

# DRAFT OF CRIMINAL COMPLAINT

IN THE COURT OF JUDICIAL MAGISTRATE  
CRIMINAL COMPLAINT CASE NO. \_\_\_\_\_ OF 2022

**ABCD**

**R/O** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**...Complainant**

**Vs.**

**(1) Shri ADAR POONAWALLA** )

Chief Executing Officer & Executive Director, )

Serum Institute of India Pvt. Ltd. )

Having his registered office at )

212/2, Off Soli Poonawalla Road, )

Hadapsar, Pune, Maharashtra-411028. )

**(2) Serum Institute of India Pvt. Ltd.** )

And all its Directors )

**(3) Shri. SUNIL CHAVAN** )

District Magistrate & Collector, )

Aurangabad – 431001. )

**(4) DR. RANDEEP GULERIA** )

Director, AIIMS, New Delhi. )

All India Institute of Medical Sciences )

Ansari Nagar, New Delhi-110029. )

**(5) DR. V.G. SOMANI** )

Drug Controller General of India )

D.A. Bhawan, Kotla Road, New Delhi 110002. )

**(6) SHRI IQBAL CHAHAL** )

Municipal Commissioner. )

M.C.G.M. Annex Building, )

Mahapalika Marg No. 1, )

Fort, Mumbai – 400 001. )

**(7) SHRI SITARAM KUNTE** )

Ex-Chief Secretary, )

General Administrative Department, )

6<sup>th</sup> Floor, Mantralaya, Mumbai – 400032 ) ...**ACCUSED**

**Complaint under section 190, r/w 200, 202, 204 of Cr.P.C for acting against the accused under section 420, 409, 166, 167, 120(B) & 34 of the Indian Penal code.**

**1.** That the complainant is the R/o of the abovesaid address and is working in the company/ Government Job/ Private Business/ etc. [Give details of your profession]

**2.** That on \_\_\_\_\_, the accused No. 3 District Magistrate (Collector) had issued a letter/circular/order thereby made getting COVID-19 vaccines a compulsory requirement for moving in local trains, Aero planes, offices, malls, etc., It was actually impossible for unvaccinated people to move anywhere and their sources of livelihood were also taken away due to such mandates.

A copy of the said order/circular/letter issued by the accused No. 3,6 & 7 is annexed at Exhibit No.\_\_\_\_\_

3. That the Government also ran a program of 'घर घर दस्तक' (Ghar Ghar Dastak) for vaccinating all citizen.

4. That in addition to such unlawful restrictions and unlawful mandates the complainant/son/daughter were compelled to take the COVID-19-19 vaccines because of the false narrative run by the Health Ministry and the accused No. 4 Dr. Randeep Guleria & accuse No. 5 Dr. V.G. Somani that the vaccines are completely safe and cause no serious side-effects; and that for any side effect there is a definite treatment available with them.

5. Similar claims were made via the Question and Answers prepared by the central Government and the State Governments.

A copy of the Questions and Answers published by the Health Ministry is annexed at Exhibit No.\_\_\_\_ and reads thus: -

***“Ministry of Health and Family Welfare***

*Frequently Asked Questions Regarding the COVID-19-19 Vaccination*

*Posted On: 08 JUN 2021 10:17AM by PIB Mumbai*

***Can people with allergies take the Kovid-19 vaccine?***

***Dr Paul :*** *A person with significant allergies should only get the COVID-19 vaccine after medical advice. However, if you have a minor allergy like cold, skin allergy, you should not hesitate to take the vaccine.*

***Dr. Guleria :*** *People who are already taking medication for allergies should not stop taking it, they should continue their medication regularly even during the vaccination period. It is important to know that all immunization centers have arrangements in place to manage vaccine allergy. That's why we*

**advise you to continue taking the vaccine even if you have a severe allergy.**

***Can pregnant women take the COVID-19-19 vaccine?***

***Dr. Paul : There are very clear guidelines on this and the vaccine is completely safe for breastfeeding mothers. There is no reason to fear. There is no need to stop breastfeeding the baby before or after***

***vaccination. ( <https://pib.gov.in/PressReleasePage.aspx?PRID=1719972> )***

***Is it normal to have a blood clot after receiving a dose of the vaccine?***

***Dr Paul : There have been a few cases of such complications, particularly with the AstraZeneca vaccine. In Europe, such cases were observed in part due to their youth, their lifestyle, physique and genetic makeup. But I would like to assure you that after a proper study of this data in India, the incidence of blood clots is found to be very negligible, so there is no reason to worry about it. Compared to our country, the rate of this complication is 30 times higher in European countries.***

***Dr Guleria : It has already been observed that the incidence of blood clots after surgery is lower in Indians compared to Americans and Europeans. This side effect called thrombosis or thrombocytopenia caused by the vaccine is very rare in India and much less than in Europe. Therefore, there is no reason to fear. Treatments are also available for this and can be used if diagnosed early.***

6. That the complainant/ son/ daughter took the prescribed vaccines because of the two reasons: -

(a) Pressure/ force/ coercion by the state authorities i.e. accused No. 3, 6, & 7 that the unvaccinated person should not be allowed entry to their offices, local trains etc. and their various services be discontinued which will cause them a serious problem of earning livelihood.

**AND**

(b) Deception/ cheating by the state authorities and also by accused No. 4 & 5 that the COVID-19 vaccines are completely safe.

7. That, the complainant faced unlawful restraint at various places, local train, mall, Airport, Officers Etc., Due to which complainant suffered mental torture, annoyance hardship, humiliation and inconvenience and also suffered monetary losses. The accused are liable for action under section 166,167,341,342, 120(B), etc., of Indian Penal Code. The accused are also liable to pay compensation to the complainant for this reason. **[Madan Mili Vs. UOI 2021 SCC OnLine Gau 1503, Jacob Puliyel v. Union of India, 2022 SCC OnLine SC 533, Registrar General, High Court of Meghalaya Vs. State of Meghalaya 2021 SCC OnLine Megh 130]**

8. That, when vaccination was not mandatory as per law then bringing any mandate to make it indirectly mandatory is not permissible.

In **NOIDA Entrepreneurs Assn. v. NOIDA, (2011) 6 SCC 508**, it is ruled as under;

*“25. It is a settled proposition of law that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud, which means “whenever a thing is prohibited, it is prohibited whether done directly or indirectly”. (See Swantraj v. State of Maharashtra [(1975) 3 SCC 322 : 1974 SCC (Cri) 930 : AIR 1974 SC 517] , CCE v. Acer India Ltd. [(2004) 8 SCC 173] and Sant Lal*

*Gupta v. Modern Coop. Group Housing Society Ltd. [(2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904 : JT (2010) 11 SC 273] )*

**26.** *In Jagir Singh v. Ranbir Singh [(1979) 1 SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381] this Court has observed that an authority cannot be permitted to evade a law by “shift or contrivance”. While deciding the said case, the Court placed reliance on the judgment in Fox v. Bishop of Chester [(1824) 2 B&C 635 : 107 ER 520] , wherein it has been observed as under: (Jagir Singh case [(1979) 1 SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381] , SCC p. 565, para 5)*

*“5. ... ‘To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.’ [Ed.: As observed in Maxwell on the Interpretation of Statutes, 11th Edn., p. 109. See SCC p. 565, para 5 of Jagir Singh case, (1979) 1 SCC 560.]”*

**9.** That, the complainant/ his son/ daughter/ father/ mother had suffered serious health problems/ death due to the side effects of the COVID-19-19 vaccines [Covishield/ Covaxin Etc.]

The details of the side-effects are as under: - [Mention your problems]

- (i) Blood clotting;
- (ii) Paralysis,
- (iii) Joint pain,
- (iv) Heart attack,
- (v) Diabetes,
- (vi) Neurological problems,
- (vii) Kidney Failure,
- (viii) AIDS (Acquired Immunodeficiency Disorder Syndrome),
- (ix) Deafness,

- (x) Memory loss,
- (xi) Loss of smell.
- (xii) Cancer.
- (xiii) Acute Immune Disorder
- (xiv) Menstrual complications
- (xv) Continuous headaches

**10.** The complainant approached local doctors for the treatment of the aftereffects of the vaccination. The bills and other documents of the said treatment are annexed herewith at Exhibit No. \_\_\_\_\_.

**11.** That before being given the vaccines, the complainant/ son/ daughter etc. were not given any idea, information regarding such side effects. In fact, as per COVID-19-19 vaccination guidelines issued by the Government of India it was mandatory for the doctors, AASHA Workers and others who administered vaccines to give the details of the side effects associated along with the vaccines. A copy of the relevant pages of said guidelines are annexed at **Exhibit** “ \_\_\_\_\_ ”

Union of India in its affidavit dated **13.01.2021** in the matter before Supreme Court in **Writ Petition (Civil) No 580 of 2021** titled as **Evara Foundation Vs. Union of India & Ors.**, had said thus;

*“19. Counselling before vaccination: It is humbly submitted that Government of India has formulated Operational Guidelines for COVID-19 vaccination. As per these Guidelines, all beneficiaries are to be informed about adverse events which may occur after COVID-19 vaccine.*

*Ref: Covid-19 Vaccine Operational Guidelines available at MoHFW website at:*

A copy of the said Affidavit can be downloaded at following link;

<https://drive.google.com/file/d/1dpTYMi-D6VerkgFDRxIAqDLuLpKa4hA7/view?usp=sharing>

12. That the law of informed consent is very well settled by UNO in **Universal Declaration on Bioethics and Human Rights 2005** and by the judgment in Montgomery.

13. The relevant clauses of the **Universal Declaration on Bioethics and Human Rights 2005** reads thus;

Relevant Articles reads thus;

*“Article 3 – Human dignity and human rights*

*1. Human dignity, human rights and fundamental freedoms are to be fully respected.*

*2. The interests and welfare of the individual should have priority over the sole interest of science or society.*

*Article 6 – Consent*

*1. Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be express and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice.*

*2. Scientific research should only be carried out with the prior, free, express and informed consent of the person concerned. The information should be adequate, provided in a comprehensible form and should include modalities for*



*withdrawal of consent. Consent may be withdrawn by the person concerned at any time and for any reason without any disadvantage or prejudice. Exceptions to this principle should be made only in accordance with ethical and legal standards adopted by States, consistent with the principles and provisions set out in this Declaration, in particular in Article 27, and international human rights law.*

*3. In appropriate cases of research carried out on a group of persons or a community, additional agreement of the legal representatives of the group or community concerned may be sought. In no case should a collective community agreement or the consent of a community leader or other authority substitute for an individual's informed consent.*

***Article 7 – Persons without the capacity to consent***

*In accordance with domestic law, special protection is to be given to persons who do not have the capacity to consent:*

*(a) authorization for research and medical practice should be obtained in accordance with the best interest of the person concerned and in accordance with domestic law. However, the person concerned should be involved to the greatest extent possible in the decision-making process of consent, as well as that of withdrawing consent;*

*(b) research should only be carried out for his or her direct health benefit, subject to the authorization and the protective conditions prescribed by law, and if there is no research alternative of comparable effectiveness with research participants able to consent. Research which does not have potential direct health benefit should only be undertaken by way of exception, with the utmost restraint, exposing the person only to a minimal risk and minimal burden and, if the research is expected to contribute to the health benefit of*

*other persons in the same category, subject to the conditions prescribed by law and compatible with the protection of the individual's human rights. Refusal of such persons to take part in research should be respected.*

***Article 8 – Respect for human vulnerability and personal integrity***

*In applying and advancing scientific knowledge, medical practice and associated technologies, human vulnerability should be taken into account. Individuals and groups of special vulnerability should be protected and the personal integrity of such individuals respected.*

***Article 16 – Protecting future generations***

*The impact of life sciences on future generations, including on their genetic constitution, should be given due regard.*

*Application of the principles*

***Article 18 – Decision-making and addressing bioethical issues***

- 1. Professionalism, honesty, integrity and transparency in decision-making should be promoted, in particular declarations of all conflicts of interest and appropriate sharing of knowledge. Every endeavour should be made to use the best available scientific knowledge and methodology in addressing and periodically reviewing bioethical issues.*
- 2. Persons and professionals concerned and society as a whole should be engaged in dialogue on a regular basis.*
- 3. Opportunities for informed pluralistic public debate, seeking the expression of all relevant opinions, should be promoted.”*

14. Similar provisions are available under the International Covenant on Civil and Political Rights [ICCPR].

**Article 7** - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, **no one shall be subjected without his free consent to medical or scientific experimentation.**

15. That Hon'ble Supreme Court in the case of **Ram Deo Chauhan v. Bani Kanta Das [Ram Deo Chauhan v. Bani Kanta Das, (2010) 14 SCC 209]** had ruled that as per Human Rights Protection Act, 1993 Indian Citizen are entitled for all protections available under international covenants. Said judgment is further upheld by the Nine Judge Bench of the Supreme Court in **K.S. Puttaswamy vs. Union of India, (2017) 10 SCC 1.**

16. That, in **Montgomery Vs. Lanarkshire Health Board [2015] UKSC 11,** it is ruled as under;

*“78. Another current document (Consent: patients and doctors making decisions together (2008)) describes a basic model of partnership between doctor and patient:*

***“The doctor explains the options to the patient, setting out the potential benefits, risks, burdens and side effects of each option, including the option to have no treatment. The doctor may recommend a particular option which they believe to be best for the patient, but they must not put pressure on the patient to accept their advice. The patient weighs up the potential benefits, risks and burdens of the various options as well as any non-clinical issues that are relevant to them. The patient decides whether to accept any of the options and, if so, which one.”** (para 5)*

*In relation to risks, in particular, the document advises that **the doctor must tell patients if treatment might result in a***

serious adverse outcome, even if the risk is very small, and should also tell patients about less serious complications if they occur frequently (para 32). The submissions on behalf of the General Medical Council acknowledged, in relation to these documents, that an approach based upon the informed involvement of patients in their treatment, rather than their being passive and potentially reluctant recipients, can have therapeutic benefits, and is regarded as an integral aspect of professionalism in treatment.

89. Three further points should be made. First, it follows from this approach that the assessment of whether a risk is material cannot be reduced to percentages. The significance of a given risk is likely to reflect a variety of factors besides its magnitude: for example, the nature of the risk, the effect which its occurrence would have upon the life of the patient, the importance to the patient of the benefits sought to be achieved by the treatment, the alternatives available, and the risks involved in those alternatives. The assessment is therefore fact-sensitive, and sensitive also to the characteristics of the patient.

77. These developments in society are reflected in professional practice. The court has been referred in particular to the guidance given to doctors by the General Medical Council, who participated as interveners in the present appeal. One of the documents currently in force (Good Medical Practice (2013)) states, under the heading “The duties of a doctor registered with the General Medical Council”:

“Work in partnership with patients. Listen to, and respond to, their concerns and preferences. Give patients the information they want or need in a way they can understand.

**Respect patients' right to reach decisions with you about their treatment and care.**

80. In addition to these developments in society and in medical practice, there have also been developments in the law. Under the stimulus of the Human Rights Act 1998, the courts have become increasingly conscious of the extent to which the common law reflects fundamental values. As Lord Scarman pointed out in *Sidaway's case*, these include the value of self-determination (see, for example, *S (An Infant) v S* [1972] AC 24, 43 per Lord Reid; *McCull v Strathclyde Regional Council* 1983 SC 225, 241; *Airedale NHS Trust v Bland* [1993] AC 789, 864 per Lord Goff of Chieveley). As well as underlying aspects of the common law, that value also underlies the right to respect for private life protected by article 8 of the European Convention on Human Rights. **The resulting duty to involve the patient in decisions relating to her treatment has been recognised in judgments of the European Court of Human Rights, such as *Glass v United Kingdom* (2004) EHR 341 and *Tysiack v Poland* (2007) 45 EHR 947**, as well as in a number of decisions of courts in the United Kingdom. The same value is also reflected more specifically in other international instruments: see, in particular, article 5 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, concluded by the member states of the Council of Europe, other states and the European Community at Oviedo on 4 April 1997.

82. **In the law of negligence, this approach entails a duty on the part of doctors to take reasonable care to ensure that a patient is aware of material risks of injury that are inherent**

*in treatment. This can be understood, within the traditional framework of negligence, as a duty of care to avoid exposing a person to a risk of injury which she would otherwise have avoided, but it is also the counterpart of the patient's entitlement to decide whether or not to incur that risk.* The existence of that entitlement, and the fact that its exercise does not depend exclusively on medical considerations, are important. They point to a fundamental distinction between, on the one hand, the doctor's role when considering possible investigatory or treatment options and, on the other, her role in discussing with the patient any recommended treatment and possible alternatives, and the risks of injury which may be involved.

83. The former role is an exercise of professional skill and judgment: what risks of injury are involved in an operation, for example, is a matter falling within the expertise of members of the medical profession. But it is a non sequitur to conclude that the question whether a risk of injury, or the availability of an alternative form of treatment, ought to be discussed with the patient is also a matter of purely professional judgment. The doctor's advisory role cannot be regarded as solely an exercise of medical skill without leaving out of account the patient's entitlement to decide on the risks to her health which she is willing to run (a decision which may be influenced by non-medical considerations). *Responsibility for determining the nature and extent of a person's rights rests with the courts, not with the medical professions.*

87. The correct position, in relation to the risks of injury involved in treatment, can now be seen to be substantially that adopted in *Sidaway* by Lord Scarman, and by Lord Woolf MR in *Pearce*, subject to the refinement made by the High Court

of Australia in *Rogers v Whitaker*, which we have discussed at paras 77-73. **An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments.** The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.

90. Secondly, the doctor's advisory role involves dialogue, the aim of which is to ensure that the patient understands the seriousness of her condition, and the anticipated benefits and risks of the proposed treatment and any reasonable alternatives, so that she is then in a position to make an informed decision. This role will only be performed effectively if the information provided is comprehensible. **The doctor's duty is not therefore fulfilled by bombarding the patient with technical information which she cannot reasonably be expected to grasp, let alone by routinely demanding her signature on a consent form.**

116. As NICE (2011) puts it, "Pregnant women should be offered evidence-based information and support to enable them to make informed decisions about their care and treatment" (para 1.1.1.1). Gone are the days when it was thought that, on becoming pregnant, a woman lost, not only

*her capacity, but also her right to act as a genuinely autonomous human being.”*

**17. That in Ajay Gautam Vs. Amritsar Eye Clinic & Ors. 2010 SCC OnLine NCDRC 96, guilty Doctor/Hospital were directed to pay compensation to the victim for not getting his signature of a written FORM of informed consent.**

**18. That the mandates/restrictions/circulars/mobile caller tune etc. were not having any mention of the death causing and serious side effects or any side effects of the vaccines.**

**19. That the caller tune of the mobile which is set by the central Government is as under;**

*“नमस्कार नया साल कोविड-19 वैक्सीन के रूप में आशा की नई किरण लेकर आया है, भारत में बनी वैक्सीन सुरक्षित और प्रभावी है और कोविड के विरुद्ध हमें प्रतिरोधक समता देती है इसीलिए भारतीय वैक्सीनो पर भरोसा रखे, अपनी बारी आने पर वैक्सीन अवश्य ले और अफवाहों पर विश्वास ना करे और हां याद रखे दवाई भी और कड़ाई भी वैक्सीन के साथ साथ ध्यान रखे की हमेशा मास्क पहने दुसरो से दो गज की दुरी बना के रखे और अपने हाथो को बार बार अच्छी तरीके से धोये। अधिक जानकारी के लिए <http://www.mohfw.gov.in> पर जाए या राष्ट्र हेल्प लाइन 1078.”*

**20. That Hon’ble Supreme Court & High Court had made it clear that all such mandates to force vaccination were unconstitutional, illegal and null & void.**

**(i) Jacob Puliyel Vs. Union of India and Ors. 2022 SCC OnLine SC 533.**

**(ii) Re: Dinthar Incident Vs. State of Mizoram and Ors. 2021 SCC OnLine Gau 1313.**



(iii) **Madan Mili Vs. Union of India, 2021 SCC OnLine Gau 1503.**

(iv) **Dr. Aniruddha Babar Vs. State of Nagaland 2021 SCC OnLine Gau 1504.**

(v) **Registrar General Vs. State of Meghalaya 2021 SCC OnLine Megh 130**

(vi) **Feroze Mithiborwala Vs. State of Maharashtra and Ors. 2022 SCC OnLine Bom 457.**

21. That Hon'ble High Court in **Registrar General Vs. State of Meghalaya 2021 SCC OnLine Megh 130**, had clearly ruled that if any person is vaccinated under deception or coercion then the guilty officials, vaccine companies etc. can be prosecuted in civil & criminal proceedings and they are liable to pay compensation to the victims.

22. That the complainant (or his family members) who relied on upon the accused had suffered a loss of life (death), Paralysis, etc. The said loss cannot be compensated in any terms.

23. That the accused is not having any defence of good faith.

***“Section 52 in The Indian Penal Code***

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

24. In **Noor Mohammad Vs. Nadirshah Ismailshah Patel 2004 ALL MR (Cri) 42** it is ruled as under;

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

***complaint so presented before him** unless there are the other grounds for acting otherwise which has to be justified by reasons recorded in writing.”*

25. That the accused No. 1 & 2 are manufacturer of vaccine.

26. That in March 2021 in a European country i.e. in Norway, one person died due to side effects of Covishield (Astrazeneca) vaccine.

Considering this seriousness the said Government and around 21 European Countries have banned the Covishield vaccines. On the contrary the accused in conspiracy with the owners of the vaccine company hatched criminal conspiracy and they brought unlawful and unconstitutional mandates and thereby forced the complainant/ their son/ daughter to get those vaccines.

27. All accused deliberately suppressed the side effects of the vaccines and ran false narratives that the vaccines are completely safe. They went ahead to misuse the public machinery for giving wrongful profits worth thousands of crores to the accused vaccine companies at the cruel cost of loss of life and money of the common man.

This is a sufficient ground to prove the malafides of the accused.

28. That the accused Adar Poonawalla and Serum Institute India Pvt. Ltd. in their affidavit filed before the Hon'ble High Court in the case of **Serum Institute vs Yohan Tengra & Ors [Civil Suit No.3253 of 2022]** , also made false statement that the Covishield vaccine manufactured by them is safe and the person calling it as dangerous or causing death should be restrained from making any such statements.

The falsity of abovesaid version is ex-facie proved from the stand taken by the Central Government that the covishield vaccine is causing deaths.

In a recent publication by Health Ministry on Frequently Asked Questions (FAQs), the following side effects are connected to covid vaccines:-

<https://www.mohfw.gov.in/pdf/FAQsCOVID19vaccinesvaccinationprogramWebsiteupload27Sep.pdf>

**“Question: What are expected immediate and delayed side effects of this vaccine?”**

Covishield®: Some mild symptoms may occur like injection site tenderness, injection site pain, headache, fatigue, myalgia, malaise, pyrexia, chills and arthralgia, nausea. Very rare events of demyelinating disorders, thrombosis with thrombocytopenia syndrome (TTS) have been reported following vaccination with this vaccine. **Any specific Information for vaccine beneficiaries in relation to Covishield® vaccine?**

A vaccine beneficiary vaccinated with any of the COVID-19 vaccines, particularly Covishield® and having one or more of the symptoms mentioned below should be suspected to have Thrombosis and Thrombocytopenia Syndrome (TTS). Persons taking Covishield should be vigilant for atleast 30 days after taking vaccine for the following symptoms:

Severe and persistent headaches with or without vomiting (in the absence of previous history of migraine or chronic headache)

- o Shortness of breath
- o Chest Pain o Pain in limbs / pain on pressing the limbs or swelling in the limbs (arm or calf)
- o Multiple, pinhead size red spots or bruising of skin in an area beyond the injection site
- o Persistent abdominal pain with or without vomiting

- o Seizures in the absence of previous history of seizures with or without vomiting
- o Weakness/paralysis of limbs or any particular side or part of the body (includes cranial nerve involvements)
- o Persistent vomiting without any obvious reason
- o Blurred vision/ pain in eyes/Diplopia
- o Mental status change / encephalopathy/ depressed level of consciousness
- o Any other symptom or health condition which is of concern to the recipient or the family

**Contraindications for the administration of COVISHIELD in the context of TTS:**

Past history of major venous and arterial thrombosis occurring with thrombocytopenia.

Covaxin®: Some mild symptoms AEFIs may occur like injection site pain, headache, fatigue, fever, body ache, abdominal pain, nausea and vomiting, dizziness-giddiness, tremor, sweating, cold, cough and injection site swelling.

**Sputnik V:** Short term general: Chills, fever, arthralgia, myalgia, asthenia, general discomfort, headache

➤ Local: injection site tenderness, hyperaemia, swelling

➤ Less common: nausea, dyspepsia, loss of appetite,

➤ Occasionally: enlarged regional lymph nodes

**CorBEvax:**

Systemic:

Common:

Fever/Pyrexia, Headache, Fatigue, Body Pain, Myalgia, Nausea

Uncommon: Arthralgia, urticaria, Chills, Lethargy

Local:

Common: Injection Site Pain (Very common), Injection site erythema

Uncommon: Injection site swelling, Injection site rash, Injection site pruritis

Rare: Injection site irritation

**Covovax:**

Very Common: Injection site pain, Injection site tenderness, Feeling tired (fatigue) , Malaise ,Headache , Fever , Soreness of muscles , Joint pain , Nausea or vomiting Common: Chills, Injection site redness , Injection site swelling , Injection site induration (hardness), Pain in extremity (legs or arms) , Body ache Uncommon: Asthenia (weakness or lack of energy), Injection site pruritus (itching) , Injection site rash , Rash , Skin redness , Itching , Hives , Enlarged lymph nodes , Back pain Rare: Dizziness (feeling dizzy) , Sleepiness

**ZyCoV-D :**

Pain at injection site, redness, swelling and itching, headache, fever, muscle pain, and fatigue, Arthralgia, Back pain, Muscle spasms, Myalgia, Musculoskeletal pain, Neck pain, Vertigo, Diarrhoea, Gastritis, Gastroesophageal reflux disease, Nausea, Vomiting, Asthenia, Chills, Eye irritation, Abdominal distension, Abdominal pain, Fatigue, Pain, Pyrexia, Nasopharyngitis, Pain in extremity, Ageusia, Anosmia, Cerebral infarction, Dizziness, Headache, Cough, Dyspnoea, Nasal dryness, Oropharyngeal pain, Rhinorrhoea, Sneezing.

**Source:** As per the data information provided by vaccine manufacturer”

29. This shows the active involvement of accused company Serum Institute in vaccinating people by cheating and misrepresentation. They are also involved in suppressing truth. Hence, they are liable to be punished severely and they are also liable to complaint.

30. That the accused have also spread false narrative that the unvaccinated people are spreading infection and only vaccinated people are safe. This claim was found to be false by the hon’ble Supreme Court of India and the High Courts. [**Jacob Puliye v. Union of India, 2022 SCC OnLine SC 533 & Madan Mili Vs. Union of India 20201 SCC OnLine Gau 1503**]

31. The Hon’ble High Court in the case of **Raman Lal v. State of Rajasthan, 2000 SCC OnLine Raj 226** it is stated as: -

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

32. Similar law has been laid down by the Hon'ble Bombay High Court in the case of CBI VS Bhupendra Champaklal Dalal 2019 SCC OnLine Bom 140 it is ruled as under;

**CHARGE FOR THE OFFENCE OF CRIMINAL BREACH OF TRUST :-**

*Hon'ble Apex Court in the case of Ram Narain Poply Vs. Central Bureau of Investigation, AIR 2003 SC 2748, wherein the Hon'ble Apex Court has, at length, dealt with the charge of criminal conspiracy, in the backdrop of the similar allegations, in a case arising out of the decision of this Court in the matter of Harshad Mehta and others. While dealing with the essential ingredients of the offence of criminal conspiracy, punishable u/s. 120 B IPC, the Hon'ble Court was, in paragraph No.349 of its Judgment, pleased to hold that, "349. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference."*

*[Emphasis Supplied]*

*177. This Court can also place reliance on another landmark decision of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Som Nath Thapa, (1996) 4 SCC 659,*

wherein the Hon'ble Apex Court was pleased to observe as follows :-

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use." [[See State of Kerala v. P. Sugathan](#), (2000) 8 SCC 203, SCC p. 212, para 14]." [Emphasis Supplied]

178. While dealing with the offence of criminal conspiracy in respect of the financial frauds, the Hon'ble Apex Court in the case of Ram Narain Poply (*supra*), in paragraph No.344, was pleased to observe that,

"344. .... The law making conspiracy a crime, is designed to curb immoderate power to do mischief, which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators



*and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."*

*[Emphasis Supplied]*

179. In the context of [Section 10](#) of the Indian Evidence Act, it was held by the Hon'ble Apex Court, in paragraph No.348, that, the expression "in furtherance to their common intention" in [Section 10](#) is very comprehensive and appears to have been designedly used to give it a wider scope than the words "in furtherance of" used in the English Law : with the result anything said, done or written by co- conspirator after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is a relevant fact only.

186. The Hon'ble Apex Court has further quoted with approval in paragraph No.101, the observations made in the case of State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600, wherein it was held that, "The cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances."

33. Section 10 of the **Indian Evidence Act, 1872** reads thus:

**“Section 10 in The Indian Evidence Act, 1872**

**“10. Things said or done by conspirator in reference to common design -Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or**

*written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact as against each of the persons believed to be so conspiring. as well as for the purpose of proving the existence of the conspiracy as for the purpose showing that any such persons was a party to it.*

***Illustration:-***

***Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the '[Government of India].***

*The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money Chad collected at Calcutta, and the contents of a letter written by H giving which an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.*

**34.** Hence the following offences are attracted against the accused under section **166, 167, 420, 409, 115, 302, 304, 120(B), 34,** etc. of the Indian Penal Code.

**35.** Section 166 of the Indian Penal Code is invoked for bringing unlawful mandates, while Section 167 is invoked for making false records to cause injury

to the reputation and liberty of the unvaccinated people by stating that only they can spread the infection.

**36. That the offence committed by the accuse No. (vi) & (vii) on the duty of being a public servant are not a part of their official duty and therefore they are not entitled for any protection and no sanction is required to prosecute them.**

**36.1. The Hon'ble Supreme Court in the case of S. Shivakumar and Others vs. State of Karnataka 2021 SCC OnLine Kar 12526, it is ruled as under;**

*“29. This Court also would like to refer to the judgment of the Apex Court in the case of Choudhury Parveen Sultana v. State of West Bengal reported in (2009) 2 SCC (Cri) 122 regarding Section 197 of Cr.P.C, wherein the object, nature and scope of Section 97 of Cr.P.C. has been reiterated. Wherein it is held that all acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 of Cr.P.C. Further, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. The underlying object of Section 197 Cr.P.C. is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered dehors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution*

*for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.”*

**36.2.** The Hon’ble Supreme Court in the case of **Noorula Khan Vs Karnataka State Pollution Control board & Anr. 2021 SCC OnLine SC 601**, it is ruled as under;

*“9. The decision relied upon by the High Court in Writ Petition No. 30610 of 2008 was directly under challenge before this Court in V.C. Chinnappa Goudar v. Karnataka State Pollution Control Board1. In that decision, this Court considered the scope and applicability of Section 48 of the Water Act and found that “the Head of the Department” by virtue of deeming provision would be deemed to be guilty and, as such, the protection under Section 197 of the Code would stand excluded. The relevant discussion on the point was:*

*“6. As against the above submission, Mr. A. Mariarputham, learned Senior Counsel for the respondent by drawing our attention to Section 5 CrPC and Section 48 of the 1974 Act, contended that under Section 48 there is a rebuttable presumption insofar as the guilt of the offence is concerned as against the Head of the Department in respect of any offence said to have been committed by any department of the Government and that, if Section 197 sanction is held to be mandatory even for proceeding against Head of the Department of Government Department, the same would directly conflict with Section 5 CrPC and consequently Section 60 of the 1974 Act gets attracted. According to the learned Senior Counsel, if the application of Section 197 is held to be attracted and in the event of the sanction being refused by prosecution that by itself would be an impediment*

*for the operation of the deemed fiction contained in Section 48 of the 1974 Act. The learned Senior Counsel, therefore, contended that in such an event there would be a direct conflict of Section 48 of the 1974 Act with Section 197 CrPC and consequently Section 60 of the 1974 Act would come into play which has an overriding effect on any other enactment other than the 1974 Act.*

*7. Having considered the respective submissions, we find force in the submission of Mr. A. Mariarputham, learned Senior Counsel for the respondents. As rightly pointed out by the learned Senior Counsel under Section 48, the guilt is deemed to be committed the moment the offence under the 1974 Act is alleged against the Head of the Department of a government department. It is a rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974 Act would in any manner enable the Head of the Department of the government department to seek umbrage under Section 197 CrPC and such a course if permitted to be made that would certainly conflict with the deemed fiction power created under Section 48 of the 1974 Act.*

*8. In this context, when we refer to Section 5 CrPC, the said section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Criminal Procedure Code would affect any special or local laws providing for any special form or procedure prescribed to be*

*made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. If one can visualise a situation where Section 197 CrPC is made applicable in respect of any prosecution under the 1974 Act and in that process the sanction is refused by the State by invoking Section 197 CrPC that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of a government department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application of Section 197 CrPC by resorting to reliance placed by Section 4(2) CrPC would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the 1974 Act would automatically come into play which has an overriding effect over any other enactment other than the 1974 Act.”*

**11.** *What emerges from these decisions of this Court is:*

*a. If the violation of the provisions of the Water Act was at the hands of a Department, subject to the satisfaction of the requirements under Section 48 of the Water Act, “the Head of the Department” would be deemed to be guilty. This would of course be subject to the defences which are available to him to establish whether the offence in question was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*

*b. By virtue of the decision of this Court in V.C. Chinnappa Goudar (Supra), because of deeming fiction under Section 48 of the Water Act, the protection under Section 197 of the Code*

would not be available and the matter ought to be considered de hors such protection.

c. If the concerned public servant happens to be a Chief Officer or Commissioner of a Municipal Council or Town Panchayat, he cannot strictly be called “the Head of the Department of the Government”. Therefore, in terms of decision of this Court in *B. Heera Naik (Supra)*, the matter would not come under Section 48 of the Water Act. But the matter would come directly under Section 47 of the Water Act. According to said decision, even in such cases, the deeming fiction available under Section 47 of the Water Act would disentitle the public servant from the protection under Section 197 of the Code.

d. If the offenders are other than public servants or where the principal offenders are corporate entities in private sectors, the question of protection under Section 197 would not arise.”

**36.3.** The Hon’ble Supreme Court in the case of **D. Rajagopal Vs Ayyappan & others 2021 SCC OnLine Ker 3227**, it is ruled as under;

“33. Sanction contemplated under Section 197 Cr.P.C. is not meant to protect a public servant dealing with the life or personal liberty of a man out of purview of law or procedure established by law. Therefore, a Policeman has to act within the limits of the legal domain recognized by the Code of Criminal Procedure or any other enactments. Sanction as a protective measure is incorporated in Cr.P.C. to save a public servant acting bonafidely without exceeding the jurisdictional limits and also duly exercising the authority recognized by law. What is intended by the incorporation

*of Section 197 in Cr.P.C. is an assurance to a public servant that for whatever things bonafide done by him in the lawful exercise of the authority conferred on him, protection would be afforded to him.*

*34. Therefore, they cannot take the advantage of Section 197 Cr.P.C. after committing mischievous acts under the guise of lawful discharge of official duties as in the case on hand. The fact that the incident was occurred within the Police Station and during the course of discharge of official duty by the Policemen will not legalise it, if it turns out as an exercise of excess power by them for illegal gain. Exercise of power by a public servant in the course of lawful discharge of his official duty, though in excess, will be given protection under Section 197 Cr.P.C.*

*35. Viewed in the above perspective, the Accused in the case on hand can only be taken to have exercised their authority for committing some illegal acts, under the guise of exercise of lawful discharge of their official duties and therefore are not liable to be afforded with the protection envisaged under Section 197 Cr.P.C. Sanction contemplated under the above provision is not intended to safeguard illegal acts. Therefore, this Court has no hesitation to hold that sanction is absolutely unwarranted in the context for taking cognizance of the offence against the Accused and prosecuting them.”*

**36.4.** That, the Respondent No. 3 Union of India, in its affidavit dated **28.11.2021** submitted before the Hon’ble Supreme Court in the case of **Jacob Puliyeel Vs. Union of India in Writ Petition (Civil) No. 607 of 2021** had made it clear that as per Indian Law there is no immunity available to the vaccine manufacturing companies.

The relevant para of the affidavit reads thus;

**“INDEMNIFICATION OF VACCINE MANUFACTURERS**



*65. No indemnity has been granted and the current legal regime under the New Drugs and Clinical Trials Rules, 2019 and Drugs and Cosmetics Act, 1940 does not contain any such provisions.”*

37. That Union of India in its affidavit dated **23.11.2022** filed before Hon’ble Supreme Court in **Rachana Gangu Vs. Union of India WP (c) No. 1220 of 2021** had made it clear that, the citizen can file cases before local Civil & other courts. The relevant para reads thus;

*“47. At the vaccine administration stage, after marketing authorization has been obtained from the Government of India and . the vaccine is available to the public, if a person suffers physical injury or death from an AEFI, appropriate remedies in law are open to the vaccine beneficiary or their family including approaching civil be r r courts for a claim of damages / compensation for negligence **malfeasance** or misfeasance. Such claims may be determined on a case-to-case basis in an appropriate forum.*

*51.10. If a person suffers physical injury or death from an AEFI, appropriate remedies in law are open to the vaccine beneficiary or their family including approaching civil courts for a claim of damages/compensation for negligence, **malfeasance** or misfeasance. Such claims may be determined on a case-to-case basis in an appropriate forum.”*

37.1. That the role played by each accused is given here and the complainant is having all the documentary proofs and witness to prove the criminality of the accused.

37.2. That this Hon’ble Court may be pleased to take cognizance, record evidence, conduct preliminary enquiry and issue process against the accused.

**38. That the law regarding compensation to victims who suffered due to of negligence, conspiracy etc. by the vaccine companies and public servant.**

**38.1. In Devilal Vs M.P State Through Chief Secretary 2017 SCC OnLine MP 2322, Hon'ble High Court granted compensation of argued 30 Lacs to a children who suffered paralysis due to polio vaccines.**

It ruled as under;

*“11. The research conducted by WHO also establishes that the paralysis can be one of the side effects of Oral Polio Vaccine. The Doctor examined before the trial Court has also supported the aforesaid view and, therefore, the appeal filed by the plaintiff, keeping in view the facts and circumstances of the case, deserves to be allowed.*

*12. This Court is of the considered opinion that once the factum of side effect of Polio drops was established on the basis of statement given by the defence witness, in all fairness, the proper compensation towards treatment and mental sufferings should have been granted in the peculiar facts and circumstances of the case.*

*13. .... The plaintiff shall be entitled for a sum of Rs. 10,00,000/- (Rs. Ten lacs) along with interest @ 12% p.a., w.e.f. 20/11/1996, towards the treatment and the mental sufferings and the amount shall be paid by the State of Madhya Pradesh within a period of 90 days from the date of receipt of certified copy of this order. In case the amount is not paid within a period of 90 days, it shall carry interest @ 15% p.a., w.e.f. 20/11/1996.”*

**38.2. That in a case of side effects of vaccines, the United States Government has set up the ‘National Vaccine Injury Compensation Program’. In a case of**

side effects of MMR vaccines, the court granted a settlement of 101 Million U.S Dollars (7,50,34,31,400 Crores).

A copy of the news article published in “**mctlaw**” is marked and annexed herewith at **“Exhibit - G”**.

**38.3.** Needless to mention here that, in a recent case of vaccine injury the Government of Singapore granted a compensation of **Rs. 1 Crore 78 Las** to the victim as vaccine cause increase in heart beats.

**Link:-** <https://greatgameindia.com/pfizer-heart-attack-compensation/>

**38.4.** That, there is another case related with misrepresentation by pharma companies by suppressing the side effects of medicines.

The companies failure to report certain safety data was also taken into consideration. The investigating agency of US at their own investigated and recovered an amount **10.2 Billion U.S.** around **7,57,71,92,40,000** Crore Rupees. The excerpts from the news published on **July 2, 2012** in The United State’ Department of Justice.

**GLAXOSMITHKLINE TO PLEAD GUILTY AND PAY \$3 BILLION TO RESOLVE FRAUD ALLEGATIONS AND FAILURE TO REPORT SAFETY DATA**

Largest Health Care Fraud Settlement in U.S. History

***“1. The United States alleges that GSK stated that Avandia had a positive cholesterol profile despite having no well-controlled studies to support that message. The United States also alleges that the company sponsored programs suggesting cardiovascular benefits from Avandia therapy despite warnings on the FDA-approved label regarding cardiovascular risks. GSK has agreed to pay \$657 million relating to false claims arising from misrepresentations about***

*Avandia. The federal share of this settlement is \$508 million and the state share is \$149 million.*

*2. In addition to the criminal and civil resolutions, GSK has executed a five-year Corporate Integrity Agreement (CIA) with the Department of Health and Human Services, Office of Inspector General (HHS-OIG). The plea agreement and CIA include novel provisions that require that GSK implement and/or maintain major changes to the way it does business, including changing the way its sales force is compensated to remove compensation based on sales goals for territories, one of the driving forces behind much of the conduct at issue in this matter. Under the CIA, GSK is required to change its executive compensation program to permit the company to recoup annual bonuses and long-term incentives from covered executives if they, or their subordinates, engage in significant misconduct. GSK may recoup monies from executives who are current employees and those who have left the company. Among other things, the **CIA also requires GSK to implement and maintain transparency in its research practices and publication policies and to follow specified policies in its contracts with various health care payors.***

*Federal employees deserve health care providers and suppliers, including drug manufacturers, that meet the highest standards of ethical and professional behavior,” said Patrick E. McFarland, Inspector General of the U.S. Office of Personnel Management.*

*Assistant Director of the FBI’s Criminal, Cyber, Response and Services Branch. “Together, we will continue to bring to justice those engaged in illegal schemes that threaten the*

*safety of prescription drugs and other critical elements of our nation's healthcare system.*

***This matter was investigated by agents from the HHS-OIG; the FDA's Office of Criminal Investigations; the Defense Criminal Investigative Service of the Department of Defense; the Office of the Inspector General for the Office of Personnel Management; the Department of Veterans Affairs; the Department of Labor; TRICARE Program Integrity; the Office of Inspector General for the U.S. Postal Service and the FBI.***

*This resolution is part of the government's emphasis on combating health care fraud and another step for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced in May 2009 by Attorney General Eric Holder and Kathleen Sebelius, Secretary of HHS. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. Over the last three years, the department has recovered a total of more than \$10.2 billion in settlements, judgments, fines, restitution, and forfeiture in health care fraud matters pursued under the False Claims Act and the Food, Drug and Cosmetic Act.*

***The company's unlawful promotion of certain prescription drugs, its failure to report certain safety data, and its civil liability for alleged false price reporting practices.***

***GSK did not make available data from two other studies in which Paxil also failed to demonstrate efficacy in treating depression in patients under 18. The United States further alleges that GSK sponsored dinner programs, lunch programs, spa programs and similar activities to promote***

*the use of Paxil in children and adolescents. GSK paid a speaker to talk to an audience of doctors and paid for the meal or spa treatment for the doctors who attended.*

*Between 2001 and 2007, GSK failed to include certain safety data about Avandia, a diabetes drug.*

*The missing information included data regarding certain post-marketing studies, as well as data regarding two studies undertaken in response to European regulators' concerns about the cardiovascular safety of Avandia. Since 2007, the FDA has added two black box warnings to the Avandia label to alert physicians about the potential increased risk of (1) congestive heart failure, and (2) myocardial infarction (heart attack).*

*GSK has agreed to plead guilty to failing to report data to the FDA and has agreed to pay a criminal fine in the amount of \$242,612,800 for its unlawful conduct concerning Avandia.*

*It also includes allegations that GSK paid kickbacks to health care professionals to induce them to promote and prescribe these drugs as well as the drugs Imitrex, Lotronex, Flovent and Valtrex. The United States alleges that this conduct caused false claims to be submitted to federal health care programs.*

*GSK has agreed to pay \$1.043 billion relating to false claims arising from this alleged conduct. The federal share of this settlement is \$832 million and the state share is \$210 million.”*

The details of abovesaid report is marked and annexed herewith at “**Exhibit – I**”.

**3.5.** That, Hon’ble Civil Court in Pune has granted a compensation of Rs. 100 Crores for defamation for half an hours news mistaken identity. Said fact was also taken in to consideration by Hon’ble Bombay High Court in granting interim

compensation in the case of **Veena Sippy Vs. Mr. Narayan Dumbre 2012 SCC OnLine Bom 339**. It is observed as under;

*“20....We must state here that the Petitioner in person has relied upon an interim order passed by this Court in First Appeal arising out of a decree passed in a suit. The decree was passed in a suit filed by a retired Judge of the Apex Court wherein he claimed compensation on account of act of defamation. Considering the evidence on record, the Trial Court passed a decree for payment of damages of Rs. 100/- crores. While admitting the Appeal and while considering the prayer for grant of stay, this Court directed the Appellant-Defendant to deposit a sum of Rs. 20/- crores in the Court and to furnish Bank Guarantee for rest of the decretal amount as a condition of grant of stay. However, this Court directed investment of the amount of Rs. 20/- crores till the disposal of the Appeal. The interim order of this Court has been confirmed by the Apex Court.*

*23....*

*i. We hold that the detention of the Petitioner by the officers of Gamdevi Police Station from 5<sup>th</sup> April, 2008 to 6<sup>th</sup> April, 2008 is illegal and there has been a gross violation of the fundamental right of the Petitioner guaranteed by Article 21 of the Constitution of India.*

*ii. We direct the 5<sup>th</sup> Respondent-State of Maharashtra to pay compensation of Rs. 2,50,000/- to the Petitioner together with interest thereon at the rate of 8% per annum from 5<sup>th</sup> April, 2008 till the realization or payment. We direct the State Government to pay costs quantified at Rs. 25,000/- to the Petitioner. We grant time of six weeks to the State Government to pay the said amounts to the Petitioner by an account payee cheque. It will be also open for the fifth Respondent - State Government to deposit the amounts in this*

*Court within the stipulated time. In such event it will be open for the Petitioner to withdraw the said amount.*

*iii. We clarify that it is open for the State Government to take proceedings for recovery of the amount of compensation and costs from the officers responsible for the default, if so advised.*

*iv. Petition stands dismissed as against the Respondent No. 4.*

*vi. We make it clear that it will be open for the Petitioner to adopt a regular remedy for recovery of compensation/damages in addition to the amount directed to be paid under this Judgment.*

**38.6. In Sanjeevani Vs. State MANU/MH/0469/2021, it is ruled as under;**

*“13.... Apex Court in the case of D.K. Basu Vs. State of West Bengal reported in MANU/SC/0157/1997: AIR 1997 Supreme Court 610(1) wherein it has been held thus:-*

*55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. **The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State in law, is duly bound to do.***



*The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizens, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.*

**38.7.** That, the law is very well settled by this Hon'ble Court and Hon'ble Supreme Court in catena of judgment that whenever fundamental rights of any persons are violated or if any person lost his/her life due to act of commission and omission on the part of a public servant then the High Court can direct the State Government to pay interim compensation to the victim or their family members under writ jurisdiction and the state can recover the said amount from erring public servant later.

**RELIED ON: -**

- i) **Nambi Narayan Vs. Siby Mathews (2018) 10 SCC 804.**
- ii) **Veena Sippy Vs. Narayan Dumbre 2012 SCC OnLine Bom 339.**
- iii) **Chairman Railway Board Vs. Mrs. Chandrima Das (2000) 2 SCC 465.**
- iv) **Nina Rajan Pillai Vs. Union of India 2011 (5) AD (Del) 36.**

**38.8.** That, Hon'ble Supreme Court in the case of **Balram Prasad v. Kunal Saha, (2014) 1 SCC 384** granted Rs. 11 Crore compensation for medical negligence.

The criteria for compensation set out in the said case is as under;

*“A. Consumer Protection- - Services Medical practitioners/ services Medical negligence- Compensation- Apportionment of liability between Hospital and doctors Hospital, held, vicariously liable for conduct of its doctors Hence, liable to pay entire compensation minus compensation payable by each doctor to extent of his/her liability.*

*B. Treatment of patient contrary to established medical protocols resulting in death -Patient (US resident) suffering from Toxic Epidermal Necrolysis (TEN), a skin disease Dr M failed to diagnose the disease at f initial stage and prescribed high dose of medicine (steroid) -Dr H though diagnosed TEN and stopped use of medicine prescribed by Dr M but administered to patient another steroid without considering harmful effect of earlier steroid already accumulated in patient's body -Dr P though a junior doctor stood as second fiddle who did not apply his own mind-All three doctors thus found guilty of medical negligence - Compensation of Rs 6 crores for medical negligence awarded to husband of deceased patient -- Dr M and H. both senior doctors, maligned their profession firstly by the way they treated deceased patient and secondly on being charged, by shifting blame onto other doctors Both, held, liable to pay Rs 10 lakhs -- each However, Dr P being a junior doctor whose contribution to negligence is less than senior doctors, held, liable to pay Rs 5 lakhs Balance compensation of Rs 5.8 crores, held, payable by Hospital with interest 6% p.a. from date of complaint (1998) till its payment.*

*C. Medical negligence Compensation - Loss of income of deceased - Relevant factors to be taken into consideration - Determination of income has to be only on basis of evidence on record*

*Held, status, future prospects and educational qualifications of deceased must be considered- Appropriate addition towards future*

*loss of income also to be made along with deduction for personal expenses of deceased Total loss of income is then to be determined by multiplying annual loss with expected years of life deceased would have worked*

*Death of 36 yr old US based NRI woman due to medical negligence of doctors in India Deceased was graduate in Psychology from highly -- prestigious institution in New York US. Record showing deceased's earnings of \$30,000 p.a. as graduate student --As earnings were not from regular source of income, earnings of deceased on regular job taken at \$40,000-- Addition of 30% made towards future loss of income (ie. \$12,000) Further deduction of 1/3rd made - towards personal expenditure of deceased (i.c. \$17,333)*

*Estimating life expectancy of healthy person as 70 yrs, total loss of income determined by multiplying net annual loss (\$34,667) with 30 (assuming she would have worked till age of 66) --Taking current value of Indian rupee at Rs 55 per d \$1, total loss of income of deceased in Indian rupees computed at Rs 5.7 crores.*

***D.** Additional (unanticipated) claim Non-inclusion in original claim through amendment-- Held, no ground to reject additional claim-It is the duty of Tribunals, Commissions and Courts including Supreme Court to award just and reasonable compensation even if the same is more than what was originally claimed*

***E.** Claim of Rs 77 crores filed in 1998 for medical negligence before National Commission (NC) -- Additional claim of Rs 20 crores made in 2011-- Rejection of such additional claim by NC without consideration simply on ground that the same was not pleaded earlier or included in pleadings by way of amendment, held, not*

*justified – Additional damages/losses suffered by claimant during these years could not have been anticipated with original claim in 1998- Additional claim considered by Supreme Court for determining Just compensation On facts, total a - compensation of Rs 6 crores awarded.*

*F. Relevant factors - Inflation of money Exchange rate of currency Date on which to be reckoned Date of award in appeal - Held, inflation should be considered while deciding quantum of compensation - Medical negligence claim of Rs 77 crores filed in 1998 remained pending for 15 yrs Devaluation of money in these years to great extent Claim of Rs 77 -- crores in 1998 equivalent to Rs 188.6 crores in 2013 as per Cost Inflation Index (CII) - Hence, enhanced claim by claimant on current value of - money is maintainable.*

*G. No record of air fare produced However, considering that claimant - husband being resident of US must have incurred some expenses to come to India to attend proceedings, amount of Rs 10 lakhs awarded for such travel expenses - Consumer Forums - Exercise of power Compensation-Quantum-Determination*

*H. Consumer Protection-Services-Medical practitioners/services-Medical negligence Compensation Pecuniary damages - Legal expenses Claimant himself appearing and arguing his case Consideration of, while awarding damages under this head Medical negligence case filed by husband (claimant) for death of his wife Both - foreign residents - Claimant, a doctor by profession appeared in person to argue his case though he might have required assistance of lawyers to prepare his case and produce evidence in order - Claim for Rs 1.65 crores towards litigation expenses over the past 12 yrs, held on higher side- Compensation of Rs 1.5 lakhs appropriate.*

*I. Consumer Protection--Services-Medical practitioners/services-- Medical negligence -- Compensation -- Pecuniary damages -- Medical expenses incurred for treatment of deceased patient— Enhancement -- Death of foreign resident due to medical negligence of doctors in India -- Treatment of deceased at two hospitals for which claim of Rs 12 lakhs made Medical bill of only Rs 2.5 lakhs pertaining to one hospital on record National Commission quantified expenses at Rs 5 lakhs -- Award insufficient Deceased remained as in-patient at the other hospital for about a week-- Compensation under this head enhanced to Rs 7 lakhs*

*J. Consumer Protection-Services- Medical practitioners/services - Medical negligence Compensation Interest on compensation Held. has to be awarded from date of filing complaint up to date of payment of compensation-Death of US based woman, a child Psychologist in 1998- Claim for compensation for Rs 97 crores remained pending for 15 yrs National Commission (NC) while awarding compensation (Rs 1.5 crores) granted no interest for this long period when case was pending Held, unjustified Supreme Court while enhancing compensation to Rs 6 crores awarded interest @ 6% p.a. from date of complaint till date of payment of such compensation.”*

**38.9.** That in the present case the son/ father/daughter/husband/wife of the complainant was also doing various small businesses and earning more than Rs. 1 Lakh per month.

I can examine the witnesses to show business.

**38.10.** In Anita Kushwaha **Anita Kushwaha Vs. Pushap Sadan (2016) 8 SCC 509**, has ruled that the life of Indian Citizen is not less pricy than the life of people in England or anywhere. But in India the rights are more precious.

It is ruled that;

*“18... Bose, J. emphasised the importance of the right of any person to apply to the court and demand that he be dealt with according to law. He said: (Prabhakar Kesheo case [Prabhakar Kesheo Tare v. Emperor, AIR 1943 Nag 26 : 1942 SCC OnLine MP 78] , SCC OnLine MP para 1)*

*“1. ... The right is prized in India no less highly than in England, or indeed any other part of the Empire, perhaps even more highly here than elsewhere; and it is zealously guarded by the courts.”*

**39. PRAYER:** - It is therefore humbly requested that this Hon’ble Court may please to: -

- (a) conduct enquiry under section 202 of Cr.P.C. and allow the complaint to produce witness, evidence etc.
- (b) pass an order of issue of process under section 204 of Cr.P.C. for offences under section 166, 167, 420, 115, 302, 304, 120(B), 34 etc. of IPC.
- (c) Issue warrant of arrest (Non-Bailable) against the accused under section 204 of Cr.P.C.
- (d) try and punish all the accused for maximum punishment;
- (e) grant compensation of Rs. 25 crores to the complainant under section 357(3) of Cr. P.C.
- (f) grant any other relief to the complainant which this Hon’ble court deems fit and proper in the facts and circumstances of the case;

Signature

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Complainant