if not unconstitutional. Such a measure would also trample upon the freedom of the individual to get vaccinated or choose not to do so.**”*

2.7. That, the above judgments are passed after hearing the Counsel for Union India and the judgment is regarding the interpretation of constitutional provisions, therefore they are binding on all the authorities in India.

3. That, as per section 38(1) and 39 of Disaster Management Act, 2005 the State Authority or District Authority cannot take any decision against the guidelines and directions given by the National Authority. If any State or District Authority takes any decision by disobeying the guidelines of the National Authority then such person and all Government Officers of the office will be guilty of the offences under section 55, 51(b) of Disaster Management Act, 2005.

Section **38(1), 39(a)** of the Act reads thus;

“Section 38(1) in the Disaster Management Act, 2005

38. State Government to take measures. -

(1) Subject to the provisions of this Act, each State Government shall take all measures specified in the guidelines laid down by the National Authority and such further measures as it deems necessary or expedient, for the purpose of disaster management.

Section 39(a) in the Disaster Management Act, 2005

39. Responsibilities of departments of the State Government.-

It shall be the responsibility of every department of the Government of a State to—

(a) take measures necessary for prevention of disasters, mitigation, preparedness and capacity-building in accordance with the guidelines laid down by the National Authority and the State Authority.”

Section **51(b), 55** of the Act reads thus;

“Section 51 in the Disaster Management Act, 2005

51. Punishment for obstruction, etc.-

Whosoever,

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions

results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to 58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the Act, false claim for relief, misappropriation of relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him under the Act without due permission or lawful excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences.

Section 55 in the Disaster Management Act, 2005

55. Offences by Departments of the Government.-

(1) Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (1) Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.”

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a

Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the Department, such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

4. That earlier few Districts authorities and State Governments including authorities of State of Maharashtra put some restrictions on intra state and inter-state movements. Since said restrictions were against the guidelines issued by MHA therefore on 20th Aug 2020, Home Secretary Sh. Ajay Bhalla, vide his letter outward D. O. No. 40-3 /2020/DM-I(A) warned Chief secretary of all states as under;

“D.O. No. 40-3/2020-DM-I(A)

Dear Chief Secretary,

Please refer to Ministry of Home Affairs' Order of even number dated 29.07.2020 whereby Guidelines for Unlock-3 have been issued.

*2. I would like to draw your kind attention to para-5 of these guidelines which clearly state that **there shall be no restriction on inter-State and Intra-State movement of persons and goods. No separate permission, approval/e-permit will be required for such movements.** This includes movement of persons & goods for cross land border trade under Treaties with neighboring countries.*

3. It has, however, been reported that local level restrictions on movement are being imposed by various districts/States. Such restrictions are creating problems in inter-State

movement of goods and services and are impacting the supply chain, resulting in disruption of economic activities and employment, besides affecting supply of goods and services.

4. Such restrictions at local level imposed by the District Administration or by the State Government, amount to violation of the guidelines issued by MHA under the provisions of Disaster Management Act, 2005.

5. I would, therefore, request that no restrictions may be imposed on inter-State and intra State movement of persons and goods and services and instructions issued to ensure that MHA guidelines mentioned above are strictly followed.”

5. That, despite the abovesaid factual and legal position, the accused people started spreading false alarm and rumors that the vaccinated people can spread more infection.

The interview given by the accused Naresh Mhaske, Mayer, Thane Municipal Corporation and aired by the news channel Lokmat News 18 can be seen at following link. [**Time 1:05 onwards**]

Link:

https://youtu.be/iE5K_ZO_arg

In the said interview the accused Naresh Mhaske is spreading the abovesaid misinformation with ulterior motive of inciting hatred against the non-vaccinated people.

6. The complicity of co-accused news channel **Lokmat News-18** can be seen from the very fact that they have not shown any expert opinion on this subject

and straightaway spread the misinformation to promote the false alarm. This caused a serious issue of law and order amongst few groups. Therefore all the reporter, editor, publisher and owner of the said news channel are liable for prosecution alongwith main accused in view of section **10** of Evidence Act, 1872 and section **120(B)** of IPC and also as per law laid down in the case of **Raman Lal Vs. State 2001 Cr.L.J. 800**, where it is ruled as under;

”Conspiracy – I.P.C. Sec. 120 (B) – Apex court made it clear that an inference of conspiracy has to be drawn on the basis of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal omission committed by them in furtherance of a common design – Once such a conspiracy is proved, act of one conspirator becomes the act of the others – A Co-conspirator who joins subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against accused cannot be quashed.”

7. That, the another accused are the reporter, editor, publisher and owner of the news paper NavBharat Times.

7.1. They on **12.11.2021** published a news with heading **“टीका नहीं लेना विद्यार्थियों को पड़ेगा महंगा”** (not taking vaccines will cost more for students). In the said news, it is published as under;

“आईआईटी बॉम्बे में पढ़ने वाले विद्यार्थियों को कोरोना का टीका नहीं लगवाना महंगा पड़ सकता है।

कुछ विद्यार्थियों की वजह से पूरे कैम्पस में रोग के प्रसार के खतरे को देखते हुए आईआईटी प्रशासन विद्यार्थियों के नियमित कोरोना

टेस्ट करवाने पर विचार कर रहा है।

संस्थान के करीब सभी लोगों का टीकाकरण हो गया है। लेकिन कुछ लोगों की लापरवाही के कारण परिसर में रोग के मामले सामने आ रहे हैं। परिसर में बने हॉस्टल में रहने वाले 5 विद्यार्थी वायरस से संक्रमित मिले हैं। कुछ विद्यार्थियों की वजह से उस हॉस्टल में रहने वाले सभी विद्यार्थियों को क्वारंटीन करना पड़ा है।”

7.2. The publication of said news apart from its falsity and dishonesty has a natural tendency of spreading hatred amongst vaccinated and non-vaccinated.

8. That, the accused Naresh Mhaske is Mayor of Thane and co-accused Shri. Rajesh Narwekar is Collector of Thane District. Since their act of commission and omission is misappropriation of crores of public money in giving vaccines unlawfully and to the person who don't require it, therefore they are guilty of working for giving wrongful gain to vaccine companies and it is an offence u/s 409 of IPC.

Section 409 of IPC read thus;

“409. Criminal breach of trust by public servant, or by banker, merchant or agent. - *Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

9. That the relevant provisions of IPC attracted against the accused are as under;

9.1. Section 153-A of IPC read thus;

“153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.-

(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, 2[or]

2[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial,

language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

9.2. Section 505(2) read thus;

“505. Statements conducing to public mischief.

....(2). Statements creating or promoting enmity, hatred or ill-will between classes. - *Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”*

9.3. Section 52 of IPC read thus;

“52. “Good faith”. - *Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.”*

In Noor Mohamed Mohd. Shah R. Patel Vs. Nadirshah Ismailshah Patel 2003 SCC OnLine Bom 1233, it is ruled as under;

“It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution. If these ingredients are indicated by the complaint, the Magistrate is obliged to take the cognizance of the complaint so presented before him.”

9.4. Section 166 of IPC read thus;

“166. Public servant disobeying law, with intent to cause injury to any person. - *Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Illustration A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z’s favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.”*

9.5. Section 167 of IPC read thus;

“167. Public servant framing an incorrect document with intent to cause injury. - *Whoever, being a public servant, and being, as I[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person,*

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

9.6. Section **120(B)** of IPC read thus;

“120B. Punishment of criminal conspiracy. -

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

9.7. Section **34** of IPC read thus;

“34. Acts done by several persons in furtherance of common intention. - *When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”*

9.8. Section **109** of IPC read thus;

“109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. - *Whoever abets any offence*

shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

10. That, the narrative run by the accused is also proven to be false on two grounds:

10.1. The research proved that the **non vaccinated persons who are having previous Covid-19 infection or having developed the antibodies due to contact with the virus Covi-Sars-2 (i.e. Covid-19) are most safest person and they cannot spread infection and they are 13 times better and protected than the vaccinated people.**

Link:

<https://youtu.be/6v5VrpgXPm4>

81 Research Studies Confirm Natural Immunity to COVID is ‘Superior’ to Vaccine Immunity.

Link:

<https://childrenshealthdefense.org/defender/research-natural-immunity-covid-brownstone-institute/>

10.2. The unvaccinated person who is not having previous infection or not having antibodies developed are also not at any different level than the vaccinated person. Research had proven that the viral load and infection spreading possibility of both the person is equal.

(i) Hon'ble Gauhati High Court in the case of Madan Mili Vs. UOI 2021 SCC OnLine Gau 1503 has observed as under;

“13. In the instant case, the classification sought to be made between the vaccinated and unvaccinated persons for Covid-19 by Clause 11 of the Order dated 30.06.2021 for the purpose of issuing a temporary permit for developmental works in both public and private sector in the State of Arunachal Pradesh is undoubtedly to contain Covid-19 pandemic and its further spread in the State of Arunachal Pradesh. There is no evidence available either in the record or in the public domain that Covid-19 vaccinated persons cannot be infected with Covid-19 virus, or he/she cannot be a carrier of a Covid-19 virus and consequently, a spreader of Covid-19 virus. In so far as the spread of Covid-19 Virus to others is concerned, the Covid-19 vaccinated and unvaccinated person or persons are the same. Both can equally be a potential spreader if they are infected with Covid-19 Virus in them.”

11. A new study finds that this dominant variant can grow in the noses of vaccinated people as strongly as in unvaccinated people.

Link:

<https://www.nationalgeographic.com/science/article/evidence-mounts-that-people-with-breakthrough-infections-can-spread-delta-easily>

12. A study published on September 30, in the peer-reviewed European Journal of Epidemiology Vaccines found “no discernible relationship” between the percentage of population fully vaccinated and new COVID cases.

In fact, the study found the most fully vaccinated nations had the highest number of new COVID cases, based on the researchers' analysis of emerging

data during a seven-day period in September.

“Most recently, researchers in Israel report that fully vaccinated persons are up to 13 times more likely to get infected than those who have had a natural COVID infection.

“In one analysis, comparing more than 32,000 people in the health system, the risk of developing symptomatic COVID-19 was 27 times higher among the vaccinated, and the risk of hospitalization eight times higher.’

“The study also said that, while vaccinated persons who also had natural infection did appear to have additional protection against the Delta variant, the vaccinated were still at a greater risk for COVID-19-related-hospitalizations compared to those without the vaccine, but who were previously infected.

“This study demonstrated that natural immunity confers longer lasting and stronger protection against infection, symptomatic disease and hospitalization caused by the Delta variant of SARS-CoV-2, compared to the BNT162b2 two- dose vaccine-induced immunity,’ study authors said.

Link:

<https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1>

13. Vaccination of all the population will not be of any help. Many countries with full vaccination are facing outbreaks. In Kerala there are 40,000 new cases amongst vaccinated people.

Link:-

<https://www.onmanorama.com/news/kerala/2021/10/12/kerala-covid-cases-deaths-among-vaccinated.amp.html>

In Mumbai among the new 29 cases at KEM hospital, the 27 patients were vaccinated.

Link:-

<https://www.freepressjournal.in/mumbai/mumbai-29-mbbs-students-at-kem-hospital-test-positive-for-covid-19-27-were-fully-vaccinated>

In Bangalore the hospitalization share of vaccinated is 56%.

Link:-

<https://www.deccanherald.com/state/top-karnataka-stories/more-than-half-of-hospitalised-covid-19-cases-among-vaccinated-in-bengaluru-1015918.html>

In Nagpur 12 out of 13 new cases were from fully vaccinated.

Link:-

<https://www.freepressjournal.in/mumbai/covid-19-third-wave-has-entered-nagpur-guardian-minister-nitin-raut-urges-people-to-avoid-crowding>

14. Breakthrough Infections and Hospitalisations, Deaths among vaccinated in India.

1) Assam: 80% Covid-19 infections among vaccinated in Guwahati.

<https://timesofindia.indiatimes.com/city/guwahati/assam-80-covid-19-infections-among-vaccinated-in-guwahati/articleshow/86791235.cms>

2) Over 50% new COVID-19 cases, deaths in Kerala from vaccinated section.

<https://www.onmanorama.com/news/kerala/2021/10/12/kerala-covid-cases-deaths-among-vaccinated.html>

15. Covishield unable to halt breakthrough *Delta* infections: Study

Fresh evidence on Covishield's inability to halt "breakthrough infections" caused by the Delta variant of SARS-CoV-2 in fully vaccinated individuals emerged on Sunday with a group of Indian researchers reporting an unexpectedly large proportion of Covid-19 infections among the vaccine recipients.

Link:

<https://www.medrxiv.org/content/10.1101/2021.02.28.21252621v4>

Link:

<https://www.deccanherald.com/science-and-environment/covishield-unable-to-halt-breakthrough-delta-infections-study-1024960.html>

Half of India's 87k breakthrough Covid cases in Kerala

Contributing over half of the new Covid positive cases in the country, the state has also accounted for half of the breakthrough infections reported till date.

Link:

<https://www.newindianexpress.com/states/kerala/2021/aug/20/half-of-indias-87k-breakthrough-covid-cases-in-kerala-2347145.html>

Nearly 80% (91 out of 114) Covid-19 cases reported from Sept 1 till Oct 23 in Lucknow were of breakthrough infections, according to data accessed by TOI from the office of Chief Medical Officers.

Link:

16. Positive Association between vaccination rates and number of cases.

We investigate the relationship between the percentage of population fully vaccinated and new COVID-19 cases across 68 countries and across 2947 counties in the US.

At the country-level, there appears to be no discernable relationship between percentage of population fully vaccinated and new COVID-19 cases in the last 7 days. In fact, the trend line suggests a marginally positive association such that countries with higher percentage of population fully vaccinated have higher COVID-19 cases per 1 million people. Notably, Israel with over 60% of their population fully vaccinated had the highest COVID-19 cases per 1 million people in the last 7 days. The lack of a meaningful association between percentage population fully vaccinated and new COVID-19 cases is further exemplified, for instance, by comparison of Iceland and Portugal. Both countries have over 75% of their population fully vaccinated and have more COVID-19 cases per 1 million people than countries such as Vietnam and South Africa that have around 10% of their population fully vaccinated.

Of the top 5 counties that have the highest percentage of population fully vaccinated (99.9–84.3%), the US Centers for Disease Control and Prevention (CDC) identifies 4 of them as “High” Transmission counties. Chattahoochee (Georgia), McKinley (New Mexico), and Arecibo (Puerto Rico) counties have above 90% of their population fully vaccinated with all three being classified as “High” transmission. Conversely, of the 57 counties that have been classified as “low” transmission counties by the CDC, 26.3% (15) have percentage of population fully vaccinated below 20%.

Link:

<https://link.springer.com/article/10.1007/s10654-021-00808-7>

17. The reply given by Health Ministry on **20.09.2021** proves falsity of news published. The reply says that, there is no data available regarding longevity of the immune response in vaccinated individuals. The relevant Question & Answer is as under;

***Question-1** Detailed information on approved vaccines to prevent corona outbreaks. As well as detailed information about their time period.*

***Answer:- 1.** Longevity of the immune response in vaccinated individuals is yet to be determined. Hence, continuing the use of masks, hand washing, physical distancing and other COVID-19 appropriate behaviors is strongly recommended.*

18. The number of fully vaccinated people dying from COVID is rising, according to data in most countries.

18.1. Data shows a pronounced and very troubling trend, which is that the “double vaccinated persons are showing greater infection (per 100,000) than the unvaccinated, and especially in the older age groups e.g. 30 years and above.”

Link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031157/Vaccine-surveillance-report-week-44.pdf

18.2. Berenson said. “In the UK, at least 70% of the people who died from COVID in August were fully vaccinated, and that’s straight from British government documents.”

Link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1018547/Technical_Briefing_23_21_09_16.pdf

18.1. Israel was nearly fully vaccinated by February.

Israel saw skyrocketing numbers of cases, even after they'd hit this so-called herd immunity threshold of 70%.”

More and more cases among the fully vaccinated, and more and more of them becoming very severe to the point where the majority of their cases in the hospitals and in the ICU and those dying were fully vaccinated people.”

Link:

<https://childrenshealthdefense.org/defender/justin-williams-robert-malone-fully-vaccinated-covid-super-spreaders/>

18.4. “A majority of gravely ill patients in [Israel](#) are double vaccinated. A majority of deaths over 50 in [England](#) are also double vaccinated.

Link:

<https://www.science.org/content/article/grim-warning-israel-vaccination-blunts-does-not-defeat-delta>

18.5. Also, mass vaccination of the population with the highly mutating coronavirus will only evolve perfectly vaccine-resistant strains of the virus.”

Link:

<https://www.livescience.com/coronavirus-vaccine-resistance-mutation-model.html>

As part of the study, researchers investigated the relationship between the percentage of population fully vaccinated and new COVID cases across 68 countries and 2,947 U.S. counties that had second dose vaccine, and available

COVID case data.

19. Data shows that the deaths in countries having high vaccinated rate is higher than deaths in less vaccinated countries.

Increases in COVID-19 are unrelated to levels of vaccination across 68 countries and 2947 counties in the United States.

Link:-

<https://link.springer.com/article/10.1007/s10654-021-00808-7>

19.1. A paper published Sept. 30 in Eurosurveillance raises questions about the legitimacy of “vaccine-generated herd immunity.”

The study cites a COVID outbreak which spread rapidly among hospital staff at an Israeli Medical Center - despite a 96% vaccination rate, use of N-95 surgical masks by patients and full personal protective equipment worn by providers.

The calculated rate of infection among all exposed patients and staff was 10.6% (16/151) for staff and 23.7% (23/97) for patients, in a population with a 96.2% vaccination rate (238 vaccinated/248 exposed individuals).

The paper noted several transmissions likely occurred between two individuals both wearing surgical masks, and in one instance using full PPE, including N-95 mask, face shield, gown and gloves.

Link:

<https://www.eurosurveillance.org/content/10.2807/15607917.ES.2021.26.39.2100822>

20. People with Natural Immunity who take Covishield, much more likely to suffer from serious side effects.

An international survey²¹ published in mid-March 2021 surveyed 2,002 people who had received a first dose of COVID-19 vaccine, finding that those who had previously had COVID-19 experienced “significantly increased incidence and severity” of side effects, compared to those who did not have natural immunity.

The mRNA COVID-19 injections were linked to a higher incidence of side effects compared to the viral vector-based COVID-19 vaccines, but tended to be milder, local reactions. Systemic reactions, such as anaphylaxis, flu-like illness and breathlessness, were more likely to occur with the viral vector COVID-19 vaccines.

“People with prior COVID-19 exposure were largely excluded from the vaccine trials and, as a result, the safety and reactogenicity of the vaccines in this population have not been previously fully evaluated. For the first time, this study demonstrates a significant association between prior COVID19 infection and a significantly higher incidence and severity of self-reported side effects after vaccination for COVID-19.

Consistently, compared to the first dose of the vaccine, we found an increased incidence and severity of self-reported side effects after the second dose, when recipients had been previously exposed to viral antigen.

Link:

<https://www.mdpi.com/2075-1729/11/3/249/htm>

21. Majority of Hospitalisations in the Vaccinated - Global Data.

The oft-repeated refrain is that we're in a "pandemic of the unvaccinated," meaning those who have not received the COVID jab make up the bulk of those hospitalized and dying from the Delta variant. However, we're already seeing a shift in hospitalization rates from the unvaccinated to those who have gotten one or two injections.

For example, in Israel, the fully "vaccinated" made up the bulk of serious cases and COVID-related deaths in July 2021, as illustrated in the graphs below. The red is unvaccinated, yellow refers to partially "vaccinated" and green fully "vaccinated" with two doses. By mid-August, 59% of serious cases were among those who had received two COVID injections.

Data from the U.K. show a similar trend among those over the age of 50. In this age group, partially and fully "vaccinated" people account for 68% of hospitalizations and 70% of COVID deaths.

Link:

<https://cdn.altnews.org/wp-content/uploads/2021/08/new-hospitalizations-thumb.jpg>

Link:

<https://cdn.nexusnewsfeed.com/images/2021/8/new-severe-covid-19-patients-thumb-1631973102161.png>

Link:

<https://cdn.nexusnewsfeed.com/images/2021/8/deaths-trend-thumb-1631973112475.png>

Link:

<https://cdn.nexusnewsfeed.com/images/2021/8/covid-19-delta-variant-hospital-admission-and-death-in-england-1631973123881.png>

Link:

<https://www.science.org/content/article/grim-warning-israel-vaccination-blunts-does-not-defeat-delta>

Link:

<https://www.standard.co.uk/news/uk/england-delta-donald-trump-government-public-health-england-b951620.html>

22.1. Vaccination is causing harm to the person with previous covid infection:-

An international survey²¹ published in mid-March 2021 surveyed 2,002 people who had received a first dose of COVID-19 vaccine, finding that those who had previously had COVID-19 experienced “significantly increased incidence and severity” of side effects, compared to those who did not have natural immunity.

Link:

<https://altnews.org/2021/10/13/are-the-covid-shots-working/>

22.2. Data from the U.K. show a similar trend among those over the age of 50. In this age group, partially and fully "vaccinated" people account for 68% of hospitalizations and 70% of COVID deaths.

Link:

<https://cdn.altnews.org/wp-content/uploads/2021/08/new-hospitalizations-thumb.jpg>

23. Request:- It is therefore humbly requested for;

- (i) Immediate registration of case under section 51(b), 55, 54 of Disaster Management Act, 2005 and under section 153-A, 505(2), 166, 167, 409, 120(B), 34, 52 etc., of IPC against Shri. Naresh Mhaske, Mayer Thane, Editor, Reporter and Owner of News Channel Lokmat News 18 and Hindi Newspaper ‘Navbharat Times’ for spreading false and misleading information with ulterior motive to incite hatred

against and unvaccinated people.

- (ii) Immediate steps for stopping the abovesaid offences across the country by passing appropriate directions to all Chief Secretaries of all states in India.

Sincerely,

A handwritten signature in black ink, appearing to read 'DNOjha', with a horizontal line underneath it.

Adv. Dipali N. Ojha
Head - Legal Cell
Indian Bar Association

Copy to,

- 1. Hon'ble President of India**
- 2. Hon'ble Prime Minister of India**
- 3. Hon'ble Home Minister of India**
- 4. Hon'ble Health Minister of India**

4 128

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 1820 of 2021

IN THE MATTER OF:

Mr. Nelson Paulo Fernandes & Another

.....Petitioners

Versus

The State of Goa & Ors.

.....Respondents

COUNTER AFFIDAVIT ON BEHALF OF ANSWERING
RESPONDENT NO. 6 (MINISTRY OF HEALTH & FAMILY
WELFARE, GOVT. OF INDIA)

I, Satyendra Singh, S/o Sh. Phool Singh, aged about 41 years, working as Under Secretary COVID Vaccination Administration Cell in the Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi do hereby solemnly affirm and sincerely state as follows:

1. That, I am well acquainted with the facts of the case from the records. I am filing this Counter Affidavit on behalf of the Ministry of Health & Family Welfare, Govt. of India, as I am authorized to do so.



Sat Singh

08 OCT 2021

- 2. I have perused the Writ Petition of the petitioner and I deny the averments made therein, except those that are specifically admitted hereunder.
- 3. I humbly submit that, the Petitioner has filed this writ petition seeking directions predominantly as against the State Government. However, since we are also made a party, I am filing this counter affidavit.
- 4. That, it is humbly submitted by the Answering Respondent No. 6 that, instead of traversing various allegations para-wise, this respondent deems it appropriate to counter the whole set of the facts in this matter as follows:

It is submitted that in the Writ Petition the petitioner has prayed the interim prayer as follows: -

"1. For an appropriate Writ, order or direction, thereby quashing the circular dated 13/07/2021 issued by respondent no. 2 (Director, Directorate of Education, Govt of Goa).

For an appropriate Writ, order or direction, thereby directing the respondent no. 1 and 2 (State of Goa and Director, Directorate of Education, Govt of Goa) to consider the petitioner's representations dated 30/07/2021 and 11/08/2021 and to issue a corrigendum



Sakriya 08 OCT 2021

thereby making the vaccination by the teaching and non-teaching staff voluntary.

3. For an interim relief, staying the operation of circulars dated 16/07/2021, 28/07/2021 and 16/08/2021 thereby directing the respondent No 2 and 3 (Headmistress, Little Flower of Jesus High School) not to take any coercive measures/actions against the petitioners pending the hearing and final disposal of petition.

4. For ex parte relief in terms of prayer clause 3. "

5. It is further humbly submitted that the matter has been examined and from the prayer (at para 1, 2 & 3 above) and the statements of the petitioner in the writ petition, it is evidently clear that the grievances of the petitioner in the prayer is related to the Departments of State Government of Goa (Respondent No. 1 and 2).

6. That, it is further humbly submitted that the annexures as mentioned in the Writ Petition by the petitioner have been issued by the Departments under State Government of Goa.



08 OCT 2021

Shrikish

7. That, it is further submitted that the subject matter of the present Petition does not fall within the domain of the Answering Respondent No. 6 (Union of India).

8. That, it is further humbly submitted that however, since this matter is related to vaccination, and Union of India is the respondent no. 6; thus, it is pertinent to present the stand of Union of India with regards to vaccination. It is humbly submitted that vaccination for Covid-19 is a matter of social obligation and is of a larger public interest. As a responsible citizen looking to contribute in the nation and humanity's fight against the Pandemic of Covid-19 infection, it is natural that every person would get her/himself vaccinated against Covid-19 so as to prevent the spread of Covid-19 infection in the community.

9. That, it is further humbly submitted that the directions and guidelines released by Government of India and Ministry of Health and family Welfare, do not entail compulsory or forcible vaccination against COVID-19 disease implying that COVID-19 vaccination is completely voluntary for all citizens of India. Ministry of Health and Family Welfare, Government of India has not formulated or suggested any policies for discrimination between



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08 OCT 2021

citizens of India on the basis of their vaccination status.

10. That, it is duly advised, advertised and communicated by MoHFW through various print and social media platforms that all citizens should get vaccinated, but this in no way implies that any person can be forced to be vaccinated against her/his wishes.

11. That, as per the existing guidelines, there is no provisions for forcing any citizen to book appointment for Covid Vaccination on Co-WIN or visiting Covid Vaccination Center for vaccination. if a person above the age of 18 years visits a Covid Vaccination Centre by her/his choice for vaccination and asks for the same, it implies that she/he is voluntarily coming to the center to get the benefit of Covid Vaccination.

12. Therefore, it is humbly submitted that in order to prevent the transmission and spread of Covid-19 pandemic, it is expected that all responsible citizens especially the teachers who are also the role models and influencers for the society get themselves vaccinated as soon as possible against Covid-19 and meticulously follow Covid Appropriate Behaviour.



Suk Singh
08 OCT 2021

13. Prayer:

It is therefore most humbly prayed that, this Hon'ble Court may be pleased to admit this Counter Affidavit on behalf of Answering Respondent No. 6 (Union of India) on this petition for the ends of justice.

Identified by *M.P. Shukla*

Satyendra Singh
DEPONENT

(सत्येन्द्र सिंह)
(SATYENDRA SINGH)
अवर सचिव / Under Secretary
स्वास्थ्य एवं परिवार कल्याण विभाग
Ministry of Health & Family Welfare
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

VERIFICATION:

Verified at New Delhi on October 08, 2021 that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false thereof, and no material fact has been canceled therefrom.

Satyendra Singh
DEPONENT

(सत्येन्द्र सिंह)
(SATYENDRA SINGH)
अवर सचिव / Under Secretary
स्वास्थ्य एवं परिवार कल्याण विभाग
Ministry of Health & Family Welfare
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi



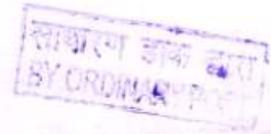
08 OCT 2021

M. P. SHUKLA
Notary Public, Delhi

CERTIFIED THAT THE DEPONENT
Shri/Sm/Km. *Satyendra Singh*
S/o, W/o, D/o, Sh. *Devendra Singh*
Identified by *M.P. Shukla*
has solemnly sworn on *21/10/2021*
that the contents of the affidavit are true and correct to the best of his knowledge and belief and no part of it is false thereof, and no material fact has been canceled therefrom.

M.P. Shukla
M. P. SHUKLA
Notary Public, Delhi

मिसिल संख्या जेड.60011/06/2020-सीवीएसी
भारत सरकार
स्वास्थ्य और परिवार कल्याण मंत्रालय
सीवीएसी अनुभाग



Priss



निर्माण भवन, नई दिल्ली
दिनांक 09 मार्च, 2021

To,

Sh. Anurag Sinha,
Qtr no. 10 po swang bokaro
Jharkhand, gomia, 829128
Jharkhand

विषय: आरटीआई अधिनियम, २००५ के अंतर्गत मांगी गई जानकारी के संबंध में।

महोदय,

कृपया आप अपनी आर.टी.आई. एमओएचएफडबल्यू/आर/ई/21/00630, आर.टी.आई. अधिनियम, 2005 के संदर्भ ले जोकि अधोहस्ताक्षरी को दिनांक 27.02.2021 को प्राप्त हुआ था जिसमें आर.टी.आई.(RTI) अधिनियम, २००५ के तहत जानकारी मांगी गई है

संख्या क्रम	आवेदक के प्रश्न	उत्तर
i.	कोरोना वैक्सीन लेना स्वैच्छिक है या अनिवार्य, जबरदस्ती	कोरोना वैक्सीन लेना स्वैच्छिक है।
ii	क्या वैक्सीन नहीं लेने पर सारी सरकारी सुविधाएं बंद कर दी जायगी, सरकारी योजना पेंशन	आवेदन मे लिखी बातें निराधार है । किसी भी सरकारी सुविधा, नागरिकता, नौकरी इत्यादि से वैक्सीन का कोई सम्बन्ध नहीं है ।
iii	क्या वैक्सीन नहीं लेने पर नौकरी नहीं मिलेगा, ट्रेन, बस, मेट्रो मे चढ़ने नहीं मिलेगी	
iv	यदि कोई ias ips स्वास्थ्य या पुलिस कर्मचारी नागरिक को धमकी दे की वैक्सीन ले नहीं तो ये कर देगे तो नागरिक क्या कर सकती क्या कोर्ट जा सकते है	
v	क्या वैक्सीन नहीं लेने पर स्कूलों, कॉलेज, विश्वविद्यालय, गैस कनेक्शन, पानी, बिजली कनेक्शन, राशन आदि के लिए क्या वैक्सीन नहीं मिलेगे	
vi	क्या वैक्सीन नहीं लेने पर नौकरी से निकला जा सकता है वेतन रोका जा सकत है, निजी और सरकारी विभाग दोनों मे ।	

o/c