(A)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO ____ OF 2021

IN

SUO MOTU PUBLIC INTEREST LITIGATION NO. 1 OF 2021

Ambar H. Koiri	)	
B – 1501, Runwal Hts.	)	
L.B.S. Marg, Mulund (W)	)	
Mumbai – 400 080	)	**... Intervener**
IN THE MATTER BETWEEN	)	
High Court on its own motion	)	**... Petitioner**
Versus	)	
State of Maharashtra	)	**... Respondent**

SYNOPSIS

Date	Particulars
16.04.2021	The Bench of Shri. Justice Nitin Jamdar took the suo-moto cognizance of article published in the newspaper. Said cognizance is illegal as only Chief Justice can take the suo-moto cognizane.
20.04.2021	The subsequent Bench passed an order directing vaccination of prisoners above 45 years. Said order is illegal and per-incuriam as it ignored the Constitutional mandate and Central

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(B)

	Government's policy decision that no one can be forced to take vaccination against his/her will.
	Hence the present application is being filed before this Hon'ble Court to recall and set aside the said order.

POINTS TO BE URGED

As set out in the application

ACTS APPLICABLE

1. Criminal Procedure Code
2. Constitution of India
3. Others, if any, with the leave of this Hon'ble Court.

Mumbai

Date: September, 2021

Advocate for Intervener

Intervener

AMBAR KOHLI

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APPLICATION FOR INTERVENTION AND RECALL OF DIRECTION IN ORDER DATED 20.04.2021 DIRECTING VACCINATION OF PRISONERS ABOVE 45 YEARS.

MOST RESPECTFULLY SHEWETH:

I, **Ambar H. Koiri**, R/o **B – 1501, Runwal Hts., L.B.S. Marg, Mulund (W) Mumbai – 400 080**, applicant hereinabove humbly submits as under;

1. That, the petitioner is a robotic Engineer, researcher, and social activist.

That, this Hon'ble Court **(Coram: Shri Nitin Jamdar & Shri C.V. Badang, J.J.)** vide its order dated **16.04.2021** took the Suo-Moto cognizance of the news

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reports with regards to an alarming rise in the **Covid-19** cases. **[Suo-Moto Public Interest Litigation (Crl.) No. 01 of 2021]**

A copy of the said order dated **16.04.2021** is at **'Exhibit – A.'**

The relevant para read thus;

> *"2. Newspaper reports, more particularly, Hindustan Times dated 16 April 2021(Annexure 1) and Free Press Journal dated 16 April 2021 (Annexure 2), have highlighted an alarming rise in the COVID-19 cases in the last few days in the prisons in the State of Maharashtra. It is reported that almost two hundred prisoners amongst 47 prisons in the State have tested positive as of 14 April 2021. This number has gone up from 42 to 200 within nearly a month. It is stated that eighty-six staff members working in the prisons have also tested positive.*
>
> *3. The learned Advocate General informs us that the Court had taken up a similar cause in July 2020 where the measures taken by the State Government were noted and certain directions were issued. The learned Advocate General states that the current situation will have to be dealt with similarly. The reports however show a sudden rise of the COVID-19 cases in the State prisons, indicating a need for the Court's intervention to revisit the measures. This is a fit case where the Court should take note of this situation and take up the cause in the public interest."*

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2. That, said suo-moto cognizance was itself illegal as it is against the binding precedent of Hon'ble Supreme Courts Constitution Bench in the case of

Campaign for Judicial Accountability and Reforms v. Union of India, (2018) 1 SCC 196, where it is ruled as under;

> ***"No Judge can take up the matter on his own, unless allocated by the Chief Justice of India, as he is the Master of the Roster.***
>
> ***....If any such order has been passed by any Bench that cannot hold the field as that will be running counter to the order passed by the Constitution Bench.***
>
> *....The rules have been framed in that regard. True, the rules deal with reference, but the law laid down in Prakash Chand [State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1] has to apply to the Supreme Court so that there will be smooth functioning of the Court and there is no chaos in the administration of justice dispensation system."*

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3. That, no individual Judge is having power to take suo-moto cognizance of any subject, newspaper, telegram, letter etc.,

i) A. V. Amarnathan vs. The Registrar, HC of Karnataka **ILR1999 Kar 478.**

ii) Divine Retreat Center vs. State of Kerala **(2008) 3 SCC 542.**

iii) Shanti Bhushun vs. Supreme Court of India **(2018) 8 SCC 396**

iv) Nandlal Sharma vs. chief secretary, state of Rajasthan **1984 WLN 161 (D.B)**

4. In **A.V. Amarnathan AIR 1999 Kar 478,** it is ruled that, when all the power vests in the Chief Justice the other Brother Judges will have no power or jurisdiction to entertain any petition, telegram or letter or a case on their own unless the subject is allotted to them.

No Judge can claim to himself any inherent power to take cognizance of a particular cause either on being moved or suo motu unless it is assigned by the Chief Justice to the Judge concerned.

Further by the doctrine of self-restraint the Judges who receive the telegram, letter or request is made before them has to direct that the concerned case to be placed before the Chief Justice for obtaining permission to post it before the appropriate Bench when the said subject is not allotted to them.

No Judge or a Bench of Judges can assume jurisdiction in a case pending in the Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from it can be permitted. If every Judge of a Court starts picking and choosing cases for disposal by him, the discipline in the High Court would be the casualty and the administration of justice would suffer. No legal system can permit machinery of the Court to collapse.

5. In **Nandlal Sharma 1984 WLN 161 (DB),** it is ruled that the meaning of suo-moto is Chief Justice only.

6. Furthermore, there was no reason mentioned in the order as to what was the compelling urgency in not following the above law and rules. The more surprising part was that the Hon'ble Supreme Court was already seized of the said subject **In Re: Contagion of Covid 19 Virus In Prisons,** Hon'ble Supreme Court had taken suo-motu cognizance on **16.03.2020.**

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Many orders were passed by the Hon'ble Supreme Court in the said case. Committees were constituted and directions were being given time to time.

The order dated **16.03.2020** passed by the Hon'ble Supreme Court read thus;

> *"For all the above reasons, we consider it appropriate to direct that notices be issued to the Chief Secretaries/Administrators, Home Secretaries, Directors General of all the Prisons and Department of Social Welfare of all the States and the Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID 19) in the country, and further to suggest immediate measures which should be adopted for the medical assistance to the prisioners in all jails and the juveniles lodged in the Remand Homes and for protection of their health and welfare.*
>
> *The respondents shall submit a reply in writing before 20th March, 2020. The reply shall contain the particulars of the steps being taken and the relevant data necessary for implementing the measures to prevent the possible spread of the Corona virus among the prisoners/juveniles."*

7. Hon'ble Supreme Court thereafter passed orders on many dates and constituted High Power committee and formulated the guidelines.

1) **16-07-2021**
2) **28-06-2021**
3) **04-06-2021**

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4) **01-06-2021**

5) **07-05-2021**

6) **06-07-2020**

7) **13-05-2020**

8) **13-04-2020**

9) **07-04-2020**

10) **23-03-2020**

8. Under these circumstances, there was neither occasion nor jurisdiction for the Bench of Justice Nitin Jamdar to take cognizance on same subject. It is also a case of judicial impropriety.

In the case of **Mohinder Kumar Vs. State of Haryana (2001) 10 SCC 605**, Hon'ble Supreme Court criticized such conduct. It is ruled as under;

> ***"Precedents – Precedent under reconsideration – Value of – Correctness of decision of Division Bench under reconsideration before Full Bench – Applicability of same Division Bench's decision in similar matter despite pendency before Full Bench, held, was not proper.***
>
> ***3…. It was brought to the notice of the High Court that when the matter was still under consideration, it would be in the fitness of things to await the outcome of the decision in that matter by the Full Bench. However, without awaiting for the outcome of the decision in that matter by the Full Bench, the High Court proceeded to state that so long as ruling of the Division Bench holds the field, the learned Single Judge proposed to follow the same***

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decision and decide the matter. We do not think that was the right course adopted by the High Court. We, therefore, set aside the order passed by the High Court and remit the matter to the High Court for fresh consideration in accordance with law. It has also been brought to our notice that the Full Bench decision has now been rendered. Appeal is allowed accordingly."

9. In **S. Adbul Karim Vs. M.K. Prasad (1976) 1 SCC 975,** it is ruled that when higher court is seized of the matter then the proper course is to wait for the outcome of the result. If any undue haste is shown then it amounts to contempt.

10. WHENEVER THE UNLAWFUL SUO-MOTO COGNIZANCE IS TAKEN BY THE INDIVIDUAL JUDGE OTHER THAN CHIEF JUSTICE THAN SUCH COGNIZANCE AND ORDERS HAS TO BE QUASHED.

10.1. The illegality of suo-motu cognizance by the Justice Nitin Jamdar can also be viewed from the law laid down in the case of **State of Punjab v. Davinder Pal Singh Bhullar (2011) 14 SCC 770**, where it is ruled as under;

"70. In view of the above, the legal regime, in this respect emerges to the effect that the Bench gets jurisdiction from the assignment made by the Chief Justice and the Judge cannot choose as to which matter he should entertain and he cannot entertain a petition in respect of which jurisdiction has not been assigned to him by the Chief Justice as the

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order passed by the court may be without jurisdiction and make the Judge coram non judice.

107. *It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato fundamento cadit opusmeaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.*

108. *In Badrinath v. Govt. of T.N. [(2000) 8 SCC 395 : 2001 SCC (L&S) 13 : AIR 2000 SC 3243] and State of Kerala v. Puthenkavu N.S.S. Karayogam [(2001) 10 SCC 191] this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.*

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109. *Similarly in Mangal Prasad Tamoli v. Narvadeshwar Mishra [(2005) 3 SCC 422] this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.*

110. In C. Albert Morris v. K. Chandrasekaran [(2006) 1 SCC 228] this Court held that a right in law exists only and only when it has a lawful origin. (See also Upen Chandra Gogoi v. State of Assam [(1998) 3 SCC 381 : 1998 SCC (L&S) 872] , Satchidananda Misra v. State of Orissa [(2004) 8 SCC 599 : 2004 SCC (L&S) 1181] , SBI v. Rakesh Kumar Tewari [(2006) 1 SCC 530 : 2006 SCC (L&S) 143] and Ritesh Tewari v. State of U.P. [(2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315 : AIR 2010 SC 3823])

111. Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/orders/FIR/investigation stand automatically vitiated and are liable to be declared non est."

10.2. In a recent case of a Judge of Bihar High Court such suo moto cognizance is quashed and set aside by constituting a special 11 Judge Bench.

In the case of **Suo Motu Vs. Union of India 2019 SCC OnLine Pat 1525,** it is ruled as under;

*"9….. **It is this issue which has been highlighted in the case of Prakash Chand (supra) and then we are again fortified in our view as enunciated by HWR Wade & C.F. Forsyth in their classic work of Administrative Law where they have opined that such an order which has the consequence of a precedent, so as to enable the benefit of it to others,***

has the impact of operating erga omnes i.e. for and against anyone concerned. The learned authors have, therefore, said that a judgment which is a nullity has its direct impact on third parties as well and if the 'brand of invalidity' is plainly visible then it is absolutely necessary to undertake proceedings to remove the cause of invalidity as it would have the effect of an ostensible purpose for which it has been passed. We find that the said principle was applied by the Apex Court in a matter arising out of a contract in the case of Sultan Sadik v. Sanjay Raj Subba, reported in (2004) 2 SCC 377 : A.I.R. 2004 SC 1377.

1. The 11 Judges' Bench in the operative part of the order also directed the matter to be placed before the Chief Justice on the administrative side for further appropriate action. The 11 Judges' Bench may have thought it proper to entertain the matter apprehending an institutional crisis as was once experienced in the matter of Special Reference No. 1 of 1964, reported in AIR 1965 Supreme Court 745 looking to the nature and the contents of the order of the learned Single Judge dated 28.08.2019 that raised an issue of jurisdiction to the forefront.

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2. *Upon deliberations, the Chief Justice in his discretion thought it appropriate that this issue of jurisdiction alone could be dealt with by a numerically lesser strength of Judges forming a Full*

Bench and accordingly reconstituted the present three Judges Bench vide order dated 1st September, 2019 to hear this matter and deliver orders accordingly. This is how the present three Judges Bench had been constituted to dispose of the said matter for which we have assembled today.

16. *We have stated the minimal facts only to understand that the power exercised by the learned Single Judge completely omits to consider as to the scope of a Jurisdiction Rule which raises a test of validity and has been extensively dealt with by a renowned author Ammon Rubinstein in his work "Jurisdiction and Illegality - A Study of Public Law" (published by Oxford at the Clarendon Press). The learned Author opens Chapter-7 as follows:*

VII

JURISDICTION AS A TEST OF VALIDITY

SCOPE OF THE JURISDICTION RULE

"THE criterion of jurisdiction as an exclusive test of validity has a dual meaning:

(a) acts done outside the jurisdictional limits are null and void;

(b) acts done within the jurisdictional limits are valid though, possibly, voidable."

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20. *The judgements that have been extracted hereinabove, have referred to famous American Judges like Justice Benjamin N. Cardozo and Justice Felix Frankfurter. In yet another matter, where sweeping adverse marks had been made, the same was described and dealt with in paragraphs 12 to 15 by the Supreme Court in the case of A.M. Mathur v. Pramod Kumar Gupta, (1990) 2 SCC 533 : AIR 1990 SC 1737, paragraph 12 to 15:*

12. It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said:

> *"First and foremost, humility and an understanding of the range of the problems and (one's) own inadequacy in dealing with them, disinterestedness and allegiance to nothing except the effort to find (that) pass through precedent, through policy, through history, through (one's) own gifts of insights to the best judgement that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called laws."*

3. The judiciary and Constitutional Politics Views from the Bench by Mark W. Cannon and David M.O. 's Brien p. 2.

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13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect; that is, respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the State, the Executive and Legislature. There must be mutual respect. ***When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.***

14. The Judges Bench is a seat of power. Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallengeable control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of

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justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. (See (i) R.K. Lakshmanan v. A.K. Srinivasan, (1976) 1 SCR 204 : ((1975) 2 SCC 466 : AIR 1975 SC 1741); (ii) Niranjan Patnaik v. Sashibhushan Kar, (1986) 2 SCR 569 at p 576 : ((1986) 2 SCC 569 : AIR 1986 SC 819 at p 824)."

15. Learned Judge having held that the High Court has no jurisdiction to entertain the review petition ought not to have commented on the professional conduct of the appellant and that too without an opportunity for him. We regret to note that the observations made and aspersions cast on the professional conduct of the appellant are not only without jurisdiction, but also they are wholly and utterly unjustified and unwarranted.

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21. *A perusal of these basic principles having been laid down by our peers also indicates that a wrong order requires setting aside if it has travelled beyond the objective boundaries and has far reaching consequences in setting a trend which no law recognizes. We are aware that this sparseness of such examples hardly come up as a controversy, but the passing of such an order has the inherent danger of creating uncertainty and a feeling that all*

things can be set right on the exercise of authority by a Judge even though he may not have a legal power to do so. We may only observe that there are regrettable limits and compulsory restraints that control jurisdiction. The jurisdiction to summon a file and then to pass strictures, comments and issuing administrative directions were all totally outside the scope of the authority of the learned Judge as indicated in the impugned order dated 28th August, 2019. The order is absolutely unsustainable on any count as it suffers from a dual incompetence of exercise of administrative as well as judicial authority.

25. *The order of the learned Single Judge is definitely one of judicial and administrative overreach and, therefore, the appeal deserves to be allowed.*

26. *We would say nothing further, but we direct the Registrar General to circulate this judgement amongst all Judges as well as to all concerned, particularly court masters of every court, who will be under a bounden duty to inform the Hon'ble Judge of the manner in which a file can be summoned for adjudication, excluding files being summoned for perusal, only under the authority of the roster as assigned by the Chief Justice and not otherwise. The order dated 28th August, 2019 is a complete nullity and is declared to be coram non*

judice and the same, for all the reasons aforesaid, is hereby quashed."

10.3. In **Devine Retreat Ventre Vs. state (2008) 3 SCC 542** case Hon'ble Supreme Court set aside such order of suo-moto cognizance by the individual Judge.

10.4. In **Campaign For Judicial Accountability And Reforms Vs. Union Of India (2018) 1 SCC 196** the unlawful suo-motu of a two judge Bench of Supreme Court 8s quashed and set aside by the Constitution Bench to whom the matter was transferred by the CJI.

11. In the case of **Asok Pande Vs. Supreme Court of India (2018) 5 SCC 341** has ruled as under;

*"**9.** The position of the Chief Justice of a High Court was elucidated in a judgment of a three-Judge Bench of this Court in State of Rajasthan v. Prakash Chand [State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1] . During the course of the judgment the following broad conclusions were formulated in regard to the position of the Chief Justice: (SCC pp. 39-40, para 59)*

"(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the Master of the Roster. He alone has the prerogative to constitute Benches of the court and allocate cases to the Benches so constituted.

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(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the Bench themselves and one or both the Judges constituting such Bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a case to the larger Bench for its disposal and he can exercise this jurisdiction even in relation to a part-heard case.

(6) That the puisne Judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

(emphasis in original)"

12. In view of the abovesaid binding precedents the suo-moto cognizance by the Bench of Justice Nitin Jamdar was unlawful and highly illegal and the Hon'ble Chief Justice Shri Dipankar Datta did not have jurisdiction to condone said illegality in view of law laid down by the constitution bench in the case of **Campaign for Judicial Accountability** (supra). Hence all the orders are nullity.

13. In **State Vs. Mamta Mohanty's case (2011) 3 SCC 436**, it is ruled as under;

> *"**37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage.** A subsequent action/development cannot Validate an action which was not lawful as its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order..... Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same.Whiledealing with a similar issue, this Court in **Hotel Balaji & Ors.v. State of A.P. ., AIR 1993 SC 1048** observed as under:*
>
> *"...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience.*

14. Hon'ble Supreme Court in the case of **State of Kerala Vs. M.S. Mani (2001) 8 SCC 82** had also ruled that the illegal cognizance of petition cannot

be made legal by subsequent ratification. The incompetent petition cannot be made competent.

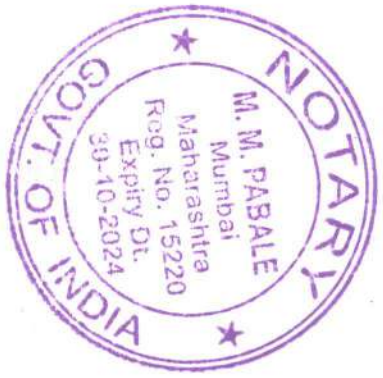
Also Relied On: **Kanwar Singh Saini Vs. High Court of Delhi (2012) 4 SCC 307.**

15. Such order which is bad at inception vitiates the further prosecution. The Constitution Bench of Supreme Court in the case of **A.K. Kraipak v. Union of India (1969) 2 SCC 262** ruled that;

> *"... If the decision of the selection board is held to have been vitiated, it is -clear to our mind that the final recommendation made by the Commission must also be held to have been vitiated."*

16. In **Chandrabhai K. Bhoir Vs. Krishna Arjun Bhoir (2009) 2 SCC 315** it is ruled as under;

> *"**26.** Thus, the said issue, in our opinion, did not attain finality. In any view of the matter,* ***an order passed without jurisdiction would be a nullity. It will be a coram non judice. It is non est in the eye of the law.*** *Principles of res judicata would not apply to such cases. (See Chief Justice of A.P. v. L.V.A. Dixitulu [(1979) 2 SCC 34 : 1979 SCC (L&S) 99] , Union of India v. Pramod Gupta [(2005) 12 SCC 1] and National Institute of Technology v. Niraj Kumar Singh [(2007) 2 SCC 481 : (2007) 1 SCC (L&S) 668])"*



17. But Hon'ble Chief Justice Shri Dipankar Datta have not followed the said law and therefore the subsequent hearing, judgments, guidelines and

directions are nullity, illegal, vitiated and void-ab-initio as they are without jurisdiction and not binding to the state or any other authorities.

18. CHIEF JUSTICE CANNOT ACT AGAINST THE RULES AND LAW EVEN IN ASSIGNMENT OF BENCH:-

18.1. That the **Hon'ble Chief Justice cannot act against the High Court Rules and law even though he is the master of the Roster.**

All his decisions are subject to pass the test of Article 14 of the Constitutional and should not be arbitrary.

That Full Bench of Full Bench of Karnataka High Court in **Narasimhasetty Vs. Padmasetty ILR 1998 Kar 3230**, had ruled as under;

> *"15. It also goes without saying that while exercising powers of allocation/distribution of judicial work among the benches, it is open for the Chief Justice to devise his own method of classification of cases to ensure quick and effective disposal of cases and for effective administration of justice. Such classifications can be based on any intelligible criteria like the nature of disputes involved, valuation of the subject matter, age of the case, the areas from which the cases are arising, as also as to whether the cases pertain to private or public litigation, whether the jurisdiction to be exercised is revisional, appellate, or original, whether the cases are to be instituted on regular petitions or on informations received from known or unknown sources and the like, keeping in view the*

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recent judgment of the Supreme Court in the case of State of Rajasthan (supra). But is needs to be stressed here that the exercising of the said power by the Chief Justice by deviating from the normal rule based on the regular practice of the Court (See (1974) 2 SCC 627 : AIR 1974 SC 2269, para 6) or the statutory provisions must stand the test of reason and objectivity since such exercise will be always subject to mandates of Article 14 of the Constitution of India which absolutely prohibits the exercise of powers in a discriminatory, arbitrary or mala fide manner and always entitle the aggrieved party to seek remedy against the same by approaching the appropriate forum. No judge of the High Court can claim to himself any inherent power to take cognizance of a particular cause either on being moved or suo moto unless it is assigned by the Chief Justice to the judge concerned. The extent of power of the Chief Justice and that of the judges of the High Court has to be now treated as authoritatively determined and clearly delineated. But it may be clarified that if any learned Judge, either suo moto or on the basis of information coming to his possession, prima facie finds that any matter, not concerning the jurisdiction assigned to him, needs to be examined in the judicial side of the High Court, then, by recording his opinion in writing, he may refer the same to the Chief Justice for being placed before an appropriate Bench."

18.2. In **Sudakshina Ghosh Vs. Arunangshu Chakraborty (Uday) 2008 SCC OnLine Cal 34,** it is ruled as under;

> *"20. Keeping in mind the aforesaid decision of the Hon'ble Supreme Court, this Court has no hesitation to hold that the Rules which have been framed by this High Court regarding distribution of its business, should be followed strictly and* ***the administrative decision of the Hon'ble Chief Justice regarding distribution of its business cannot override the said Rules.***
>
> *18. In my view, such consideration is necessary as despite such order of assignment, any decision which will be taken by this Court, sitting singly, may ultimately become void because of inherent lack of jurisdiction of this Court to deal with such matter in view of the provision contained in Rule 10 of Chapter II of the Appellate Side Rules."*

18.3. That in **Pandurang Vs. State (1986) 4 SCC 436,** where it is ruled as under;

> *"4...****Even a "right" decision by a "wrong" forum is no decision. It is non-existent in the eye of law. And hence a nullity. The judgment under appeal is therefore no judgment in the eye of law.*** *This Court in State of M.P. v. Dewadas [(1982) 1 SCC 552 : has taken a view which reinforces our view.* ***The matter having been heard by a court which had no***

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<u>competence to hear the matter, it being a matter of total lack of jurisdiction.</u>

This right cannot be taken away .... except by amending the rules. So long as the rules are in operation it would be arbitrary and discriminatory to deny him this right regardless of whether it is done by reason of negligence or otherwise. Deliberately, it cannot be done. Negligence can neither be invoked as an alibi, nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules. Even if the decision is right on merits, it is by a forum which is lacking in competence with regard to the subject-matter. We wish to add that the Registry of the High Court was expected to have realized the true position and ought not to have created a situation which resulted in waste of court time, once for hearing the appeal, and next time, to consider the effect of the rules. No court can afford this luxury with the mountain of arrears which every court is carrying these days."

18.4. Hon'ble Supreme Court in the case of **<u>Addl. District & Seesions Judge 'X' Vs. Registrar General of High Court of Madhya Pradesh (2015) 4 SCC 91</u>** had also taken a view that the Chief Justice cannot act against the rules and principles of natural justice while taking administrative decision.

19. <u>SUBSEQUENT DIRECTION DATED 20.04.2021</u>:-

19.1. Be that as it may, the further illegality in the subsequent orders passed in the present PIL which is cause of action for filing present Interim

Application is regarding one per-incuriam direction in the order dated **20.04.2021** passed by this Hon'ble Court (Coram: Shri. Dipankar Datta CJ & Shri G.S. Kulkarni J.)

19.2. That, in the said order the Hon'ble Bench headed by Hon'ble Chief Justice Shri. Dipankar Datta, gave a blanket direction in **Para 9** that the prisoners /arrested persons above 45 years be vaccinated. Said directions were given out of context and without any reasoning, discussion or urgency.

The relevant para reads thus;

*"**9.** Mr. Kumbhakoni has next flagged the issue of testing of the accused, who are remanded by the appropriate courts to judicial custody. According to him, if such an accused remanded to judicial custody is a carrier of thevirus, the possibility of the infection spreading inside the correctional homes cannot be ruled out and if spread, would lead to disastrous consequences. To get rid of such consequences, it has been submitted that it would be appropriate if only those accused, who are not carriers of the virus, can be lodged in the correctional homes upon being remanded to judicial custody. Having regard to the menace that could possibly be posed in the correctional homes should a carrier of the virus be remanded to judicial custody, he submits that it would be proper to make a direction facilitating lodging of those accused who test negative in the correctional homes and those testing positive in the temporary prisons/COVID*

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Care Centres. To achieve such an end, we ***direct*** *that henceforth, immediately upon arrest of an individual on the ground that his complicity in a crime has transpired, the arresting police officer and the officer in-charge of the police station to which such arresting police officer is attached shall arrange for Rapid Antigen and RT-PCR tests of such arrested accused and if within a few days of receipt of the report he is remanded to judicial custody, he shall not be lodged in the correctional homes unless the reportshows that the virus in him was not detected, or that it is a negative report. In case the arrested accused tests positive, he shall be lodged in the temporary prisons/COVID Care Centres.* ***We also direct that any accused in excess of 45 years of age, upon arrest, shall be sent for vaccination to the nearest vaccination centre withoutfail."***
(emphasis supplied)

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A copy of the order dated **20.04.2021** is annexed herewith at **'Exhibit - B'.**

20. THE ILLEGALITY OF THE SAID DIRECTION IN ORDER DATED 20.04.2021 :-

20.1. That the abovesaid direction is not only against the law of the land but also violative of the fundamental rights of the said prisoners. It is also having death causing side effects upon the persons who are in prohibited category to take vaccines. The persons who are having allergies to allopathic medicines or contents of vaccine etc. are in the prohibited categories.

20.2. That, it is a fundamental rule that no one can force any citizen to take a particular medicine. It is his choice either to take vaccine or to choose Ayurvedic Medicine, Naturopathy, Unani or any other remedies available. This position is settled in binding precedents and also in **Universal Declaration on bioethics and Human Rights, 2005 (UDBHR). [Exhibit - C]**

The other relevant binding precedents are:-

i. International Covenant of Civil & Political Rights 1976, (Article 7).

ii. Universal Declaration on Bioethics and Human Rights, 2005.

iii. Supreme Court of India's judgment in Common Cause Vs. Union of India **(2018) 5 SCC 1.**

iv. U.S. Court Judgment in Montgomery's case **(2015) UKSC 11.**

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v. Aruna Ramachandra Shanbaug v. Union of India, **(2011) 4 SCC 454**

vi. K.S. Puttuwamy Vs. Union of India **(2017) 70 SCC 7**

vii. Webster Vs. Burton Hospitals NHS Foundation Trust **[2017] EWCA Civ 62**

viii. Airedale N.H.S. Trust Vs. Bland **(1993) 1 All ER 821 [9 Judge bench] (followed in India)**

ix. Meghalaya Vs. State of Meghalaya **2021 SCC OnLine Megh 130**

x. In Re: Dinthar Incident Aizawl Vs. State of Mizoram **2021 SCC OnLine Gau 1313.**

xi. Osbert Khaling Vs State of Manipur **2021 SCC OnLine Mani 234.**

xii. Madan Mili Vs. UOI **2021 SCC OnLine Gau 1503.**

xiii. A. Varghese Vs. Union of India **2020 SCC OnLine Kar 2825**

xiv. Master Haridaan Kumar (Minor through Petitioners Anubhav Kumar and Mr. Abhinav Mukherji) Versus Union of India, **W.P.(C) 343/2019 & CM Nos.1604-1605/2019,**

xv. Baby Veda Kalaan & Others Versus Director of Education & Others. **W.P.(C) 350/2019 & CM Nos. 1642-1644/2019.**

20.3. Even Government of India in its various circulars have clarified that the vaccines are voluntary and not mandatory. **[Re: Dinthar Incident Vs. State of Mizoram 2021 SCC OnLine of Gau 1313] [Exhibit - D]**

20.4. In a recent information dated **02.08.2021** received from **Covid-19 Vaccine Administration Cell (CVAC)** has clarified that no one can be forced to be vaccinated against his/her wishes.

COVID-19 Vaccine Administration Cell (CVAC) has clearly indicated the following on 02.Aug.2021 in their response to RTI MOHFW/R/E/21/04552:

> *"If anyone is concerned for any specific health reason before COVID Vaccination, please consult a doctor/Health Care Provider.*

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. Covid Vaccination is voluntary."

20.5. If anyone is forced to take vaccine then it is criminal offence and such person is entitled for getting compensation. **[RegistrarGeneral Vs. State of Meghalaya 2021 SCC OnLine Megh 130] [Airedale NHS Trust Vs. Bland reported (1993) 2 WLR 316] [Exhibit - E Colly]**

20.6. In India, the 2nd wave of pandemic reportedly started around in the month of March 2020. The Indian Government approved emergency use of vaccines namely **Covishield** and **Covaxin** followed by Sputnik V. Since it is being issued under **Emergency use Authorization (EUA),** it could not be obviously made mandatory. Needless to mention that, the trial data and clinical data of said experimental vaccines is not made available to the public.

20.7. It is pertinent note that the Minister of State in the Ministry of Health & Family Welfare, Government of India in an answer given on 19.03.2021 in the Lok Sabha to an Unstarred Question No. 3976, **stated 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. [Exhibit - F]**

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20.8. In a reply dated 23rd March 2021 to the RTI filed by Mr. Dinesh Bhausaheb Solanke, RTI number A.60011/06/2020 -CVAC, the **Ministry of Health and Family Welfare, stated that, "the Covid-19 Vaccine being voluntary, there is no provision for compensation as of now." [Exhibit-G]**

20.9. In a reply to RTI application dated **9th March, 2021** filed by Anurag Sinha of Jharkhand, the Central Ministry of Health and Family Welfare has clearly stated that **"taking the Covid Vaccines was entirely voluntary and there is no relation whatsoever to provision of government facilities, citizenship, job etc to the vaccine".** A copy of the RTI reply dated **09.03.2021** is enclosed to the memo of this Petition and marked as **[EXHIBIT - H].**

20.10. In a reply to RTI filed by Mr. Tarun, dated 16-04-2021 file number MOHFW/R/E/21/01536, the Ministry of Health and Family Welfare, replied to *the* 1st question, **"Is Covid Vaccine Voluntary or Mandatory?",** thus: **"Vaccination for Covid-19 is Voluntary".** Further when the applicant asked in his subsequent questions, **"Can any government or private organization hold our salary or terminate us from job in case of not taking Covid vaccine?"** and **"Can government cancel any kind of government facilities such as subsidies, ration and medical facilities in case of not taking covid vaccine?"** the reply was, **"In view of above reply, these queries do not arise".**"EXHIBIT H1 "

20.11. **Thus, the above RTI information also makes it clear that it is purely individual decision either to get vaccinated or not.** Hence, any kind direct or indirect method to coerce the citizens to get vaccination is not only illegal but also violative of fundamental right guaranteed under **article 14, 19 and 21 of Constitution of India.**

20.12. It is worth to state that in **Common Cause Vs. Union of India (2018) 5 SCC 1,** the Apex Court held that a person has a right to choose medication of his choice.

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21.ADVISORY OF VACCINE COMPANIES ITSELF ASKED FEW CATEGORY OF PERSONS TO NOT TO TAKE VACCINES:-

21.1. That the direction in the order dated **20.04.2021** is without accessing the other serious aspects and having death causing effects upon the person having allergies to allopathic medicines and under various prohibited category laid down by the vaccine companies itself.

21.2. COVISHIELD:-

That the fact sheet of Covishield Vaccine states the categories who should not take the vaccine. The fact sheet can be accesses at:

Link : https://www.seruminstitute.com/pdf/covishield_fact_sheet.pdf

The relevant part of the Fact sheet is as under:

> *"What you should mention to your health care provider before you get the Covishield vaccine: Tell the healthcare provider about all of your medical conditions, including;*
>
> □
>
> *If you have ever had a severe allergic reaction (anaphylaxis) after any drug, food, any vaccine or any ingredients of Covishield vaccine*
>
> *If you have fever* □
>
> *If you have a bleeding disorder or on a blood thinner* □
>
> *If you are immunocompromised or are on a medicine which affects the immune system* □
>
> *If you are pregnant or plan to become pregnant* □
>
> *If you are breast feeding* □
>
> *If you have received another covid-19 vaccine*

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You should not get the covishield if you □

Had a severe allergic reaction after a previous dose of this vaccine Had a severe allergic reaction to any ingredients of this vaccine"

The insert sheet of Covishield Vaccine gives warnings against the use of Covid-19 vaccine for certain categories of persons. The product sheet can be found at:

https://www.seruminstitute.com/pdf/covishield_ChAdOx1_nCoV19_corona_virus_vaccine_insert.pdf

The relevant part of the product sheet is asunder:

"4.4 Special warnings & Special precautions for use - Hypersensitivity As with all injectable vaccines, appropriate medical treatment and supervision should always be readily available in case of an anaphylactic event following the administration of the vaccine. Concurrent illness As with other vaccines, administration of Covishield should be postponed in individuals suffering from an acute severe fibrile illness. However the presence of a minor infection such as cold and/or low grade fever should not delay vaccination.

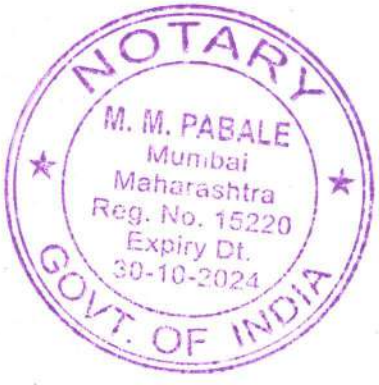
Thrombocytopenia and coagulation disorders As with other intramuscular injections Covishield should be given with caution to individuals with Thrombocytopenia, any coagulation disorders or to persons on anti-coagualation therapy, because bleeding/bruising may occur following an intramuscular administration in these individuals.

Immunocompromised Individuals It is not known whether individuals with impaired immune responsiveness, including individuals receiving immune suppressant therapy, will elicit the same response as immune competent individuals to the vaccine regimen.

Immunocompromised Individuals may have relatively weaker immune response to the vaccine regimen.

4.5 Interactions with other medicinal products and other forms of interaction. No interaction studies have been performed. Concomitant administration of Covishield with other vaccines has not been studied. 4.6 Fertility, pregnancy and lactation Fertility Preliminary animal studies do not indicate direct or indirect harmful effects with respect to fertility.

Pregnancy There is a limited experience with the use of ChAdOx1 nCoV-19 Corona Virus Vaccine (Recombinant) in pregnant women. ... Breastfeeding It is unknown whether covishield is excreted in human milk."



Thrombocytopenia is a dangerous drop in the number of platelets in the blood. This decrease can increase the risk of bleeding. Thrombocytopenia occurs in people without cancer as well. Coagulation disorders are disruptions in the body's ability to control blood clotting. Coagulation disorders can result in either a hemorrhage (too little clotting that causes an increased risk of bleeding) or thrombosis (too much clotting that causes blood clots to

obstruct blood flow). As with other intramuscular injections,

COVISHIELD should be given with caution to individuals with thrombocytopenia, any coagulation disorder or to persons on anticoagulation therapy, because bleeding or bruising may occur following an intramuscular administration in these individuals.

Re interaction with other medicinal products, it is important to note that patients who are on regular medications for Diabetes, heart issues, other lifestyle diseases where daily medication is required, no studies have been done.

Re Breast feeding- It is unknown whether Covishield is excreted in human milk. - Since this vaccine is not a live attenuated or inactivated virus technology but an Recombinant DNA technology in which Adeno Viruses carry a spike protein DNA molecule of Sarscov 2 which enters into human cells nucleus and instructs the DNA of the human cell to produce mRNA which instructs the ribosomes to produce spike proteins, and then our immune system responds to the proteins. This is very alarming as we don't know what reaction it will create in newborn babies when the human milk is consumed. The link to a news article explaining recombinant DNA vaccine of Covishield can be found at:

https://www.nytimes.com/interactive/2020/health/oxford-astrazeneca-covid-19-vaccine.html

Further re Duration and level of protection, it has not yet been established. Vaccinating with Covishield may not protect all vaccine recipients. As can be seen from the above there are many diseases for which vaccine should not be taken/given. People can be immunocompromised due to many reasons- diabeties, heart issues, thyroid gland problem, arthritis, crohns disease, psoriasis, eczema IIII etc and a high percentage of people with various comobordities are using blood thinners.

Hence the Government & vaccine manufacturers should give more clarity on these issues, & if these implications are correct, then the Government must stop recommending people with comorbidities to get vaccinated.

It is further submitted that being immunocompromised can be due to many causes: □ chronic medical conditions, such as heart disease, lung disease, diabetes, HIV, and cancer □ autoimmune diseases, such as lupus, multiple sclerosis, and rheumatoid arthritis □ medications or treatments, such as radiation therapy □ transplants, such as bone marrow or solid organ □ pregnancy □ a combination of any of the above This explanation can be found at:

https://www.healthline.com/health/immunocompromised-how-toknow-if-you-have-a-weakened-immune-system

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21.3. COVAXIN:-

The fact sheet available on the website of the Covaxin states that certain categories of persons should not be administered the vaccine. The fact sheet can be found at https://www.bharatbiotech.com/images/covaxin/ covaxin-factsheet.pdf

The relevant part of the fact sheet is asunder:

> *"What should you mention to your vaccine provider before you get Covaxin? Tell the Vaccintor/officer supervising your vaccination about all of your medical conditions, including if you:* □
>
> *Are on regular medication for any illness,*
>
> *for how long and for which condition.*
>
> *It is not advisable to take the vaccine in any of these conditions - have any allergies*
>
> *have fever* □
>
> *have a bleeding disorder or a blood thinner* □
>
> *are immunocompromised or*
>
> *are on a medicine that affects your immune system* □
>
> *Are pregnant ;* □
>
> *Are breast feeding* □
>
> *Have received another Covid-19 vaccine*
>
> *WHO SHOULD NOT GET COVAXIN –*
>
> *You should not get Covaxin if you :*
>
> *1. Had a severe allergic reaction to any ingredients of the vaccine*

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2. Had a severe allergic reaction after a previous dose of the vaccine

3. Currently have an acute infection or fever

4. Further in a document released by Bharat Biotech titled

"SUMMARY OF PRODUCT CHARACTERISTICS" dated 15 Jan 2021, the effect of the vaccine has been explained for certain categories of work and exercise. The relevant part of the report is as under:

4.1 Interaction with other medicinal products. Chloroquine and Corticosteroids as they may impair the antibody response.

4.2 Effects on ability to drive and use machines

No studies on the effect of COVAXINTM on the ability to drive and use machines have been performed. The link of the report titled "SUMMARY OF PRODUCT CHARACTERISTICS" dated 15 Jan 2021 can be found at:

https://cdsco.gov.in/opencms/export/sites/CDSCO_WEB/en/COVAXIN-SMPC_-BBIL.pdf

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It is submitted that Chloroquine is a medication primarily used to prevent and treat malaria in areas where malaria remains sensitive to its effects. Corticosteroids are a class of drug that lowers inflammation in the body. They also reduce immune system activity. Because corticosteroids ease swelling, itching, redness, and allergic reactions,

doctors often prescribe them to help treat diseases like: asthma.

As can be seen from the above there are many diseases for which vaccine should not be taken/given.

Immunocompromised can be due to many causes, such as □ chronic medical conditions, such as heart disease, lung disease, diabetes, HIV, and cancer □ autoimmune diseases, such as lupus, multiple sclerosis, and rheumatoid arthritis □ medications or treatments, such as radiation therapy □ transplants, such as bone marrow or solid organ This can be found at:

https://www.healthline.com/health/immunocompromised-how-toknow-if- you-have-a-weakened-immune-system

22. The said blanket direction violates the fundamental rights of the Covid cured person and also caused much damage to their life and liberty.

22.1. Apart from the above said prohibited and allergic categories the crucial aspect which is ignored by this Hon'ble Court while passing blanket order on **20.04.2021** is that, the person who got cured from corona or got developed immunity due to their contact with corona are having far far superior immunity than the vaccinated people and there are least chances of said persons getting infected again or spreading Corona.

These people need not to take any vaccine or medicine. In fact giving vaccines to such person may be harmful. The relevant proofs, research papers are capusilized in the following paras.

22.2. **Scientific evidence that the people who contracted covid-19 and recovered from it have better immunity than those who are vaccinated.**

22.2.1. That, there is enough and robust evidence available now that those who have recovered from Covid 19 develop robust and long-lasting immunity against SARS CoV2, even after mild or asymptomatic infections, and that chances of reinfection among these people, even from the emerging variants of the same virus, are extremely rare or non-existent. The WHO in its interim guidance released on **July 2, 2021** has also recognised the fact of acquired immunity in all those who have had previous infection with SARS-CoV-2. **[Exhibit - I]**

22.2.2. **Brian Hooker, Ph.D., P.E., Children's Health Defense chief scientific officer and professor of biology at Simpson University**, said while the Delta variant is likely more transmissible, it's also likely less pathogenic. "What we're seeing is virus evolution 101," Hooker said. ...Hooker said the more the variant deviates from the original sequence used for the vaccine, the less effective the vaccine will be on that variant, which could explain why fully vaccinated people are getting infected with the Delta variant. But this isn't the case for natural immunity, he explained.

Hooker said:

> ***"The vaccine focuses on the spike protein, whereas natural immunity focuses on the entire virus. Natural immunity - with a more diverse array of antibodies and cell receptors targets in which to attack the virus, whereas vaccine will provide better protection overall as it has more derived immunity only focuses on one portion of the virus, in this case, the spike protein. Once that portion of the virus DIA has mutated sufficiently, the vaccine no longer is effective."***

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According to research published last week in Scientific Reports, the highest risk for establishing a vaccine-resistant virus strain occurs when a large

fraction of the population has already been vaccinated but the transmission is not controlled.

22.2.3. That, there is no evidence to show that those who have recovered from the infection will get any additional benefit from vaccination. There is an elegant study from the Cleveland Health System which has conclusively reported that those infected do not get re-infected, whether vaccinated or not. **[Exhibit - J]**

In India, recent sero-surveys at Delhi and Mumbai have reported a positivity of 50-70%, indicating that a significant proportion of our people have already been infected, reaching the levels of herd immunity, and will not need the vaccine. **[Exhibit - K]**

https://www.hindustantimes.com/india-news/kids-adults-have-similar-antibodies-sero-survey-101623953000262.html

That many reports of India achieving herd immunity have already appeared. The mathematical models have explained how what percentage of population is required to be infected is also different for different population and with mixing rates fitted to social activity, the disease-induced herd immunity level can be ~43%.

22.2.4. That as per the clear proofs, research and opinion given by the honest physicians, scientists et al, it is an undisputed position that the person who has recovered from corona infection caused due to SARS-CoV-2 virus or even who came in contact with the SARS-CoV-2 is the most safe person and is on much higher footing than the person who is vaccinated. The reasons are very simple that;

(i) The vaccine only injects synthetic spike protein in the body of the person, which trains the immune system to create antibodies to fight the SARS-CoV-2 virus.

On the contrary, the body of person who got cured from the Covid-19 had actually fought with the original corona virus and won the battle and hence has developed the immunity, which is far more superior than the vaccine induced immunity.

(ii) There are very less chances of Covid cured person getting infected again and spreading the infection.

On the Contrary the person who is vaccinated will be get corona, spread infection and die because of Corona.

22.2.5. There is no difference between vaccinated and non-vaccinated people. Both have to follow the covid appropriate behavior. **Only the Covid cured person is the most safe person.**

22.2.6. That a recent study on around 7 lac people had made it clear that the person cured from covid are having 13 times better immunity than those who have taken two doses of vaccines.
Link:- https://youtu.be/6v5VrpgXPm4

22.2.7. Coronavirus patients who recovered from the virus were far less likely to become infected during the latest wave of the pandemic than people who were vaccinated against COVID, according to numbers presented to the Israeli Health Ministry.

Health Ministry data on the wave of COVID outbreaks which began this May show that Israelis with immunity from natural infection were far less likely to

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become infected again in comparison to Israelis who only had immunity via vaccination.

A copy of Israel Research Report dated **24th April 2021** is annexed herewith at **Exhibit – L.**

Source:
https://drive.google.com/file/d/1wloFQ1WqZYODnZ5BC6qX3poP7GCS3lT3/view?usp=sharing

More than 7,700 new cases of the virus have been detected during the most recent wave starting in May, but just 72 of the confirmed cases were reported in people who were known to have been infected previously – that is, less than 1% of the new cases.

Roughly 40% of new cases – or more than 3,000 patients – involved people who had been infected despite being vaccinated.

With a total of 835,792 Israelis known to have recovered from the virus, the 72 instances of reinfection amount to 0.0086% of people who were already infected with COVID.

By contrast, Israelis who were vaccinated were 6.72 times more likely to get infected after the shot than after natural infection, with over 3,000 of the 5,193,499, or 0.0578%, of Israelis who were vaccinated getting infected in the latest wave.

According to a report by Channel 13, the disparity has confounded – and divided – Health Ministry experts, with some saying the data proves the higher level of immunity provided by natural infection versus vaccination, while others remained unconvinced.

Link and complete article is annexed herewith at **Exhibit –M.**

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Source

https://www.israelnationalnews.com/News/News.aspx/309762

22.2.8. Proofs of Sweden has reached natural herd immunity against several variants of SARS-CoV-2 despite using limited restrictions.

Time to revisit Sweden as much of the world starts locking down and masking again regardless of vaccination levels, blaming the Delta variant. And those impudent Swedes are pretty much refusing to die of Covid at all.

Not to say that vaccines haven't contributed to the current low numbers, but … cases peaked during the first week of January while vaccinations didn't even *begin until the end of that month.* Currently Sweden ranks 18th in Europe in vaccines per capita, right in the middle. Likewise, there are those who say Sweden finally buckled down and imposed serious restrictions. It didn't. It imposed more restrictions in the second week of January, perhaps more in response to international opprobrium than anything else. But yes, it was after cases not only had started dropping but actually plummeted by more than half.

What's happening? According to an as-yet unpublished but online study by two Svenske researchers, it appears the country has reached that Holy Grail of Covid called "herd immunity." That means a level where those already protected are significantly guarding those without exposure. Mind, they say, it's not all from Covid-19 per se but possibly in great part to "pre-immunity" from other infections. Four coronaviruses are known to cause colds, but the researchers actually don't even mention that. It's just that previous exposure to *something* seems to be providing natural inoculation. And it shouldn't be as unique to Sweden as Ingrid Bergman.

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Mind, the current figures are just a snapshot. Did the country pay an awful price en route to the apparent herd immunity? Well, certainly the Swedish death rate is higher than its Nordic neighbors Norway, Denmark, and Finland. Those are the comparisons you'll hear. But it's well below the rates for larger-population European countries including Belgium, Italy, the U.K., Romania, Spain, France, and Portugal. The U.S., too.

Sweden's chief epidemiologist **Anders Tegnell,** who caught absolute hell, feels vindicated.

"Locking down is saving time," he said last year. "It's not solving anything." In essence the country "front-loaded" its deaths and decreased those deaths later on.

Link and complete article is annexed herewith at **Exhibit –N.**

Source:

https://www.globalresearch.ca/sweden-despite-variants-no-lockdowns-no-daily-covid-deaths/5752004

https://www.medrxiv.org/content/10.1101/2021.07.07.21260167v1.full

22.3. Research proving natural immunity developed due to contact with Covid-19 infection is far better than the vaccine.

22.3.1. This study followed 254 Covid-19 patients for up to 8 months and concluded they had "durable broad-based immune responses." In fact, even very mild Covid-19 infection also protected the patients from an earlier version of "SARS" coronavirus that first emerged around 2003, and against Covid-19 variants. "Taken together, these results suggest that broad and effective immunity may persist long-term in recovered COVID-19 patients," concludes the study scientists.

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Link and complete article is annexed herewith at **Exhibit –O.**

Source:

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8253687/

22.3.2. This study of airline passengers in Qatar found that both vaccination and prior infection were "imperfect" when it comes to preventing positive Covid-19 test results, but that the incidence of reinfection is similarly low in both groups.

Link and complete article is annexed herewith at **Exhibit –P.**

Source: https://jamanetwork.com/journals/jama/fullarticle/2781112

22.3.3. This study followed 52,238 employees of the Cleveland Clinic Health System in Ohio. **For previously-infected people, the cumulative incidence of re-infection "remained almost zero."** According to the study, "Not one of the 1,359 previously infected subjects who remained unvaccinated had a [Covid-19] infection over the duration of the study" and vaccination did not reduce the risk. "Individuals who have had [Covid-19] infection are unlikely to benefit from COVID-19 vaccination," concludes the study scientists.

Link and complete article is annexed herewith at **Exhibit – Q.**

Source: https://www.medrxiv.org/content/10.1101/2021.06.01.21258176v2

22.3.4. This study found strong immune signs in people who had previously been infected with Covid-19, including "those [who] experienced asymptomatic or mild disease." The study concludes there is "reason for optimism" regarding the capacity of prior infection "to limit disease severity and transmission of variants of concern as they continue to arise and circulate."

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Link and complete article is annexed herewith at **Exhibit – R.**

Source:
https://www.medrxiv.org/content/10.1101/2021.05.28.21258025v1

22.3.5. This study of real world data extended the timeframe of available data indicating that patients have strong immune indicators for "almost a year post-natural infection of COVID-19." The study concludes the immune response after natural infection "may persist for longer than previously thought, thereby providing evidence of sustainability that may influence post-pandemic planning."

Link and complete article is annexed herewith at **Exhibit – S.**

Source:https://www.thelancet.com/action/showPdf?pii=S2589-5370(21)00182-6

22.3.6. This study examined bone marrow of previously-infected patients and found that even mild infection with Covid-19 "induces robust antigen-specific, long-lived humoral immune memory in humans." The study indicates "People who have had mild illness develop antibody-producing cells that can last lifetime."

People who have had mild illness develop antibody-producing cells that can last lifetime.

Link and complete article is annexed herewith at **Exhibit –T.**

Source: https://www.nature.com/articles/s41586-021-03647-4

22.3.7. This scientific brief issued by WHO states that after natural infection with Covid-19, "available scientific data suggests that in most people immune

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responses remain robust and protective against reinfection for at least 6-8 months."

Link and complete article is annexed herewith at **Exhibit – U**

Source:

https://www.livemint.com/news/world/natural-infection-gives-same-immunity-as-inoculation-11621363241230.html

22.3.8. This study found humoral and cellular immunity in recovered Covid patients. "Production of S-RBD-specific antibodies were readily detected in recovered patients. Moreover, we observed virus-neutralization activities in these recovered patients," wrote the study authors.

The adaptive immune system consists of three major lymphocyte types: B cells (antibody producing cells), CD4+ T cells (helper T cells), and CD8+ T cells (cytotoxic, or killer, T cells.

Link and complete article is annexed herewith at **Exhibit – V.**

Source:

https://www.cell.com/immunity/fulltext/S1074-7613(20)30181-3?_returnURL=https%3A%2F%2Flinkinghub.elsevier.com%2Fretrieve%2Fpii%2FS1074761320301813%3Fshowall%3Dtrue

https://www.cell.com/cell/fulltext/S0092-8674(20)31235-6?_returnURL=https%3A%2F%2Flinkinghub.elsevier.com%2Fretrieve%2Fpii%2FS0092867420312356%3Fshowall%3Dtrue

22.3.9. This study found a rare Covid-19 positive test "reinfection" rate of 1 per 1,000 recoveries.

Link and complete article is annexed herewith at **Exhibit – W.**

Source: https://www.medrxiv.org/content/10.1101/2021.03.06.21253051v1

22.3.10. Research funded by the National Institutes of Health and published in Science early in the Covid-19 vaccine effort found the "immune systems of more than 95% of people who recovered from COVID-19 had durable memories of the virus up to eight months after infection," and hoped the vaccines would produce similar immunity. (However, experts say they do not appear to be doing so.

Link and complete article is annexed herewith at **Exhibit – X.**

Source:

https://www.nih.gov/news-events/nih-research-matters/lasting-immunity-found-after-recovery-covid-19

22.3.11. This study found Covid-19 natural infection "appears to elicit strong protection against reinfection" for at least seven months. "Reinfection is "rare," concludes the scientists.

Link and complete article is annexed herewith at **Exhibit – Y.**

Source: https://www.medrxiv.org/content/10.1101/2021.01.15.21249731v2

22.3.12. This study confirmed and examined "immune memory" in previously-infected Covid-19 patients.

Link and complete article is annexed herewith at **Exhibit – Z.**

Source: https://www.nature.com/articles/s41586-020-2550-z

22.3.13. This study concluded "T cell" immune response in former Covid-19 patients likely continues to protect amid Covid-19 variants.

Link and complete article is annexed herewith at **Exhibit – AA.**

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Source: https://www.biorxiv.org/content/10.1101/2021.02.27.433180v1

22.3.14. This study found that "neutralizing antibodies are stably produced for at least 5–7 months" after a patient is infected with Covid-19.

Link and complete article is annexed herewith at **Exhibit – BB.**

Source: https://www.cell.com/immunity/fulltext/S1074-7613(20)30445-3?_returnURL=https%3A%2F%2Flinkinghub.elsevier.com%2Fretrieve%2Fpii%2FS1074761320304453%3Fshowall%3Dtrue

22.3.15. This study found that all patients who recently recovered from Covid-19 produced immunity-strong T cells that recognize multiple parts of Covi1d-19.

They also looked at blood samples from 23 people who'd survived a 2003 outbreak of a coronavirus: SARS (Cov-1). These people still had lasting memory T cells 17 years after the outbreak. Those memory T cells, acquired in response to SARS-CoV-1, also recognized parts of Covid-19 (SARS-CoV-2).

Much of the study on the immune response to SARS-CoV-2, the novel coronavirus that causes COVID-19, has focused on the production of antibodies. But, in fact, immune cells known as memory T cells also play an important role in the ability of our immune systems to protect us against many viral infections, including—it now appears—COVID-19.

"Immune T Cells May Offer Lasting Protection Against COVID-19"

Link and complete article is annexed herewith at **Exhibit – CC.**

Source: https://www.nature.com/articles/s41586-020-2550-z

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22.4. Expert Reports that Vaccines May Do More Harm Than Good To Those Recovered From Covid-19.

22.4.1. Experts argue that when the current evidence shows that people recovered naturally from Covid-19 are well-protected from future infection or severity of the disease, there is no point including them in the current vaccination drive.

22.4.2. A section of infectious disease experts in India believes that vaccines have no benefits to such individuals who have naturally recovered from Covid-19. Instead, it might cause some harm to them and lead to Serious Adverse Event Following Immunization (SAEFI).

22.4.3. Deaths, blood clotting or other health complications have been reported due to SAEFI from across the world and health experts say that it has nothing to do with any deficiency in the safety aspects of approved Covid-19 vaccines.

> "Even a good vaccine can cause health complications due to adverse side effects as each human body responds to inoculation differently. But when you have to protect a larger population, this is the price one has to pay," an epidemiologist associated with the government said requesting not to be named.

He added, "This is true with all vaccines and vaccination programmes ever introduced in human history."

22.4.4. Experts argue that when the current evidence shows that people recovered naturally from Covid-19 are well-protected from future infection or severity of the disease, there is no point including them in the current vaccination drive and risking their lives even if the risk is minuscule.

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22.4.5. Dr. Sanjay Rai, Professor, Community Medicine in All India Institute of Medical Sciences, New Delhi, says that all available evidence demonstrates that the natural infection provides better and longer protection that may even be lifelong.

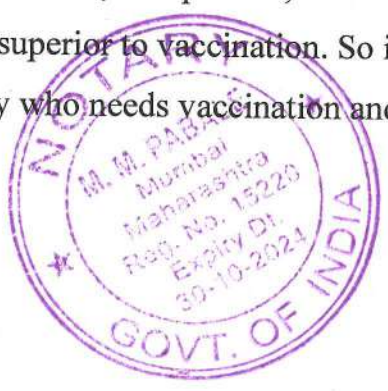
> "There is no need to vaccinate individuals who had documented COVID-19 infection in the past. These individuals may be vaccinated after generating evidence that vaccine is beneficial after natural infection," Dr. Rai said.
>
> He added," Based on the available shreds of evidence, we can say that there is no additional benefit of vaccination in COVID recovered individuals. Actually, it may cause harm due to few known and unknown severe adverse events following immunization."

22.4.6. Noted epidemiologist Dr. Jayaprakash Muliyil, who is a core member of the National Technical Advisory Group on Immunization (NTAGI), agrees that vaccinating a confirmed Covid-19 recovered person doesn't have any additional benefit "but there is some small chance of adverse reaction."

Health experts say that there are two ways to find out if a person is a confirmed Covid-19 recovered case. First, those people who developed symptoms after contracting the virus and got it confirmed through the RT-PCR test.

"A reliable test of antibody can be another way to establish if a person is a confirmed Covid-19 recovered case," Dr. Muliyil said.

He added, "At present, the available evidence suggests that natural infection is superior to vaccination. So in retrospect, it is a good and convenient way to say who needs vaccination and who doesn't."



22.4.7. As the current vaccination drive in India doesn't have any provision to exclude naturally-recovered persons, a lot of such people say that they have to get vaccinated even if they didn't want because they were under pressure from their employers.

Some of them have to go abroad and many countries have made vaccination a pre-requisite condition for issuing a visa as they still believe that vaccinated individuals don't spread infection. This is contrary to the growing evidence that a vaccinated person can be a spreader of infection.

Outlook has earlier highlighted how health experts had suggested the introduction of a "Natural Certificate" for those travellers who are unvaccinated but have recovered from Covid-19.

22.4.8. European nations have reportedly introduced a **'Digital Green Certificate'** for safe and free movement during the pandemic within the EU. The certificate is **issued to the three categories of people (a) a person has been vaccinated against Covid-19, (b) has received a negative test resultor (c) has recovered from Covid-19.**

Link:- https://www.bbc.com/news/world-europe-56522408.amp

22.4.9. "A senior government doctor said. There is a wrong notion among many doctors that natural immunity is transient. It is because, during the initial days of Covid-19, the World Health Organization had made this baseless statement which many doctors still believe to be true".

Link and complete article is annexed herewith at **Exhibit – DD.**

Source: https://www.outlookindia.com/website/story/india-news-vaccines-may-do-more-harm-than-good-to-those-recovered-from-covid-19-experts/390974

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23.Under these circumstances the blanket direction to vaccinate arrested person above 45 years is highly illegal and violative of the fundamental rights of the prisoners. The order is an antithesis to the decision taken in accordance with the law.

23.1. That, Hon'ble Supreme Court in **State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639** had ruled that such judgments are per-incuriam and loses its efficacy as binding judgment. It is ruled as under;

> *"67. Thus, **"per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.***
>
> ***69.** The courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P. [1993 Supp (4) SCC 536 : AIR 1993 SC 1048] observed as under : (SCC p. 551, para 12)*
>
> > *"12. ... '2. ... To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this we derive comfort and strength from the wise and inspiring*

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words of Justice Bronson in Pierce v. Delameter [1 NY 3 (1847)] , AMY at p. 18:

*"a Judge ought to be wise enough to know that he is fallible and therefore ever ready to learn : great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead : and courageous enough to acknowledge his errors."' [**Ed.** : As observed in Distributors (Baroda) (P) Ltd. v. Union of India, (1986) 1 SCC 43, p. 46, para 2.] "*

66. *While dealing with the observations made by a seven-Judge Bench in India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12 : AIR 1990 SC 85] , the five-Judge Bench in State of W.B. v. Kesoram Industries Ltd. [(2004) 10 SCC 201] , observed as under : (Kesoram Industries Ltd. case [(2004) 10 SCC 201] , SCC pp. 292 & 297, paras 57 & 71)*

*"57. ... **A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored**, far from making any capital out of it, giving way to the correct*

expression which ought to be implied or necessarily read in the context, ...

***

*71. ... **A statement caused by an apparent typographical or inadvertent error in a judgment of the court should not be misunderstood as declaration of such law by the court."***

(emphasis added)

23.2. Hon'ble Supreme Court the case of **NOIDA Entrepreneurs Assn. Vs. NOIDA (2011) 6 SCC 508,** had ruled that if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law such order should be held to be vitiated. It is ruled as under;

*"**39.** State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". **The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias,***

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favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

40. *The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society.*

41. *Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them."* ***A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other.***

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42. In view of the above, we are of the considered opinion that these allegations being of a very serious nature and as alleged, Respondent 4 had passed orders in colourable exercise of power favouring himself and certain contractors, require investigation. Thus, in view of the above, we direct CBI to have preliminary enquiry and in case the allegations are found having some substance warranting further proceeding with criminal prosecution, may proceed in accordance with law. It may be pertinent to mention that any observation made herein against Respondent 4 would be treated necessary to decide the present controversy. CBI shall investigate the matter without being influenced by any observation made in this judgment."

23.3. Hon'ble Supreme Court in the case of **Harshit Agarwal vs. UOI (2021) 2 SCC 710,** had ruled that the decision which suffers from blemish of overlooking or ignoring, wilfully or otherwise vital facts bearing on the decision is bad in law and is vitiated and needs to be set aside. It is ruled as under;

"10. Judicial review of administrative action is permissible on grounds of illegality, irrationality and procedural impropriety. An administrative decision is flawed if it is illegal. A decision is illegal if it pursues an objective other than that for which the power to make the decision was conferred *[De Smith's Judicial Review, (6th Edn., p. 225)] . There is no unfettered discretion in public law [Food*

Corpn. of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71].The discretion exercised by the decision maker is subject to judicial scrutiny if a purpose other than a specified purpose is pursued. ***If the authority pursues unauthorised purposes, its decision is rendered illegal. If irrelevant considerations are taken into account for reaching the decision or relevant considerations have been ignored, the decision stands vitiated as the decision maker has misdirected himself in law.*** *It is useful to refer to R. v. Vestry of St. Pancras [R. v. Vestry of St. Pancras, (1890) LR 24 QBD 371 (CA)] in which it was held: (QBD pp. 375-76)*

> *"... If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."*

13..... *The decision which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision is bad in law [Baldev Raj Chadha v. Union of India, (1980) 4 SCC 321 : 1981 SCC (L&S) 1] . The decision of the first respondent was propelled by extraneous considerations .....Consideration of factors other than availability of eligible students would be the result of being influenced by irrelevant*

or extraneous matters. ***There is an implicit obligation on the decision maker to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote*** *[CIT v. Mahindra & Mahindra Ltd., (1983) 4 SCC 392 : 1983 SCC (Tax) 336]."*

23.4. That, in **Medical Council of India Vs. G.C.R.G. Memorial Trust (2018) 12 SCC 564** it is ruled as under;

"A Judge cannot think in terms of "what pleases the Prince has the force of law". A Judge even when he is free, is still not wholly free; he is not to innovate at pleasure; he is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness; he is to draw inspiration from consecrated principles the Respondent-institution directed to pay Rs. 10,00,000/- to each of the students. costs of Rs. 25 lacs to be deposited before Court within eight weeks. A Judge is not to be guided by any kind of notion. The decision-making process expects a Judge or an adjudicator to apply restraint, ostracize perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum. (13)

A Judge should abandon his passion. He must constantly remind himself that he has a singular

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master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics. (13)

The judicial propriety requires judicial discipline. A Judge cannot think in terms of "what pleases the Prince has the force of law". Frankly speaking, the law does not allow so, for law has to be observed by requisite respect for law."

23.5. That, in **State Bank of Travancore Vs. Mathew 2018 (3) SCC 85,** it is ruled that the Judges has to apply the correct law even if it is not raised by the party.

24. FAILURE OF STATE AUTHORITIES, ADVOCATE GENERAL AND PUBLIC PROSECUTOR TO BRING THE CORRECT FACTUAL AND LEGAL POSITION BEFORE THE COURT:-

24.1. That in **Heena Nikhil Dharia Vs. Kokilaben Kirtikumar Nayak 2016 SCC OnLine Bom 9859**, it is ruled as under;

"DUTY OF ADVOCATE"

A] The counsel in question was A. S. Oka, now Mr. Justice Oka, and this is what Khanwilkar J was moved to observe in the concluding paragraph of his judgement:

While parting I would like to make a special mention regarding the fairness of Mr. Oka, Advocate. He conducted the matter with a sense of detachment. In his own inimitable style he did the wonderful act of balancing of his duty to his client

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and as an officer of the Court concerned in the administration of justice. He has fully discharged his overriding duty to the Court to the standards of his profession, and to the public, by not withholding authorities which go against his client. As Lord Denning MR in Randel v W. (1996) 3 All E. R. 657 observed: "Counsel has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. Whereas when the Advocate puts his first duty to the Court, he has nothing to fear. But it is a mistake to suppose that he (the Advocate) is the mouthpiece of his client to say what he wants. The Code which obligates the Advocate to disregard the instructions of his client, if they conflict with his duty to the Court, is not a code of law — it is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

This view is quoted with approval by the Apex Court in Re. T. V. Choudhary, [1987] 3 SCR 146 (E. S. Reddi v Chief Secretary, Government of AP & Anr.).

The cause before Khanwilkar J may have been lost, but the law gained, and justice was served.

B] Thirteen years ago, Khanwilkar J wrote of a code of honour. That was a time when we did not have the range, width and speed of resources we do today.

With the proliferation of online databases and access to past orders on the High Court website, there is no excuse at all for not cross-checking the status of a judgement. I have had no other or greater access in conducting this research; all of it was easily available to counsel at my Bar. Merely because a judgement is found in an online database does not make it a binding precedent without checking whether it has been confirmed or set aside in appeal. Frequently, appellate orders reversing reported decisions of the lower court are not themselves reported. The task of an advocate is perhaps more onerous as a result; but his duty to the court, that duty of fidelity to the law, is not in any lessened. If anything, it is higher now.

C] Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperilled. Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperilled."

24.2. In **Deepak Aggarwal Vs. Keshav Kaushik (2013) 5 SCC 277**, it is ruled as under;

"77. The Public Prosecutor has a very important role to play in the administration of justice and, particularly, in criminal justice system. Way back on 15-4-1935 in Berger v. United States [79 L Ed

1314 : 295 US 78 (1935)] , Sutherland, J., who delivered the opinion of the Supreme Court of United States, said about the United States attorney that he is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. The twofold aim of the United States attorney is that guilt shall not escape or innocence suffer. It is as much his duty to refrain from improper methods calculated to produce wrongful conviction as it is to use every legitimate means to bring about a just one.

***78.** The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, adopted guidelines on the role of prosecutors in 1990. Inter alia, it states that prosecutors shall perform their duties fairly, consistently and expeditiously and respect and protect human dignity and uphold human rights. He shall take proper account of the position of the suspect and the victim and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.*

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***79.** As a follow-up action to the above guidelines on the role of prosecutors, the International Association of Prosecutors adopted Standards of*

Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors which, inter alia, provides that prosecutors shall strive to be, and to be seen to be, consistent, independent and impartial; prosecutors shall preserve the requirements of a fair trial and safeguard the rights of the accused in cooperation with the Court.

80. *The European Guidelines on Ethics and Conduct for Public Prosecutors (the Budapest Guidelines) adopted in the Conference of Prosecutors General of Europe on 31-5-2005 are on the same lines as above. Under the head "professional conduct in the framework of criminal proceedings", these guidelines state that when acting within the framework of criminal proceedings, Public Prosecutor should at all times carry out their functions fairly, impartially, objectively and, within the framework of the provisions laid down by law, independently; seek to ensure that the criminal justice system operates as expeditiously as possible, being consistent with the interests of justice; respect the principle of the presumption of innocence and have regard to all relevant circumstances of a case including those affecting the suspect irrespective of whether they are to the latter's advantage or disadvantage.*

81. *In India, the role of Public Prosecutor is no different. He has at all times to ensure that an*

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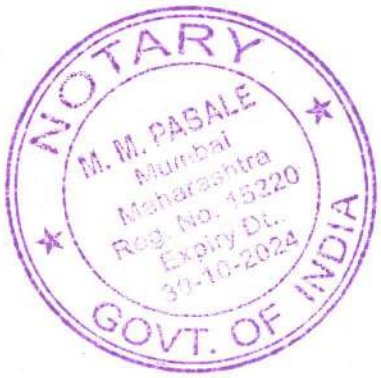
accused is tried fairly. He should consider the views, legitimate interests and possible concern of witnesses and victims. He is supposed to refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods. His acts should always serve and protect the public interest. The State being a prosecutor, the Public Prosecutor carries a primary position. He is not a mouthpiece of the investigating agency. In Chapter II of the BCI Rules, it is stated that an advocate appearing for the prosecution of a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent; he should scrupulously avoid suppression of material capable of establishing the innocence of the accused."

24.3. In **Hindustan Organic Chemicals Ltd. Vs. ICI India Ltd. 2017 SCC Online Bom 74**, it is read as under;

"DUTY OF ADVOCATES TO NOT TO MISLED THE COURT EVEN ACCIDENTALLY.

I have found counsel at the Bar citing decisions that are not good law.



The availability of online research databases does not absolve lawyers of their duties as officers of the Court. Those duties include an obligation not to mislead a Court, even accidentally. That in turn casts on each lawyer to carefully check whether a decision sought to be cited is or is not good

law. *The performance of that duty may be more onerous with the proliferation of online research tools, but that is a burden that lawyers are required to shoulder, not abandon. Every one of the decisions noted in this order is available in standard online databases. This pattern of slipshod research is inexcusable."*

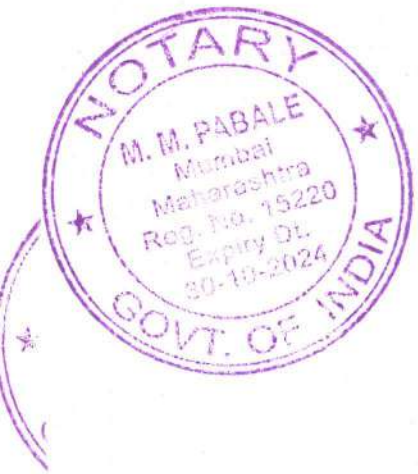
24.4. In **Amardeepsingh Baswantsingh Thakur v. Deputy Inspector General (Pr 2020 SCC OnLine Bom 6621**, it is ruled as under;

*"**3.** The reply filed on behalf of the respondent No. 2 is far from satisfactory, rather it borders upon interfering in the administration of justice. We say so with all sense of responsibility. The least that is expected from the State is to be correct on facts and straight forward in submissions. The reply filed on behalf of the respondent No. 2, does not fulfill any of these parameters. The reply is misleading and also takes a ground which is not stated in the impugned order, for resisting this petition. It appears that the respondent No. 2 has taken the issue quite personally and, therefore, while filing an affidavit, he has displayed his utter dislike for the petitioner. Being a public servant, it is expected of respondent No. 2 to be fair in performance of his duty and treat all the inmates of the jail as well as his staff members with equality. But, that has not been done by the respondent No. 2. This time we*

would not pass any order which may be adverse to the interest of respondent No. 2, but, we would like to put respondent No. 2 and the officers like him who are public servants on guard by what we have said just now."

24.5. In **Seethalaxmi Vs. State of Tamil Nadu and Ors. 1991 Cri.L.J. 1037**, it is ruled as under;

> ***"The Reply affidavits are not intended just to point out the flaws in the case of the opponent. Their affidavits should always place all the facts before the Court whether such facts would support the contention of the Government in the case or not.***
>
> *18. This Court has on several occasions pointed out that affidavits should not be treated in a light-hearted fashion and prepared in a hap-hazard manner. Every litigant should understand that an affidavit is a sworn statement and it takes the place of deposition. Responsibility of Government officials is much more in this regard. Their affidavits are not intended just to point out the flaws in the case of the opponent. Their affidavits should always place all the facts before the Court whether such facts would support the contention of the Government in the case or not."*



25.GROUNDS OF RECUSAL OF HON'BLE CHIEF JUSTICE SHRI. DIPANKAR DATTA AND JUSTICE SHRI. G.S. KULKARNI FROM THIS CASE:

25.1. That an impression is being created in the mind of applicant that Hon'ble Chief Justice Shri. Dipankar Datta and Shri. Justice G.S. Kulkarni are liberal and prejudiced in favour of vaccines.

25.2. The above impression has developed due to following few incidences:-

25.2.1. When the **PIL (ST) No. 10766 of 2021** is filed by Capt. Vikrant Girish Sansare for direction to State Government to use **Ivermectin** as prophylactic medicine as cure for corona. If that prayer is allowed then there will have impact to the effect that there is no need for vaccination. But in that matter the bench of **Justice G.S. Kulkarni took an exactly opposite view** and in his order dated **16.06.2021** have observed that **the court is not the expert and it is for the Doctor to decide as to which medicine to be given and when it should be given.** Said **Para 6** reads thus:

> *"**6.** In regard to the petitioner's prayer in prayer clause (b), we may observe, it cannot be for the Court to direct either the Union of India or the State to include in the SoP for treatment of Covid-19 any particular drug and more particularly the drugs as suggested by the petitioner. We have noted that the Central Government and the State Government have issued the appropriate treatment protocols, which is certainly considering **the advise of the experts in the field. The Court would not have any expertise to consider any plea which lies with the experts in the medical field.** We have already noted that such drug finds a mention in the protocol and it is always for the concerned doctors to prescribe such medication as suitable to the patient*

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considering his clinical condition. We, therefore, cannot issue such direction as prayed for by the petitioner and reject such prayer as made by the petitioner."

A copy of said order dated 16.06.2021 is annexed at Exhibit - EE.

25.2.2. Then question arises as to why on **20th April. 2021** the same Judge Shri G.S. Kulkarni while sitting with Chief Justice Shiri. Dipankar Datta have given the direction for compulsory vaccination when Central Government and experts' view was exactly contrary that vaccines are voluntary and no one can be forced to take vaccines not be against his free and informed consent.

25.2.3. Another crucial aspect is that the Chief Justice Shri. Dipankar Datta have unprecedented personal meeting with Shri. Uddhav Thackeray, Chief Minister of Maharashtra and Shri. Iqbal Chahal, Municipal Commissioner of Mumbai.

Both the said persons are prima facie accused of acting for the benefit of vaccine companies. They are having ties with Mr. Bill Gates, the infamous and toxic philanthropist known for killing children in India by implementing his sinister plan of vaccinations and found guilty in the enquiry report of Parliamentary Committee. (72nd Report).

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Evidently value of said report is confirmed by the Constitution Bench of Hon'ble Supreme Court in **Kalpana Mehta Vs. Union of India (2018) 7 SCC 1.**

That, the details and proofs of close relations and sponsorship to BMC by **'Bill & Milinda Gates Foundation'** is summarized at **Exhibit – FF.**

That, the 72nd Parliamentary Report exposing the nexus between vaccine mafia Bill Gates and officials of ICMR and others, who were conspired for wrongful profits of thousands of crores to vaccine companies and responsible for killing 8 female children is at **Exhibit - GG.**

The details regarding fatal injuries and disabilities cause to 4,50,000 children and deaths due to accepting the malicious suggestions of Bill Gates regarding increasing numbers of doses of polio vaccines is at **Exhibit - HH**.

Link: https://greatgameindia.com/bill-gates-agenda-in-india-exposed-by-robert-kennedy-jr/

25.2.4. In **Supreme Court Advocates-on-Record Vs. Union of India (2016) 5 SCC 808,** it is ruled as under;

> *"A judge shall ensure that **his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.***
>
> *A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases."*

25.3. Under these circumstances the Hon'ble Chief Justice Dipankar Datta and Justice Shri G.S. Kulkarni are disqualified to hear any petition related with vaccination. **[State of Punjab Vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770; Supreme Court Advocates-On-Record Association Vs. Union of India (2016) 5 SCC 808]**

26. DISQUALIFICATION OF CHIEF JUSTICE IN ALLOCATING CASES AS 'MASTER OF ROSTER':-

26.1. That Chief Justice is the Master of Roster. He decides the allocation of the cases to the Benches in the High Court.

26.2. The law, judicial propriety and binding precedents of the Supreme Court demands that the Chief Justice should recuse himself from allocation of any case related with vaccine companies, Corona, lockdown etc.

26.3. As per earlier precedents, **this job of allocations of cases where Chief Justice is disqualified is to be handed over to the Second Senior most Judge.**

26.4. Earlier in the case of contempt related with Prashant Bhushan's Tweet this procedure was followed and the **then CJI Shri. Sharad Bobde recused from the allocation of bench and the decision was taken by the second senior most Judge Shri. N.V. Ramana.**

26.5. Hon'ble Supreme in the case of **The CIT Bombay City Vs. R.H.Pandi (1974) 2 SCC 627,** has ruled that practice of the Court is the law of the court.

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> ***"6...Cursus curiae est lex curiae. The Practice of the Court is the law of the Court.*** *See Broom's Legal Maxims at p.82.* ***Where a practice has existed it is convenient to adhere to it because it is the practice."***

26.6. In a complaint of sexual harassment against the then CJI Shri. Ranjan Gogoi the decision for 'In-House-Procedure' for constituting enquiry committee against CJI was handed over to Second Senior most Judge Shri. Sharad Bobde. **[Exhibit - II]**

Link: **https://thewire.in/law/cji-ranjan-gogoi-allegations-panel-investigation**

26.7. In that case which was against the then CJI Shri. Ranjan Gogoi, the present CJI Shri. N.V. Ramana was also one of the members of enquiry Committee. But the victim Supreme Court lady staffer took objection to Hon'ble CJI Shri. N.V. Ramana's presence. Hon'ble CJI Shri. N.V. Ramana recused from the case by giving a 3 page letter dated **25th April, 2019.**

The relevant para of the said letter reads thus;

> *"My decision to recuse is only based on an intent to avoid any suspicion that this institution will not conduct itself in keeping with the highest standards of judicial propriety and wisdom. It is the extraordinary nature of the complaint, and the evolving circumstances and discourse that underly my decision to recuse and not the grounds cited by the complainant per se. Let my recusal be a clear message to the nation that there should be no fears about probity in our institution, and that we will not refrain from going to any extent to protect the trust reposed in us. That is, after all, our final source of moral strength. It is true that justice must not only be done, but also manifestly seem to be done."*
>
> **Link:** https://drive.google.com/file/d/11WYbQb94Bk7IRsbIJxRP7qRAQATFOHd6/view?usp=sharing

26.8. Justice Shri. Markandey Katju recused himself in a part-heard matter as his wife held shares in a company which was a litigant in the case before the

bench. On November 6, Justice Kapadia recused himself from a case in which the Sterlite Industries' sister concern, Vedanta, was an applicant in the court.

26.9. Justice Shri. Raveendran recused himself from the case as he had discovered that, his daughter was a lawyer in a firm which was doing legal work not connected with the litigation before him but for one of the Reliance companies.

26.10. That, the Hon'ble Chief Justice Shri. Dipankar Datta have not followed the abovesaid principles and he not only heard those petitions but himself gave unconstitutional and illegal suggestions on **2nd August, 2021** during the hearing of said PIL and asked the State to consider to give facilities to the vaccinated people in local trains. Said suggestions are discriminatory to the people who are in most superior category i.e. covid recovered persons.

Link 1. https://www.thehindu.com/news/national/other-states/why-not-allow-vaccinated-persons-to-use-trains-asks-bombay-high-court/article35684307.ece

Link 2. https://timesofindia.indiatimes.com/city/mumbai/why-not-a-card-for-those-fully-vaccinated-to-use-rly-locals-bombay-hc/articleshow/85082495.cms

Link 3. https://indianexpress.com/article/cities/mumbai/bombay-hc-asks-maharashtra-govt-why-vaccinated-persons-cannot-travel-by-local-trains-7434538/

26.11. After the said hearing the State of Maharashtra issued two unconstitutional circular giving permission to vaccinated people to travel through local trains. Which are violative of the fundamental rights of the citizens and since it was a question of job of poor and middle class people and also livelihood of crores of citizens and many common citizens were

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compelled to rush for the vaccination when in fact there was no stock of vaccines with the Government.

Said directions by the State Government gave rise to black marketing and exploitation of common people and due to such situation the people rushed to private hospitals and were compelled to take vaccines at higher rates approximately Rs. 1000 to 3000.

26.12. The said unlawful decision taken by the State of Maharashtra under leadership of Chief Minister Shri. Uddhav Thackeray has dual side effect i.e. corruption on one side and a risk of death causing side effects to the common man on other side. It caused wrongful profit of Crores of Rupees to hospitals and vaccine mafias and their syndicates.

If we simply calculate the figure then vaccination of 2 doses of 2 Crores people in Maharashtra in private hospital at approximately cost of Rs. 1000 then it will go to an amount of 4000 Crores turnover.

26.13. That, the above figure will keep on increasing not only regarding population but also regarding the agenda of sponsored experts and corrupt bureaucrats who in active connivance with vaccine companies are trying to keep on increasing number of booster doses and keep the people under fear and exploit them by doing more corruption.

26.14. Under these circumstances a reasonable apprehension is created in the mind of Applicant that his cause will not have a fair hearing and therefore it is just and necessary that the present application is heard by any Bench other than Hon'ble Chief Justice Shri. Dipankar Datta, Shri. G.S. Kulkarni and other Hon'ble Judges who are directly or indirectly connected or interested, with the cause or outcome of the cause raised in this petition.

26.15. That one more illegality committed with regard to this PIL by another Hon'ble Judge Shri A.A. Sayed is ex-facie clear from the very fact that he is an Executive Chariman of Maharashtra State Legal Services Authority.

That Shri. Justice A.A. Sayed himself prepared minutes of High power committee on **7th May** and **11th May 2021** as per the order dated **29th April 2021** in **Suo-moto PIL No. 01 of 2021.**

Copy of the said minutes of committee are at **Exhibit - JJ**

26.16. Justice Shri. A. A. Sayed in **Para 16 (ix)** have recommended as under;

> ***"16.*** *Having regards to the facts and circumstances and having taken stock of the entire situation arising out of the "second wave" of corona virus (Covid 19), this committee issues the following guidelines/recommendations:*
>
> ***(ix)*** *prisoners as well as the prison staff be vaccinated at the earliest by conducting vaccination drives as and when sufficient stocks are made available. The Home Department, Govt. of Maharashtra to take up the issue of vaccination with the Health Department, Govt. of Maharashtra so as to set up Vaccination Centres in all the prisons of Maharashtra."*

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The **Para 17** reads thus;

> ***"17.*** *In as much as the Hon'ble Supreme Court and Hon'ble High Court are in seisin of the matter, this decision of the Committee shall be subject to further orders passed by the Hon'ble Supreme Court and Hon'ble High Court."*

26.17. The surprising part is that the same Judge on **22nd July 2021** presided the Bench hearing the **Suo- motu PIL No.01 of 2021.**

A copy of order dated **22nd July, 2021** is annexed herewith at **Exhibit - KK**

The above said act of Hon'ble Justice A.A. Sayed in being members of recommendation committee on one side and then being a Judge of the Bench hearing the applicability of said recommendations on other side is highly illegal and Contempt of Supreme Court's binding precedent which mandates that no one can be a Judge of his own case.

Hon'ble Supreme court in **Re: C.S. Karnan (2017) 7 SCC 1, Union of India Vs. Ram Lakhan Sharma (2018) 7 SCC 670, State Vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770** have prohibited such Judge to sit on a bench. They are disqualified to hear any matter. The relevant legal position is explained in detail by the Constitution Bench in the case of **Supreme Court Advocates-On-Record Association Vs. Union of India (2016) 5 SCC 808**

Also Relied on:-

i) State Vs. Davinder Pal Singh Bhullar **(2011) 14 SCC 770**

ii) P. K. Ghosh Vs. J. G. Rjput **(1995) 3 SCC 744**

iii) Suresh Ramchandra Palande Vs. The Government of Maharashtra **2015 SCC OnLine Bom 6775.**

26.18. In the case of **Re: C.S. Karnan (2017) 7 SCC 1**, it is ruled as under;

*"55.... Unfortunately, the contemnor appears to be oblivious of one of the fundamental principles of law that **a complainant/informant cannot be a judge in***

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> ***his own complaint.*** *The contemnor on more than one occasion "passed orders purporting to be in exercise of his judicial functions" commanding various authorities of the States to take legal action against various Judges of the Madras High Court on the basis of the allegations made by him from time to time."*

27.DISQUALIFICATION OF HON'BLE C. J. SHRI. DIPANKAR DATTA AS A JUDGE TO DEAL ANY CASE RELATED WITH VACCINES, LOCKDOWN OR RELATED WITH C. M. UDDHAV THACKERAY AND BMC COMMISSIONER IQBAL CHAHAL:-

27.1. That it is time honoured principle that 'Justice is not only to be done but it has to be seen that justice is going to be done.

27.2. That, it is settled law that, when a Judge is disqualified to hear a case and despite pointing out the said fact to the said Judge if he refuses to recuse from the said case then it erodes the facet of rule of law.

27.3. That on 31st January, 2019 CJI N.V. Ramanna himself recused from the hearing of a petition challenging appointment of Shri. M. Nageshwar Rao as the interim director of the C.B.I.

While recusing himself from hearing the matter, Justice Ramana said Rao is from his home state. "Nageswara Rao is from my home state and I have attended his daughter's wedding,".

Link:- https://www.hindustantimes.com/india-news/justice-nv-ramana-recues-from-hearing-on-m-nageswara-rao-s-appointment-as-interim-cbi-director/story-pKEAjTOS7mgL5IsCTvervN.html

27.4. In **P.K. Ghosh Vs. J.G. Rajput (1995) 3 SCC 744**, it is ruled as under;

"We are indeed sad that in these circumstances, B. J. Shethna, J. persisted in hearing the contempt petition, in spite of the specific objection which cannot be called unreasonable on the undisputed facts, and in making the impugned order accepting prima facie the respondent's above noted contention- The more appropriate course for him to adopt was to recuse himself from the Bench hearing this contempt petition, even if it did not occur to him to take that step earlier when he began hearing it. It has become our painful duty to emphasise on this fact most unwillingly. We do so with the fervent hope that no such occasions arise in future which may tend to erode the credibility of the course of administration of justice.

In the fact and circumstances of this case, we are ***afraid that this facet of the rule of law has been eroded. We are satisfied that B. J. Shethna, J., in the facts and circumstances of this case, should have recused himself from hearing this contempt petition,*** *particularly when a specific objection to this effect was taken by the appellants in view of the respondent's case in the contempt petition wherein the impugned order came to be made in his favour.* ***In our opinion, the impugned order is vitiated for this reason alone.***

A basic postulate of the rule of law is that 'justice should not only be done but it must also be seen to

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be done'. ***If there be a basis which cannot be treated as unreasonable for a litigant to expect that his matter should not be heard by a particular Judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should rescue himself from the Bench hearing that matter.*** *This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge, may be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it to happens to be in favour of the opposite party. Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done."*

27.5. In **Supreme Court Advocates-on-Record Vs.Union of India (2016) 5 SCC 808: 2015 SCC OnLine SC 976**, it is ruled as under;

"Recusal – The prayer should be made to the said particular Judge sitting in the Bench.

On the ground of him having conflicting interests.

It is one of the settled principles of a civilised legal system that a Judge is required to be impartial. It is said that the hallmark of a democracy is the existence of an impartial Judge.

It all started with a latin maxim Nemo Judex in Re Sua which means literally – that no man shall be a judge in his own cause. There is another rule which requires a Judge to be impartial. The theoretical basis is explained by Thomas Hobbes in his Eleventh Law of Nature. He said

"If a man be trusted to judge between man and man, it is a precept of the law of Nature that he deal equally between them. For without that, the controversies of men cannot be determined but by war. He therefore, said that is partial in judgment doth what in him lies, to deter men from the use of judges and arbitrators; and consequently, against the fundamental law of Nature, is the cause of war."

"No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest he had in this concern: but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause be held sacred. And ***that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest*** *.... This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid*

the appearance of labouring under such an influence."

27.6. Observation of Justice Esher in **Allinson Vs. General Council of Medical Education and Registration, (1894) 1 QB 750 at p. 758)** which is set out below;

"The question is not, whether in fact he was or was not biased. The Court cannot enquire into that. There is something between these two propositions. In the administration of Justice, whether by a recognized legal Court or by persons who although not a legal public Court, are acting in a similar capacity, public policy requires that in order that there should be no doubt the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased."

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27.7. In **R. Vs. Commissioner of pawing (1941) 1 QB 467**, William J. Observed;

*"I am strongly dispassed to think that **a Court is badly constituted of which an intrested person is a part, whatever may be the number of disintrested peraons. We cannot go into a poll of the Bench."***

27.8. In **High Court of Karnataka Vs. Jai Chaitanya Dasa & Others 2015 (3) AKR 627,** it is ruled as under;

"79. In order to appreciate the case of bias alleged against a Judge, we have to carefully scan the allegations made in the affidavit of the 1st respondent.

***91.** The law on the point of bias is fairly well settled. Lord Denning in the case of Metropolitan Properties Co. (FGC) Ltd., v. London Rent Assessment Panel Committee (1969) 1 QB 577 observed as under:*

"....in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be nevertheless if right minded person would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit. And if he does sit his decision cannot stand."

"The Court will not enquire whether he did in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking, 'the Judge was biased".

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Frankfurter, J. in Public Utilities Commission of The District of Columbia v. Pollak, (1951) 343 US 451 at Pg. 466 has held thus:

"The judicial process demands that a Judge move within the framework of relevant legal rules and the court covenanted modes of though for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole, Judges do lay aside private views in discharging their judicial functions. This achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. But it is also true reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, Judges recuse themselves. They do not sit in judgment.

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The Apex Court in the case of Mank Lal v. Dr. Prem Chand Singhvi & Others reported in MANU/SC/0001/1957 : AIR 1957 SC 425, explained the meaning of the word 'bias' as under:

"4. It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of

the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest however small it may be in a subject- matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle", says Halsbury, "nemo debet case judex in causaproprta sua precludes a justice, who is interested in the subject matter of a dispute, from acting

as a justice therein". In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justice as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

The Apex Court in the case of A.K. Kraipak & Others v. Union of India and Others reported in MANU/SC/0427/1969 : AIR 1970 SC 150, held as under:

"The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

Again in the case of Bhajanlal, Chief Minister, Haryana v. Jindal Strips Limited & Others reported in MANU/SC/0836/1994 : (1994) 6 SCC 19, dealing with 'bias' the Supreme Court has held as under:

"Bias is the second limb of natural justice. Prima facie no one should be a Judge in what is to be regarded as 'sua cause', whether or not he is named as a party. The

decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject matter, from a close relationship or from a tenuous one."

This Court after referring to the aforesaid judgments in the case of M/s. National Technological Institutions (NTI) Housing Co-operative Society Ltd., and Others v. The Principal Secretary to The Government of Karnataka, Revenue Department and Others reported in MANU/KA/1586/2012 : ILR 2012 KAR 3431, at paragraph 39, held as under:

"39. It is of the essence of judicial decisions and judicial administration that judges should act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a Judge might have operated against him in the final decision of the tribunal. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. A mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct.

The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet case judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years, many more subsidiary rules came to be added to the rules of natural justice. The purpose of the rules of natural justice is to prevent miscarriage of justice. Arriving at a just decision is the aim of judicial enquiries. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened, the Court should decide whether the observance of that rule was necessary for a just decision on the facts of that case."

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Bias may be generally defined as partiality or preference. Frank J., in Linahan, Re (1943) 138 F 2nd 650, 652, observed thus:

"If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudiced."

92. *Bias is a condition of mind which sways the judgment and renders the Judge unable to exercise impartiality in a particular case. Bias is likely to operate in a subtle manner. A prejudice against a party also amounts to bias. Reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such subconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, Judges ought to recuse themselves. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that a person was likely to have been biased. A mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias, we have to take into consideration human probabilities and ordinary course of human conduct. The Court looks at the impression which would be given to an ordinary*

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prudent man. Even if he was as impartial as could be, nevertheless if right minded person would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand. For appreciating a case of personal bias or bias to the subject matter, the test is whether there was a real likelihood of bias even though such bias, has not in fact taken place. A real likelihood of bias presupposes at least substantial possibility of bias. The Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. Whether there was a real likelihood of bias, depends not upon what actually was done but upon what might appear to be done. Whether a reasonable intelligent man fully apprised of all circumstances would feel a serious apprehension of bias. The test always is, and must be whether a litigant could reasonably apprehend that a bias attributable to a Judge might have operated against him in the final decision.

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93. *Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done. The initiation of contempt action should be only when there is substantial and mala fide*

interference with fearless judicial action, but not on fair comment or trivial reflections on the judicial process and personnel. The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction."

27.9. In **State of Punjab Vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770 (2012) 4 SCC (Cri.) 496**, it is ruled as under;

"11. In respect of judicial bias, the statement made by Frank J. of the United States is worth quoting:

If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions ". Much harm is done by the myth that, merely by". taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine.

"Constitution of India, Article 226 - BIAS- allegations made against a Judge of having bias - High Court Judge in order to settle personal score passed illegal order against public servant acted against him - Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the

party. However, once such an apprehension exists, the trial/judgment/order etc.

stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial "coram non-judice". - Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as "sua causa. Whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one – No one should be Judge of his own case. This principle is required to be followed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. The failure to adhere to this principle creates an apprehension of bias on the part of Judge.

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10. *There may be a case where allegations may be made against a Judge of having bias/prejudice at any stage of the proceedings or after the proceedings are over. There may be some substance in it or it may be made for ulterior purpose or in a pending case to avoid the Bench if a party apprehends that judgment may be delivered against him. Suspicion or bias disables an official from acting as an adjudicator. Further, if such allegation is made without any substance, it would be*

disastrous to the system as a whole, for the reason, that it casts doubt upon a Judge who has no personal interest in the outcome of the controversy.

(In re: Linahan 138 F. 2nd 650 (1943))

(See also: ***State of West Bengal and Ors. v. Shivananda Pathak and Ors.*** *MANU/SC/0342/1998 : AIR 1998 SC 2050).*

12. *To recall the words of Mr. Justice Frankfurter in* ***Public Utilities Commission of the District of Columbia v. Franklin S. Pollak*** *343 US 451 (1952) 466: The Judicial process demands that a judge moves within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that, on the whole, judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted.*

13. *In* ***Bhajan Lal, Chief Minister, Haryana v. Jindal Strips Ltd. and Ors.*** *MANU/SC/0836/1994 : (1994) 6 SCC 19, this Court observed that there may be some consternation and apprehension in the mind of a party*

and undoubtedly, he has a right to have fair trial, as guaranteed by the Constitution. The apprehension of bias must be reasonable, i.e. which a reasonable person can entertain. Even in that case, he has no right to ask for a change of Bench, for the reason that such an apprehension may be inadequate and he cannot be permitted to have the Bench of his choice. The Court held as under:

Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as 'sua causa', whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one.

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14. *The principle in these cases is derived from the legal maxim nemo debet esse judex in causa propria sua. It applies only when the interest attributed is such as to render the case his own cause. This principle is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. (Vide:* ***Rameshwar Bhartia v. The State of Assam*** *MANU/SC/0039/1952 : AIR 1952 SC 405;* ***Mineral Development Ltd. v. The State of Bihar and Anr.*** *MANU/SC/0015/1959 : AIR 1960 SC*

468; ***Meenglas Tea Estate v. The Workmen*** *MANU/SC/0139/1963 : AIR 1963 SC 1719; and* ***The Secretary to the Government, Transport Department, Madras v. Munuswamy Mudaliar and Ors.*** *MANU/SC/0435/1988 : AIR 1988 SC 2232).*

The failure to adhere to this principle creates an apprehension of bias on the part of the Judge. The question is not whether the Judge is actually biased or, in fact, has really not decided the matter impartially, but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. (Vide: ***A.U. Kureshi v. High Court of Gujarat and Anr.*** *MANU/SC/0209/2009 : (2009) 11 SCC 84; and* ***Mohd. Yunus Khan v. State of U.P. and Ors.*** *MANU/SC/0767/2010 : (2010) 10 SCC 539).*

18. *In* ***Locabail (UK) Ltd. v. Bayfield Properties Ltd. and Anr.*** *(2000) 1 All ER 65, the House of Lords considered the issue of disqualification of a Judge on the ground of bias and held that in applying the real danger or possibility of bias test, it is often appropriate to inquire whether the Judge knew of the matter in question. To that end, a reviewing court may receive a written statement from the Judge. A Judge must recuse himself from a case before any objection is made or if the circumstances give rise to automatic disqualification or he feels personally embarrassed in hearing the case. If, in any other case, the Judge*

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becomes aware of any matter which can arguably be said to give rise to a real danger of bias, it is generally desirable that disclosure should be made to the parties in advance of the hearing. Where objection is then made, it will be as wrong for the Judge to yield to a tenuous or frivolous objection as it will be to ignore an objection of substance. However, if there is real ground for doubt, that doubt must be resolved in favour of recusal. Where, following appropriate disclosure by the Judge, a party raises no objection to the Judge hearing or continuing to hear a case, that party cannot subsequently complain that the matter disclosed gives rise to a real danger of bias.

19. *In Justice* ***P.D. Dinakaran v. Hon'ble Judges Inquiry Committee*** *MANU/SC/0727/2011 : (2011) 8 SCC 380, this Court has held that in India the courts have held that, to disqualify a person as a Judge, the test of real likelihood of bias, i.e., real danger is to be applied, considering whether a fair minded and informed person, apprised of all the facts, would have a serious apprehension of bias. In other words, the courts give effect to the maxim that 'justice must not only be done but be seen to be done', by examining not actual bias but real possibility of bias based on facts and materials.*

The Court further held:

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The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision- making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.'

20. *Thus, it is evident that the allegations of judicial bias are required to be scrutinised taking into consideration the factual matrix of the case in hand. The court must bear in mind that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment/order. Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in*

that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc. stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial 'coram non-judice."

28.NEED FOR IMMEDIATE RECALL OF ORDERS:

28.1. Under this circumstances it is just and necessary that the said unlawful order dated **20.04.2021** be recalled forthwith.

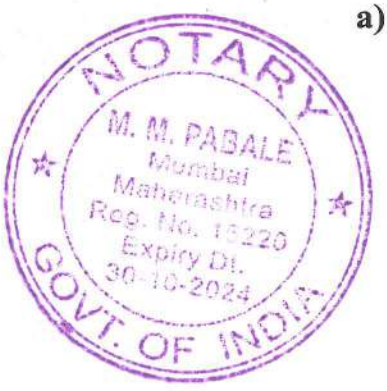
28.2. That Full Bench of Hon'ble Supreme Court in **M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278**, has ruled that 'To perpetuate error is no virtue but to correct it is compulsion of judicial conscience.'

Same view is reiterated in the case of **Mamta Mohanty's case (supra)** where it is ruled as under;

"57...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience."

28.3. That, Hon'ble Supreme Court in **Birla Inmstitute of Technology Vs. State (2019) 4 SCC 513** have suo-motu recalled its own order, when the court realized that the order is violative of law.

29.PRAYER:- It is therefore humbly prayed for:



a) To place the present application before the Bench of which Hon'ble Chief Justice Shri. Dipankar Datta and other Hon'ble Judges mentioned in memo of this petition are not a member because of the reasons of disqualification of said Hon'ble Judges from hearing the issue;

b) To hold that the suo-motu cognizance of the present P.I.L. on **16.04.2021** by Justice Shri. Nitin Jamdar was illegal and against the Constitution Bench's judgment in **Campaign for Judicial Accountability and Reforms v. Union of India, (2018) 1 SCC 196** and in **State of Rajasthan Vs. Prakash Chand (1998) 1 SCC 1**, as only Chief Justice can take the suo-motu cognizance.

c) Allow the present application and after hearing the parties recall and set aside the order dated **20.04.2021** to the effect which mandates for vaccinating the prisoners above 45 years and further be pleased to make it clear that the prisoners cannot be vaccinated against their free and informed consent.

d) Record a specific finding about failure of duty of Advocate General Mr. A. A. Kumbhkoni and P. P. Mr. Deepak Thakare for not bringing the correct legal and factual position to the notice of the Hon'ble Court and thereby inviting the unlawful orders which is violative of fundamental rights of the said prisoners and also having fear of death causing side effects or life time injuries to the said prisoners;

e) Direct State authorities to fix the amount of interim compensation to be paid to the said prisoners whose fundamental rights are violated as per law laid down

in **Ramesh Maharaj's case (1978) 2 WLR 902** which is followed in **D. K. Basu's case 1997 1 SCC 416** which mandates the State to compensate the victim for mistake of a Judge as the Judge is the extended arm of the State;

f) Record a specific finding about disqualification of Hon'ble Chief Justice Shri. Dipankar Datta as Master of Roster to take decision of allocation of Bench in a cases related with Chief Minister of Maharashtra State, Shri. Uddhav Thackeray and Brihanmumbai Municipal Corporation (BMC) Commissioner, Shri. Iqbal Singh Chahal;

f) Pass any other order which this Hon'ble Court deems fit and proper in the fact and circumstances of the case.

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

PLACE: MUMBAI

This day of September, 2021

Advocate for Petitioner

Petitioner

AMOAR KAUL

VERIFICATION

I, **Ambar Koiri**, the petitioner do hereby on solemn affirmation state and declare that what is stated in paragraphs is true to my own knowledge and belief and what is stated in paragraphs is based on the information and legal advice which I believe to be true and correct.

Solemnly affirmed at Bombay)

This day of September, 2021)

BEFORE ME

Shri. Ambar Koiri

(Applicant /Intervener)

ADV. ABHISHEK MISHRA (I-23675)
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BEFORE ME

MANISH M. PABALE
B.Sc. LL.M.
ADVOCATE & NOTARY (GOVT. OF INDIA)
104, Natwar Chambers,
94 Nagindas Master Road,
Fort, Mumbai - 400 001
NOTED & REGISTERED
Page No. 20/24 Sr. No. 112
Date 16 SEP 2021
ID / Aadhar / PAN / DL: 534203880642
Seen Org. / POA / Board Resol.:

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO ____ OF 2021

IN

SUO MOTU PUBLIC INTEREST LITIGATION NO. 1 OF 2021

Ambar H. Koiri
B – 1501, Runwal Hts.
L.B.S. Marg, Mulund (W)
Mumbai – 400 080 **... Applicant /Intervener**

IN THE MATTER BETWEEN

High Court on its motion ... Petitioner

Versus

State of Maharashtra ... Respondent

INTERIM APPLICATION

Dated this _____day of September, 2021

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M. M. PABALE
Mumbai
Maharashtra
Reg. No. 15220
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Mumbai – 400 080 ... **Applicant/Intervener**

IN THE MATTER BETWEEN

High Court on its own motion ... **Petitioner**

Versus

State of Maharashtra ... **Respondent**

VAKALATNAMA

To,

The Registrar,

Criminal Appellate Jurisdiction

Bombay High Court

I, **Mr. Ambar Koiri** the Applicant abovenamed, do hereby severally appoint **Adv. Abhishek Mishra (I-23675)** Advocate Bombay High Court, to act appeal and plead for me in the above matter.

In the witness whereof, I have set my hand to this writing.

Dated this 16th day of September, 2021)

Accepted)

Shri. Ambar Koiri

(Applicant/ Intervener)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

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Ambar H. Koiri

B – 1501, Runwal Hts.

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Mumbai – 400 080 **... Applicant /Intervener**

IN THE MATTER BETWEEN

High Court on its motion ... Petitioner

Versus

State of Maharashtra ... Respondent

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VAKALATNAMA

==========

Dated this _____day of September, 2021

ADV. ABHISHEK MISHRA (I-23675)

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