IN THE SUPREME COURT OF INDIA

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CIVIL) No. _____OF 2020

IN THE MATTER OF

...Petitioner

Versus

1. Union of India

Through Cabinet Secretary

Rastrapati Bhavan, Delhi-110003

2. State of Andhara Pradesh

Through Chief Secretary

Government of Andhra Pradesh 1st Block,1st Floor, Interim Government Complex, A.P Secretariat Office, Velagapudi - 522503

3. State of Arunachal Pradesh

Through Cabinet Secretary

Government of Arunachal Pradesh Civil Secretariat, Itanagar – 791111

4. State of Assam

Through Cabinet Secretary

Government of Assam Block- C, 3rd Floor, Assam Sachivalaya Dispur - 781006, Guwahati

5. State of Bihar

Through Cabinet Secretary

Main Secretariat, Patna – 800015

6. State of Chhattisgarh

Through Cabinet Secretary

Mahanadi Bhawan, Mantralaya Naya Raipur – 492002

7. State of Goa

Through Chief Secretary

Secretariat, Porvroim, Bardez, Goa – 403521

8. State of Gujarat

Through Chief Secretary

1st Block, 5th Floor Sachivalaya, Gandhinagar – 382010

9. State of Haryana

Through Chief Secretary

Room No. 4, 4th Floor Haryana Civil Secretariat, Sector-1, Chandigarh – 160019

10. State of Himachal Pradesh

Through Chief Secretary

H P Secretariat, Shimla – 171002

11. State of Jharkhand

Through Chief Secretary

1st Floor, Project Building, Dhurwa, Ranchi- 834004

12. State of Karanataka

Through Chief Secretary

Room No. 320, 3rd Floor Vidhana Soudha, Bengaluru - 560 001

13. State of Kerala

Through Chief Secretary

Secretariat, Thiruvananthapuram – 695001

14. State of Madhya Pradesh

Through Chief Secretary

MP Mantralaya, Vallabh Bhavan Bhopal – 462004

15. State of Maharashtra

Through Chief Secretary

CS Office Main Building, Mantralaya 6th Floor, Madame Cama Road, Mumbai – 400032

16. State of Manipur

Through Chief Secretary

South Block, Old Secretariat Imphal-795001

17. State of Meghalaya

Through Chief Secretary

Main Secretariat Building Rilang Building, Room No. 321 Meghalaya Secretariat, Shillong – 793001

18.State of Mizoram

Through Chief Secretary

New Secretariat Complex, Aizawl – 796001

19.State of Nagaland

Through Chief Secretary

Civil Secretariat, Kohima- 797004

20.State of Odisha

Through Chief Secretary

General Administration Department Odisha Secretariat Bhubaneswar – 751001

21.State of Punjab

Through Chief Secretary

Chandigarh – 160001

22. State of Rajasthan

Through Chief Secretary

Secretariat, Jaipur – 302005

23. State of Sikkim

Through Chief Secretary

New Secretariat, Gangtok – 737101

24. State of Tamil Nadu

Through Chief Secretary

Secretariat, Chennai – 600009

25. State of Telangana

Through Cabinet Secretary

Burgula Rama Krishna Rao Bhavan. 9th floor, Adarsh Nagar, Hyderabad5000063

26.State of Tripura

Through Chief Secretary

New Secretariat Complex Secretariat, Agartala-799010 West Tripura

27.State of Uttar Pradesh

Through Chief Secretary

1st Floor, Room No. 110 Lalbahadur Sastri Bhawan Uttar Pradesh Secretariat, Lucknow – 226001

28.State of Uttarakhand

Through Chief Secretary

4 Subhash Road, Uttarakhand Secretariat Dehradun – 248001

29. State of West Bengal

Through Chief Secretary

Nabanna, 13th Floor, 325, Sarat Chatterjee Road, Mandirtala Shibpur, Howrah – 711102

30.Union Territory of Andaman and Nicobar

Through Chief Secretary

Administration Secretariat, Port Blair – 744101

31. Union Territory of Daman and Diu, Dadra and Nagar Haveli

Through Administrator

Secretariat, Moti, Daman – 396220

32. Union Territory Lakshadweep

Administrator

Lakshadweep, Kavaratti – 682555

33. Union Territory of Delhi

Through Chief Secretary

Delhi Secretariat, IP Estate, New Delhi – 110002

34. Union Territory of Puducherry

Through Chief Secretary

Main Building, Chief Secretariat, Puducherry – 605001

35. Union Territory of Jammu and Kashmir

Through Chief Secretary

R. No. 2/7, 2nd, Floor Main Building, Civil Secretariat, Jammu - 180001

36. Union Territory of Ladakh

Through Chief Secretary

Raj Bhawan, Leh-Ladakh

37. Union Territory of Chandigarh

Through Administrator

Punjab Raj Bhawan, Sector 6, Chandigarh

…..Respondents

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA, 1950 SEEKING A WRIT OF MANDAMUS OR DIRECTION OR

ORDER DIRECTING THE GOVERNMENT OF INDIA, ALL THE STATE GOVERNMENTS, ALL THE UNION TERRITORY GOVERNMENTS AND OTHER CONCERNED AUTHORITIES TO NATIONALIZE ALL HEALTH CARE FACILITIES, ALL INSTITUTES, ALL COMPANIES AND ALL ENTITIES RELATED TO HEALTH CARE SECTOR SITUATED IN THE TERRITORY OF THE UNION OF INDIA AND THEIR RESPECTIVE TERRITORIES TILL THE PANDEMIC COVID-19 IS CONTAINED *OR* A WRIT OF MANDAMUS OR DIRECTION OR ORDER MAY BE ISSUED DIRECTING ALL HEALTH CARE FACILITIES, ALL INSTITUTES, ALL COMPANIES AND ALL ENTITIES RELATED TO HEALTH CARE SECTOR SITUATED IN THE TERRITORY OF THE UNION OF INDIA TO CONDUCT TESTS, ALL SUBSEQUENT TESTS, PROCEDURES AND TREATMENTS IN RELATION TO COVID-19 DISEASE FREE OF COST FOR ALL CITIZENS OF INDIA TILL THE PANDEMIC COVID-19 IS CONTAINED

To,

The Hon'ble Chief Justice of India and his companion Justices of the Supreme Court of India;

The Humble Petition of the Petitioner above-named

MOST RESPECTFULLY SHOWETH: -

ARRAY OF PARTIES

1. The writ petition to the effect of the writ petitioner has no personal interest in the litigation and the petition is not guided by self-gain or for gains of any other person/institution/body and that there is no motive other than of public interest in filing the writ petition

2. That the sole Petitioner is an Advocate registered/enrolled with the respected Bar Council of Delhi and having enrolment Petitioner is a law abiding citizen and is currently practicing as an advocate and is based in Delhi and believes that it is his duty as a concerned and aware citizen of India and as a humble servant of the hon'ble court to bring forth such issues which are detrimental to the health and safety of the nation, peculiarly in the hour of crisis like the present one wherein all of humanity is struggling with the deadly pandemic COVID-19.

3. That the sole petitioner has no personal interest in the litigation and nobody who the sole petitioner knows or is related to are interested or would in any manner benefit from the relief sought in the present petition save as the member of general public. The sole petitioner is not guided by self-gain or gain of any person, institution, body or there is no motive other than of public interest in filing the present petition.

4. That the Respondent No.1 is the Union of India which is responsible for overall well being of India and has a duty to protect the whole of India during crisis like the present one and has an obligation to mitigate the ill effects of the pandemic COVID-19.

6. That the Respondents Nos.2 to 29 are various State Governments responsible for the *'Public Health and sanitation; hospitals and dispensaries'* in their states and of their respective populations as per the entry 6, List II-State List, Seventh Schedule of the Constitution of India, 1950.

7. That Respondents Nos.30 to 37 are various Union Territories of union of India which are also responsible for the well being and health of their population respectively.

BRIEF FACTS OF THE CASE:

8. That not only India but whole of the world has been struggling with the unprecedented public health crisis commonly known as COVID-19 which is caused by novel Crona Virus having originated from Wuhan, China. To this date, this disease which has been declared Pandemic by World Health Organization (hereinafter, "WHO") and it has infected more than a million worldwide and has killed thousands. Whole world is trying to mitigate the harms of life and health being caused by this infectious disease. Countries like United States of America and Italy which are worldwide known to have very good public health facilities have seen exponential rise in the number of people

getting infected and have witnessed thousands death. The idea of 'social distancing' that is avoiding the unessential outside visits from home and keeping a bare minimum distance with the people while interacting has emerged as the most reliable method to contain the spread of this disease. Almost all countries in the world are observing some sort of lockdown or other to enforce and achieve social distancing in order to contain the spread of the COVID-19. India has been observing a 21 days lockdown since March 21, 2020 to contain the spread of this disease.

9. That it is unfortunately a well known fact that India's public health care system is not in a happy state and such situation has much to do with lack of expenditure on the same. In the budget of 2020, India chose to allocate only 1.6% of its of its total estimated budget expenditure on public health i.e. Rs 67,489 Corers, and that is very less even in comparison to the most of the poor/low-income countries of the world. For years expenditure on public health facilities has been low and as a result of which India's public health infrastructure is substandard and inadequate, more peculiar in the time of pandemics like COVID-19, in comparison to the world and unfortunately we could not see much development in this front. As per the 2019 WHO report tilled as "***Global Spending on Health: A World in Transition***", it has been found that the average per capita expenditure on Primary Health Care (hereinafter, "PHC") in low income countries is 41 $ (USA Dollar) whereas in

India its 27 $ which is as much as 1/3rd less than the average per capita expenditure on PHC for the low income countries. India's small neighbours like Bhutan and Sri Lanka spend 44 $ and 58 $ respectively per capita on PHC, again much higher than what the largest democracy in the world does. In this scenario, most of the population is compelled to spend out of pocket for basic health services and as a result of which 80% of Outside Patient Department (OPD) consultations were in private sector and 60% of Inside Patient Department (IPD) treatments happened in the private sector, as paper a well researched paper titled ***'The private health sector in India is burgeoning but at the cost of public health care'*** pointed out. In fact, in a country like India where majority of population is not resourceful considering the fact that in the ranking list based on purchasing power parity, hereinafter, "PPP", of per capita GDP prepared by International Monetary Fund (IMF) in 2017 India ranked 126 out of all the countries with a per capita income of 7,170 $ much behind other developing countries like Brazil and South Africa having per capita GDP as 15,500 $ and 13,400 $ respectively then the lack of public health care facilities in the time of pandemic like the present one and its impacts can indeed be disastrous. The estimated budget expenditure for the financial year 2020-2021 is annexed hereto and is **Annexure P-1**. The aforesaid WHO report titled "***Global Spending on Health: A World in Transition***" is annexed hereto and is **Annexure P-2**. The aforesaid paper titled as ***'The private health sector in India***

is burgeoning but at the cost of public health care' is annexed hereto and is **Annexure P-3**.

10. That it is also submitted that the public health happens to be a state subject in the seventh schedule of the constitution of India, 1950. There is a lack of coordinated effort in tackling this crisis among various states. In a scenario where borders of sovereign states are looking imaginary to a large extent, it may be submitted that the least India may do is to do away with all forms of unnecessarily barriers in order to fight this pandemic collectively and in a cohesive manner.

11. That it is respectfully submitted that it is factually incorrect and misleading that India does not have equipped hospitals and health care related facilities. In last two-three decades, India has emerged as a hub of medical tourism and today India accounts for 18% of the global market share of it. As per government figures, in the year 2018 around 5,00,000 foreigners visited India on medical visa and the size of medical tourism industry stood at $ 6 Billion and it was expected to grow at the rate of 200% and was projected to touch $ 9 Billion in the year 2020. Globally, Indian private hospitals have earned a good reputation of providing quality health care globally. A paper titled '***Medical Tourism in India: An Analysis'*** discusses the whole issue in detail and support them by government figures. It is also necessary to mention herein that on 19.03.2020, Ministry of Health and Family Welfare, Government of India issued an

'Additional Travel Advisory for Novel Cronavirus Disease (COVID-19)' wherein all scheduled commercial passenger flights to India were cancel till 29.03.2020 and from time to time the order is being extended to later dates in order to contain COVID-19. Hence, it becomes amply clear that the Indian private health care infrastructure which has capacity of catering to almost a million people is lying vacant and unutilised in the wake of ban imposed by the Indian government on arrival of foreign nationals in India. The aforesaid paper is titled as '***Medical Tourism in India: An Analysis'*** annexed hereto and is **Annexure P-4**. The aforesaid 'Additional Travel Advisory for Novel Cronavirus Disease (COVID-19)' is annexed hereto and is **Annexure P-5**.

12. That India's private health care facilities are ranked among the best in the World; aforesaid growing medical tourism is a witness to the same. Indian metropolises including but not limited to Delhi NCR, Mumbai and Chennai have the well known world class super speciality private hospitals which attract patients from all over the world like ***Sir Ganga Ram Hospital Delhi, Apollo Hospital Chennai, Fortis Hospital Gurgaon, Molchand Hospital New Delhi, The Medicity Gurgaon, Kokilaben Hospital Mumbai, Tata Memorial Hospital Mumbai, Lilavati Hospital Mumbai and Narayanan Hrudayalaya Banglore***. Private health care facilities do not remain limited to metropolises only but percolate down to small towns and districts. Individual medical practitioners giving consultations in small towns and villages on payment of professional

fees in a very common sight. Such facilities serve majority of Indians though the expenses incurred by the majority of Indians are out of pocket and more often than not a single illness in family tend to exhaust all savings of a family and tend to push them down in the social mobility ladder. Such a situation during a pandemic like COVID-19 wherein getting infected and ill and needing medical care has become a very close possibility can be very dangerous and harmful.

13. That in the light of the aforesaid submissions, it is amply clear that the struggle against the COVID-19 pandemic would require excessive reliance on health care facilities which would being with testing/screening for COVID-19, treatment for the ill and ICU and ventilator care in cases of severe illness to a large number of Indians. Presently, as aforesaid unfortunately public health care facilities alone will not be sufficient towards the fulfilment of this objective of defeating this pandemic. Whatever be the efficiency and global image of the private health care facilities, these private facilities remain out of bound for the majority of Indians as the likely cost to be incurred is prohibitive in the nature and acts as a barrier. The ones who muster courage to approach these expansive private health care centres, find themselves exhausted of whatever little they ever had soon and with the illness in hand start to face a new problem that is severe resource and economic crisis.

14. That in the aforesaid scenario, the most necessary step may be to issue a writ of mandamus or order or direction to union of India, all state governments, all governments of union territories and all concerned authorities to nationalize, Cambridge Dictionary defines nationalization as bringing a business, industry or sector under government's control, all health care resources to be found in the territory of the Union of India and to bring them, at free of cost, to the service of the common/all citizens of India in order to contain the pandemic COVID-19. Or in alternation, a writ of mandamus or direction or order may be issued to all health care providers in the territory of India to make testing and all subsequent procedures, tests and treatments in relation to COVID-19 to be free of cost for all citizens of India till the time this pandemic is contained. Once, such steps are taken a proper command chain at national level would get developed and the response to this pandemic will become swift, adequate and effective. As the measure of lockdown and social distancing taken by India is primarily in the form of learning by the experience from the other countries of the world facing COVID-19 pandemic though at the advanced/worse stages, it is respectfully submitted that the nationalization of the health care has been happening in many countries of the world to contain this pandemic including but not limited to Spain. Once nationalization of the health care facilities and related institutions happen, then the struggle against COVID-19 would become effective. Otherwise majority of the population would not be able to avail the required treatment for the cure and containment of COVID-19. Furthermore, if

contagious and infectious COVID-19 is not tackled at all levels then the threat and possibility of social transmission would not recede and the fight against COVID-19 would not be sufficient, adequate and efficient. Once nationalization of entire health care sector happens, till the pandemic COVID-19 is contained, then a strong message would percolate in society that all resources to be found in India are for the well being of all citizens during this pandemic crisis and can be availed of irrespective of class and ethnic barriers.

GROUNDS

A. That because right to get treatment is part of right to life as defined and provided for in the Article 21 of the Constitution of India, 1950. In the various judgements of this hon'ble court, right to life has been given meaning keeping in mind the broader constitutional principles and constitutional morality in mind. As such, the right to receive the necessary treatment has been held to be inalienable part of right to life of a person. In ***Consumer Education & Research Vs Union of India 1995 SCC (3) 42*** this hon'ble court has held as follows:

"27. Therefore, we hold that right to health, medical aid to protect the health and vigour to a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48A and all related Articles and fundamental human rights to make

the life of the workman meaningful and purposeful with dignity of person".

Similarly, in ***State of Punjab & Ors. Vs. Mohinder Singh Chawla Civil Appeal No. 16980-81 of 1996*** this hon'ble court again reiterated the broader meaning of the right to life and found it to be inclusive of the right to receive the necessary and adequate treatment.

B. That because Article 47 of the Constitution of India, 1950 stipulates improvement of public health among the primary duty of the state. It is primary duty of state to make sure that the public health remains of good quality and in the time of pandemic it would imply expanding the ambit of public health infrastructure by nationalizing/taking control of all health care providing facilities situated within the territory of India and making the same available to the common citizen of India free of the cost.

C. That because Article 38 of the Constitution of India, 1950 requires the state to eliminate the inequality in status, facilities and opportunities. Nothing would weaken status and dignity of a person more than the inability to get himself/herself and its family tested, if need be, and treated of this deadly disease due to financial constraints and lack of public health care system. Hence, it becomes utmost necessary to expand the ambit of public health infrastructure by nationalizing all health related facilities till the time this pandemic has been contained.

D. That because Article 39 of the Constitution of India, 1950 requires state to make policies in such a manner that ownership and control of the material resources of the community are so distributed as best to sub-serve the common good. No resource during a pandemic like COVID-19 is more important and material to the common good of society than the facilities of all hues related to health. Keeping the private health facilities are built with the active help of the state in various forms like subsidy in grant of land and relaxations of various kinds and state being primarily funded by tax payers money, including contribution paid by direct as well indirect taxes, later being higher. If such private health care facilities are constrained to miniscule number of rich people is not only unfair and unjust but is also vocative of the idea of social justice which as an ideal figures in the preamble of the constitution of India also. Hence, immediate nationalization of all health facilities till the contained of the pandemic COVID-19 is the need of the hour.

E. That because Article 39 of the Constitution of India, 1950 requires the state to give public assistance in cases of unemployment, old age, sickness and disablement and on other cases of undeserved want. This hour of global health crisis requires the state as per the mandate of the aforesaid Article to assist the persons getting infected and ill. Such assistance can be ensured in the best manner by nationalization of all

health care facilities and providing free of cost treatment to all in relation to pandemic COVID-19.

F. That because Article 25(1) of Universal Declaration of Human Rights, hereinafter ***"UDHR"***, holds as follows:

"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."

And Article 51 of the Constitution of India, 1950 requires the state to foster respect for international law and treaty obligations. In the light of India's voluntarily undertaken commitments, it becomes imperative for the state to provide for the needy in during this pandemic. Such assistance can be achieved, in true sense, by bringing all health care facilities in the total control of government and making them a service provider to needy free of the cost.

G. That because the Section 2 of The Epidemic Diseases Act, 1897 provides as follows:

*"**2. Power to take special measures and prescribe regulations as to dangerous epidemic disease.—**(1) When at any time the [State Government] is satisfied that [the State] or any part thereof is visited*

by, or threatened with, an outbreak of any dangerous epidemic disease, the [State Government], if [it] thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as [it] shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

(2) In particular and without prejudice to the generality of the foregoing provisions, the [State Government] may take measures and prescribe regulations for— * * * *

(b the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

* * * * *"

The plain and unambiguous words of the aforesaid section of the said Act makes it amply clear that State Governments, 'Public Health and sanitation; hospitals and dispensaries' being the entry 6 in the List II-State List, seventh schedule of the Constitution of India, 1950, are

well within their rights to make the regulations on temporarily basis to be followed by any class of person in order to prevent the outbreak of a dangerous epidemic. In the present context of pandemic COVID-19, it will serve a great common good and public interest if the State Governments may be issued a writ of mandamus, order or direction to nationalise/take control of all the health care facilities within their territories or in alteration may be issued a writ of mandamus, direction or order to make a regulation forthwith to be observed by all private health care providers to test and treat all the patients suffering from or are suspected to be suffering from COVID-19 till the further notice/order.

15. That the sole petitioner is constrained to file this petition before this Hon'ble Court as relief(s) claimed herein affect and pertains to protection of Fundamental Rights of the citizens of India granted by the Part III of the Constitution of India, 1950 and as a result of which this Hon'ble Court has the jurisdiction to adjudicate and entertain this Petition under Article 32 of the Constitution of India, 1950.

16.That the sole petitioner are constrained to file the above writ-petition before this Hon'ble Court as it has no other efficacious remedy and the matter is of grave and immense urgency and significance.

17. That the sole petitioner is citizen of India and filing the present petitioner for common cause and benefits of the society at large.

18. That the petition, if allowed, would benefit the citizens of India and will relieve them from insurmountable hardships.

19. That the sole Petitioner has not filed any similar petition/case previously before this Hon'ble Court or before any other High Court.

20. That the sole petitioner has no personal interest/gain/private motive of oblique reason in filing the present Writ Petition and prayers sought therein.

21. That there is no pending civil and criminal or revenue or any other litigation(s) involving the sole Petitioner which has or could have a legal nexus with the issue involved in the present Petition.

PRAYES

In the light of the above facts and circumstances, it is humbly prayed before this hon'ble court:

1. That this hon'ble court may be pleased to issue a writ of mandamus or direction or order directing the Government of India, all the State Governments, all the Union Territory Governments and other concerned authorities to nationalize all health care facilities, all

institutes, all companies and all entities related to health care sector situated in the territory of the union of India and their respective territories till the pandemic COVID-19 is contained; Or

2. That this hon'ble court may be please to issue a writ of mandamus or direction or order directing all health care facilities, all institutes, all companies and all entities related to health care sector situated in the territory of the union of India to conduct tests, all subsequent tests, procedures and treatments in relation to COVID-19 disease free of cost for all citizens of India till the pandemic COVID-19 is contained;
3. That this hon'ble court may grant any other relief which it deems fit and proper.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER IS AS DUTY BOUND AND SHALL EVER PRAY

Drawn By and Filed By:

PETITIONER IN PERSON

Drawn on: 05.04.2020

Filing on: 06.04.2020

IN THE SUPREME COURT OF INDIA

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CIVIL) No. _____of 2020

IN THE MATTER OF:

Amit Dwivedi

…. Petitioner

Versus

Union of Indian and Ors

…. Respondents

AFFIDAVIT

hereby solemnly affirm and declare as under:

1. That I am the sole Petitioner in the above noted Petition and as such I am competent to sign and file this petition.

2. I have done whatsoever inquiry/investigation which was in my power to do, to collect all data/material which was available and which was relevant for this court to entertain the present Petition. I further confirm that I have not concealed in the present Petition any data/material /information which may have

enabled this court to form an opinion whether to entertain this Petition or not and/or whether to grant any relief or not.

3. The contents of the accompanying petition from Para No. 1 to Para No. 21 are true and correct to the best of my knowledge and the last para is Prayer to this Hon'ble Court.

4. That the deponent has not filed such or similar Petition, earlier, in this Hon'ble Court or in any other Court, nor such a Petition is pending before any Hon'ble Court.

DEPONENT

VERIFICATION:

Verified at New Delhi on this 05th day of April, 2020 that the contents of my above affidavit are true and correct to my knowledge; no part of it is false and nothing has been concealed therein.

DEPONENT