

जबरन टीकाकरण के विरुद्ध शिकायत का मसौदा

प्रति

1. थाना प्रभारी
2. पुलिस आयुक्त

विषय

**IPC की धारा 341, 342, 166, 409, 220, 323,336,
367, 307, 115 आदि और आपदा प्रबंधन अधिनियम की
धारा 51 (बी) और 55 के तहत तत्काल कार्यवाही ।**

शिकायतकर्ता का नाम : _____

पता : _____

बनाम

आरोपी का नाम: _____

पता (यदि ज्ञात हो) : _____

सर/मैडम

1. मैं (शिकायतकर्ता का पता) _____ ऊपर नामित पते पर रह रहा हूं
2. कि (तारीख) _____ को, आरोपी अधिकारी मेरे घर आए और मेरे विरोध के बावजूद उन्होंने मुझे जबरदस्ती टीका लगाया और मेरे निर्धारित अधिकारों का उल्लंघन किया।
3. अतः अभियुक्तों पर भारतीय दंड संहिता की धारा 341, 342, 323, 220, 336 आदि के तहत मुकदमा चलाया जा सकता है।
4. चूंकि आरोपी ने मुझे मेरी इच्छा के विरुद्ध और टीके के खराब असर के कारण संभावित मौत तक के बारे में मेरी सूचना देने के बावजूद, मुझे टीका लगाया इसलिए आरोपी भी आईपीसी की धारा 115, 307 आदि के तहत दंड और कार्रवाई के लिए उत्तरदायी हैं।

5. राज्य एवं जिला प्राधिकरण को आपदा प्रबंधन अधिनियम 2005 की धार 38 (ए) (39) (1) के अनुसार राष्ट्रीय प्राधिकरण के नीतिगत निर्णय के अनुसार ही कार्य करना है। राष्ट्रीय प्राधिकरण का नेतृत्व भारत के प्रधान मंत्री करते हैं।

6. केंद्र सरकार ने लोक सभा में RTI का उत्तर देते हुए और सर्वोच्च एवं उच्च न्यायालय में अपने हलफनामे में भी विशेष रूप से उल्लेख किया है

- (i) टीका लेना पूरी तरह से स्वैच्छिक है और अनिवार्य नहीं है।
- (ii) व्यक्ति के टीकाकरण की स्थिति के आधार पर कोई भेदभाव नहीं किया जा सकता है।
- (iii) किसी भी नागरिक को उसके टीकाकरण की स्थिति के आधार पर किसी भी लाभ अथवा सेवा से वंचित नहीं किया जा सकता है।

7. कि माननीय उच्च न्यायालय रजिस्ट्रार जनरल बनाम के मेघालय राज्य सरकार 2021 एससीसी ऑनलाइन मेघ 130 ने फैसला सुनाया है कि यदि किसी व्यक्ति को बल प्रयोग, जबरदस्ती और धोखे से टीका लगाया जाता है तो यह दीवानी और आपराधिक रूप से गलत है।

"7. In this context, around one hundred and seven (107) years ago, in Schloendrofi v. Society of New York Hospitals reported at (1914) 211 NY 125 = 105 NE 92; 1914 NY Justice Cardozo ruled that 'every human being of adult years and sound mind has a right to determine what shall be done with their body'. Thus, by use of force or through deception if an unwilling capable adult is made to have the 'flu vaccine would be considered both a crime and tort or civil' wrong, as was ruled in Airedale NHS Trust v. Blanco reported at [1993] A.C. 789 = [1993] 2 WLR 316 = (1993) 1 All ER 821, around thirty years (30) ago. Thus, coercive element of vaccination has, since the early



phases of the initiation of vaccination as a preventive measure against several diseases, have been time and again not only discouraged but also consistently ruled against by the Courts for over more than a century.

8. कि, शपथ पत्र दिनांक 8.10.2021 में श्री. सत्येंद्र सिंह, अवर सचिव स्वास्थ्य मंत्रालय, भारत ने दिनांक 08.10.2021 को शपथ पत्र माननीय मुंबई उच्च न्यायालय के समक्ष 2021 की रिट याचिका संख्या 1820 में, देते हुए यह स्पष्ट किया है कि जैकब पुलियाल बनाम के मामले में दायर भारत सरकार और स्वास्थ्य और परिवार कल्याण मंत्रालय, भारत सरकार के सभी नागरिकों के लिए कोविड टीकाकरण पूरी तरह से स्वैच्छिक है। भारत संघ कि 2021 की रिट याचिका संख्या 607 ने भारत के नागरिकों के बीच उनके टीकाकरण की स्थिति के आधार पर भेदभाव के लिए कोई नीति नहीं बनाई है या सुझाव नहीं दिया है।
हलफनामे के प्रासंगिक पैरा निम्नानुसार पढ़े गए

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

10. That, it is duly advised, advertised and communicated by MoHFW through various print and social media platforms that all citizens should get vaccinated, but this in no way implies



that any person can be forced to be vaccinated against her / his wishes.

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

8.1 कि दिनांक 29.11.2021 में डॉ. पी.बी.एन. प्रसाद, संयुक्त औषधि नियंत्रक (भारत), स्वास्थ्य और परिवार कल्याण मंत्रालय, भारत सरकार, ने जैकब पुलियेल बनाम भारत संघ कि 2021 की रिट याचिका संख्या 607 के मामले में, ने एक बार फिर केंद्र सरकार के उपरोक्त नीति निर्णय की पुष्टि की है। हलफनामे का पैरा 64 में इस प्रकार लिखा है;

"64. In so far as the Petitioner's submissions regarding Covid 19 vaccine being mandatory, as per the Operational Guidelines document, COVID-19 vaccination is voluntary. However, it is emphasised and encouraged that all individuals take vaccination for public health and in his/ her interest as well as public interest since in case of pandemic, an individual's ill health has a direct effect on the society. Covid-19 vaccination is also not linked to any benefits or services. Therefore, any submissions made by the Petitioner to the contrary, in so far as the Answering Respondents are concerned, is denied."



8.2 कि स्वास्थ्य मंत्रालय द्वारा 01.03.2021 को दिए गए आरटीआई के जवाब में यह स्पष्ट रूप से स्पष्ट है कि ट्रेन यात्रा, वेतन आदि जैसी विभिन्न सुविधाओं को किसी व्यक्ति की टीकाकरण की स्थिति से नहीं जोड़ा जा सकता है।

प्रासंगिक प्रश्न और उत्तर निम्नानुसार पुनः प्रस्तुत किए जाते हैं;

आरटीआई के तहत एक आवेदन के लिए केंद्र सरकार का उत्तर दिनांक 01.03.2021 इस प्रकार है

“भारत सरकार के स्वास्थ्य मंत्रालय द्वारा 1.03.2021 को श्री। अनुराग सिन्हा की RTI का उत्तर दिया

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

उत्तर : कोरोना वैक्सीन लेना स्वैच्छिक है।

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

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

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

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

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

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

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

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



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

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

9. विभिन्न उच्च न्यायालयों के निर्णय आरटीआई के तहत उपरोक्त जानकारी और संसद में बताई गई बातों को संदर्भित करने के बाद, कोई भी राज्य जबरदस्ती टीकाकरण के लिए कोई नियम या परिपत्र नहीं ला सकता है या जो किसी व्यक्ति को उसके टीकाकरण की स्थिति के आधार पर भेदभाव करता है।

9.1 Madan Milli Vs. UOI 2021 SCC OnLine Gau 1503, के अंतर्गत निर्णय

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



Vaccination is entirely voluntary for the beneficiaries.

4. By referring to the fact that the Covid-19 Vaccination is entirely a voluntary exercise at the choice of an individual as indicated in the RTI answer and the answer given in the Lok Sabha by the Minister of State in the Ministry of Health and Family Welfare, Government of India, as referred to hereinabove, the learned counsel for the petitioner has contended that provision under Clause 11 of the Order dated 30.06.2021, issued by the Chief Secretary cum Chairperson-State Executive Committee, Government of Arunachal Pradesh, vide Memo No. SEOC/DRR&DM/01/2011-12, allowing temporary permits to be issued for developmental works in both public and private sector to only those persons who are vaccinated for Covid-19, have interfered with the rights of the citizens provided under Article 19 (1) (d) of the Constitution of India to move freely throughout the territory of India. The learned counsel for the petitioner, therefore, has argued that since the Clause 11 of the Order dated 30.06.2021, issued by the Chief Secretary cum Chairperson-State Executive Committee, Government of Arunachal Pradesh, vide Memo No. SEOC/DRR&DM/01/2011-12, by allowing to issue temporary permits for developmental works in both public and private sector only to persons who have vaccinated for Covid-19 Virus, have interfered with the fundamental rights granted under Article 19 (1) (d) of the



Constitution of India and the same may be struck down by this Court in exercise of power under Article 226 of the Constitution of India.

13. *In the instant case, the classification sought to be made between the vaccinated and unvaccinated persons for Covid-19 by Clause 11 of the Order dated 30.06.2021 for the purpose of issuing a temporary permit for developmental works in both public and private sector in the State of Arunachal Pradesh is undoubtedly to contain Covid-19 pandemic and its further spread in the State of Arunachal Pradesh. There is no evidence available either in the record or in the public domain that Covid-19 vaccinated persons cannot be infected with Covid-19 virus, or he/she cannot be a carrier of a Covid-19 virus and consequently, a spreader of Covid-19 virus. In so far as the spread of Covid-19 Virus to others is concerned, the Covid-19 vaccinated and unvaccinated person or persons are the same. Both can equally be a potential spreader if they are infected with Covid-19 Virus in them. This aspect of the matter came up for consideration by this Court in WP(C)/37/2020 (In Re Dinthar Incident Aizawl v. State of Mizoram Aizawl; in which case, this Court vide Order dated 02.07.2021, in paragraph 14 thereof, had observed as follows -*

“14. *It has been brought to our notice that even persons who have been vaccinated can still be infected with the covid virus, which would in turn imply that vaccinated persons who are covid*



*positive, can also spread the said virus to others. It is not the case of the State respondents that vaccinated persons cannot be infected with the covid virus or are incapable of spreading the virus. **Thus, even a vaccinated infected covid person can be a super-spreader.** If vaccinated and un-vaccinated persons can be infected by the covid virus and if they can both be spreaders of the virus, the restriction placed only upon the un-vaccinated persons, debarring them from earning their livelihood or leaving their houses to obtain essential items is unjustified, grossly unreasonable and arbitrary. As such, the submission made by the learned Additional Advocate General that the restrictions made against the un-vaccinated persons vis-à-vis the vaccinated persons is reasonable does not hold any water. As the vaccinated and un-vaccinated persons would have to follow the covid proper behavior protocols as per the SOP, there is no justification for discrimination."*

14. Thus, if the sole object of issuing the Order dated 30.06.2021, by the Chief Secretary cum Chairperson-State Executive Committee, Government of Arunachal Pradesh, vide Memo No. SEOC/DRR&DM/01/2011-12, is for containment of the Covid-19 pandemic and its further spread in the State of Arunachal Pradesh, the classification sought to be made between vaccinated and unvaccinated persons for Covid-19 virus for the purpose of issuing temporary permits for developmental works in both public



and private sector, vide Clause 11 thereof, prima facie, appears to be a classification not founded on intelligible differentia nor it is found to have a rational relation/nexus to the object sought to be achieved by such classification, namely, containment and further spread of Covid-19 pandemic."

9.2 In Re: Dinthar Incident Aizawl Vs. State of

Mizoram 2021 SCC OnLine Gau 1313 माननीय गौहाटी उच्च न्यायालय की खंडपीठ ने अपने आदेश दिनांक 02.07.2021 के द्वारा स्पष्ट रूप से निम्नानुसार शासित किया है:

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

9.3 Osbert Khaling Vs. State of Manipur and Ors. 2021 SCC OnLine Mani 234, यह निम्नानुसार शासित है;



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

10. Madan Milli 2021 SCC OnLine Gau 1503, Re: Dinthar 2021 SCC OnLine Gau 1313, Registrar General Vs. State of Meghalaya 2021 SCC OnLine Megh 130, Osbert Khaling Vs. State of Manipur and Ors. 2021 SCC OnLine Mani 234 के मामले में माननीय उच्च न्यायालय के सभी हलफनामों और संबंधित निर्णय की प्रति निम्नलिखित लिंक पर उपलब्ध हैं।

1. Re: Dinthar 2021 SCC OnLine Gau 1313.

<https://drive.google.com/file/d/1m50c0ytxpjyAHpyzHV-Gt2KAOBNO5k/view?usp=sharing>

2. Madan Milli 2021 SCC OnLine Gau 1503.

<https://drive.google.com/file/d/1PEF53VmPMr4P7kKt8JQeNMQbcZtYHAaY/view?usp=sharing>

3. Registrar General Vs. State of Meghalaya 2021 SCC OnLine Megh 130.

<https://drive.google.com/file/d/129Rd9kYFJnKez8gZDYxwgAw60ohndK2b/view?usp=sharing>



4. Osbert Khaling Vs. State of Manipur and Ors. 2021 SCC OnLine Mani 234.

<https://drive.google.com/file/d/1cLKR3LutxomKX3BbmaIBwQ9SfUhdvIJQ/view?usp=sharing>

11. आरोपी का यह कृत्य आपदा प्रबंधन अधिनियम, 2005 के तहत राष्ट्रीय प्राधिकरण के नीतिगत निर्णय के खिलाफ है, इसलिए आरोपी आपदा प्रबंधन अधिनियम, 2005 की धारा 51 (बी), 55 और धारा 166, 120 (बी), 34, आईपीसी की 109 के तहत कार्रवाई के लिए उत्तरदायी हैं

12. यह माननीय सर्वोच्च न्यायालय द्वारा **Common Cause Vs. Union of India (2018) 5SCC 1** निर्धारित कानून के अनुसार है। आरोपी शिकायतकर्ता से यह सवाल पूछने के लिए अधिकृत नहीं थे कि उसने टीका क्यों नहीं लिया।

Common Cause's case (supra) में माननीय सर्वोच्च न्यायालय ने कानून को निम्नानुसार स्पष्ट किया;

*202.8. An inquiry into Common Law jurisdictions reveals that **all adults with capacity to consent have the right of self-determination and autonomy. The said rights pave the way for the right to refuse medical treatment which has acclaimed universal recognition. A competent person who has come of age has the right to refuse specific treatment or all treatment or opt for an alternative treatment, even if such decision entails a risk of death.***

*202.9. Right to life and liberty as envisaged under Article 21 of the Constitution is meaningless unless it encompasses within its sphere individual dignity. With the passage of time, **this Court has expanded the spectrum of Article 21 to include within it the right to live with dignity as component of right to life and liberty.***



*306. In addition to personal autonomy, other facets of human dignity, namely, "self-expression" and "right to determine" also support the argument that **it is the choice of the patient to receive or not to receive treatment.***

*517. The entitlement of each individual to a dignified existence necessitates constitutional recognition of the principle that an individual possessed of a free and competent mental state is entitled to decide whether or not to accept medical treatment. The right of such an individual to refuse medical treatment is unconditional. **Neither the law nor the Constitution compel an individual who is competent and able to take decisions, to disclose the reasons for refusing medical treatment nor is such a refusal subject to the supervisory control of an outside entity;***

13. कि माननीय उच्चतम न्यायालय के दिशा-निर्देशों का पालन न करने में आरोपी अधिकारियों का कार्य उन्हें **Section 166, 120(B), 34, 109 etc. of IPC.** के तहत कार्रवाई के लिए उत्तरदायी बनाता है

14. यह **Section 2(b), 12 of Contempt of Courts Act, 1971 r/w Article 129 of the Constitution of India** के अनुसार एक स्वतंत्र अपराध है, जिसके लिए मैं भारत के सर्वोच्च न्यायालय के समक्ष एक स्वतंत्र मामला दायर करने जा रहा हूँ **[T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot 2006 (2) ACR 1649, In Re: M.P. Dwivedi and Ors. (1996) 4 SCC 152].**

15. सार्वजनिक संपत्ति के दुरुपयोग का अपराध

15.1 कि कानून के अनुसार मैं वह व्यक्ति नहीं था जिसे टीका दिया जा सकता था। लेकिन, आरोपी अधिकारियों ने अपनी शक्ति और स्थिति का और सार्वजनिक तंत्र का भी दुरुपयोग किया और एक वैक्सीन को जबरदस्ती और अवैध रूप से मुझे देने में बर्बाद कर दिया, इसलिए

सभी आरोपी अधिकारी आईपीसी की धारा 409, 120 (बी), 34 के तहत दंड के पात्र हैं। आईपीसी की धारा 409 में आजीवन कारावास की सजा का प्रावधान है।

16 आरोपी अधिकारियों के खिलाफ प्रकट किए गए आईपीसी के प्रावधानों को संक्षेप में प्रस्तुत किया गया है;

“Section 341 in The Indian Penal Code

341. Punishment for wrongful restraint.—Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Section 342 in The Indian Penal Code

342. Punishment for wrongful confinement.—Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

Section 166 in The Indian Penal Code

166. Public servant disobeying law, with intent to cause injury to any person.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Section 115 in The Indian Penal Code



115. Abetment of offence punishable with death or imprisonment for life—if offence not committed.—Whoever abets the commission of an offence punishable with death or 1[imprisonment for life], shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; If act causing harm be done in consequence.—and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Section 109 in The Indian Penal Code

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

Section 34 in The Indian Penal Code



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

Section 120B in The Indian Penal Code

120B. Punishment of criminal conspiracy.

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

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

Section 220 in The Indian Penal Code

220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing

that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 307 in The Indian Penal Code

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]

Section 304A in The Indian Penal Code

304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

17. माननीय सर्वोच्च न्यायालय ने समय और अब यह स्पष्ट कर दिया है कि लोक सेवक को केवल अपने वरिष्ठों के वैध आदेशों का पालन करना है। वे किसी भी गैरकानूनी आदेश का पालन नहीं कर सकते हैं।



यह उनके आधिकारिक कर्तव्य का हिस्सा नहीं है और यदि कोई अधिकारी इस तरह के अपराध करता है तो ऐसे अधिकारियों को अभियोजन से कोई सुरक्षा नहीं दी जा सकती है। ऐसे अधिकारियों को सजा दी जाना चाहिए। [**Nandini Satpathy Vs. P.L. Dani (1978) 2 SCC 424**].

18. पी.सी. आईपीसी की धारा 409, 420 आदि के तहत अपराध करने वाले लोक सेवक पर मुकदमा चलाने की आवश्यकता के लिए सीआरपीसी की धारा 197 के तहत किसी मंजूरी की आवश्यकता नहीं ।

18.1 माननीय सर्वोच्च न्यायालय ने **S. Shivakumar and Others vs. State of Karnataka 2021 SCC OnLine Kar 12526**, के मामले में निम्नानुसार फैसला सुनाया है;

“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. 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 de hors 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."

18.2 माननीय सर्वोच्च न्यायालय ने **Noorula Khan Vs Karnataka State Pollution Control board & Anr. 2021 SCC OnLine SC 601** के मामले में निम्नानुसार फैसला सुनाया है

"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 dis-entitle 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.**"*

18.3 माननीय उच्च न्यायालय ने **D. Rajagopal Vs Ayyappan & others** **2021 SCC OnLine Ker 3227** के मामले में इस प्रकार शासनादेश किया है;

"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."

19. निवेदन:

अतः आपसे विनम्र निवेदन है कि एफ.आई.आर. आरोपियों के खिलाफ **Section 341, 342, 166, 409, 220, 323, 336, 367, 307, 115 etc. of IPC** and **Section 51(b) & 55 of Disaster Management Act, 2005** के तहत मामला दर्ज कर उनके खिलाफ तत्काल कार्रवाई की जाए।

हस्ताक्षर

कॉपी;

1. भारत के माननीय राष्ट्रपति



2. भारत के माननीय मुख्य न्यायाधीश
3. भारत के माननीय प्रधान मंत्री जी
राष्ट्रीय आपदा प्रबंधन प्राधिकरण के अध्यक्ष,
(की धारा 60 के अनुपालन में सूचना के रूप में आपदा प्रबंधन अधिनियम, 2005)
4. महाराष्ट्र राज्य के माननीय राज्यपाल
5. राज्य के माननीय मुख्यमंत्री
6. राज्य आपदा प्रबंधन प्राधिकरण के अध्यक्ष

