

## SYNOPSIS

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The Petitioners have filed this writ petition in public interest for enforcement of the fundamental rights of migrant children and children of migrant families, under Articles 14, 15, 19, 21, 21A, 39 and 47 of the Constitution during the COVID-19 pandemic.

Due to the severity of the impact of the COVID-19 crisis, starting in 24.03.2020, the Government of India announced a nationwide lockdown during which time the country witnessed a mass exodus of millions of migrants from cities. While there were several measures taken for the protection of migrant workers including their travel back to their hometowns, the impact of all of this on the migrant children has not been addressed by the Respondent authorities. Migrant children are of three categories – children of migrant workers who are left behind in their villages, children who are taken by the migrant families with them and migrant children who migrate for labour of their own. All of these children have been the most vulnerable during this time and have been the worst affected.

Children of migrants and migrating children remain invisible and are the most vulnerable and are denied access to healthcare and proper nutrition, access to education, and are living in makeshift, unfriendly, unhygienic and testing conditions. Migrant children affected due to Covid19 are still working in brick kilns, stone crusher units, construction sites, rice mills, plantations and other sectors where children as young as 5 years lend a hand to help their parents earn their daily sustenance.

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The pandemic is having a discriminatory impact on migrant children and has aggravated their vulnerabilities. This petition brings to fore five areas of concern with regard to migrant children, i.e. hazardous living conditions, food security, health needs, education and protection. Migrant children have been deprived of access to food security which is a fundamental right under Article 21 and also a statutory right under the National Food security Act, especially because schools and anganwadis are closed and hence the mid-day meals provided in the schools are not available. Children from 0-6 months and from 6 months to 3 years have other food and nutritional security guarantees under the NFS Act which are not being complied with. Migrant children who are stranded or in relief camps and quarantine centers at source districts without food or shelter. Children of migrant workers who have been travelling with them, have died due to lack of food.

In addition to food, the children of migrant workers are left in a particularly vulnerable position regarding health. There have been deaths of infants and children due to starvation, malnutrition and tiredness. During this time of a demand in the healthcare sector in the fight for COVID-19, the regular health services such as immunization, maternal healthcare, mental and physical health of children, immunization, health check-ups, primary health care and other medical services are suffering and are not being provided due to which migrant children are not getting their basic health care.

Migrant children are the highest group of out of school children and during the pandemic when schools are shut, migrant children are facing higher risk of being forced into child labour, child marriages and hazardous work or coming in conflict with

the law. School shutdowns leave girls confined to their houses and increase the possibility of abuse and neglect and influences child marriages on a bigger scale than normal times. During the COVID-19 crisis the attention of frontline workers, the police and other functionaries have shifted to extending humanitarian response to those affected. It has created a vacuum in monitoring mechanisms related to children.

All of this amounts to a violation of the fundamental rights of migrant children under Articles 14, 15, 19, 21, 21A, 39 and 47 of the Constitution. Hence it is prayed that this Hon'ble Court pass directions to protect the fundamental rights of migrant children and children of migrant families in the wake of COVID-19. Hence this Writ Petition.

#### **LIST OF DATES**

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|-----------|---|
| 2007-2008 | NSS conducted a study on the population and India and determined that the number of internal migrants in the India was 326 million in 2007.   |
| 2011      | The 2011 Census shows that there were around one lakh migrant children aged 10-14 and around ten lakh children aged 15-19 years who undertook migration for employment thus totally amounting to 11 lakh migrant children only between the ages of 10 to 19 years. Other Studies have revealed that 39% of migrant children have never enrolled in schools, and a |



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large majority did not have access to the Integrated Child Development Services.

24.3.2020

In the beginning of the year 2020, several effects of COVID-19 were seen in India. In the wake of the unprecedented crisis in the form of COVID-19 and to contain the spread of the disease, the Respondent No. 1 issued an order dated 24.03.2020 under section 6(2) (i) of the Disaster Management Act, 2005 (hereinafter referred to as the DM Act) imposing a lockdown in the entire country for a period of 21 days. The period of 21 days in the aforesaid order was thereafter extended vide order dated 14.04.2020, till 3.05.2020. The lockdown was extended for a third time till 17.05.2020.

During this lockdown and even thereafter, schools and anganwadis were closed. Due to this there a non-availability of mid-day meals to children as well as the lactating and nursing mothers who would be deprived of the nutritional food, which has lead to large-scale malnourishment. Migrant children have been severely affected by their rights to food, health care, protection, education and right to life violated. There have been no measures for the specific protection of children or migrant children during this pandemic.

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31.03.2020

The Respondent No. 1 issued an order dated 31.03.2020 to all State Disaster Management Authorities on establishing a system of coordination and activating an NGO Coordination Cell in each District and Report to the Respondent No. 1 with such information.

15.04.2020

The UN released a United Nations Policy Brief on the Impact of COVID-19 on Children, including the impact of the pandemic on the most vulnerable children, i.e. children of migrant families and from poor and disadvantaged backgrounds. This Report recommended that governments should prioritize the continuity of child-centred services, especially nutrition programmes, immunization and other maternal and newborn care, and community-based child protection programmes. There should be specific protections put in place for vulnerable children including refugees, the displaced, homeless, migrants, minorities, slum-dwellers, children living with disabilities, street children, living in refugee settlements, and children in institutions.

16.04.2020

The lockdown had severe impact on the health, wellbeing and safety of migrant children. A news report reported that infants in nomadic

groups had died amid coronavirus lockdown in Assam.

21.04.2020 A news report was published about a 12-year-old child who had died after walking over 100 kilometers from her workplace in Bhupalpally district of Telangana to her native village in Chhattisgarh's Bijapur district.

04.2020 A Rapid Assessment of the Impact of COVID-19 Lockdown on Food and Nutrition Security in Rural Karnataka was published by National Law School of India University, Bangalore. Under this it was reported that provision of food and rations by Anganwadi workers in cities and villages is not adequate and many children and infants and lactating mothers have not received their minimum food supply as guaranteed under the National Food Security Act 2013.

23.05.2020 It was reported that during the 'COVID-19 pandemic, minor girls, especially from migrant families are under a higher risk of forced child marriage and protection measures for preventing child marriage are not in place.

13.06.2020 It has been reported extensively that COVID-19 was also impacting child labour as more and

more migrant children, due to the closure of schools and the lack of livelihood for their families, are being pushed into child labour, as documented in the New Indian Express article titled 'COVID-19 crisis can push more kids into child labour'.

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17.07.2020

Hence, the present Writ Petition.



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**IN THE SUPREME COURT OF INDIA**

**(CIVIL ORIGINAL JURISDICTION)**

WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2020

**(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

**IN THE MATTER OF:**

1. The Child Rights Trust  
A public charitable trust  
Having its Registered office at:  
4606, 6<sup>th</sup> Floor, High Point IV,  
Palace Road, Bangalore – 560001  
Represented by its Executive Director  
Sri. Vasudev Sharma

2. Nina Nayak  
aged about 66 years,  
D/o Late K. R. Shenai,

[REDACTED],  
[REDACTED],  
[REDACTED]

...Petitioners

**VERSUS**

1. Union of India  
Ministry of Home Affairs  
North Block, New Delhi  
Through its Secretary
2. Union of India  
Ministry of Labour and Empowerment  
Shram Shakti Bhawan, Rafi Marg  
New Delhi  
Through its Secretary
3. Union of India  
Ministry of Women and Child Development  
Shastri Bhawan, New Delhi  
Through its Secretary



4. Union of India  
Ministry of Food and Public Distribution  
Krishi Bhawan, New Delhi  
Through its Secretary
5. National Disaster Management Authority  
NDMA Bhawan,  
A-1 Safdarjung Enclave  
New Delhi – 110029  
Through its Member Secretary
6. National Commission for Protection of Child Rights  
5th Floor, Chanderlok Building,  
36 Janpath, New Delhi-110001  
Through its Member Secretary ... Respondents

**A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION  
OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT, ORDER  
OR DIRECTION IN THE NATURE OF MANDAMUS OR ANY OTHER  
WRIT, ORDER OR DIRECTION TO ENFORCE AND PROTECT  
THE FUNDAMENTAL RIGHTS OF MIGRANT CHILDREN AND  
CHILDREN OF MIGRANT WORKERS GUARANTEED UNDER PART –  
III AND PART – IV OF THE CONSTITUTION OF INDIA.**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND  
HIS COMPANION JUSTICES OF THE HON'BLE  
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the present writ petition is being filed under Article 32 of the Constitution of India in public interest for enforcement of fundamental rights of migrant children and children of migrant workers under Articles 14, 19, 21, 21A, 39, 45, and 47 of the Constitution of India in the wake of and as an aftermath of the COVID-19 pandemic and the resultant extended lockdown.
2. The cause of action for filing the present writ petition are that due to the severity of the impact of the COVID-19 crisis, starting in 24.03.2020, the Government of India announced a nationwide lockdown. During the period of the lockdown, migrant children were affected the most and have been among the most vulnerable. Although there has been marked efforts by the Respondents to provide migrant workers with welfare measures, no report emanated from the Central or the State governments detailing relief measures extended to women and children who are stranded or in relief camps and quarantine centers at source districts. The unprecedented lockdown, ensuing migrant crisis and the subsequent effect of the same on migrant children and their fundamental and human rights is conspicuous and an ongoing crises. Hence this Petition is being filed under Article 32 of the Constitution of India.
  - 2.1 Nature of injury caused to the public: The lockdown has resulted in tremendous amount of hardship for migrant children. Till date there has been no assessment of the exact numbers of migrant children, infants, and pregnant or lactating migrant women and their needs. Children of migrants and migrating children remain invisible and are the most vulnerable and are

denied access to health and proper nutrition, quality education and skills and knowledge they need to thrive and spend their lives in makeshift, unfriendly, unhygienic and testing conditions. The pandemic is having a discriminatory impact on migrant children and has aggravated their vulnerabilities. Migrant children will be denied their fundamental rights to education, health and nutrition under Articles 14, 19, 21, 21A, 39, 45, and 47 of the Constitution if the matter is not heard and appropriate orders passed by this Hon'ble Court.

3. The Child Rights Trust is a non-governmental, non-profit organization established in 2002 with aim to secure "Every Right for Every Child". This petition is being filed through the Executive Director of The Child Rights Trust, Vasudev Sharma S/o Vishwanath R/o # [REDACTED]

[REDACTED] There is no civil, criminal or revenue litigation involving Petitioner No.1.

3.1 The Petitioner No. 2, Ms. Nina Nayak D/o Kaup Ramdas Shenai [REDACTED]

[REDACTED] 35

[REDACTED] ty

[REDACTED] is a whole time child rights advocate/activist. Few engagements of petitioner No. 2 are:

1) Member, Sub-Committee of Training, CARA, GOI. CARA/2018-19 Pilot Project-Trg dated 11-01-2019.

2) Member, Sub-Committee, Mental Health Professionals/Experts



CARA, GOI. CARA/2019-2020- Mental Health Professional Training dated 20.02.2020.

3) Member, State Inspection Committee, Dept. of Women and Child Devt., Govt. of Karnataka vide Govt. Order Sl. No. 194 MaMaE 2015 dated 02.11.2015 & Member Secretary Karnataka State ICPS Society Order no.: ICPS/CNCP/Ta.Sa 43/17/17-18 dated 30.10.2017.

4) Member, Committee on/about Protection, Rehabilitation and Future Development of Child Married Girls, Govt. of Karnataka vide Karnataka Govt. No. MaMaE 02 MaMaA 2018/BaViNiKo/Itharae/65/2017-18 dated 03-10-2018.

5) Member, Karnataka Child Rights Observatory (KCRO), KCRO Continuing Membership Resolution Letter dated 10.12.2019

6) Engagement as Researcher, Child Rights Trust Image Next Project, Bengaluru.

The details of income of petitioner No. 2 are Family Pension (GOI), Rental Income, Investments & Consultancy Fees (IT Return AY 2019-20) is Rs.7,02,329/ and her PAN card number is AASPN0733F. The litigation involving the petitioner No.2 is WP (C) 11116/2015 in the High Court of Delhi and SLP (Civil) No. 4905/2018 in the Supreme Court of India

4. The facts and background leading to the filing of this petition are narrated below:

#### PARTICULARS OF THE PETITIONERS

The Petitioner No. 1, Child Rights Trust, is a non-governmental, non-profit organization established in the year 2002 with aim to secure "Every Right for Every Child". The Petitioner Trust endeavors to protect and promote the rights inherent to a child and to:

- a. Achieve and consolidate the rightful position of children in general to the benefits and services to which they are entitled as children, and to a healthy and safe environment which is their due as human beings;
- b. Protect, maintain and develop children's inherent right to peaceful existence and quality of life to which they are entitled;
- c. Sensitize civil society and the authorities on child rights;
- d. Carry out statistical research and research in social sciences relevant to children and their families;
- e. Secure the effective use of the legal process to remedy children's grievances.
- f. Advance the rights of the child in the community.

A copy of the Petitioner's Trust deed is annexed hereto and marked as ANNEXURE P/1. (Pg 36-46)

5. The Petitioner No. 1 has done extensive work in the area of spreading awareness on child rights and legal instruments pertaining to children, raising awareness about the status of children and prevention of child marriage in Karnataka and nationally. Its work includes spreading awareness on the issue by conducting sessions on the situation with regard to child marriages as well as analyzing the roles of the Child Marriage Prohibition Officers as well as wide range of workshops and training programmes on child rights and emerging child protection issues designed for officials of various government departments, NGOs, teachers, lawyers, colleges and students of social work, police, railway police, children and parents. The Petitioner No. 1's activities include the working towards child-friendly gram panchayats, contributions to the Citizens' CRC review voluntary working group and through drafts of sections of the report; support



to sister organizations in the state and in other South Indian States on CRC and MDG reviews and acting as the Nodal organization for ChildLine 1098, Bengaluru. The Petitioner No. 1 has also with other organizations formed a network called the "Karnataka Task Force Against Child Marriage" to fight against child marriage. As part of this network, the Petitioner No. 1 has taken up a campaign against child marriages, coupled with sensitizing workshops with government officials, police, NGOs and general public. The Petitioner No. 1 herein had also intervened in the petition which resulted in the landmark judgement in *Independent Thought v. Union of India* WP (C) 382/2013, wherein this Hon'ble Court read down the second Exception to Section 376 of the Indian Penal Code and held that child marital rape with a wife under the age of 15 years would be recognized as rape. Vasudeva Sharma, the Executive Director of the Child Rights Trust has overseen the growth of the ChildLine 1098 in Bengaluru. This Child Helpline is the oldest helpline for children. In Karnataka, it is part of the RTE (Right to Education) Rules – every school and education institute has to display the Childline number prominently. The maximum complaints that Childline gets are on child labour and children being forced into begging, complaints of abandonment, especially of newborns who often have some form of disability or are girls. During this period of the lockdown has been working extensively on the improvement of the rights of migrant children who have been largely ignored. The field-based action research that the Petitioner No. 1 undertook has resulted in Government of Karnataka issuing a circular making it compulsory for every Grama Panchayat in the State to conduct Child Rights Grama Sabhas once in a year. This forum at the Grama Panchayat level has addressed thousands of child centric issues locally to provide



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quality services and protection to all children, and particularly girls and marginalized children. The Trust with one of its projects Karnataka Child Rights Observatory is analyzing the legislative debates and Question Hour of both the houses from a child rights perspective. The Petitioner No. 1 has also motivated the legislators to form Karnataka State Legislators' Forum for Child Rights to have discussions with the NGOs and other groups pertaining to child rights.

A copy of the article titled 'All about Childline 1098: How it helps children in distress' in Citizen Matters dated 28.01.2020 is annexed herein and is marked as ANNEXURE P/2. (18-47-51)

6. Petitioner No. 2, Mrs. Nina Nayak is a child rights advocate and activist. In recognition of her work, she was nominated to serve on three statutory bodies as a Member, National Commission for Protection of Child Rights. She was also the Chairperson of the Karnataka State Commission for Protection of Child Rights. During her tenure in these posts, she has worked on the implementation of children's' rights across the country. The Petitioner No. 2 has been on several Committees of governments such as Expert Committee for Social Audit of Juvenile Justice Act, Ministry of Women and Child Development; Expert Committee to review functioning of hostels of the Sports Authority of India, Ministry of Youth Affairs and Sports; Advisory Council for Child Protection, Sardar Patel Institute of Police for Security and Criminal Justice, Govt. of Rajasthan; Committee to draft Amendment to Juvenile Justice Act, GOI; Sub Committee on Children for the 11th Five Year Plan, National Planning Commission and Advisory Committee, GOI to formulate National Policy for Children. At the international level she has

served as Secretary, International Working Group to draft Guidelines for National and Inter-country Adoption and Foster Family Care under the aegis of the International Council of Social Welfare and ISS, Geneva and was provided opportunity to study family-based services for children in Hong Kong, Thailand, U.S.A., Finland, Sweden and Norway. In the non-government sector, she has served in an honorary capacity as Vice President, Indian Council for Child Welfare, New Delhi; President, Karnataka State Council for Child Welfare and Secretary, Society for Indian Children's Welfare, Kolkata. As a trainer she has been invited to give lectures at the National Judicial Academy, Bhopal; Lal Bhahadur Shastri National Academy of Administration, Missouri; several National Law Schools, Judicial Academies, Commissions for Protection of Child Rights, Universities and civic bodies such as Rotary Clubs and Corporates and continues to do so to build capacities of multiple stakeholders on the subject of child and family rights. Ms. Nayak has co-authored a Handbook: Justice for Children used as a reference tool by Child Welfare Committees across the country and which has been translated into Hindi and Telugu.

A copy of the article titled 'How 62-year-old Nina Nayak is making the world a better place for children' in Your Story dated 08.02.2016 is annexed herein and is marked as ANNEXURE P/3.

(Pg- 52-54)

#### **PLIGHT OF MIGRANT CHILDREN DURING COVID-19**

7. That due to the severity of the impact of the COVID-19 crisis, starting in 24.03.2020, the Government of India announced a nationwide lockdown. Due to the lockdown, which continued from March to June and thereafter has been lifted in stages, the



country witnessed a mass exodus of millions of migrants from cities and only recently have there been arrangements made for safe travel of migrant workers to their respective home states.

8. During the pendency of the lockdown, migrant children were affected the most and have been among the most vulnerable. In an unfortunate incident reported on 21 April 2020, a 12-year-old child died after walking over 100 kilometers from her workplace in Bhupalpally district of Telangana to her native village in Chhattisgarh's Bijapur district. Young infants have been left alone after the death of their parents during the lockdown due to starvation and illness.

A copy of the newspaper article titled "Telangana girl death: Case against Mulugu farmer who hired child labourer" published in The New Indian Express on 23.04.2020 is annexed herein and is marked as ANNEXURE P/4. (Pg-55-56)

A copy of the newspaper article titled "Infant in nomadic group dies amid coronavirus lockdown in Assam" published in The Hindu on 16.04.2020 is annexed herein and is marked as ANNEXURE P/5. (Pg-57)

9. Although there has been marked efforts by the Respondents to provide migrant workers with welfare measures, no report emanated from the Central or the State governments detailing relief measures extended to women and children who are stranded or in relief camps and quarantine centers at source districts. Children of migrant workers stand threatened by the unprecedented social and economic disruption. Till date there has been no assessment of the exact numbers of migrant children,



infants, and pregnant or lactating migrant women and their needs. Children of migrants and migrating children remain invisible and are the most vulnerable and are denied access to health and proper nutrition, quality education and skills and knowledge they need to thrive and spend their lives in makeshift, unfriendly, unhygienic and testing conditions. Migrant children affected due to Covid19 are still working in brick kilns, stone crusher units, construction sites, rice mills, plantations and other sectors where children as young as 5 years lend a hand to help their parents earn their daily sustenance.

A copy of the newspaper article titled "Understanding the Implications of the COVID-19 Lockdown on Migrant Workers' Children" published in The Wire on 5.05.2020 is annexed and marked ANNEXURE P/6. (Pg No - 58-63)

10. According to the NSS estimates of 2007-2008, the number of internal migrants in the India was 326 million in 2007. This included 118 million urban migrants and 208 million rural migrants. Internal migration is 400 million in India (UNESCO 2013) where 15 per cent constitutes children. Although no clear data is available on child migrants, estimates suggest that they constitute approximately 15 million of the population. Children accompanying their parents in the 0-14 age group constitute about one-third of the total migrant population. Among children in the 0-5 year age group, 85 per cent migrate with their families. Children of 6-14 year age group (elementary education age group) constitute nearly 6 million child migrants.

11. Migrant children are the largest category of children out of school. A 2014 Aide et Action study 'Young migrants at worksite', covering 361 informal worksites in seven Indian cities, revealed

that 39% of children never enrolled in schools, and a large majority did not access Integrated Child Development Services.

### **THREE GROUPS OF MIGRANT CHILDREN**

12. The COVID-19 pandemic is an extraordinary emergency, which requires extraordinary measures to safeguard the interests of the large number of migrant children. There are presently three groups of migrant children in India who are affected differently by the COVID pandemic:

- a. The first group consists of children left behind in the villages by parent(s) who migrate. They are dependent on money sent back home which is critical to their food security and to support their healthcare expenditure. The loss of parents' wages will have immediate effects on the food intake and health outcomes of these children.
- b. The second group are those children who migrate with their parents for seasonal or short duration migration. This type of migration is more common among Scheduled Tribe and Scheduled Caste groups. Parents migrate with their children, especially when they are young and in need of care and older children are also brought to care for the younger ones.
- c. The third group is of unaccompanied children who undertake migration themselves for employment. According to Census 2011, there were around one lakh such migrant children aged 10-14 and around ten lakh children aged 15-19 years. The unaccompanied category, would stand at 11 lakh children migrating alone or in groups to other states. During the lockdown

period, information about these invisible migrant child labourers is yet to be reported in any official documents.

A copy of the relevant portion of '2011 Census D – Series: Migration Tables – D-5 Migrants by place of last residence, age, sex, educational level and duration of residence' is annexed as ANNEXURE P/7. (Pg-64-65)

13. The restrictions imposed by the lockdown and the COVID pandemic have led to depriving migrant children of their basic fundamental rights to a dignified life with access to basic needs, food, water, shelter, education, protection from violence and abuse. The pandemic is having a discriminatory impact on migrant children and has aggravated their vulnerabilities. There are several needs of migrant children even after most migrant families have gone back to their place of origin and many continue to remain where they have been working, that are emerging during this lockdown and the pandemic. Some of the concerns of migrant children presently during the pandemic are as follows:

**I. HAZARDOUS LIVING CONDITIONS**

14. Almost all migrant children are found to be living in hazardous, unhygienic conditions such as informal worksites and labour colonies. Without wages, as well as job losses encountered by migrant households, are only likely to exacerbate children's experiences. Many young children and infants are living at informal sites such as mustering centres, railway stations, on the streets and even on pavements. There is a lack of relief camps, labour colonies and transit camps at state borders, as well as quarantine facilities arranged at the block or panchayat levels in villages with safe and child-friendly shelters that provide



nutritious food, water and sanitation facilities for families. There are no data or statistics or numbers available about infants and children of migrant families at various work sites and centers of concentration of migrant families. These living conditions are extremely unsafe for migrant children, exposing them to abuse, harassment, and a complete lack of basic facilities of food, clothing and shelter and possibilities of infections and health risks.

## **II. FOOD SECURITY FOR MIGRANT CHILDREN**

15. With schools being shut and livelihood of migrant workers affected nationally, access of children of migrant workers to food has been affected. With schools and anganwadis shut, children do not have access to mid-day meals available to them through government schemes. A large majority of migrant families hail from arid regions of the country, where agriculture is unviable, especially in summer. Under such circumstances, nutritional insecurity is the immediate risk in the villages for migrants and their families. Provision of food and rations by Anganwadi workers in cities and villages is not uniform and many children and infants and lactating mothers have not received their minimum food supply as guaranteed under the National Food Security Act 2013 as reported in the Rapid Assessment of the Impact of COVID-19 Lockdown on Food and Nutrition Security in Rural Karnataka report by National Law School of India University, Bangalore.

A copy of the Rapid Assessment of the Impact of COVID-19 Lockdown on Food and Nutrition Security in Rural Karnataka published by NLSIU is annexed and marked as Annexure P/8.

(Pg 66-78)

16. Due to the closure of schools and anganwadis, there is non-availability of mid-day meals to children as well as the lactating and nursing mothers who would be deprived of the nutritional food, which would lead to large-scale malnourishment. Acknowledging that all the States should come out with a uniform policy so as to ensure, that while preventing spread of COVID-19, the schemes for providing nutritional food to the children and nursing and lactating mothers are not adversely affected, this Hon'ble Court issued directed the Respondents and state governments to submit their response in terms of making mid-day meal schemes available in Suo Moto Petition (c ) No. 2 / 2020.

A copy of the order of the Hon'ble Supreme Court in Suo Motu Petition (C) No. 2/2020 dated 18.03.2020 is annexed as

ANNEXURE P/9. (Pg- 79-81)

17. Though the Respondent Government made a statement to make alternate arrangements for providing mid-day meals in case the schools are shut because of unforeseen circumstances, however no concrete nation-wide plan has been taken. There has been an increase in funds for the mid-day meal programme by the centre in light of the COVID-19 situation, yet its implementation remains arbitrary from state to state. There is a need to provide rations free of cost for migrant families so that the food needs of children and infants are taken care of and they are not deprived of the same. This is crucial to meet the food and nutritional needs of migrant children.

A copy of the newspaper article titled "Schools shut over COVID-19, govt plans delivery of grains or cash for mid-day meal

14

recipients" published in The Print on 19.03.2020 is annexed as

**ANNEXURE P/10.** (Pg-82-84)

A copy of the newspaper article titled "How states are delivering mid-day meals to students during Covid-19 school closure" published in The Print on 26.03.2020 is annexed herein as

**ANNEXURE P/11.** (Pg-85-87)

**III. HEALTH NEEDS OF MIGRANT CHILDREN**

18. Due to the pandemic, the children of migrant workers are left in a particularly vulnerable position regarding health. The deaths of infants and children due to starvation, malnutrition, and tiredness as mentioned above shows the increased need for health services in place for them. Although there has been a demand in the healthcare sector in the fight for COVID-19, states must ensure the continuance of other health services such as immunization, maternal healthcare, mental and physical health of children, immunization, health check-ups, primary health care and other medical services should be provided to all the households.

19. This period is increasing the malnutrition of children, stoppage of immunization etc., thus leading to increased health risks for children. The ICDS Scheme for the early childhood care and development should be made accessible, specifically to migrant children to break the vicious cycle of malnutrition, morbidity, reduced learning capacity and mortality as well as provide pre-school non-formal education.



A copy of the newspaper report titled "The fallout of India's lockdown on child malnutrition will be felt long after the COVID-19 crisis" published in Scroll on 08.06.2020 is annexed as ANNEXURE P/12. (17-88-92)

#### IV. EDUCATION OF MIGRANT CHILDREN

20. It is submitted that migrant children even under normal circumstances, are the largest group of children who are out of school. Presently, due to the pandemic, all schools are shut and therefore the access of migrant children to any education is completely taken away which impacts the children's right to education and right to life.

21. It is submitted that the Right to Free and Compulsory Education is an inalienable right and is closely linked with children's right to health, food and nutrition, and protection from violence. The likelihood of children, particularly girls, dropping out from school at all levels, increase manifold when schools are closed for a long time and there is prolonged economic distress. It will inevitably deny millions of children opportunities to advance and break the chain of generational illiteracy and poverty, thus widening the prevailing inequality gaps.

22. It is submitted that the Sarva Shiksha Abhiyan (SSA) scheme by the MHRD envisages specialised intervention for children of migrant population. During this periods of the pandemic, if regular schools are not working, the Respondents have to devise other methods of providing education to children, especially migrant children through means such as radio,

television, mobile phone, innovative digital and non-digital interventions to prevent disruption of school education of children of migrants should be looked into.

23. It is submitted that while digital education was introduced during the lockdown, without access most children find themselves left out. This includes children with disabilities and children without smartphones, absence of or poor internet connectivity, and electricity – as is the case with most migrant children. There is need to develop low and no-tech modalities to reach all children, specifically most marginalized children during school closures, on the lines developed by UNICEF, in order to facilitate learning in communities where access to internet or technology is scarce. Unless some of these methods of education are put into practice, migrant children will be at the danger of dropping out of education altogether even when the pandemic ends and government schools begin classes again.

24. Not having any access to teaching and education is also resulting in minor children being pushed into child labour, girls being forced into child marriages, or being at risk of trafficking or coming in conflict with the law. School shutdowns leave girls confined to their houses and increase the possibility of abuse and neglect and influences child marriages on a bigger scale than normal times. During the COVID-19 crisis the attention of frontline workers, the police and other functionaries have shifted to extending humanitarian response to those affected. It has created a vacuum in monitoring mechanisms related to children; the absence threatens to revive child marriages.

A copy of the article titled, "COVID-19: Inducing Child, early and forced Marriage" dated 23 May 2020 and published in Down to Earth is annexed herein and is marked as ANNEXURE P/13.

(pg-93-96)

**V. PROTECTION MEASURES**

25. It is submitted that the lockdown has brought focus on the children vulnerable to violence and exploitation. Due to the imposition of the compulsory lockdown, there have been catastrophic results of economic instability, poverty and hunger seen in the migrant families. This will have a significant impact on the children of migrant families. Given the dire situation, the chances of child labour are on the rise. According to news reports, there are currently 10.1 million child labourers in India between the ages of 5-14 years. As such there is an urgent need for the strict and effective implementation of Child Protection Units in urban and rural areas to prevent children entering the labour market.

A copy of the newspaper report titled "COVID-19 crisis can push more kids into child labour" published in The New Indian Express on 13.06.2020 is annexed herein and is marked as ANNEXURE P/14. (pg-97-99)

26. Additionally, there is a need for precautionary measures to be put in place to protect children who are in transit and at the worksites from abuse and exploitation. For the same, coordination between the Child Welfare Committee, State Commission for Protection of Child Rights, State Legal Services Authority and District Legal Services Authority, aid agencies and specialist NGOs working with migrant worker families and children is necessary.



27. It is submitted that there are existing Child Protection Committees or community level structures/groups that should apply to migrant children and support local authorities in order to monitor the protection and safety of children, liaise with the local authority on issues which require intervention/support, and to proactively facilitate dialogue to build supportive environment for children.

28. National Policy for Children, 2013: The National Policy of Children has been adopted to reiterate the commitment to the rights-based approach for children. The Policy is to guide and inform all laws, policies, plans and programmes affecting children. It has identified key priority areas – survival, health, nutrition, development, education, protection and participation – all of which are significant during the current pandemic.

29. National Health Policy, 2017: It is submitted that under the National Health Policy of 2017, priority is given to addressing the primary health care needs of the urban population with special focus on poor populations living in listed and unlisted slums, other vulnerable populations such as homeless, rag-pickers, street children, rickshaw pullers, construction workers, sex workers and temporary migrants. The policy also addresses malnutrition, especially micronutrient deficiencies, which restricts survival, growth and development of children. The policy declares that micronutrient deficiencies would be addressed through a well-planned strategy on micronutrient interventions.

#### **INTERNATIONAL FRAMEWORK ON THE RIGHTS OF CHILDREN**

30. It is submitted that there are international treaties, declarations and statements supporting the Rights of Children.

(A) UDHR:

- (i) Article 3 of the Universal Declaration of Human Rights, 1948 ("UDHR") grants everyone the *right to life, liberty and security of person*. Similarly Article 25 of the UDHR states that *(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.*

(B) CRC:

- (i) The Convention on the Rights of the Child, 1989 under Article 19 guarantees to *every child the right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation including sexual abuse, while in the care of parents, guardian, or any other person.*
- (ii) Furthermore, in Article 24, the State Parties are directed to *recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.*
- (iii) In Article 27, the States Parties have undertaken to recognize the *right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*

- (iv) Article 28 recognizes the *right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.*

(C) Sustainable Development Goals:

- (i) It is submitted that Target 2.2 of the Zero Hunger Goal of Sustainable Development Goals ("SDG") enjoins upon all States to end all forms of malnutrition, including achieving the *internationally agreed targets on stunting and wasting in children under 5 years of age, and address the nutritional needs of adolescent girls.*
- (ii) Under Target 4 of the Quality Education Goal of the SDG, the State has undertaken to ensure that the *proportion of children and young people completing primary, lower secondary and upper secondary education would be increased, and to achieve a minimum proficiency level in reading and mathematics.*
- (iii) Similarly, under Target 8.7.1 of the Decent Work and Economic Growth Goal of the SDGs, the State has *undertaken to lower the proportion and number of children aged 5-17 years engaged in child labour, by sex and age.*

31. It is submitted that the Government of India being a signatory to the aforesaid conventions, is accountable under international law to protect children, specifically those in situations of vulnerability due to the effects of the COVID-19 pandemic.



32. The Committee on the Rights of the Child has released a statement calling on the States to protect the rights of children from the grave physical, emotional and psychological effect of the pandemic, especially in countries that have declared states of emergencies and mandatory lockdowns as in India.

A copy of the Statement of the Child Rights Committee titled 'The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children' dated 8.04.2020 is annexed herein as ANNEXURE P/15.

(Pg- 100-103)

33. The United Nations Policy Brief on the Impact of Covid-19 on children identifies that children are affected through the infection with the virus itself, immediate socioeconomic impacts of measures to stop transmission of the virus and end the pandemic; and the potential longer-term effect of delayed implementation of SDGs. It specifically recognises that children living in institutions and detention – including child migrants – face a different kind of vulnerability. Their continued care is easily put in jeopardy at a time of crisis.

A copy of the United Nations Policy Brief on the Impact of COVID-19 on Children is annexed herein and is marked as

ANNEXURE P/16. (Pg- 104-120)

34. That the Petitioners have filed the present Writ Petition seeking protection of their fundamental rights on the following grounds:

(A) **THAT** the rights of the migrant children are being violated under Articles 14, 19, 21, 21A, 39, 45, and 47 of the Indian Constitution in the wake of and as an aftermath of the COVID-19 pandemic and the resultant extended lockdown.

(B) **THAT** the inaction of the Respondents to take any measures for the protection of the rights to food and nutrition, education and health of the migrant children is violating the right to life and dignity of children as provided in Article 21 of the Constitution. This Hon'ble Court in *Vikram Deo Sing Tomar v. State of Bihar* AIR 1988 SC 1782 stated that:

*India is a welfare State governed by a Constitution which holds the pride of place in the hearts of its citizens. It lays special emphasis on the protection and well-being of the weaker sections of society and seeks to improve their economic and social status on the basis of constitutional guarantees spelled out in its provisions. It shows a particular regard for women and children, and notwithstanding the pervasive ethos of the doctrine of equality it contemplates special provision being made for them by law. This is only to be expected when an enlightened constitutional system takes charge of the political and socio-economic governance of a society, which has for centuries witnessed the relegation of women to a place far below their due. We live in an age when this Court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen. And, so, in the discharge of its responsibilities to the people, the State recognizes the need for maintaining establishments for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order and for whom, therefore, of necessary provision must be*



*made for their protection and welfare. Both common humanity and considerations of law and order require the State to do so.*

Similar consideration must be given to children of migrant workers who are in a particularly vulnerable position, and as such require the State to discharge its responsibilities to protect them at the earliest.

(C) **THAT** this Hon'ble Court in *National Campaign Committee for Central Construction Labour (NCC-CL) v. Union of India*, W.P. (Civil) No. 318/2006 stated that:

*This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State — neither the Central Government nor any State Government — has the right to take any action which will deprive a person of the enjoyment of these basic essentials.*

(D) **THAT** Article 39(a), (e) and (f) specifically provide certain policies to be followed by the State for the welfare of the children. Article 39(f) provides that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.



(E) **THAT** Article 47 casts upon the State the duty to raise the level of nutrition and the standard of living and to improve public health. It is even more pertinent to raise the level of public health in the wake of the COVID-19 pandemic, specifically to ensure the mental and physical health of children of migrant workers.

(F) **THAT** there has been haphazard implementation of welfare measures by the state governments, resulting in unequal facilities provided to migrant children based on their geographical location in India. This violates Article 14 of the Constitution which guarantees equality before law and equal protection of law to all persons within the territory of India. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, class, and place of birth or any of them. Article 15(3) which provides for protective discrimination in favour of children, states "Nothing in this Article shall prevent state from making any special provisions for women and children."

(G) **THAT** as held by this Hon'ble Court in *People's Union For Democratic Reforms vs Union Of India & Others*, 1982 AIR 1473 that it is absolutely essential that the employment of children under the age of 14 years must be prohibited and that it would be in consonance with Convention No. 59 adopted by the International Labour Organisation and ratified by India and also in compliance of Article 24 of the constitution which provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. Under the Child Labour (Prohibition and Regulation) Act 1986 there is a complete prohibition on employment of children below the age of 14 years in any establishment. In the present

situation, there are minor migrant children who are being pushed into child labour which is not only hazardous but also in complete violation of the rights of migrant children under Article 24 of the constitution and the legislative provisions of the applicable laws and hence deserves the intervention of this Hon'ble Court.

(H) **THAT** all migrant children and pregnant and lactating mothers have the right to food security under the National Food Security Act 2013, which is presently not being implemented. The NFS Act in Section 4 mandates that every pregnant woman and lactating mother shall be entitled to free nutritional meals during pregnancy and six months after the child birth through the local anganwadi and maternity benefits of not less than rupees six thousand. Under 5 of the NFS Act, children in the age group of six months to six years would be entitled to free, age appropriate nutritious meals through the local anganwadi, children within the age group of six to fourteen years would get one free nutritional mid-day meal every day in all schools run by local bodies, Government and Government aided schools. Under Section 6 the State Government shall provide free meals to children who suffer from malnutrition. Presently, the provisions of the NFS Act for meeting the food security and nutritional needs of children from 6 months to 14 years and of pregnant and lactating mothers are not being met as schools and anganwadis are shut down and the food distributed is not sufficient to meet the basic right to food of migrant children as provided under the NFS Act and the Respondents have to therefore implement the same.

(I) **THAT** the non-provision of basic food and nutrition to migrant children is a violation of the children's right to life under Article 21 which includes the right to food. In *Swaraj Abhiyan v.*



*Union of India*, (2016) 7 SCC 498, this Hon'ble Court held that there is a basic right to wholesome and nutritious food particularly for women and children which is really the objective of the NFS Act and that the National Food Security Act 2013 should be implemented strictly in letter and spirit, particularly for migrant children whose food and nutritional security is seriously jeopardized during the present pandemic situation.

(J) **THAT** all children have the right to free and compulsory education under Article 21, Article 21A of the constitution and under the Right of children to Free and Compulsory Education Act 2009. In the present situation where schools are shut, the migrant children cannot be deprived of their fundamental right to education and the Respondents have the constitutional and statutory obligation to put in place measures for tracking migrant children, enrolling them in the neighbourhood schools and also providing alternate means of education to migrant children through alternative learning and provide education, whether through radio programmes, TV, home visits by teachers, mobile and phone apps and other innovative approaches.

(K) **THAT** in *Avinash Mehrotra v. Union of India & Ors.* (2009) 6 SCC 398 this Hon'ble Court recognizes education's "transcendental importance" in the lives of individuals and in the very survival of our Constitution and Republic and held that the right to education attaches to the individual as an inalienable human right. This Hon'ble Court held that the State must provide education to all children in all places, even in prisons, to the children of prisoners and affirmed the inviolability of the right to education. Education remains essential to the life of



the individual, as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens. In the instant case, the non-provision of education in any form to migrant children is a serious violation of the fundamental right to education of children and deserves the same to be implemented strictly.

(L) **THAT** under Article 46 of the Directive Principles, the state shall promote with special care the educational and economic interests of the weaker sections of the people. Thus, in addition to Articles 21 and 21A, it is the obligation of the State under Article 46 to provide education to the most marginalized children. As held by this Hon'ble Court in *Maharshi Mahesh Jogi vs State of M.P. & Ors*, (2013) 15 SCC 677 education is the basic necessity of the democracy and if children are denied their right to education, then democracy will be paralyzed. In *Mohini Jain V State of Karnataka and others*, (1992) 3 SCC 666 and in *Unni Krishnan & Others v. State of Andhra Pradesh* (1993) 1 SCC 645, it was held that the right to education is a fundamental right enshrined under Article 21 of the Constitution as the right to life and dignity of the individual cannot fully be appreciated without the enjoyment of right to education.

(M) **THAT** under the Juvenile Justice Act 2015, the Child Welfare Committees under Section 30 have the obligation to conduct an inquiry into the safety and well-being of children, ensure the care, protection, appropriate rehabilitation or restoration of children in need of care and protection, ensure that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed and

taking suo motu action in reaching out to children in need of care and protection, who are not produced before the Committee. Such action should be taken under the Juvenile Justice Act in respect of migrant children who are in need of care and protection and to ensure that they are protected from sexual exploitation, violence and abuse and provided care and support.

(N) **THAT** Section 37 of the National Disaster Management Act, 2005 (NDM Act), provides for the ministries and departments of Government of India to prepare a disaster management plan for prevention and mitigation of disaster. Similarly, section 31 of the NDM Act stipulates that every district of a state should have a plan for disaster management. Under this Act, a targeted COVID-19 response by the Respondents in the form of formulating a policy/guideline can substantially decrease the vulnerabilities of children of migrant workers. In the given circumstances, it would be apposite if the Respondent is directed to formulate policy/issue guidelines/implement prevalent policies/guidelines to protect the rights of migrant children with regard to food and nutrition, healthcare, education and prevention of exploitation.

(O) **THAT** under Section 13 of the Commissions for Protection of Child Rights Act, 2005; the National Commission for Child Protections is duty bound to carry its functions to protect all the rights of a child as adopted in the United Nations Convention on the Rights of the Child. Section 13 (1) (d) specifically states that the Commission shall *"examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial*



measures". COVID-19 is a global pandemic compounding the difficulties of children.

(P) **THAT** in the matter of *Sheela Barse & Anr. v Union of India*, 1986 SCALE (2) 230, the Hon'ble Supreme Court observed that:

*Some years ago, we came out with a National Policy for the Welfare of Children which contained the following preambulatory declaration:*

*"The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice."*

*If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality.*

In the present times, the migrant children are one of the most vulnerable category of children and their fundamental rights to life and dignity, which includes the right to food, health, welfare and also freedom from protection and exploitation cannot be violated and deserves the directions and interference from this Hon'ble Court.

(Q) **THAT** the Petitioners have no efficacious alternate remedy other than to file the present petition under Article 32 of the Constitution of India which pertains to enforcement of fundamental rights of migrant children and children of migrant workers across the country.



35. It is submitted that the Petitioners have not filed any other or similar petition before this Hon'ble Court or any other court seeking the same relief.

**PRAYER**

In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a. Issue an appropriate writ, order or direction in the nature of mandamus directing Respondents to map, enumerate and register the number of infants and children of migrant families at various work sites and centers of concentration of migrant families with the help of local authorities at the panchayat and ward offices through front line workers such as the Asha, ANMs, Anganwadi workers including the services of primary school teachers and SC/ST/BCM run hostel superintendents;
- b. Issue an appropriate writ, order or direction in the nature of mandamus directing Respondents to set up Children's Assistance center in all major areas of concentration of migrant labour households that would facilitate migrant families to get information and assistance about the basic needs relating to health care, food security, education for children;
- c. Issue an appropriate writ, order or direction in the nature of mandamus directing the Anganwadi centers in villages to extend their services to all migrant children and

households and to provide mid-day meals and rations free of cost to migrant children at their homes;

- d. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to provide basic food and nutrition to migrant children of migrant workers through the ICDS Scheme, targeted public distribution system and other welfare schemes covered under the National Food Security Act, 2013 for children in the ages of 0-6 years and 6-14 years;
- e. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to report on the provision of health services of immunization, health check-ups, primary health care services to children of migrant workers as also pregnant and lactating mothers through ICDS and other schemes including the Primary Health Centres both at their place of migration and source villages and schemes under the National Health Mission;
- f. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to give data on the out of school migrant children from all the States and to provide an action plan on providing a temporary education plan for migrant children and an action plan on how migrant children will be brought back to schools when schools start;
- g. Issue an order directing all local Governments including Grama Panchayats, and municipalities to conduct special Grama Sabhas or meetings at ward level and

panchayat/municipality level to listen to children about their grievances and take immediate action with respect to their life, health, protection, development and participation;

- h. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to involve the VCPCs/ Women and Child Protection Committees and Urban Child Protection in tandem with the school authorities and District Child Protection Units to prevent children entering the labour market (animal husbandry, agriculture);
- i. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to submit an action plan on the prevention of child marriages during this period;
- j. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to direct the Child Welfare Committee, State Commission for Protection of Child Rights, State Legal Services Authority and District Legal Services Authority, aid agencies and specialist NGOs working with migrant worker families and children to ensure all precautionary measures are put in place to protect children who are in transit and at the worksites from abuse and exploitation;
- k. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to constitute a Task Force including representatives of Government departments, non-governmental and community



organizations working on child rights, human rights and gender to monitor the protection rights of the children of the migrant workers across sectors.


1. Pass such other order or orders as this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS SHALL, AS IN  
DUTY BOUND EVER PRAY

SETTLED BY:

FILED BY:

(JAYNA KOTHARI)  
SENIOR ADVOCATE

  
RUKHSANA CHOUDHURY  
ADVOCATE FOR THE PETITIONERS

DRAWN ON: 13.07.2020

FILED ON: 17.07.2020