



# **ADV. MANGESH B. DONGRE**

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**Date: 24.11.2021**

## **Notice to authority under section 60 of Disaster Management Act, 2005**

**To,**

**Kritika Kulhari (I.A.S)**

District Magistrate, cum-Chairman,

District Disaster Management Authority

(DDMA) Solan, District Solan

**Sub:** Notice as per compliance under **Section 60 of Disaster Management Act, 2005** before filing of case in competent court against you under **Section 51(b), 55 of the Act** for passing orders against guidelines and policies of National Authorities and in violation of the mandate of **Section 38 & 39 of the Act.**

**Ref:-** i) Order dated 12<sup>th</sup> November, 2021 passed by the accused Kritika Kulhari bearing No. **SLN/DDMA/COVID-19/2021-33164.**

Under the authorization and instructions of my client Shri. Ambar Koiri, National Steering Committee Member of Awaken India Movement, I, undersigned, serve this notice upon you as under:

1. That you on 12.11.2021 passed an order thereby putting restrictions upon unvaccinated people.
2. That the said order is against the guidelines and policies framed by the National Authority.
3. That, the National Authority in their written communications, affidavit filed before Hon'ble High Court and also the Hon'ble High Courts in catena of decisions made it clear that, there cannot be any discrimination between vaccinated and unvaccinated people.
4. That, as per **Section 38(1) and 39(a) of Disaster Management Act, 2005** the State Authority or District Authority cannot take any decision against the guidelines and directions given by the National Authority. If any State or District Authority takes any decision by disobeying the guidelines of the National Authority then such person and all Government Officers of the office will be guilty of the offences under **section 55, 51(b) of Disaster Management Act, 2005**.

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

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

***38. State Government to take measures. -***

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

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

***39. Responsibilities of departments of the State Government.-***

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

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

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

***“Section 51 in the Disaster Management Act, 2005***

***51. Punishment for obstruction, etc.-***

*Whosoever,*

***(b)*** *refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to 58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the*

*Act, false claim for relief, misappropriation of relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him under the Act without due permission or lawful excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences.*

***55. Offences by Departments of the Government.-***

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

*(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the Department, such officer*

*shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*

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

***“D.O. No. 40-3/2020-DM-I(A)***

*Dear Chief Secretary,*

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

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

*3. It has, however, been reported that local level restrictions on movement are being imposed by various districts/States. Such restrictions are creating problems in inter-State movement of goods and services and are impacting the supply chain, resulting in disruption of economic activities and employment, besides affecting supply of goods and services.*

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

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

6. That my client has already filed a complaint before Home Secretary on **24.11.2021**.

The prayers in the said complaint read thus;

*“It is therefore humbly requested for;*

*(i) Immediate directions to C.B.I. or any authority for registration of case under section 51(b), 55, 54 of Disaster Management Act, 2005 and under section 166, 167, 409, 120(B), 34, 52 etc., of IPC against Smt. Kritika Kulhari (I.A.S.), District Magistrate, Solan for passing an unlawful order and thereby discriminating the citizens on the basis of their vaccination status and acting in utter disregard and defiance of guidelines and policies issued by National Authorities, which mandates that there cannot be any discrimination on the basis of vaccination status of a person.*

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

**OR**

*iii) Treating this complaint as compliance of section 60 of Disaster Management Act, 2005 as a permission to complainant to file case against accused before the competent court.”*

A copy of said complaint is annexed herewith at **Annexure \_\_\_\_**.

7. That, you are hereby called upon to refrain from committing further offences and to forthwith withdraw your unlawful orders.
8. If you failed to act according to notice, then my client will take appropriate proceedings against you in the competent court.
9. Please treat this notice a compliance of **Section 60 of the Disaster Management Act, 2005**

**Section 60 of the Disaster Management Act, 2005** reads thus;

*“60. Cognizance of offences.—No court shall take cognizance of an offence under this Act except on a complaint made by—*

*(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or*

*(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.”*

- 10.** I hope, good wisdom shall prevail over you and you will respect the constitutional rights and liberties of citizen and will not put their life in to danger.

**Sincerely**



**Adv. Mangesh B. Dongre**