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Presented on : 11-05-2020

Sub:- Public Interest Litigation – Arogya Setu App – Mandatory imposition of Arogya Setu App violating fundamental right to privacy under Art 21 of the Constitution of India

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

(Vacation Court)

W.P.(C)No. /2020

Shameer.P.S : PETITIONER

Vs.

Union of India & others : RESPONDENTS

WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Court Fee Paid : `100/-

S.K. ADHITHYAN

KEERTHI S JYOTHI

&

GOKUL D. SUDHAKARAN

Counsel for the Petitioners

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BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM

W.P.(C)No. /2020

Shameer.P.S : Petitioner

Vs.

Union of India & others : Respondents

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Dated this the 11th day of May, 2020

COUNSEL FOR THE PETITIONER

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- A -

BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM

W.P.(C)No. /2020

Shameer.P.S : Petitioner

Vs.

Union of India & others : Respondents

SYNOPSIS

The petitioner is a citizen of India and he is permanently residing at the address shown above. He is espousing the cause of the entire people of the country who is an employee in a work place. Thus this Writ Petition is filed as a Public Interest Litigation. The government while issuing revised guidelines for lockdown imposed the mandatory use of Arogya Setu Application in the workplace by all employees of both public and private organizations. The mandatory use of Arogya Setu Application takes away the consent of an individual and by forcing to part with personal data violates fundamental right to privacy enshrined under Article 21 of the Constitution of India as espoused by 9 Judge Bench of the Hon'ble Supreme Court in K.S.Puttaswamy Case. The application which the employees are forced to mandatorily use has vague Terms and Conditions and also Privacy Policy which is very ambiguous and allows the state to act as a surveillance mechanism over its citizens. The ambiguity also intensifies as to the transfer of data to non-state actors and no there is ambiguity regarding who will have access to the data in the Government. The government has themselves put up a limited lianility clause in case of a breach by a 3rd party even when the government is forcing the application to be used. Therefore a standard form contract is being forced upon the employees in a workplace, in which the terms and conditions may vary, the privacy policy may vary from time to time. But as it is made compulsory the employees are forced to accept the terms without any other option. Hence this Writ Petition.

Chronology of dates and events:-

24-03-2020 - Nationwide lockdown declared by the central government

01-05-2020 - Lockdown guidelines issued for extending lockdown till 19/05/2020 and also compulsory use of Arogya Setu Application

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Points to be urged:-

In the facts and circumstances of the case the 1st respondent may be directed to make use of Arogya Setu Application mandatory as compulsory use of it is in violation of law and affecting the entire people of this country.

Dated this the 11th day of May, 2020

COUNSEL FOR THE PETITIONER

WWW.LIVELAW.IN

BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM
(Special Original Jurisdiction)
(Vacation Court)

W.P.(C)No. /2020

PETITIONER:-

Shameer.P.S,

Vs.

RESPONDENTS:-

1. Union of India,
Represented by the Secretary,
Ministry of Home Affairs,
North Block, New Delhi – 110 001.

2. Ministry of Electronics & Information
Represented by its Secretary,
Technology, Electronics Niketan, 6, CGO
Complex,
Lodhi Road, New Delhi – 110 003

3. National Informatics Center,
Represented by its Director General,
A-Block, Lodhi Rd, CGO Complex, Pragati Vihar,
New Delhi- 110003

4. State of Kerala,
Represented by the Secretary,
Home Department, Government Secretariat,
Thiruvananthapuram – 695 001.

5. The Director General of Police,
Police Head Quarters,
Vazhuthacaud P.O.,
Thiruvananthapuram –695010 .

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WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

All notices to the Petitioner may be served on his Counsel **S K Adhithyan , Keerthi S Jyothi** & **Gokul D. Sudhakaran**, Advocates,1st Floor, TWRA-90, Pushpaka Road, Vaduthala Ernakulam, Kochi – 682 023 and to the Respondents in the addresses mentioned above.

The Petitioner most humbly submits as follows:-

1. The petitioner is a citizen of India and he is permanently residing at the address shown above. The petitioner is a public spirited person and is involved in political as well as social work. The petitioner is espousing the cause of the entire people affected by the order/guidelines issued by the Government directing mandatory use of *Arogya Setu* tech application in workplace. The term 'workplace' is very wide and affects sizeable majority of the population in India as well as the State of Kerala. The petitioner runs CNet Total Solution at Kadakkal which provides various services through internet. This facility is being used by many in the locality. Thus this Writ Petition is filed as a Public Interest Litigation. The petitioner has not filed earlier petitions in respect of the same subject matter before this Hon'ble Court. The petitioner undertakes that he will not file any other petition for the same relief during the pendency of this Writ Petition.

2. The COVID-19 pandemic was first reported in India on 30th January. The 1st respondent declared nationwide lockdown from March 24th and is extending the lockdown from time to time. The 1st respondent at last extended the lockdown on 1st May 2020 through an Order No-40-3/2020-DM-I(A). The lockdown which started on 24/03/2020 was extended up to 03/05/2020. Under the direction of the National Disaster Management Authority the 1st respondent has extended lockdown for a further period of two weeks from 04/05/2020. True copy of the order by the 1st respondent as Order No-40-

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3/2020-DM-I(A) dated 01/05/2020 extending lockdown and guidelines attached to it is produced herewith and marked as **Exhibit-P1**.

3. Arogya Setu Application is a contact tracking application which the 3rd respondent has developed and is being mandatorily directed by the 1st respondent to be installed in all smart phones. In Exhibit P1 the 1st respondent has directed for mandatory use of Aogya Setu application by public and private employees in workplace. In clause 15 of Annexure-I attached to the guidelines it is mandated as follows "*Use of Arogya Setu app shall be made mandatory for all employees, both private and public. It shall be the responsibility of the Head of the respective Organization to ensure 100% coverage of this app among the employees.*" In clause 16 of the guidelines as per MHA Order No.40-3/2020-DM-I(A) it is specifically stated as follows "*any person violating these lockdown measures and the National Directives for COVID-19 Management will be liable to be proceeded against as per the provision of Section 51 to 60 of the Disaster Management Act,2005, besides legal action under S.188 of Indian Penal Code and other legal provisions as applicable*". Thereby the use of the Arogya Setu application has been mandated in electronic gadgets for all employees, both private and public. It is also stated that the employers have to force upon the employees the application, thereby even if an employee does not download the application the employer can be held liable. The guidelines presuppose that all public and private employees should have smart phones in order to use the application and penal liability is also attached to the same if not done.

4. The Arogya Setu Application collects the personal data of a person including his health data. The information collected include name, phone number, age, sex, profession, countries visited in the last 30 days and whether you are a non smoker or not. This information is stored in a cloud server. Once installed into an electronic gadget it is mandatory for switching

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on Bluetooth and Location of a person. And location of a person has to be set in the settings of the gadget as 'always' .Thereby meaning that there will be constant surveillance of a person. The Arogya Setu App as per the application itself gives instructions on how to self-isolate and what to do in case anyone develops symptoms that may need help and support.

5. The Terms and Conditions of the Arogya Setu Application are very ambiguous. The preface on the Terms and Conditions states that *".....The terms may be amended from time to time with notice to you. In order to continue using the App, you will be required to accept the revised Terms. Failure to comply with the Terms can result in suspension of your ability to use the App*". From the wordings itself it is clear that once it is directed to be mandatorily used the employee will have to compulsory give consent to the revised terms and that too after the data from him has been collected even if there is any amendment to the terms and conditions the employee will have to accept the terms blindly. It is stated in the Disclaimer of the terms that all services are never wholly free from defects, errors and bugs and the Government of India provides no warranty or representation to that effect. It also admitted in its disclaimer policy that the services that are being provided are not a substitute for common prudence ,medical diagnosis, specific therapeutic and epidemiological measures necessary to combat COVID-19. True copy of the Terms and Conditions specified in the Arogya Setu application is produced herewith and marked as **Exhibit-P2**

6. It is humbly submitted by the petitioner that the privacy policy of the Arogya Setu application is fully immersed in ambiguity and shrouded with vagueness. The privacy policy is set out in a standard form contract which the user has to accept while mandatorily using the application. The privacy policy in its preface says that "*At registration you accepted the terms of this Privacy*

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Policy and your use of the App signifies your continued acceptance thereof. This Privacy Policy may be revised from time to time and you will be notified of all such changes. In order to use the App, you will be required to consent to the terms of the Privacy Policy as revised from time to time". This clearly indicates that in the standard form contract which the employees are forced to mandatorily accept as the application has to be compulsorily used ,terms of the privacy policy, can be varied after collecting the information from a user. It also says that the application continuously collects the location date of users and a record of all the places within fifteen minute intervals. In the clause 3 (a) of the Privacy Policy it is stated that "*All personal information collected from you under Clause1(a) at the time of registration will be retained for as long as your account remains in existence and for such period thereafter as required under any law for the time being in force*". This clearly indicates that the personal data of a person will be retained by the Government even after uninstalling the application. The privacy policy also lacks a clause or process in which a user wants to formally delete the personal data provided. True copy of the Privacy Policy specified in the Arogya Setu Application is produced herewith and marked as **Exhibit-P3**.

7. It is further stated in the Arogya Setu application's Privacy Policy in clause 1(b), Information Collected & Manner of Collection, that " When two registered users come within Bluetooth range of each other, their Apps will automatically exchange DiDs and record the time and GPS location at which the contact took place. The information that is collected from your App will be securely stored on the mobile device of the other registered user and will not be accessible by such other user. In the event such other registered user tests positive for COVID-19, this information will be securely uploaded from his/her mobile device and stored on the Server". The privacy policy clearly states that information uploaded with the government will be shared with a third party/ another registered user's device. Through this when a non-state

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actor gets hold of a registered users information, even though the government says it is stored in a 3rd party's gadget which he has no access. The government themselves has put forward a standard form contract in which there is limited liability if there are any bugs or viruses planted by a 3rd party. The information can also be stored in an external server. The employees of private and public bodies are being directed to use the application mandatorily thereby their right to exercise their choice or right to be let alone and right to consent under Article 21 & 19(a) of the Constitution of India. This clearly violates the right to privacy of a person enshrined under Article 21 of the Constitution of India as reasonable restrictions on a person's right to life cannot take away right to consent declared by the Hon'ble Supreme Court of India in ***K.S.Puttaswamy v. Union of India*** , ***(2017) 10 SCC 1***

9. It is submitted by the petitioner that a further perusal of clause 3(c) of the Privacy Policy would make it clear that third parties will also be able to access the data "*Nothing set out herein shall apply to the anonymized , aggregated datasets generated by the personal data of registered users of the App or any reports, heat maps or other visualization created using such datasets. Nothing set out herein shall apply to medical reports, diagnoses or other medical information generated by medical professional in the course of treatment*". Therefore the data deletion requirement does not apply in any capacity to anonymised and aggregated datasets. This is stated just below clause 3(b) which says that all personal information collected from other users who came in contact with the mobile device shall be retained on the mobile device for a period of 30 days if it has not been uploaded to the server, and all information which has been uploaded to the server will be purged within 45 days, and all information collected of persons having tested positive will be purged from the server after 60 days after such persons have been declared cured of COVID-19. From this it is clear that the data will be available to a third party in their gadget for this amount of period and thereafter.

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10. The Government is also allowed to share the personal information with "other necessary and relevant persons", for "necessary medical and administrative interventions" which suggests interdepartmental exchanges of people's personal information. This is more excessive than countries like Singapore and even Israel. This will create a more vagueness as "opacity is what fuels the creation of surveillance systems". The Privacy Policy is not clear as to who will be those medical professionals and whether who will be the authority in the government to be assigned such a task. It is humbly submitted that a conjoint reading of this clause along with clause 3(a) 'Retention' part in the Privacy Policy makes it clear that the information can be retained till such time the application is installed and till any law allows it. Therefore mandatory installation of application and its use will violate the fundamental rights enshrined under Article 21 of the Constitution of India

11. The Arogya Setu Application presupposes that all employees in public and private bodies should have smart phone. Without a smart phone the installation of Arogya Setu App is not possible. The sizeable majority in the Indian Union does not own a smart phone. The aim as claimed to be is to mitigate a pandemic whereas the majority of the population is left out. This itself shows that the Arogya Setu Application is to reach the hands of a elitist few who owns a smart phone. The mandatory installation of the Arogya Setu Application thereby developing a system which leaves out the majority of the population to be left out in the midst of pandemic, just because they lack a smart phone is lucidly arbitrary and unreasonable and is violative of Article 14 of the Constitution of India.

12. In Exhibit P1, clause 15 of Annexure-I says that the employer shall be responsible for 100% coverage of the application. Thereby the 1st respondent is forcing the employer to be liable for no wrong of his. If an employee does not install Arogya Setu App or does not have a smart phone the employer will be held liable without any mens rea/intention to do so . In

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another way the employer is also forced to check the smart phones of his/her employees thereby infringing the right to privacy of the employees. Clause 16 of Exhibit P1 clearly says that penal provision under Section 51 to 60 of the Disaster Management Act, 2005 and Section 188 IPC would be attracted. This is clearly violative of the cardinal principles of criminal jurisprudence.

12. The data confidentiality of the Arogya Setu Application is also now under a cloud. The French ethical hacker Robert Baptist alias Elliot Anderson raised serious doubts over the data confidentiality and possible breach of privacy of the Aorgya Setu application. The Arogya Setu Application responded to the allegations by an official statement. It is also pointed out by the ethical hacker that after his statement the Arogya Setu tried to fix two issues in the application. The ethical hacker also revealed that five persons in the Prime Minister's Office and army personnel are feeling not well indicating that the Arogya Setu App has given him this info. True copy of the response statement given by Arogya Setu to Robert Baptist's claim is produced herewith and marked as **Exhibit-P4**. True copy of the newspaper report in The Hindu online edition on the privacy concerns raised by Robert Baptiste is produced herewith and marked as **Exhibit-P5**.

Aggrieved by the Exhibit-P1 guidelines mandating compulsory installation and use of Arogya Setu Application for all public and private sector employees, this Writ Petition is filed on the following among other:-

GROUNDS

A) The direction issued to mandatorily use Arogya Setu Application by public and private sector employees through guidelines issued by the 1st respondent is highly arbitrary and violative of Article 14, 19 and 21 of the Constitution of India.

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B) In the information age data is considered as the new oil. Any data is valuable and therefore, liable to be treated at par with any other valuable property which an individual owns. Therefore, the individuals cannot be made to suffer undue losses by parting with the property which assumes a certain value in monetary terms, that too without the consent of the concerned individual. Moreover, there is a liability to safeguard the data from being misused.

C) The 9 Judge Bench of the Hon'ble Apex Court in **Justice K.S. Puttaswamy and Ors. vs. Union of India (UOI) and Ors. (2017)10 SCC 1** unambiguously held that the right to privacy of a person is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. The right to privacy of a person is inviolable and cannot be infringed through an arbitrary exercise of executive power. In the present case, direction to mandatorily use a smart phone application by collection and dissemination of personal data of the individuals in a routine and carefree manner is highly arbitrary.

D) The actions of the 1st respondent clearly overstep the reasonable safeguards to be observed, as laid down by the Hon'ble Apex Court in the Puttuswamy's case. While discussing the various facets of the right to privacy, Justice D.Y. Chandrachud held that

"177. The sphere of privacy stretches at one end to those intimate matters to

which a reasonable expectation of privacy may attach. It expresses a right to be left alone. A broader connotation which has emerged in academic literature of a comparatively recent origin is related to the protection of one's identity. Data protection relates closely with the latter sphere. Data such as medical information would be a category to which a reasonable expectation of privacy

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attaches. There may be other data which falls outside the reasonable expectation paradigm.

Apart from safeguarding privacy, data protection regimes seek to protect the autonomy of the individual. This is evident from the emphasis in the European data protection regime on the centrality of consent. Related to the issue of consent is the requirement of transparency which requires a disclosure by the data recipient of information pertaining to data transfer and use."

Therefore, the data so collected and it's end use is unknown to the person from whom the data is so collected. The final analysis or synthesis of the data and its end use is without the informed consent of the person parting with such sensitive personal information. The person so parting with the data is also not given an opportunity to opt out of the same through an informed decision making process.

E) As per the views of Justice Sanjay Kishan Kaul in the Puttuswamy Case a infringement of privacy by state action can only be done by following a four fold test :

"Test: Principle of Proportionality and Legitimacy

490. The concerns expressed on behalf of the Petitioners arising from the possibility of the State infringing the right to privacy can be met by the test suggested for limiting the discretion of the State:

(i) The action must be sanctioned by law;

(ii) The proposed action must be necessary in a democratic society for a legitimate aim;

(iii) The extent of such interference must be proportionate to the need for such interference;

(iv) There must be procedural guarantees against abuse of such interference."

In the present case, the action of the 1st respondent in issuing guidelines does not qualify the above tests. Therefore, it is liable to be interfered with.

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F) Even going by the discussions on the extent to which the State may encroach into the right of privacy of the individual, the issue of consent is cardinal and cannot be overlooked. However, the judicial pronouncement on the rights of privacy carefully carves out an exception for legitimate actions by the State in furtherance of public interest. Even in that case the reasonable procedural safeguards are not liable to be forgone. Therefore, on the said count alone the actions of the 1st respondent suffer from gross arbitrariness. Therefore, the interference of this Court in the matter is highly warranted.

G) The lack of a legislative framework to safeguard the interests of its users points out to the larger question of consent being obtained forcefully as in this case. In the *Aadhar case* right after the first *Puttaswamy* judgment a constitutional bench of the Honble Apex Court held that the Circular dated March 23, 2017 of the Department of Tele communications to mandatorily link Aadhar with mobile phone was declared as unconstitutional as the court found it to be disproportionate and unreasonable state compulsion. It was also held that the circular lacked backing of law and also violates the requirement of proportionality as well. The 1st respondent does not have any legal backing to issue a direction to use Arogya Setu App compulsorily. The 1st respondent relies on Section 10(l) of the Disaster Management Act, 2005, this only confers general powers to issue directions. In *K.S.Puttaswamy v Union of India(Aadhar case)* it is clearly stated without an explicit backing of law right to privacy enshrined under Article 21 of the Constitution of India cannot be restricted especially when right to consent is taken away.

H) The physical data of COVID-19 patients and persons under observation who have been quarantined have already been collected by the respective state governments. The Hon'ble High Court of Kerala especially after the interim order in the case, Ramesh Chennthiala v. State of Kerala, has clearly laid down that informed consent is a prerequisite for legitimate use

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of data by the State. The State of Kerala is collecting data by complying with these directions. This has been collected directly through a questionnaire and without using any gadgets. No persons in quarantine are allowed to step out or go to a workplace. Therefore the collection of data from employees of public and private organizations is highly unwarranted, as only those who are not under quarantine are allowed to go to a workplace .

l) The definition of 'workplace' is not stated in the Disaster Management Act, 2005 . The discussion as to the definition of workplace can be found in a Dvision Bench decision of this Hon'ble Court in Essar Telecom Infrastructure Pvt. Ltd v. State of Kerala, 2011(2) KHC 171. The Hon'ble Court had gone through while going through various laws and Halsbury's Laws of England (Vol.20), paras. 415 deals with "workplace" as follows:

"415. Workplace: Any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a factory if they were in the employment of the owner or occupier, is deemed to be a factory. If the workplace is not a tenement factory or part of a tenement factory, the provisions of the Factories Act. 1961 apply as if the owner or occupier were the occupier of a factory and the persons working in it were employed in the factory".

After going through the above definition of workplace and various legislations including Travancore-Cochin Public Health Act the court held that "*Going by the concept of worker, either he must be employed in a manufacturing process or in cleaning any machinery or premises used for a manufacturing process or any work which is incidental or connected with the manufacturing process. Having regard to the definition of the word "manufacturing process", we are of the view that the activity which is carried out in a mobile tower cannot be treated as a manufacturing process. At any rate, we would think that drawing light from the definition of the word*

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"workplace" in the Travancore - Cochin Public Health Act, that the activity which is carried on in a mobile tower cannot be treated as an industrial, manufacturing or a trade process. The fact that the mobile tower operates or works without any employee or workmen having to attend to it with any measure of regularity fortifies our view that it cannot be treated as a workplace, as intended by the Legislature. We would think that not only must systematic work be done with the aid of power as stated therein, but there must be at least a few employees who attend to the work with some measure of regularity. This feature is certainly not present in the case of a mobile tower and the presence of an occasional worker, essentially for doing maintenance once in a while, cannot render the place a workplace". Therefore in work places where there is no manufacturing process Exhibit-P1 would not apply.

J) It is the primary duty of the 1st respondent to safeguard the interest of its citizens. In the absence of a concrete legislation specifically dealing with the subject, the careful considerations have to be given when data is collected and disseminated amongst different state-entities and non-state entities, which are not morally or constitutionally bound to safeguard the privacy of the citizens. In such cases, normally the contractual obligations concerning the activity determine the end use of the data so procured. In the absence of a detailed and solid contract, the end use of the data is unregulated and the interest of the individuals to whom the data belongs to will be jeopardized. The individuals shall not be put to such disadvantage by the 1st respondent, who is constitutionally bound to preserve the privacy of the it's citizens. All other countries which have successfully implemented a smart phone application in its privacy policy clearly specifies that this application will be used only for prevention of COVID-19. Whereas the Arogya Setu app is ambiguous as to whether it will be used for other purposes as it is stated in the Privacy Policy that all purposes which is allowed by any law in force.

K) The Petitioner has no other efficacious speedy remedy than to approach this Hon'ble Court under Article 226 of the Constitution of India.

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It is therefore humbly prayed that this Hon'ble Court may be pleased to call for the records of the case and:-

i) to declare that clause 15 of Annexure-I Guidelines issued along with Exhbit-P1 as Order No-40-3/2020-DM-I(A) of the 1st respondent dated 01/05/2020 to use Arogya Setu Application compulsorily by employees of public and private organizations is unconstitutional and violative of fundamental right to privacy enshrined under Article 19 & 21 of the Constitution of India

ii) to issue an order or direction as general guidelines to check the violations of right to privacy and to fix the parameters within which the 1st respondent uses personal data for contact tracking.

iii) to issue a Writ of Mandamus or order or direction to 1st respondent to not mandate use of Arogya Setu Application compulsory for employees of public and private organizations.

iv) to declare that the 'workplace' as stated in clause 15 of Annexure-I in Exhibit-P1 includes only place where manufacturing takes place.

v) to direct the 5th respondent that any prosecution steps taken pursuant to Exhbit-P1 guidelines for violation of clause 15 of Annexure-I be dropped.

vi) to issue such other appropriate Writ, Order or direction as is deemed just and necessary in the circumstances of the case.

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INTERIM RELIEF:-

For the reasons stated in the Writ Petition and accompanying affidavit it is most humbly prayed that this Hon'ble Court may be pleased to issue an interim direction to the 1st respondent to make the use of Arogya Setu Application voluntary and to further direct the 5th respondent not to take any coercive steps if there is any violation of clause 15 of Annexure-I in Exhbit-P1

Dated this the 11th day of May, 2020

PETITIONER

COUNSEL FOR THE PETITIONER

WWW.LIVELAW.IN

16.

BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM

W.P.(C)No. /2020

Shameer.P.S : Petitioner

Vs.

Union of India & others : Respondents

AFFIDAVIT

I, Shameer.P.S,

do hereby solemnly affirm and state as follows:-

1. I am the Petitioner in the above Writ Petition and am conversant with the facts of the case.

2. The averments in the Writ Petition are true and correct.

3. The Exhibits produced and marked are the true copies of the originals. The Interim order prayed for is just and necessary.

4. The petitioner has not filed earlier petitions seeking similar and identical reliefs in respect of the same subject matter.

5. This Writ Petition is filed by the petitioner not for any personal gain nor he has any private interest in the matter. There is no authoritative pronouncement by the Hon'ble Supreme Court or the High Court on the question raised and the result of the litigation will not lead to any undue gain to the petitioner or to anyone associated with him. He is interested to see that there is no data epidemic after this pandemic. The respondents are legally liable to see that the Arogya Setu Application is to be used only voluntarily.

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All the facts stated above are true and correct.

Dated this the 11th day of May, 2020

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 11th day of May, 2020 in my office at Ernakulam.

Advocate

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Exhibit P1

No. 40-3/2020-DM-I(A)
Government of India
Ministry of Home Affairs

North Block, New Delhi-110001
Dated 1st May, 2020

ORDER

Whereas under directions of the National Disaster Management Authority (NDMA), guidelines on lockdown measures to contain the spread of COVID-19 in all parts of the country were issued vide Order of even number dated 24.03.2020 under the Disaster Management Act 2005 for a period of 21 days with effect from 25.03.2020. Under further directions of NDMA, the lockdown period was extended upto 03.05.2020 vide Order of even number dated 14.04.2020 and consolidated revised guidelines were issued vide Order of even number dated 15.04.2020;

Whereas in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, NDMA has issued an Order number 1-29/2020-PP dated 01.05.2020 directing the Chairperson, NEC that lockdown measures be continued to be implemented in all parts of the Country, for a further period of two weeks with effect from 04.05.2020;

Whereas under directions of the aforesaid Order of NDMA dated 01.05.2020, and in exercise of the powers, conferred under Section 10(2)(I) of the Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, NEC, hereby issues directions to all the Ministries/ Departments of Government of India, State/Union Territory Governments and State/Union Territory Authorities that the lockdown period is extended for a further period of two weeks with effect from 04.05.2020;

Whereas, in exercise of the powers, conferred under Section 10(2)(I) of the Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, NEC, hereby issues new guidelines on lockdown measures, as annexed, which will come into effect from 04.05.2020 for a period of two weeks, for strict implementation.

1/5/2020
Union Home Secretary

To:
1. The Secretaries of Ministries/ Departments of Government of India
2. The Chief Secretaries/Administrators of States/Union Territories
   (As per list attached)

Copy to:
i. All members of the National Executive Committee.
ii. Member Secretary, National Disaster Management Authority.

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Encl: P.(a)

New Guidelines on the measures to be taken by Ministries/ Departments of Government of India, State/ UT Governments and State/ UT authorities for containment of COVID-19 in the country for the extended period of National Lockdown for a further period of two weeks with effect from 4th May, 2020.

[As per Ministry of Home Affairs (MHA) Order No. 40-3/2020-DM-I (A) dated 1st May, 2020]

1. With the extension of the Lockdown period for a further period of two weeks with effect from 4th May 2020, new guidelines, as under, will be applicable based on the risk profiling of the districts into Red (Hotspot), Green and Orange zones.

2. **Identification of Red (Hotspots), Green and Orange Zones**

   i. Based on their risk profile, the criteria for dividing the districts of the country into three zones, viz., **green, red and orange**, will be as follows:

      a. **Green Zones**: Green Zones shall be defined as per the following criteria: districts with zero confirmed case till date; or; districts with no confirmed case in the last 21 days.

      b. **Red Zones or Hotspot Districts**: Districts shall be defined as Red Zones or Hotspot districts, by Ministry of Health and Family Welfare (MoHFW), Government of India (GoI), taking into account total number of active cases, doubling rate of confirmed cases, extent of testing and surveillance feedback.

      c. **Orange Zones**: Districts, which are neither defined as Red nor as Green Zones, shall be Orange Zones.

   ii. MoHFW will share the list of Red Zone (Hotspot), Orange Zone and Green Zone districts and related information with State/ UTs on a weekly basis or earlier as required. States/ UTs, on review, may consider inclusion of **additional districts** as Red Zone (Hotspots) and Orange Zone districts depending on the extent of spread of COVID-19 infection. **However, States and UTs may not lower the classification of any district, that is included in the list of Red Zone (Hotspots) and Orange Zone districts by MoHFW.**

   iii. Districts classified either as Red or Orange Zones, may have one or more Municipal Corporation (MC) areas. In such cases, States/ UTs and District administrations may make an assessment of the distribution of cases - within the jurisdiction of the MC(s); and the area falling outside the MC(s) boundaries. In such cases, the classification of zones shall be as follows:

      a. In case the district is classified as a Red Zone, and, there is no confirmed case in the last 21 days in the area of the district outside the limits of the MC(s), this area may be labeled as an Orange Zone. However, due caution may be exercised in such areas so that they remain free from COVID-19 cases.

      b. In case the district is classified as an Orange Zone, and, there is no confirmed case in the last 21 days in the area of the district outside the limits of the MC(s), this area may be labeled as a Green Zone. However, due caution may be exercised in such areas so that they remain free from COVID-19 cases.

      c. In case in the area of the district outside the limits of the MC (s) does have one or more confirmed case(s) in the last 21 days, this part of the

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Exbt. P1(b)

district shall continue to be labeled as a Red or Orange Zone, as per the classification of the district.

d. While assessing the classification of a zone, cases should be registered in the zone where the case originates, rather than where it is treated.

3. Identification of Containment Zones

i. Containment Zones shall be demarcated within **Red (Hotspots) and Orange Zones** by States/ UTs and District Administrations based on the guidelines of MoHFW. The boundary of the Containment Zone shall be defined by District Administrations taking into account the following factors: mapping of cases and contacts; geographical dispersion of cases and contacts; area with well demarcated perimeter; and enforceability.

ii. The boundary of the Containment Zone will be a residential colony, *mohalla*, municipal ward, municipal zone, Police Station area, towns etc., in case of urban areas; and, a village, cluster of villages, Gram Panchayats, group of Police Stations, blocks etc., in case of rural areas.

Protocol within Containment Zones:

iii. Intensive surveillance mechanism as outlined in the Standard Operating Protocol (SOP) issued by MoHFW is to be established within the Containment Zone. **The local authority shall ensure 100% coverage of *Aarogya Setu* app among the residents of Containment Zones.**

iv. In the Containment Zone, following activities shall be undertaken by the local authorities:

a. Contact Tracing.

b. Home or Institutional quarantining of individuals based on risk assessment by medical officers. This risk assessment will be based on symptoms, contact with confirmed cases, and travel history.

c. Testing of all cases with Severe Acute Respiratory Infection (SARI), Influenza Like Illness (ILI) and other symptoms specified by MOHFW.

d. House to house surveillance by special teams constituted for this purpose.

e. Clinical management of all cases as per protocol.

f. Counselling and educating people; and establishing effective communication strategies.

v. In these **Containment Zones**, within Red (Hotspots) and Orange Zones, **where maximum precaution is required**, there shall be strict perimeter control to ensure that there is no movement of population in or out of these zones except for medical emergencies and for maintaining supply of essential goods and services. The guidelines issued in this regard by MoHFW will be strictly implemented by State/ UT Governments and the local district authorities.

4. The following activities will continue to remain prohibited across the country, irrespective of the Zone, for a period of two weeks with effect from 4th May, 2020:

i. All domestic and international air travel of passengers, except for medical services, air ambulance and for security purposes or for purposes as permitted by MHA.

ii. All passenger movement by trains, except for security purposes or for purposes as permitted by MHA.

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Exhibit P(C)

iii. Inter-State Buses for public transport, except as permitted by MHA.

iv. Metro rail services.

v. Inter-State movement of individuals except for medical reasons or for activities as permitted by MHA.

vi. All schools, colleges, educational/ training/ coaching institutions etc. However, online/ distance learning shall be permitted.

vii. Hospitality services other than those used for housing health/ police/ Government officials/ healthcare workers, stranded persons including tourists, and those used for quarantine facilities.

viii. All cinema halls, shopping malls, gymnasiums, sports complexes, swimming pools, entertainment parks, theatres, bars and auditoriums, assembly halls and similar places.

ix. All social/ political/ sports/ entertainment/ academic/ cultural/ religious functions/ other gatherings.

x. All religious places/ places of worship shall be closed for public. Religious congregations are strictly prohibited.

5. Measures for well being and safety of persons

i. The movement of individuals, for all non-essential activities, shall remain strictly prohibited between 7 pm to 7 am. Local authorities shall issue orders under appropriate provisions of law, such as prohibitory orders [curfew] under Section 144 of CrPC, for this purpose, and ensure strict compliance.

ii. In all zones, persons above 65 years of age, persons with co-morbidities, pregnant women, and children below the age of 10 years, shall stay at home, except for meeting essential requirements and for health purposes, as per the National Directives.

iii. In Containment Zones, Out-Patient Departments (OPDs) and Medical clinics shall not be permitted to operate. However, these may be permitted to operate in Red, Orange and Green Zones, with social distancing norms and other safety precautions.

6. Activities in Containment Zones

i. Strict perimeter control.

ii. Establishment of clear entry and exit points.

iii. Movement of persons only for maintaining supply of goods and services; and for medical emergencies.

iv. No unchecked influx of people and transport.

v. Recording of details of people moving in and out of perimeter.

7. Activities in Red Zones (Hotspots) [Outside Containment Zones]

i. Apart from the prohibited activities mentioned at Para 4, the following activities shall **not** be permitted:

   a. Cycle rickshaws and auto rickshaws.

   b. Taxis and cab aggregators.

   c. Intra-district and inter-district plying of buses.

   d. Barber shops, spas and salons.

ii. The following activities shall be permitted with **restrictions** as specified:

   a. Movement of individuals and vehicles, only for permitted activities. Four wheeler vehicles will have maximum two passengers besides the vehicle driver; for two wheelers, pillion rider is not allowed.

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b. Industrial establishments in urban areas: Only Special Economic Zones (SEZs), Export Oriented Units (EOUs), industrial estates and industrial townships with access control; Manufacturing units of essential goods, including drugs, pharmaceuticals, medical devices, their raw material and intermediates; Production units, which require continuous process, and their supply chain; Manufacturing of IT hardware; Jute industry with staggered shifts and social distancing; and, Manufacturing units of packaging material are permitted.

All industrial activities are permitted in rural areas.

c. Construction activities in urban areas: Only in situ construction (where workers are available on site and no workers are required to be brought in from outside) and construction of renewable energy projects are permitted.

All construction activities are permitted in rural areas.

d. All malls, market complexes and markets shall remain closed in urban areas, i.e., areas within the limits of municipal corporations and municipalities. However, shops selling essential goods in markets and market complexes are permitted.

All standalone (single) shops, neighborhood (colony) shops and shops in residential complexes are permitted to remain open in urban areas, without any distinction of essential and non-essential.

All shops in rural areas, except in malls, are permitted to remain open, without any distinction of essential and non-essential.

Social distancing (*2 Gaz ki doori*) will be maintained in all cases.

e. E-commerce activities will be permitted only in respect of essential goods.

f. Private offices can operate with upto 33% strength as per requirement, with the remaining persons working from home.

g. All Government offices shall function with officers of the level of Deputy Secretary and above to the extent of 100% strength. The remaining staff will attend upto 33% as per requirement. However, Defense and Security services, Health and Family Welfare, Police, Prisons, Home Guards, Civil Defence, Fire and Emergency Services, Disaster management and related services, NIC, Customs, FCI, NCC, NYK and Municipal services shall function without any restrictions; delivery of public services shall be ensured and necessary staff will be deployed for such purpose.

8. Activities in Orange Zones [Outside Containment Zones]

i. Apart from the prohibited activities mentioned at Para 4, the following activities shall **not** be permitted:

   a. Inter-district and Intra-district plying of buses.

ii. The following activities shall be permitted with **restrictions** as are specified:

   a. Taxis and cab aggregators, with 1 driver and 2 passengers only.

   b. Inter-district movement of individuals and vehicles, only for permitted activities. Four wheeler vehicles will have maximum two passengers besides the driver.

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Exhibit P1(e)

9. **Activities in Green Zones**

i. All activities are permitted in Green Zones, except those activities that are prohibited under Para 4.

ii. Buses can operate with upto 50% seating capacity.

iii. Bus depots can operate with upto 50% capacity.

10. **All other activities will be permitted activities, which are not specifically prohibited/ permitted with restrictions in the various Zones, under these guidelines. However, States/ UTs, based on their assessment of the situation, and with the primary objective of keeping the spread of COVID-19 in check, may allow only select activities from out of the permitted activities, with such restrictions as felt necessary.**

11. All States/ UTs shall allow inter-state movement of goods/ cargo, including empty trucks.

12. No State/ UT shall stop the movement of cargo for cross land-border trade under Treaties with neighbouring countries.

13. No separate/ fresh permissions are required from authorities for activities already permitted to operate under the guidelines on Lockdown measures up to May 3, 2020. The following Standard Operating Protocols (SOPs) issued by MHA will continue to operate:

i. SOP on transit arrangement for foreign national(s) in India and release of quarantine persons, issued vide Order dated April 02, 2020.

ii. SOP on movement of stranded labour within States/ UTs, issued vide Order dated April 19, 2020.

iii. SOP on sign-on and sign-off of Indian seafarers, issued vide Order dated April 21, 2020.

iv. SOP on movement of stranded migrant workers, pilgrims, tourists, students and other persons, issued vide Order dated April 29, 2020.

v. SOP on movement of stranded migrant workers, pilgrims, tourists, students and other persons by train, issued vide Order dated May 01, 2020.

14. **Strict enforcement of the lockdown guidelines**

State/ UT Governments shall not dilute these guidelines issued under the Disaster Management Act, 2005, in any manner, and shall strictly enforce the same.

15. **Instructions for enforcement of above lockdown measures:**

i. All the district magistrates shall strictly enforce the above lockdown measures and the National Directives for COVID 19 Management, for public and work places, as specified in **Annexure I.**

ii. In order to implement these containment measures, the District Magistrate will deploy Executive Magistrates as Incident Commanders in the respective local jurisdictions. The Incident Commander will be responsible for the overall implementation of these measures in their respective jurisdictions. All other line department officials in the specified area will work under the directions of such Incident Commander. The Incident Commander will issue passes for enabling essential movements as explained.

iii. The Incident Commanders will in particular ensure that all efforts for mobilization of resources, workers and material for augmentation and expansion of hospital infrastructure shall continue without any hindrance.

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Encl (PICR)

16. Penal provisions

Any person violating these lockdown measures and the National Directives for COVID-19 Management will be liable to be proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005, besides legal action under Sec. 188 of the IPC, and other legal provisions as applicable. Extracts of these penal provisions are at **Annexure II**.

1/5/2020

Union Home Secretary

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Enclt 'D1 (9)

Annexure I

National Directives for COVID-19 Management

PUBLIC PLACES

1. Wearing of face cover is compulsory in all public places.
2. All persons in charge of public places and transport shall ensure social distancing as per the guidelines issued by Ministry of Health and Family Welfare.
3. No organization/ manager of public place shall allow gathering of 5 or more persons.
4. Marriages related gatherings shall ensure social distancing, and the maximum number of guests allowed shall not be more than 50.
5. Funeral/ last rites related gatherings shall ensure social distancing, and the maximum numbers allowed shall not be more than 20.
6. Spitting in public places shall be punishable with fine, as may be prescribed by the State/ UT local authority.
7. Consumption of liquor, *paan*, *gutka*, tobacco etc. in public places is not allowed.
8. Shops selling liquor, *paan*, *gutka*, tobacco etc. will ensure minimum six feet distance (*2 gaz ki doori*) from each other, and also ensure that not more than 5 persons are present at one time at the shop.

WORK PLACES

9. Wearing of face cover is compulsory in all work places and adequate stock of such face covers shall be made available.
10. All persons in charge of work places shall ensure social distancing as per the guidelines issued by Ministry of Health and Family Welfare, both within the work places and in company transport.
11. Social distancing at work places shall be ensured through adequate gaps between shifts, staggering the lunch breaks of staff, etc.
12. Provision for thermal scanning, hand wash and sanitizer preferably with touch free mechanism will be made at all entry and exit points and common areas. In addition, sufficient quantities of handwash and sanitizer shall be made available in the work places.
13. Frequent sanitization of entire workplace, common facilities and all points which come into human contact e.g. door handles etc., shall be ensured, including between shifts.
14. Persons above 65 years of age, persons with co-morbidities, pregnant women and children below the age of 10 years shall stay at home, except for meeting essential requirements and for health purposes.
15. Use of *Arogya Setu* app shall be made mandatory for all employees, both private and public. It shall be the responsibility of the Head of the respective Organizations to ensure 100% coverage of this app among the employees.
16. Large physical meetings to be avoided.
17. Hospitals/ clinics in the nearby areas, which are authorized to treat COVID-19 patients, should be identified and list should be available at work place all the times. Employees showing any symptom of COVID-19 should be immediately sent for check up to such facilities. Quarantine areas should be earmarked for isolating employees showing symptoms till they are safely moved to the medical facilities.

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Encl 1, (47)

18. Arrangements for transport facilities shall be ensured with social distancing, wherever personal/ public transport is not feasible.
19. Intensive communication and training on good hygiene practices shall be taken up.

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Exhibit P1 (i)

Annexure II

Offences and Penalties for Violation of Lockdown Measures

A. Section 51 to 60 of the Disaster Management Act, 2005

51. Punishment for obstruction, etc.—Whoever, without reasonable cause —

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.

52. Punishment for false claim.—Whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

53. Punishment for misappropriation of money or materials, etc.—Whoever, being entrusted with any money or materials, or otherwise being, in custody of, or dominion over, any money or goods, meant for providing relief in any threatening disaster situation or disaster, misappropriates or appropriates for his own use or disposes of such money or materials or any part thereof or wilfully compels any other person so to do, shall on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

54. Punishment for false warning.—Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine.

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

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

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

56. Failure of officer in duty or his connivance at the contravention of the provisions of this Act.—Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine.

57. Penalty for contravention of any order regarding requisitioning.—If any person contravenes any order made under section 65, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

58. Offence by companies.—(1) Where an offence under this Act has been committed by a company or body corporate, every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also, be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

i. "company" means any body corporate and includes a firm or other association of individuals; and

ii. "director", in relation to a firm, means a partner in the firm.

59. Previous sanction for prosecution.—No prosecution for offences punishable under sections 55 and 56 shall be instituted except with the previous sanction of the Central Government or the State Government, as the case may be, or of any officer authorised in this behalf, by general or special order, by such Government.

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

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

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

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Exhibit P.(b)

B. Section 188 in the Indian Penal Code, 1860

188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

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True Copy.

S. C. Advocate

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Exbt P2

Aarogya Setu TERMS OF SERVICE

These terms of service (**Terms**) govern your use of the Aarogya Setu application for mobile and handheld devices (**App**) and the services provided thereunder. Please read these terms and conditions (**Terms**) carefully before you download, install or use the App. By clicking on the "I Agree" button, you signify your acceptance of the Terms, and your agreement to be bound by them. The Terms may be amended from time to time with notice to you. In order to continue using the App, you will be required to accept the revised Terms. Failure to comply with the Terms can result in susper n of your ability to use the App.

1. SERVICE OVERVIEW

The App is part of a service designed to enable registered users who have come in contact with other registered users who have tested positive for the severe acute respiratory syndrome Coronavirus 2 (**COVID-19**) to be notified, traced and suitably supported (**Services**). When the App is installed on your mobile or handheld device, it detects when your device comes within Bluetooth range of any other registered user's device and initiates a protocol by which the

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Exhibit P2(a)

information specified in the Privacy Policy (including location information) about that other registered user is collected. In the event you test positive for COVID-19, the Government of India will contact and/or inform such registered users you have come in contact with you over the past 30 days who have a risk of being infected, to administer the appropriate medical intervention. Similarly, you will be notified if, as a result of having come in contact with any persons who have tested positive for COVID-19, you have a risk of being infected. The App also allows users to conduct a self-assessment test to assess whether their symptoms combined with other relevant factors affects their risk of being infected.

2. REQUIREMENTS FOR USE

You agree to turn on and allow the App access to the Bluetooth and GPS services on your mobile or handheld device. You acknowledge that if your device is switched off or in airplane mode, if Bluetooth and GPS services on your device are turned off or if you revoke the App's access to Bluetooth and GPS services on your device, it will not be able capture all necessary information which will impair the completeness and accuracy of the Services. You agree to keep the mobile or handheld device on which the App is installed

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Exhibit P2 (B)

in your possession at all times and to not share it with or allow anyone else to use it. You acknowledge that if you do so it could result in you being falsely identified as being COVID-19 positive or not being identified when you are.

3. USE

You agree that you will only use the App in good faith and will not provide false or misleading information about yourself or your infection status. You agree that you will not do anything to throttle, engineer a denial of service, or in any other manner impair the performance or functionality of the App. You agree that you will not tamper with, reverse-engineer or otherwise use the App for any purpose for which it was not intended including, but not limited to, accessing information about registered users stored in the App, identifying or attempting to identify other registered users or gaining or attempting to gain access to the cloud database of the Service.

4. PRIVACY

You hereby consent to the collection and use of your personal information for the provision of the Services. The details of the personal information collected and the manner in

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which it collected and Draft Version by whom as well as the purposes for which it will be used is more fully set out in our privacy policy which is available here. You are free to choose not to provide this information at any time by revoking the App's access to Bluetooth and GPS services or by deleting the App from your mobile or handheld device. However, should you do so, you acknowledge that you will no longer be able to avail of the Services.

5. DISRUPTION

You agree that you have no expectation of, or right to permanent and uninterrupted access to the Services. While the Services are intended to be accessible to you from everywhere on a 24x7 basis, from time to time and without prior notice of downtime, access to the App or the Services or to any part thereof may be suspended on either a temporary or permanent basis and either with respect to all or a certain class of users.

6. LIMITATION OF LIABILITY

You agree and acknowledge that the Government of India will not be liable for any claims in relation to the use of the App, including but not limited to (a) your inability to access or use the App or the Services; (b) the failure of the App or the Services to

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accurately identify persons in your proximity who have tested positive to COVID-19; (c) the accuracy of the information provided by the App or the Services as to whether the persons you have come in contact with in fact been infected by COVID-19; (d) any unauthorised access to your information or modification thereof.

7. DISCLAIMER

The App is being made available on an "as-is" basis and the Government of India makes no warranties of any kind, whether express, implied, statutory or otherwise, with respect to the functioning of the App or its ability to accurately identify those who have tested positive to COVID- 19. All services such as those provided by this App are never wholly free from defects, errors and bugs, and the Government of India provides no warranty or representation to that effect or that the App will be compatible with any application, or software not specifically identified as compatible. The Government of India specifically disclaims any implied warranties of fitness for a particular purpose or non-infringement. The functioning of the App is dependent on the compliance by all registered users of the App with these Terms. Accordingly, the Government of India

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Exhibit P-2 (e)

disclaims all liability on account of such non-compliance by other registered users. The Services that are being provided (including the self-assessment test, its results and any notifications sent by the App) are not a substitute for common prudence, medical diagnosis, or specific therapeutic and epidemiological measures necessary to combat COVID-19.

8. GOVERNING LAW

These Terms shall be governed by the laws of India.

True Copy

Advocate

PRIVACY POLICY

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Exhibit P3

When you use Aarogya Setu (**App**), some personal information is collected from and about you. We are committed to protecting the security of this information and safeguarding your privacy. This privacy policy sets out the details of the personal information collected, the manner in which it collected, by whom as well as the purposes for which it is used. At registration you accepted the terms of this Privacy Policy and your use of the App signifies your continued acceptance thereof. This Privacy Policy may be revised from time to time and you will be notified of all such changes. In order to use the App, you will be required to consent to the terms of the Privacy Policy as revised from time to time.

1. INFORMATION COLLECTED AND MANNER OF COLLECTION

a. When you register on the App, the following information is collected from you and stored securely on a server operated and managed by the Government of India (**Server**) – (i) name; (ii) phone number; (iii) age; (iv) sex; (v) profession; and (vi) countries visited in the last 30 days. This information stored on the Server will be

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information will only be uploaded to the Server along with your DiD, (i) if you test positive for COVID-19; and/or (ii) if your self-declared symptoms indicate that you are likely to be infected with COVID-19; and/or (iii) if the result of your self-assessment test is either YELLOW or ORANGE. For the avoidance of doubt, this information will NOT be uploaded to the Server if you are not unwell of if the result of your self-assessment test is GREEN.

2. USE OF INFORMATION

a. The personal information collected from you at the time of registration under Clause 1(a) above, will be stored on the Server and only be used by the Government of India in anonymized, aggregated datasets for the purpose of generating reports, heat maps and other statistical visualisations for the purpose of the management of COVID-19 in the country or to provide you general notifications pertaining to COVID-19 as may be required. Your DiD will only be co-related with your personal information in order to communicate to you the probability that you have been infected with COVID-19 and/or to provide persons carrying out medical and administrative

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interventions necessary in relation to COVID-19, the information they might need about you in order to be able to do their job.

b. The information collected from any other user's mobile device and uploaded and stored on the Server in accordance with Clause 1(b) will be used to calculate your probability of having been infected with COVID-19.

c. The information collected under Clause 1(c) will be used by the Government of India to evaluate, based on the self-assessment tests and the GPS locations from where they are being uploaded, whether a disease cluster is developing at any geographic location.

d. The information collected under Clause 1(d) and securely uploaded and stored on the Server will, in the event you have tested positive for COVID-19, be used to map the places you visited over the past 14 days in order to identify the locations that need to be sanitised and where people need to be more deeply tested and identify emerging areas where infection outbreaks are likely to occur. Where, in order to more accurately map the places you visited and/or the persons who need to be deeply tested, your personal information is

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hashed with a unique digital id (**DiD**) that is pushed to your App. The DiD will thereafter be used to identify you in all subsequent App related transactions and will be associated with any data or information uploaded from the App to the Server. At registration, your location details are also captured and uploaded to the Server.

b. When two registered users come within Bluetooth range of each other, their Apps will automatically exchange DiDs and record the time and GPS location at which the contact took place. The information that is collected from your App will be securely stored on the mobile device of the other registered user and will not be accessible by such other user. In the event such other registered user tests positive for COVID-19, this information will be securely uploaded from his/her mobile device and stored on the Server.

c. Each time you complete a self-assessment test the App will collect your location data and upload it along with your DiD to the Server.

d. The App continuously collects your location data and stores securely on your mobile device, a record of all the places you have been at 15 minute intervals. This

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Exhibit P3(d)

and/or the persons who need to be deeply tested, your personal information is required, the DiD associated with the information collected under Clause 1(d) will be co-related with your personal information collected under Clause 1(a).

e. The information collected under Clause 1 will not be used for any purpose other than those mentioned in this Clause 2.

3. RETENTION

a. All personal information collected from you under Clause 1(a) at the time of registration will be retained for as long as your account remains in existence and for such period thereafter as required under any law for the time being in force.

b. All personal information collected under Clauses 1(b), 1(c) and 1(d) will be retained on the mobile device for a period of 30 days from the date of collection after which, if it has not already been uploaded to the Server, will be purged from the App. All information collected under Clauses 1(b), 1(c) and 1(d) and uploaded to the Server will, to the extent that such information relates to people who have not tested positive for COVID-19, will be purged from the Server 45 days after being

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uploaded. All information collected under Clauses 1(b), 1(c) and 1(d) of persons who have tested positive for COVID-19 will be purged from the Server 60 days after such persons have been declared cured of COVID-19.

c. Nothing set out herein shall apply to the anonymized, aggregated datasets generated by the personal data of registered users of the App or any reports, heat maps or other visualization created using such datasets. Nothing set out herein shall apply to medical reports, diagnoses or other medical information generated by medical professionals in the course of treatment.

4. RIGHTS

a. As a registered user, you have the right to access your profile at any time to add, remove or modify any registration information that you have supplied.

b. You cannot manage the communications that you receive from us or how you receive them. If you no longer wish to receive communications from us, you may cancel your registration. If you cancel your registration, all the information you had provided to us will be deleted after the

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expiry of 30 days from the date of such cancellation.

5. DATA SECURITY

The App is equipped with standard security features to protect the confidentiality and security of your information. Data is encrypted in transit as well as at rest. Personal information provided at the time of registration is encrypted before being uploaded to the cloud where it is stored in a secure encrypted server. Personal information that is stored in the Apps of other registered users that you come in contact with is securely encrypted and are incapable of being accessed by such user.

6. DISCLOSURES AND TRANSFER

Save as otherwise set out in Clause 2 with respect to information provided to persons carrying out medical and administrative interventions necessary in relation to COVID-19, no personal information collected by the App will disclosed or transferred to any third party.

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Exhibit P4.

Aarogya Setu

मैं सुरक्षित | हम सुरक्षित | भारत सुरक्षित

WEDNESDAY, 6 MAY 2020

Earlier today, we were alerted by an ethical hacker of a potential security issue of Aarogya Setu. We discussed with the hacker and were made aware of the following:

1. The App fetches user location on a few occasions.

Response: This is by design and is clearly detailed in the privacy policy. Reproducing the same for everyone's benefit. We fetch a user's location and store on the server in a secure, encrypted, anonymised manner

- At the time of registration
- At the time of self-assessment
- When a user submits their contact tracing data voluntary through the App or when we fetch the contact tracing data of a user after they have turned COVID-19 positive

2. User can get the COVID-19 stats displayed on Home Screen by changing the radius and latitude-longitude using a script

Response: The radius parameters are fixed and can only take one of the five values: 500 metres, 1km, 2km, 5km and 10km. These values are standard parameters, posted with HTTP headers. Any other value as part of the "distance" HTTP header gets defaulted to 1km.
The user can change the latitude / longitude to get the data for multiple locations. The API call though is behind a Web Application Firewall, and hence bulk calls are not possible. Getting data for multiple latitude longitude this way is no different than asking several people of their location's COVID-19 statistics. All this information is already public for all locations and hence does not compromise on any personal or sensitive data.

No personal information of any user has been proven to be at risk by this ethical hacker. We are continuously testing and upgrading our systems. Team Aarogya Setu assures everyone that no data or security breach has been identified.

We thank this ethical hacker on engaging with us. We encourage any users who identify a vulnerability to inform us immediately at support.aarogyasetu@gov.in. Your continued support will help us keep the App even more secure.

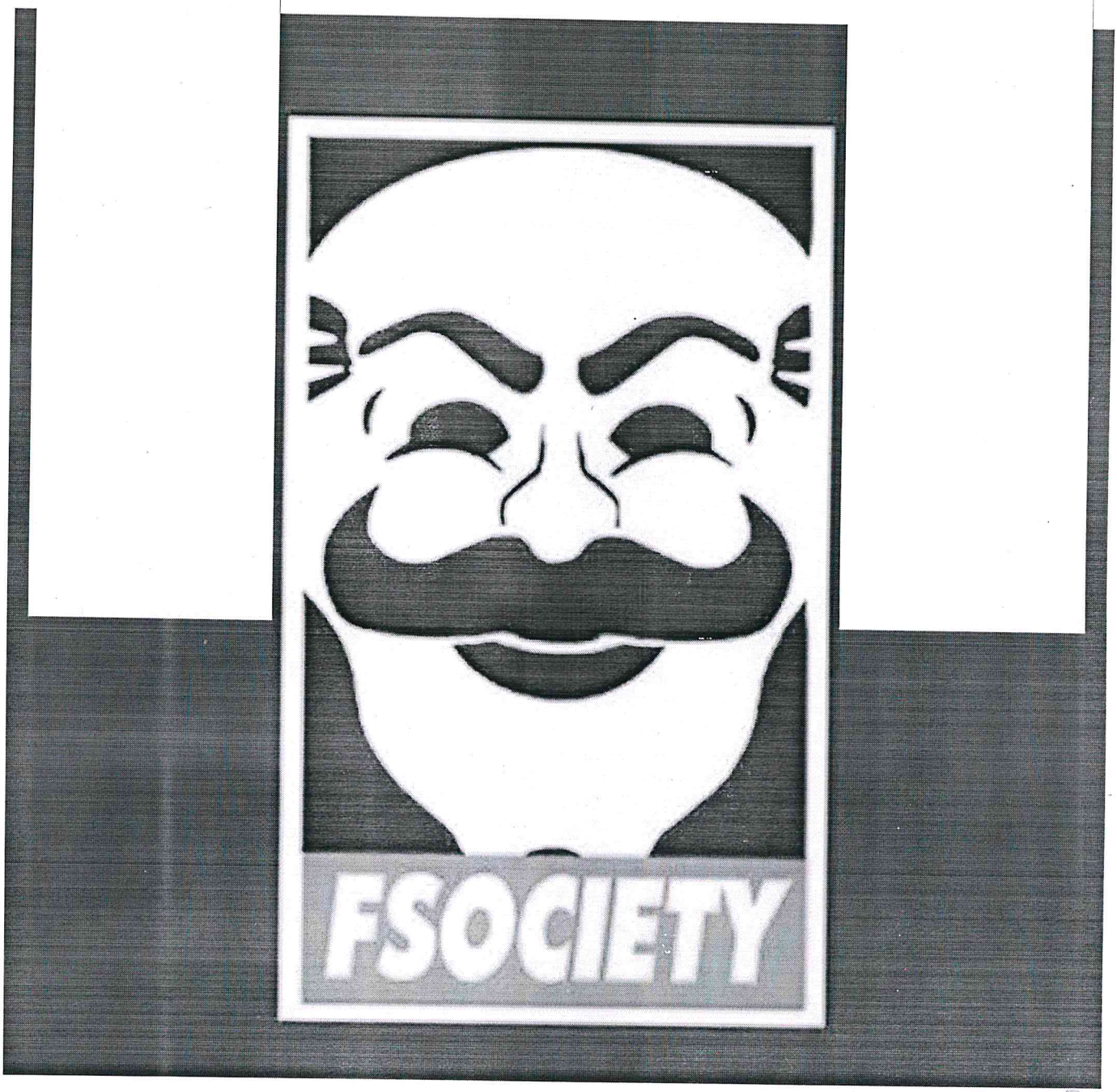
True Copy

S. K. [illegible]
Advocate

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THE HINDU

security flaws in Aarogya Setu



Yuthika Bhargava

NEW DELHI, MAY 06, 2020 11:01 IST
UPDATED: MAY 07, 2020 10:14 IST

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THE HINDU

Ethical hacker Robert Baptiste on May 6 alleged that security flaws in the government's Aarogya Setu application enabled him to see that five people at the Prime Minister's Office (PMO) and two people at the Indian Army headquarters were unwell.

Mr. Baptise, who goes by Elliot Alderson on Twitter, also claimed that there was "one infected person at the Indian Parliament and three at the Home office."

Coronavirus | What are the concerns around the Aarogya Setu app?

On May 5, he tweeted that there were security issues with Aarogya Setu. Tagging the official account of Aarogya Setu, he said, "A security issue has been found in your app. The privacy of 90 million Indians is at stake. Can you contact me in private?".

'Rahul is right'

He went on to add that former Congress president Rahul Gandhi, who has termed the app "a sophisticated surveillance system", was right.

In response to the issues raised by Mr. Baptise, the team of Aarogya Setu, in a statement, said no personal information of any user had been proven to be at risk. " ...we were alerted by an ethical hacker of a potential security issue of Aarogya Setu...No personal information of any user has been proven to be at risk by this ethical hacker. We are continuously testing and upgrading our systems. Team Aarogya Setu assures everyone that no data or security breach has been identified," the statement said.

Also read | Aarogya Setu not accessible to persons with disabilities

Following this statement, Mr. Baptise tweeted that he was able to "... know who is infected, unwell, made a self assessment in the area of his choice. Basically, I was able to see if someone was sick at the PMO office or the Indian parliament. I was able to see if someone was sick in a specific house if I wanted... This is the issue."

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(force) people to install an app, they have the right to know what the app is really doing. If you love your country @SetuAarogya, publish the source code," he tweeted, adding that countries such as Singapore, Israel did it and Iceland did it.

Comment | Implement Aarogya Setu, but only through law

As per the Aarogya Setu statement, Mr. Baptise pointed out that the application fetched user location on a few occasions. However, Aarogya Setu said, "This is by design and is clearly detailed in the privacy policy."

It noted that the application fetched a user's location and stored it on a server in a secure, encrypted and anonymised manner "1) at the time of registration, 2) at the time of self-assessment, and 3) when the user submits his or her contact tracing data voluntarily through the app or when we fetch the contact tracing data after the person turns COVID-19 positive."

Further, the French hacker had said that a user can get the COVID-19 stats displayed on the home screen by changing the radius and latitude-longitude using a script.

The Aarogya Setu statement said, "The radius parameters are fixed and can only take one of the five values -- 500 metres, 1 km, 2km, 5km and 10km. These values are standard parameters, posted with HTTP headers. Any other value as part of the 'distance' HTTP header gets defaulted to 1 km."

Also read | Army asks personnel to use Aarogya Setu app

It added that a user can change the latitude/longitude to get the data for multiple locations. "The API call though is behind a Web Application Firewall, and hence bulk calls are not possible. Getting data for multiple latitude longitude this way is no different than asking several people of their location's COVID-19 statistics. All this information is already public for all locations and hence does not compromise on any personal or sensitive data."

— raising serious data security & privacy concerns. Technology can help keep us safe; but fear must not be leveraged to track citizens without their consent."

Editorial | On Centre's directive to use Arogya Setu: App for one season

Mr. Baptiste sent out a tweet, saying: "Rahul Gandhi tweeted about the Aarogya app. I guess I'm forced to look at it now." He claimed that the Indian Computer Emergency Response Team (CERT-In) and the National Informatics Centre (NIC) got in touch with him 49 minutes after his initial tweet.

Letter from Editor

Dear reader,

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livelihoods, during these difficult times. To enable wide dissemination of news that is in public interest, we have increased the number of articles that can be read free, and extended free trial periods. However, we have a request for those who can afford to subscribe: please do. As we fight disinformation and misinformation, and keep apace with the happenings, we need to commit greater resources to news gathering operations. We promise to deliver quality journalism that stays away from vested interest and political propaganda.

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UNDERTAKING

I, S K Adhithyan, aged 28, S/o K C Suresh Kumar, 1st Floor,TWRA-90, Pushpaka Road, Vaduthala, Kochi, PIN – 682023, do hereby solemnly affirm and undertake that I will produce the physical copies of the documents, along with necessary fees and charges applicable, when the court registry resumes its normal functioning, within the time limit notified by the Registry for the purpose.

S K ADHITHYAN
COUNSEL FOR THE PETITIONER