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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 30TH DAY OF JULY 2020 / 8TH SRAVANA, 1942

WP(C).No.15342 OF 2020

PETITIONERS:

1 JAYAKUMAR T.V., AGED 46 YEARS
ADVOCATE, S/O.ESWARAN NAMBOODIRI,
THAZHATHE VATTAPARAMB, KARANTHAD P.O.,
RAMANTHALI, KANNUR-670 308.

2 MANSOOR B.H., AGED 40 YEARS,
S/O. LATE P.O.HASSAN KOYA, FLAT D2,
GALAXY ESTATE, PEEDIYEKAL ROAD,
ERNAKULAM NORTH, KOCHI-682 018.

BY ADVS. DR.K.P.PRADEEP
SMT.T.THASMI

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2 ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

3 KERALA STATE DISASTER MANAGEMENT AUTHORITY-KSDMA
OBSERVATORY HILLS, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM-695 033,
REPRESENTED BY ITS MEMBER SECRETARY.

4 STATE POLICE CHIEF,
KERALA POLICE POLICE HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695 010.

5 UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
NEW DELHI-110 001.

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R1 TO R4 BY ADDITIONAL ADVOCATE GENERAL
SRI RANJITH THAMPAN,
SENIOR GOVT. PLEADER SRI.P.NARAYANAN, AND
SENIOR GOVT. PLEADER SRI.V.MANU

R5 BY ADV. SRI.P.VIJAYAKUMAR, ASG

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-07-2020, THE COURT ON 30-07-2020 DELIVERED THE FOLLOWING:

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"C.R"

JUDGMENT

S. Manikumar, CJ

Instant public interest writ petition is filed for the following reliefs:

i. "To declare that public gathering/assemblies or mass prayers by any social or religious institution or group or congregation, violating the norms issued by Government of India from time to time during the period of COVID-19 pandemic, is illegal and unconstitutional;

ii. To issue a certiorari or any other appropriate writ or writs or order or directions, to quash Exhibits-P5 and P5(a) orders dated 05.06.2020 and 26.06.2020 respectively, issued by respondent No.1 - State of Kerala, to the extent they permit social or religious gathering with a participation of upto 100 persons, and in violation of Exhibits-P4 and P7 orders dated 29.06.2020 and 30.06.2020 respectively;

iii. To issue a writ of mandamus, or any other writ or order or direction to respondents 1 and 4, viz., State of Kerala, represented by its Chief Secretary, Thiruvananthapuram; and State Police Chief, Kerala Police Head Quarters, Thiruvananthapuram, to take strict actions against the organisations or participants; or both, of large social or religious gathering, who are acting in violation of existing COVID-19 Regulations, issued in Exhibit-P4 or such other directives issued by Government of India under Disaster Management Act, 2005 from time to time.

iv. To declare Exhibit-P1 Kerala Epidemic Diseases Ordinance, 2020 or any regulation made thereunder or any Standard Operation

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Procedure or notifications or orders issued thereunder, to the extent of its repugnancy or contravention to the order or notification or rules issued or framed under the Disaster Management Act, 2005 is unconstitutional and unenforceable.

v. Direct the respondents to pay the cost of this proceedings."

2. Facts leading to the filing of instant writ petition are,- petitioners are lawyers practicing in this Court and are actively involved in the forefront of COVID-19 mitigation activities, by providing necessary assistance and guidance to the needy people. Considering the spread of Novel Coronavirus as a threat to human life, the public at large are required to follow the health advisories of the Government of India and the respective State Governments, issued from time to time.

3. This Court, after taking note of the increasing cases of COVID-19 positive and its contact spreading, considered *Suo Motu* W.P.(C) No.9401 of 2020, as well as W.P.(C) Nos.14141 & 14196 of 2020 and issued orders on 14.07.2020 and 15.07.2020, wherein direction was issued to the respondents 1 and 4 therein to strictly abide by the directives of the Government of India.

4. Petitioners have further stated that at the beginning of COVID-19, considering the gravity of the situation, Hon'ble Governor of Kerala has promulgated Kerala Epidemic Diseases Ordinance, 2020, by Exhibit-P1

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Notification No.6640/Leg.H1/2020/Law dated 27.03.2020, to unify and consolidate the laws relating to regulation, prevention of epidemic diseases and for matters connected therewith or incidental thereto. Consequently, the State Government issued an order dated 29.03.2020 vide SRO No.250 of 2020, initiating measures necessary for regulation and prevention of epidemic diseases by the Government, viz., Kerala Epidemic Diseases Coronavirus Disease (COVID-19) Regulations, 2020.

5. Petitioners have further stated that by Exhibit-P2 order dated 2.7.2020, Government of Kerala have issued Kerala Epidemic Disease Coronavirus Disease (COVID-19) Additional Regulations, 2020. Though public health is a subject enumerated in Entry 6 of List II, State List in Schedule VII of the Constitution of India, once an epidemic or pandemic is notified as disaster under the Disaster Management Act, 2005, (for short, 'Act, 2005') which is a Central Legislation, the State Government cannot formulate separate guidelines, contrary to the regulations framed under the Act, 2005. Hence, Exhibits-P1 and P2 are subject to law and regulations enacted or framed by the Government of India under the Disaster Management Act, 2005.

6. Petitioners have further stated that on 30.05.2020, Government of India, invoking the powers under Section 6(2) r/w. Section 10(2) of the

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Disaster Management Act, 2005, have issued Exhibit-P3 order, providing guidelines on prohibited and restricted activities in re-opened areas as well as containment zones, after the complete lockdown.

7. In modification to the said order, Government of India has issued Exhibit-P4 order dated 29.06.2020 under the Act, 2005. However, claiming that in terms of the Standard Operating Procedure issued by the Central Government, State Government have issued Exhibit-P5 order dated 5.6.2020, granting relaxation in public places like hotels/restaurants, shopping malls, including religious and other places of worship, with effect from 8.6.2020. Thereafter, the State Government has issued Exhibit-P5(a) order dated 24.06.2020 clarifying Exhibit-P5.

8. Petitioners have further stated that Exhibits-P5 and P5(a) are issued in terms of Exhibit-P6 Standard Operating Procedure issued by the Ministry of Health and Family Welfare Department on 4.6.2020.

9. The grievance of the petitioners is that in the Annexure which is appended to Exhibit-P5, it is stated that,- "Number of person's at a time may be decided on the basis of the area of religious/worship place. 15 persons per 100 sq. ft. can be taken as a parameter. In any case, the number of persons shall not exceed 100 at a time", which is in contradiction with Exhibits-P3 order and P6 Standard Operative Procedure

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issued by the Government of India. However, in the Annexure appended to Exhibit-P4 notification dated 29.06.2020, Government of India have made it clear that public assembly of 20 persons and 50 persons are allowed in the case of funeral as well as marriage functions. Hence, Exhibit-P4 superseded all other directives issued by the Central as well as State Governments. In fact, Exhibits-P5 and P5(a) are not in terms of Exhibit-P6 SOP and the Government of Kerala has exceeded in its jurisdiction while issuing Exhibit-P5 order, wherein public assembly upto 100 persons have been allowed in the religious and other worship places.

10. Petitioners have further stated that on 30.06.2020, Government of Kerala have issued Exhibit-P7 order implementing the general guidelines of the Central Government, for phase 2 and extension of lockdown in containment zones. However, in Exhibit-P5 order dated 5.6.2020, contrary to the directions in Exhibit-P4, which is adopted in Exhibit-P7, it is learnt that religious activities, propagation, rites and rituals are being permitted with a maximum congregation of 100 persons, which according to the petitioners, is nothing, but , violation of COVID-19 Regulations issued by the Central Government, which are in force. According to the petitioners, the State Government is not competent to permit any religious congregation, by fixing 100 as maximum limit, since there is an absolute

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bar on religious assembly, in view of Exhibit-P4 order issued by the Government of India.

11. Petitioners have further stated that in view of Exhibit-P5, State Government is going to permit larger public worship and gatherings in religious as well as worship places, more particularly, with respect to Muslim community, stating that it is an essential practice of that religion. However, during the Ramzan month, the religious head in the State agreed to comply with the lockdown guidelines and have cancelled all the mass prayers and public assemblies. The followers of Muslim religion in the world celebrate "Eidgah", a mass assembly of the worshipers in the Mosque, on 31.07.2020 and 01.08.2020, in connection with the religious festival "Bakrid". Usually, in every year, large scale public gatherings are being conducted on that day. This year, Government of Kerala, in terms of Exhibits-P5 and P5(a) orders, have conveyed permission to the religious leaders that mass prayers upto 100 persons will be permitted in Mosque and the participation in excess of 100 persons will be illegal. At the same time, it is also stated that mass gatherings in public places other than the Mosques are not allowed.

12. Petitioners have further contended that the intention of the Government is clear, that regulatory measures are suggested for

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implementation to certain extent, but as per Exhibit-P4, no such gatherings can be permitted even upto 100 persons and allowing such gatherings are highly unreasonable and arbitrary. Petitioners have stated that the lazy and irresponsible attitude of the State Government to prevent large gatherings to contain spreading of COVID-19 is objectionable. Now, a Scientific Brief has been published by the World health Organisation, on 9.7.2020, certifying the fact that COVID-19 virus is asymptomatic and airborne. Further, petitioners have referred to Articles 19, 21 and 254 of the Constitution of India as well as the various provisions of Disaster Management Act, 2005, to substantiate their contentions.

13. Petitioners have further contended that the COVID-19 spreading is escalating to an alarming situation and various health experts have warned the State Government to take urgent measures to contain the situation, before attaining a surge or super spread or community spreading. In spite of that, the official respondents are not taking any action to curb the situation. According to the petitioners, Exhibit-P4 order of the Government of India has to be complied with ,and Exhibits-P5 and P5(a)orders shall not be enforced, over-reaching Exhibits-P4 and P7 orders of the government of India in force. That apart, the actions of the respondents are against the parameters of Articles 14, 19 and 21 of the

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Constitution of India.

14. Inviting our attention to various orders issued by Central Government viz., Ext.P1 dated 27.03.2020, Ext.P3 dated 30.05.2020, Ext.P4 dated 29.06.2020, vis-a-vis the State Government in Ext.P2 dated 02.07.2020, Ext.P5 dated 05.05.2020, Ext.P5(a) dated 24.06.2020, and Ext.P7 dated 30.06.2020, and the pleadings, Dr. K. P. Pradeep, learned counsel for the petitioners, contended that Exhibit-P4 and the directions in continuation of Exhibit-P4 need to be enforced by the 1st respondent, in its letter and spirit, and Exhibits-P5 and P5(a) are liable to be vacated and held as unconstitutional.

15. He further contended that even though there are advisories and regulations, to regulate religious and social gatherings during containment period, State have failed to take stringent actions against the religious assemblies, and contrary to Exhibit-P4, Government of Kerala have diluted the guidelines by prescribing 100 as maximum, in Exhibits-P5 and P5(a), which, in fact, promotes public gatherings, which are prohibited or regulated, as per the law and supported by the procedure established by that law.

16. He further contended that the powers under the Disaster Management Act, 2005 and Epidemic Diseases Act are not properly exercised by the State Government to regulate or prohibit the larger public

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gatherings conducted in the name of religious worship and practices. The intervention of the Constitutional Court is warranted in such a peculiar circumstance and it is thus, this Writ Petition under Article 226 of the Constitution of India, seeking to invoke the extraordinary powers is filed.

17. Learned counsel further submitted that Article 254 of the Constitution of India and Section 72 of the Disaster Management Act, 2005 are more clear and specific that the law made by the Government of India, in exercise of its legislative and executive powers, are indissoluble on all the State units, and it is a fundamental principle of the federalism.

18. Inviting our attention to Exhibit-P3 order No.40-3/2020-DM-1(A) dated 30.05.2020 issued by the Ministry of Home Affairs, Government of India, Mr. Ranjith Thampan, learned Additional Advocate General, submitted that initially, in exercise of powers under Sections 6(2)(i) & 10(2)(1) of the Disaster Management Act, 2005, the Chairman, National Executive Committee (NEC), issued order to extend the lockdown in containment zones upto 30.06.2020 and guidelines were issued for phased re-opening, to remain in force upto 30.06.2020.

19. As per the guidelines, Government of India, Ministry of Home Affairs decided to permit all activities, except the following; viz., (i) Religious places/places of worship for public, (ii) Hotels, restaurants and other

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hospitality services, and (iii) Shopping malls, which will be allowed with the stipulation of following Standard Operating Procedures (SOP), to be prescribed by the Ministry of Health and Family Welfare (MoHFW) in a phased manner.

20. As on 30.05.2020, activities have to be followed in three phases. Insofar as religious places/places of worship for public is concerned, the activity was permitted with effect from 8.6.2020, subject to Ministry of Health and Family Welfare issuing the Standard Operating Procedures for the activities in Phase I, in consultation with the Central Ministries/Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID-19.

21. Referring to clause (iv) of Phase III activities, mentioned in the Guidelines for Phased Re-opening (Unlock 2) i.e., social/political/sports/ entertainment/cultural/religious functions and other large gatherings, learned Additional Advocate General submitted that there is a subtle difference between Religious Places/Places of Worships and religious functions. According to him, the activity permitted in clause (iv) of Phase III has to be done based on the assessment of the situation,and dates for restarting the activities mentioned in Phase IV have to be decided.

22. Referring to Exhibit-P4 order No.40-3/2020-DM-1(A), Ministry of Home Affairs, Government of India, Mr. Ranjith Thampan, learned

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Additional Advocate General submitted that, in exercise of powers under Sections 6(2)(i) and 10(2)(1) of the Disaster Management Act, 2005, the Union Home Secretary and Chairman, National Executive Committee (NEC) has issued an order dated 29.06.2020, to re-open more activities in a calibrated manner in areas outside the containment zones and to extend the lockdown in containment zones upto 31.07.2020.

23. Referring to the Guidelines of Phased Re-opening (Unlock 2), learned Additional Advocate General submitted that the guidelines do not speak about religious places/places of worship, but speak about Schools, International Air-travel etc., including social/political/sports/entertainment/ academic/cultural/religious functions and other large gatherings.

24. Referring to the National Directives for COVID-19 Management (Annexure-I) appended to the Guidelines for Phased Re-opening (Unlock 2), in particular clause (3) - Gatherings, learned Additional Advocate General submitted that activities relating to religious places/places of worship, already considered in the Guidelines for Phased Re-opening (Unlock 1) dated 30.05.2020 have been excluded.

25. According to the learned Additional Advocate General, though the SOP was issued on 4.6.2020, the Government of India, Ministry of Health and Family Welfare, in terms of the earlier Order 40-3/2020-DM-I(A) dated

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30.05.2020, the competent authority under the Disaster Management Act, 2005, has not specified the number of persons attending the religious places/places of worship. According to the learned Additional Advocate General, the Central Government expected crowds in religious places/places of worship and that is why SOP was issued on 4.6.2020. In this context, he took us through the SOP dated 4.6.2020.

26. Though strong reliance has been made to clause (xvi) of the said SOP dated 4.6.2020 by the learned counsel for the petitioner, it is the submission of the learned Additional Advocate General that the said condition is only general in nature. Though the Government of Kerala, has adopted the regulations and guidelines of the Ministry of Home Affairs, dated 30.05.2020 applicable to the entire State of Kerala, according to the learned Advocate General, State Government is empowered to frame Guidelines/Regulations to prevent the spread of COVID-19. Thus, G.O(MS) No.127/2020/GAD dated 30.06.2020 was issued by the State Government, directing the District Collectors to ensure strict enforcement of the restrictions by the police and health authorities, as per the guidelines issued by the Central and State Governments respectively.

27. He further submitted that crowd is expected to be there in the places of worship/religious places and, therefore, Government of Kerala, by

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adopting the SOP dated 4.6.2020 issued by MoHFW, New Delhi, with effect from 8.6.2020, issued orders in G.O.(Rt.) No.1762/2020/GAD dated 5.6.2020, with additional restrictions in the State of Kerala, inter alia that, -

(i) Number of persons at a time may be decided on the basis of the area of religious/worship place. 15 persons per 100 sq ft. can be taken as a parameter. In any case, the number of persons shall not exceed 100 at a time.

(ii) Entry of persons from nearby areas alone shall be encouraged. Worship places in town areas, where travellers are likely to gather, should discourage the crowd. Name and details of persons coming to places of worship along with the visiting time may be recorded in a register kept in each place. The person should bring the pen for this purpose.

(iii) Special gatherings or festivals or mass gatherings of any religious nature shall not be allowed till 30th of June-2020.

(iv) Virtual queue system shall be put in place in Sabarimala with maximum 100 persons at a time in temple with 50 at a time for darshan.

28. Subsequently, the Government of Kerala issued order G.O.(Rt.) No.2066/2020/GAD dated 24.06.2020 [Exhibit-P5(a)] clarifying clause (i) of additional restriction in the order dated 5.6.2020 (Exhibit-P5), that for deciding the number of persons at a time allowable in places of worship, may be corrected and read as '15 persons per 100 square meter can be taken as a parameter'. Government in Exhibit-P5(a) further ordered that the regulation of maximum 100 persons at a time, which has been stipulated in the SOP, is for each prayer/namaz/pooja in the places of

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worship and not for different phases of same prayer/namaz/pooja.

29. Learned Additional Advocate General further submitted that in a places of worship, the maximum persons allowed are 100 persons and for such assembly in a places of worship or religious place, the worshipers have to maintain social distancing of six feet, and to follow all the regulations of the Ministry of Health and Family Welfare, New Delhi dated 4.6.2020. According to him, if 100 people have to gather, the hall should be approximately 7000 sq. ft.

30. He further submitted that in exercise of the powers conferred under Section 20(3) of the Disaster Management Act, 2005, the Chief Secretary and Chairperson, State Executive Committee of the State Disaster Management Authority is empowered to issue orders and that there is no repugnancy attracting Article 254 of the Constitution of India and it cannot be said to be in contradiction to Exhibit-P4 dated 29.06.2020.

31. Inviting our attention to the date of issue of the Government order dated 5.6.2020, learned Additional Advocate General further submitted that the earlier Government order was issued in the month of June, 2020. Though all Temples, Mosques, and Churches were permitted to have religious activities, Travancore Devaswom Board has decided not to open Sabarimala Temple. But, in certain Mosques and Temples, places of

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worship have already opened. According to him, the petitioners have not chosen to challenge the Government orders issued by Government of Kerala, when Temples and Churches of Southern Kerala, particularly Malankara Church, are opened for religious activity, but chosen to challenge the religious activity in Mosque, having regard to the "*Bakrid*" festival and, therefore, expressed doubt over the *bona fides* in the action of the petitioners challenging the Government orders at this length of time. For the above reasons, he prayed for dismissal of the writ petition.

32. In reply, Dr. K. P. Pradeep, learned counsel for the petitioners, submitted that despite the Central Government's advice dated 4.6.2020, Sabarimala Temple was not opened and, therefore, there was no occasion to challenge the Government orders at that point of time. According to the learned counsel, action of the petitioners is *bona fide* and permitting large gatherings contrary to clause (3) of Exhibit-P4 directives issued by the Government of India, MoHFW, New Delhi, is violative of Clause 9(i) of Exhibit-P3 guidelines dated 30.05.2020, which stipulates that State/UT Governments shall not dilute the guidelines issued under the Disaster Management Act, 2005 in any manner. He further submitted that in marriages and funerals, the members would be mostly relatives, unlike in the places of worship/religious places, and that is why, the number is

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restricted to the above said activities. According to him, State Government, by issuing Exts.P5 and P5(a) orders, have diluted the Central Government directives and thus, Article 254 of the Constitution is attracted.

33. Heard Dr. K.P.Pradeep, learned counsel for the petitioner and Mr. Ranjith Thampan, learned Additional Advocate General, and perused the materials on record.

34. Before adverting to the rival contentions, let us have a cursory look at the statutory provisions under the Disaster Management Act, 2005.

35. Disaster Management Act, 2005 is an Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto. Section 2(c) of the Act, 2005 defines that "Central Government" means the Ministry or Department of the Government of India having administrative control of disaster management

36. Section 2(d) of the Act, 2005 defines "disaster" ,means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

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37. As per Section 2(e) of Act, 2005, "disaster management" means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for,

(i) prevention of danger or threat of any disaster;

(ii) mitigation or reduction of risk of any disaster or its severity or consequences;

(iii) capacity-building;

(iv) preparedness to deal with any disaster;

(v) prompt response to any threatening disaster situation or disaster;

(vi) assessing the severity or magnitude of effects of any disaster;

(vii) evacuation, rescue and relief; and

(viii) rehabilitation and reconstruction.

38. As per Section 2(l) of the Act, 2005, "National Plan" means the plan for disaster management for the whole of the country prepared under section 11; Section 2(s) of the Act defines that "State Government" means the Department of Government of the State having administrative control of disaster management and includes Administrator of the Union territory appointed by the President under Article 239 of the Constitution.

39. Chapter II of the Act deals with the National Disaster Management Authority. Section 3 of the Act, 2005 speaks about the establishment of National Disaster Management Authority and the same read thus:

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"(1) With effect from such date as the Central Government may, by notification in the Official Gazette appoint in this behalf, there shall be established for the purposes of this Act, an authority to be known as the National Disaster Management Authority.

(2) The National Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the Central Government and, unless the rules otherwise provide, the National Authority shall consist of the following:—

(a) the Prime Minister of India, who shall be the Chairperson of the National Authority, ex officio;

(b) other members, not exceeding nine, to be nominated by the Chairperson of the National Authority. (3) The Chairperson of the National Authority may designate one of the members nominated under clause (b) of sub-section (2) to be the Vice-Chairperson of the National Authority. (4) The term of office and conditions of service of members of the National Authority shall be such as may be prescribed."

40. Section 6 of the Disaster Management Act, 2005 reads thus:

"6. Powers and functions of National Authority.—

(1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.

(2) Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may —

(a) lay down policies on disaster management;

(b) approve the National Plan;

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(c) approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan;

(d) lay down guidelines to be followed by the State Authorities in drawing up the State Plan;

(e) lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects;

(f) coordinate the enforcement and implementation of the policy and plan for disaster management;

(g) recommend provision of funds for the purpose of mitigation;

(h) provide such support to other countries affected by major disasters as may be determined by the Central Government;

(i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;

(j) lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.

(3) The Chairperson of the National Authority shall, in the case of emergency, have power to exercise all or any of the powers of the National Authority but exercise of such powers shall be subject to ex post facto ratification by the National Authority."

41. Section 10 of the Act, 2005 speaks about powers and functions of National Executive Committee and the same reads thus:

"(1) The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the

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National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may—

(a) act as the coordinating and monitoring body for disaster management;

(b) prepare the National Plan to be approved by the National Authority;

(c) coordinate and monitor the implementation of the National Policy;

(d) lay down guidelines for preparing disaster management plans by different Ministries or Departments of the Government of India and the State Authorities;

(e) provide necessary technical assistance to the State Governments and the State Authorities for preparing their disaster management plans in accordance with the guidelines laid down by the National Authority;

(f) monitor the implementation of the National Plan and the plans prepared by the Ministries or Departments of the Government of India;

(g) monitor the implementation of the guidelines laid down by the National Authority for integrating of measures for prevention of disasters and mitigation by the Ministries or Departments in their development plans and projects;

(h) monitor, coordinate and give directions regarding the mitigation and preparedness measures to be taken by different Ministries or Departments and agencies of the Government;

(i) evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or disaster and give directions, where necessary, for enhancing such preparedness;

(j) plan and coordinate specialised training programme for disaster management for different levels of officers, employees and voluntary rescue workers;

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(k) coordinate response in the event of any threatening disaster situation or disaster;

(l) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster;

(m) require any department or agency of the Government to make available to the National Authority or State Authorities such men or material resources as are available with it for the purposes of emergency response, rescue and relief;

(n) advise, assist and coordinate the activities of the Ministries or Departments of the Government of India, State Authorities, statutory bodies, other governmental or non-governmental organisations and others engaged in disaster management;

(o) provide necessary technical assistance or give advice to the State Authorities and District Authorities for carrying out their functions under this Act;

(p) promote general education and awareness in relation to disaster management; and (q) perform such other functions as the National Authority may require it to perform."

42. Chapter III of the Act, 2005 deals with State Disaster Management Authorities. Sections 14 and 18 of the Act read thus:

"**14. Establishment of State Disaster Management Authority**.—(1) Every State Government shall, as soon as may be after the issue of the notification under sub-section (1) of section 3, by notification in the Official Gazette, establish a State Disaster Management Authority for the State with such name as may be specified in the notification of the State Government.

(2) A State Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the State Government and, unless the rules otherwise provide, the State Authority shall consist of the

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following members, namely:—

(a) the Chief Minister of the State, who shall be Chairperson, ex officio;

(b) other members, not exceeding eight, to be nominated by the Chairperson of the State Authority;

(c) the Chairperson of the State Executive Committee, ex officio

(3) The Chairperson of the State Authority may designate one of the members nominated under clause (b) of sub-section (2) to be the Vice-Chairperson of the State Authority.

(4) The Chairperson of the State Executive Committee shall be the Chief Executive Officer of the State Authority, ex officio:

Provided that in the case of a Union territory having Legislative Assembly, except the Union territory of Delhi, the Chief Minister shall be the Chairperson of the Authority established under this section and in case of other Union territories, the Lieutenant Governor or the Administrator shall be the Chairperson of that Authority:

Provided further that the Lieutenant Governor of the Union territory of Delhi shall be the Chairperson and the Chief Minister thereof shall be the Vice-Chairperson of the State Authority.

(5) The term of office and conditions of service of members of the State Authority shall be such as may be prescribed."

"**18. Powers and functions of State Authority**.— (1) Subject to the provisions of this Act, a State Authority shall have the responsibility for laying down policies and plans for disaster management in the State.

(2) Without prejudice to the generality of provisions contained in sub-section (1), the State Authority may—

(a) lay down the State disaster management policy;

(b) approve the State Plan in accordance with the guidelines laid down by the National Authority;

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(c) approve the disaster management plans prepared by the departments of the Government of the State;

(d) lay down guidelines to be followed by the departments of the Government of the State for the purposes of integration of measures for prevention of disasters and mitigation in their development plans and projects and provide necessary technical assistance therefor;

(e) coordinate the implementation of the State Plan;

(f) recommend provision of funds for mitigation and preparedness measures;

(g) review the development plans of the different departments of the State and ensure that prevention and mitigation measures are integrated therein;

(h) review the measures being taken for mitigation, capacity building and preparedness by the departments of the Government of the State and issue such guidelines as may be necessary.

(3) The Chairperson of the State Authority shall, in the case of emergency, have power to exercise all or any of the powers of the State Authority but the exercise of such powers shall be subject to ex post facto ratification of the State Authority."

43. Chapter V deals with measures to be taken by the Government for disaster management. Sections 35, 36, 37, 38, 39 and 40 which comes under Chapter V of the Act, 2005 read thus:

"**35. Central Government to take measures**.—(1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of disaster management.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub-section include measures with respect to all or any of the following matters, namely:—

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(a) coordination of actions of the Ministries or Departments of the Government of India, State Governments, National Authority, State Authorities, governmental and non-governmental organisations in relation to disaster management;

(b) ensure the integration of measures for prevention of disasters and mitigation by Ministries or Departments of the Government of India into their development plans and projects;

(c) ensure appropriate allocation of funds for prevention of disaster, mitigation, capacity-building and preparedness by the Ministries or Departments of the Government of India;

(d) ensure that the Ministries or Departments of the Government of India take necessary measures for preparedness to promptly and effectively respond to any threatening disaster situation or disaster;

(e) cooperation and assistance to State Governments, as requested by them or otherwise deemed appropriate by it;

(f) deployment of naval, military and air forces, other armed forces of the Union or any other civilian personnel as may be required for the purposes of this Act;

(g) coordination with the United Nations agencies, international organisations and governments of foreign countries for the purposes of this Act;

(h) establish institutions for research, training, and developmental programmes in the field of disaster management;

(i) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act.

(3) The Central Government may extend such support to other countries affected by major disaster as it may deem appropriate."

"36. Responsibilities of Ministries or Departments of Government of India.—It shall be the responsibility of every Ministry or Department of the Government of India to—

(a) take measures necessary for prevention of disasters, mitigation, preparedness and capacity building in accordance with the guidelines laid down by the National Authority;

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(b) integrate into its development plans and projects, the measures for prevention or mitigation of disasters in accordance with the guidelines laid down by the National Authority;

(c) respond effectively and promptly to any threatening disaster situation or disaster in accordance with the guidelines of the National Authority or the directions of the National Executive Committee in this behalf;

(d) review the enactments administered by it, its policies, rules and regulations, with a view to incorporate therein the provisions necessary for prevention of disasters, mitigation or preparedness;

(e) allocate funds for measures for prevention of disaster, mitigation, capacity-building and preparedness;

(f) provide assistance to the National Authority and State Governments for—

(i) drawing up mitigation, preparedness and response plans, capacity-building, data collection and identification and training of personnel in relation to disaster management;

(ii) carrying out rescue and relief operations in the affected area;

(iii) assessing the damage from any disaster; (iv) carrying out rehabilitation and reconstruction;

(g) make available its resources to the National Executive Committee or a State Executive Committee for the purposes of responding promptly and effectively to any threatening disaster situation or disaster, including measures for—

(i) providing emergency communication in a vulnerable or affected area;

(ii) transporting personnel and relief goods to and from the affected area;

(iii) providing evacuation, rescue, temporary shelter or other immediate relief;

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(iv) setting up temporary bridges, jetties and landing places;

(v) providing, drinking water, essential provisions, healthcare, and services in an affected area;

(h) take such other actions as it may consider necessary for disaster management."

"37. Disaster management plans of Ministries or Departments of Government of India.—(1) Every Ministry or Department of the Government of India shall—

(a) prepare a disaster management plan specifying the following particulars, namely:—

(i) the measures to be taken by it for prevention and mitigation of disasters in accordance with the National Plan;

(ii) the specifications regarding integration of mitigation measures in its development plans in accordance with the guidelines of the National Authority and the National Executive Committee;

(iii) its roles and responsibilities in relation to preparedness and capacity-building to deal with any threatening disaster situation or disaster;

(iv) its roles and responsibilities in regard to promptly and effectively responding to any threatening disaster situation or disaster;

(v) the present status of its preparedness to perform the roles and responsibilities specified in sub-clauses (iii) and (iv);

(vi) the measures required to be taken in order to enable it to perform its responsibilities specified in sub-clauses (iii) and (iv);

(b) review and update annually the plan referred to in clause (a);

(c) forward a copy of the plan referred to in clause (a) or clause (b), as the case may be, to the Central Government which

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Government shall forward a copy thereof to the National Authority for its approval.

(2) Every Ministry or Department of the Government of India shall—

(a) make, while preparing disaster management plan under clause (a) of sub-section (1), provisions for financing the activities specified therein;

(b) furnish a status report regarding the implementation of the plan referred to in clause (a) of sub-section (1) to the National Authority, as and when required by it."

"**38. State Government to take measures**.—(1) Subject to the provisions of this Act, each State Government shall take all measures specified in the guidelines laid down by the National Authority and such further measures as it deems necessary or expedient, for the purpose of disaster management.

(2) The measures which the State Government may take under sub-section (1) include measures with respect to all or any of the following matters, namely:—

(a) coordination of actions of different departments of the Government of the State, the State Authority, District Authorities, local authority and other non-governmental organisations;

(b) cooperation and assistance in the disaster management to the National Authority and National Executive Committee, the State Authority and the State Executive Committee, and the District Authorities;

(c) cooperation with, and assistance to, the Ministries or Departments of the Government of India in disaster management, as requested by them or otherwise deemed appropriate by it;

(d) allocation of funds for measures for prevention of disaster, mitigation, capacity-building and preparedness by the departments of the Government of the State in accordance with the provisions of the State Plan and the District Plans;

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(e) ensure that the integration of measures for prevention of disaster or mitigation by the departments of the Government of the State in their development plans and projects;

(f) integrate in the State development plan, measures to reduce or mitigate the vulnerability of different parts of the State to different disasters;

(g) ensure the preparation of disaster management plans by different departments of the State in accordance with the guidelines laid down by the National Authority and the State Authority;

(h) establishment of adequate warning systems up to the level of vulnerable communities;

(i) ensure that different departments of the Government of the State and the District Authorities take appropriate preparedness measures;

(j) ensure that in a threatening disaster situation or disaster, the resources of different departments of the Government of the State are made available to the National Executive Committee or the State Executive Committee or the District Authorities, as the case may be, for the purposes of effective response, rescue and relief in any threatening disaster situation or disaster;

(k) provide rehabilitation and reconstruction assistance to the victims of any disaster; and

(l) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of provisions of this Act."

"**39. Responsibilities of departments of the State Government**.—It shall be the responsibility of every department of the Government of a State to—

(a) take measures necessary for prevention of disasters, mitigation, preparedness and capacity building in accordance with the guidelines laid down by the National Authority and the State Authority;

(b) integrate into its development plans and projects, the measures for prevention of disaster and mitigation;

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(c) allocate funds for prevention of disaster, mitigation, capacity-building and preparedness;

(d) respond effectively and promptly to any threatening disaster situation or disaster in accordance with the State Plan, and in accordance with the guidelines or directions of the National Executive Committee and the State Executive Committee;

(e) review the enactments administered by it, its policies, rules and regulations with a view to incorporate therein the provisions necessary for prevention of disasters, mitigation or preparedness;

(f) provide assistance, as required, by the National Executive Committee, the State Executive Committee and District Authorities, for—

(i) drawing up mitigation, preparedness and response plans, capacity-building, data collection and identification and training of personnel in relation to disaster management;

(ii) assessing the damage from any disaster;

(iii) carrying out rehabilitation and reconstruction;

(g) make provision for resources in consultation with the State Authority for the implementation of the District Plan by its authorities at the district level;

(h) make available its resources to the National Executive Committee or the State Executive Committee or the District Authorities for the purposes of responding promptly and effectively to any disaster in the State, including measures for—

(i) providing emergency communication with a vulnerable or affected area;

(ii) transporting personnel and relief goods to and from the affected area;

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(iii) providing evacuation, rescue, temporary shelter or other immediate relief;

(iv) carrying out evacuation of persons or live-stock from an area of any threatening disaster situation or disaster;

(v) setting up temporary bridges, jetties and landing places;

(vi) providing drinking water, essential provisions, healthcare and services in an affected area;

(i) such other actions as may be necessary for disaster management."

"**40. Disaster management plan of departments of State**.—(1) Every department of the State Government, in conformity with the guidelines laid down by the State Authority, shall—

(a) prepare a disaster management plan which shall lay down the following :—

(i) the types of disasters to which different parts of the State are vulnerable;

(ii) integration of strategies for the prevention of disaster or the mitigation of its effects or both with the development plans and programmes by the department;

(iii) the roles and responsibilities of the department of the State in the event of any threatening disaster situation or disaster and emergency support function it is required to perform;

(iv) present status of its preparedness to perform such roles or responsibilities or emergency support function under sub-clause (iii);

(v) the capacity-building and preparedness measures proposed to be put into effect in order to enable the Ministries or Departments of the Government of India to discharge their responsibilities under section 37;

(b) annually review and update the plan referred to in clause (a); and

(c) furnish a copy of the plan referred to in clause (a) or clause (b), as the case may be, to the State Authority.

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> (2) Every department of the State Government, while preparing the plan under sub-section (1), shall make provisions for financing the activities specified therein.
>
> (3) Every department of the State Government shall furnish an implementation status report to the State Executive Committee regarding the implementation of the disaster management plan referred to in sub-section (1)."

44. A conjoint reading of the above provisions would make it clear that subject to the provisions of the Disaster Management Act, 2005, the State Government is empowered to issue guidelines. Main ground of challenge is to Exhibits-P5, P5(a) and P7 Government orders dated 05.06.2020, 24.06.2020 and 30.06.2020 respectively.

45. Kerala Epidemic Diseases Ordinance, 2020 was promulgated by the Hon'ble Governor of Kerala on 26.03.2020 and published as Notification No.6650/Leg.H1/2020/ Law in the Kerala Gazette Extraordinary No.998 dated 27.03.2020.

46. In exercise of the powers conferred under Section 4 of the above said Ordinance, the Kerala Epidemic Disease CoronaVirus Disease (COVID-19) Regulations, 2020 were issued by the Government of Kerala under G.O. (P) No.16/2020/H&FWD dated 29.03.2020 and published in the Kerala Gazette Extraordinary No.1003 dated 29.03.2020. Sub-section 2 of Section 4 of the Ordinance empowers the Government to take such other measures

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as may be necessary for the regulation and prevention of epidemic diseases as decided by the Government.

47. Therefore, in exercise of the powers conferred under sub-section (2) of Section 4 of the Kerala Epidemic Disease Ordinance, 2020, Government of Kerala issued the Kerala Epidemic Disease CoronaVirus Disease (COVID-19) Additional Regulations, 2020. Regulations 3 to 3(e) of the Additional Regulations, 2020 dated 2.7.2020 are extracted hereunder:

> "***3. General precautionary measures to be observed by all persons for control of COVID-19***.- To control and prevent spreading of COVID-19 in the State following measures shall be followed by all the persons:-
>
> (a) **Wearing of Mask/Face Cover**.- All persons shall cover their mouth and nose with the mask/face cover in all public places, work places, any place where public have access, all kinds of vehicles and during transport.
>
> (b) **Social Distancing**.-All persons shall maintain a social distance of six feet between person to person in all public places and functions.
>
> (c) **Marriage Function.**- In all marriage ceremonies and any functions thereafter the maximum number of participants at a time shall not exceed fifty persons. All persons in such ceremonies/ functions shall use sanitizer, wear face cover/mask and shall keep a social distance of six feet between them. Organizers of the marriage or functions shall provide sanitizer for the use of the participants.
>
> (d) **Funeral Functions**.-In funeral functions the maximum participants at a time shall not exceed twenty persons and all of them shall wear face cover/mask, use sanitizer and also keep a social distance of six feet between them. In the case of COVID suspected death the standing instructions issued by Government of India and State Government shall be complied.

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(e) **Social Gathering**.-No manner of social gathering including get together, processions, dharna, congregation, demonstration etc., shall be conducted without the written permission of the concerned authority. The maximum participants in such social gathering shall not exceed ten persons. The persons participating in such gatherings shall wear face cover/mask, use sanitizer and observe a social distance of six feet between them."

48. Order No.40-3/2020-DM-1(A) dated 30.05.2020 issued by the Government of India, Ministry of Home Affairs, prescribing the guidelines on prohibited and restricted activities in re-opened area as well as containment zones, after the complete lockdown, is extracted hereunder:

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

North Block, New Delhi-110001
Dated 30th May, 2020

ORDER

Whereas, an Order of even number dated 17.05.2020 was issued for containment of COVID-19 in the country, for a period upto 31.05.2020;

Whereas, in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed the undersigned to issue an order to extend the lockdown in Containment Zones upto 30.06.2020, and to re-open prohibited activities in a phased manner in areas outside Containment Zones;

Now therefore, in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act, 2005, the undersigned hereby directs that guildeines, as Annexed, will remain in force upto 30.06.2020.

Sd/-
Union Home Secretary
and, Chairman, National Executive Committee (NEC)"

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A) "Guidelines for Phased Re-opening (Unlock 1)

(As per Ministry of Home Affairs (MHA) Order No.40-3/2020-DM-I(A) dated 30th May, 2020)

1. Phased re-opening of areas outside the Containment Zones

In areas outside Containment Zones, all activities will be permitted, except the following, which will be allowed, with the stipulation of following Standard Operating Procedures (SOPs) to be prescribed by the Ministry of Health and Family Welfare (MoHFW), in a phased manner.

Phase-I

The following activities will be allowed with effect from 8th June, 2020:

i) Religious places/places of worship for public;
ii) Hotels, restaurants and other hospitality services;
iii) Shopping malls.

Ministry of Health & Family Welfare (MoHFW) will issue SOPs for the above activities, in consultation with the Central Ministries/Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID-19.

Phase-II

Schools, Colleges, educational/training/coaching institutions etc. will be opened after consultations with States and UTs. State Governments/UTs administrations may hold consultations at the institution level with parents and other stakeholders. Based on the feedback, a decision on the re-opening of these institutions will be taken in the month of July, 2020. MoHFW will prepare SOP in this regard, in consultation with the Central Ministries/Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID-19.

Phase-III

Based on the assessment of the situation, dates for re-starting the following activities will be decided :

(i) International air travel of passengers, except as permitted by MHA,

(ii) Metro Rail.

(iii) Cinema halls, gymnasiums, swimming pools, entertainment parks, theatres, bars and auditoriums, assembly halls and similar places.

(iv) Social/ political/ sports/ entertainment/ academic/ cultural/ religious functions and other large congregations.

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2. National Directive for COVID-19 Management

National Directives for COVID-19 Management, as specified in Annexure-I, shall continue to be followed throughout the country.

3. Night Curfew : Movement of individuals shall remain strictly prohibited between 9.00 pm to 5.00 am throughout the country, except for essential activities. Local authorities shall issue orders, in the entire area of their jurisdiction, under appropriate provisions of law, such as under Section 144 of CrPC, and ensure strict compliance.

4. Lockdown Limited to Containment Zones

(i) Lockdown shall continue to remain in force in the Containment Zones till 30th June, 2020.

(ii) Containment Zones will be demarcated by the District authorities after taking into consideration the guidelines of MoHFW.

(iii) In the Containment Zones, only essential services shall be allowed. There shall be strict perimeter control to ensure that there is no movement of people in or out of these zones, except for medical emergencies and for maintaining supply of essential goods and services. In the Containment Zones, there shall be intensive contact tracing, house-to-house surveillance, and other clinical interventions, as required. Guidelines of MoHFW shall be taken into consideration for the above purpose.

(iv) States/UTs may also identify Buffer Zones outside the Containment Zones, where new cases are more likely to occur. Within the buffer zones, restrictions as considered necessary may be put in place by the District authorities.

5. States/UTs, based on their assessment of the situation, may prohibit certain activities outside the Containment Zones, or impose such restrictions as deemed necessary.

6. Unrestricted movement of Persons and Goods:

(i) There shall be no restriction on inter-State and intra-State movement of persons and goods. No separate permission/ approval/ e-permit will be required for such movements.

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(ii) However, if a State/UT, based on reasons of public health and its assessment of the situation, proposes to regulate movement of persons, it will give wide publicity in advance regarding the restrictions to be placed on such movement, and the related procedures to be followed.

(iii) Movement by passenger trains and Shramik special trains; domestic passenger air travel; movement of Indian Nationals stranded outside the country and of specified persons to travel abroad; evacuation of foreign nationals; and sign-on and sign-off of Indian seafarers will continue to be regulated as per SOPs issued.

(iv) No State/UT shall stop the movement of any type of goods/ cargo for cross land-border trade under Treaties with neighbouring countries.

7. Protection of Vulnerable persons

Persons above 65 years of age, persons with co-morbidities, pregnant women and children below the age of 10 years are advised to stay at home, except for essential and health purposes.

8. Use of *Aarogya Setu* :

(i) *Aarogya Setu* enables early identification of potential risk of infection, and thus acts as a shield for individuals and the community.
(ii) With a view to ensuring safety in offices and work places, employers on best effort basis should ensure that Aarogya Setu is installed by all employees having compatible mobile phones.

(iii) District Authorities may advise individuals to install the Aarogya Setu application on compatible mobile phones and regularly update their health status on the app. This will facilitate timely provision of medical attention to those individuals who are at risk.

9. Strict enforcement of the guidelines

(i) State/UT Governments shall not dilute these guidelines issued under the Disaster Management Act, 2005, in any manner.
(ii) All the District Magistrates shall strictly enforce the above measures.

10. Penal Provisions

Any person violating these measures 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 Section 188 of the IPC, and other legal provisions as applicable. Extracts of these penal provisions are at **Annexure II**."

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ANNEXURE-I

NATIONAL DIRECTIVE FOR COVID-19 MANAGEMENT

1. **Face Coverings** : Wearing of face cover is compulsory in all public places; in workplaces; and during transport.

2. **Social Distancing** : Individuals must maintain a minimum distance of 6 feet (2 gaz ki doori) in public places.

   Shops will ensure physical distancing among customers and will not allw more than 5 persons at one time.

3. **Gatherings** : Large public gatherings/ congregations continue to remain prohibited.

   Marriage related gatherings : Number of guests not to exceed 50.

   Funeral/last rites related gatherings: Number of persons not to exceed 20.

4. **Spitting in public places** will be punishable with fine, as may be prescribed by the State/UT Local Authority in accordance with its laws, rules or regulations.

5. **Consumption of liquor, *paan*, *gutka*, tobacco etc**. in public places is prohibited.

Additional Directives for Work Places: .

6. **Work from Home (WfH)**: As for as possible, the practice of WfH should be followed.
7. **Staggering of work/business hours** shall be followed in offices, work places, shops, markets and industrial and commercial establishments.
8. **Screening & Hygiene** : Provision for thermal scanning, hand wash and sanitizer will be made at all entry and exit points and common areas.
9. **Frequent sanitization** of entire work-place, common facilities and all points which come into human contact e.g. door hand/es etc. shall be ensured, including between shifts.
10. **Social distancing**: All persons in charge of work places will ensure adequate distance between workers, adequate gaps between shifts, staggering the lunch breaks of staff, etc."

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49. Reading of the Guidelines for Phased Re-opening (Unlock 1) dated 30.05.2020 (Exhibit-P3) make it clear that Ministry of Home Affairs, New Delhi has decided phased re-opening of areas outside the containment zones, as hereunder:

> "In areas outside Containment Zones, all activities will be permitted, except the following, which will be allowed, with the stipulation of following Standard Operating Procedures (SOPs) to be prescribed by the Ministry of Health and Family Welfare (MoHFW), in a phased manner."

50. Phase I states that the following activities will be allowed with effect from 8.6.2020:

> i) Religious places/places of worship for public;
> ii) Hotels, restaurants and other hospitality services;
> iii) Shopping malls.
>
> Ministry of Health & Family Welfare (MoHFW) will issue SOPs for the above activities, in consultation with the Central Ministries/ Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID-19.

51. Phase II deals with opening of colleges/educational/ training/coaching institutions etc., and based on the feedback, a decision on the re-opening of the above institutions will be taken in the month of July, 2020. In terms of Phase III, based on the assessment of the situation, dates for reopening the following activities will be decided:

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(i) International air travel of passengers, except as permitted by MHA,
(ii) Metro Rail.
(iii) Cinema halls, gymnasiums, swimming pools, entertainment parks, theatres, bars and auditoriums, assembly halls and similar places.
(iv) Social/ political/ sports/ entertainment/ academic/ cultural/ religious functions and other large congregations.

52. Activities in religious places/places of worship is a totally permitted subject, of course to the SOPs to be issued by the Ministry of Health and Family Welfare, Government of India. As rightly contended by the learned Additional Advocate General, there is a subtle difference between the activities in places of worship/religious places than allowing religious functions and other large gatherings.

53. As per Clause 3 of Annexure-I to Ext-P3 guidelines; 'Gatherings' - Large public gatherings/congregations continue to remain prohibited. Marriage related gatherings - Number of guests not to exceed 50, and Funeral/last rites related gatherings - Number of persons not to exceed 20.

54. A close scrutiny of Annexure I directives for COVID-19 management, to the Guidelines for Phased Re-opening (Unlock 1), make it clear that places of worship for public/religious places are excluded in the Annexure. If the Central Government wanted to restrict the number in the places of worship for public/religious places, the Central Government in the Annexure would have said so.

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55. In conformity with the Guidelines for Phased Re-opening (Unlock 1) dated 30.05.2020, Ministry of Health and Family Welfare, Government of India, have issued the following SOPs on preventive measures, to contain spread of COVID-19 in religious places/places of worship dated 4.6.2020:

Government of India
Ministry of Health and Family Welfare

SOP on preventive measures to contain spread of COVID-19 in religious places/places of worship

1. **Background**

   Religious places / places of worship get frequented by large number of people for spiritual solace. To prevent spread of COVID-19 infection, it is important that required social distancing and other preventive measures are followed in such premises.

2. **Scope**

   This document outlines various generic precautionary measures to be adopted in addition to specific measures to be taken at particular places to prevent spread of COVID-19.
   Religious places/places of worship for public in containment zones shall remain closed. Only those outside containment zones will be allowed to open up.

3. **Generic preventive measures**

   Person above 65 years of age, persons with comorbidities, pregnant woman and children below the age of 10 years are advised to stay at home. Organisations managing the religious institutions to advise accordingly.

   The generic preventive measures include simple public health measures that are to be followed to reduce the risk of COVID-19. These measures need to be observed by all (workers and visitors) in these places at all times.

   These include:

   i. Individuals must maintain a minimum distance of 6 feet in public places as far as feasible.
   ii. Use of face covers/masks to be mandatory.
   iii. Practice frequent hand washing with soap (for at least 40-60 seconds) even when hands are not visibly dirty. Use of alcohol-based hand sanitizers (for at least 20 seconds) can be made wherever feasible.
   iv. Respiratory etiquettes to be strictly followed. This involves strict practice of covering one's mouth and nose while coughing/sneezing with a tissue/handkerchief/flexed elbow and disposing off used tissues properly.
   v. Self-monitoring of health by all and reporting any illness at the earliest to state and district helpline.
   vi. Spitting should be strictly prohibited.
   vii. Installation & use of Aarogya Setu App shall be advised to all.

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4. All religious places shall also ensure:

i. Entrance to have mandatory hand hygiene (sanitizer dispenser) and thermal screening provisions.

ii. Only asymptomatic persons shall be allowed in the premises.

iii. All persons to be allowed entry only if using face cover/masks.

iv. Posters/standees on preventive measures about COVID-19 to be displayed prominently. Audio and Video clips to spread awareness on preventive measures for COVID-19 should be regularly played.

v. Staggering of visitors to be done, if possible.

vi. Shoes / footwear to be preferably taken off inside own vehicle. If needed they should be kept in separate slots for each individual / family by the persons themselves.

vii. Proper crowd management in the parking lots and outside the premises – duly following social distancing norms shall be organized.

viii. Any shops, stalls, cafeteria etc., outside and within the premises shall follow social distancing norms at all times

ix. Specific markings may be made with sufficient distant to manage the queue and ensure social distancing in the premises.

x. Preferably separate entry and exits for visitors shall be organized

xi. Maintain physical distancing of a minimum of 6 feet at all times when queuing up for entry.

xii. People should wash their hand and feet with soap and water before entering the premises.

xiii. Seating arrangement to be made in such a way that adequate social distancing is maintained.

xiv. For air-conditioning/ventilation, the guidelines of CPWD shall be followed which inter alia emphasises that the temperature setting of all air conditioning devices should be in the range of 24-30oC, relative humidity should be in the range of 40-70%, intake of fresh air should be as much as possible and cross ventilation should be adequate.

xv. Touching of statues/idols / holy books etc. not to be allowed.

xvi. Large gatherings/congregation continue to remain prohibited.

xvii. In view of potential threat of spread of infection, as far as feasible recorded devotional music/songs may be played and choir or singing groups should not be allowed.

xviii. Avoid physical contact while greeting each other.

xix. Common prayer mats should be avoided and devotees should bring their own prayer mat or piece of cloth which they may take back with them.

xx. No physical offerings like Prasad/distribution or sprinkling of holy water, etc.to be allowed inside the religious place.

xxi. Community kitchens/langars / “Ann-daan”, etc. at religious placesshould follow physical distancing norms while preparing and distributing food.

xxii. Effective sanitation within the premises shall be maintained with particular focus on lavatories, hand and foot-washing stations/areas.

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xxiii. Frequent cleaning and disinfection to be maintained by the management of the religious place.

xxiv. The floors should particularly be cleaned multiple times in the premises.

xxv. Proper disposal of face covers / masks / gloves left over by visitors and/or employees should be ensured.

xxvi. In case of a suspect or confirmed case in the premises:

a. Place the ill person in a room or area where they are isolated from others.
b. Provide a mask/face cover till such time he/she is examined by a doctor.
c. Immediately inform the nearest medical facility (hospital/clinic) or call the state or district helpline.
d. A risk assessment will be undertaken by the designated public health authority (district RRT/treating physician) and accordingly further action be initiated regarding management of case, his/her contacts and need for disinfection.
e. Disinfection of the premises to be taken up if the person is found positive.

56. Various conditions are stated in the Standard Operating Procedure, including crowd management, in parking lots and outside the premises, maintaining physical distancing of 6 feet, at all times when queuing up for entry, seating arrangement to be made in such a way that adequate social distancing is maintained etc. While doing so, SOP also states that large gatherings/congregations continue to be maintained.In fact, on a reading of the entries in the guidelines dated 4-6-2020 extracted above, together, it would appear that there is no restriction, as to the maximum imposed at all, though directions are issued for maintaining social distancing and for other safety precautions. Adopting the SOP dated 4.6.2020 by the Ministry of Health and Family Welfare, New Delhi,

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Government of Kerala have issued Ext-P5 Government order dated 5.6.2020 and as regards religion and places of worship additional restrictions are imposed in the State, thus imposing a maximum of 100 persons irrespective of the larger area of the religious building, and that too following all the impositions contained under the orders discussed above. Government order dated 5.6.2020 and the additional restrictions are extracted hereunder:

"Government of Kerala

Abstract

GAD - Covid-19 - containment activities of Noval Corona Virus (COVID-19) - SOPs for reopening of various sectors after Lock Down - orders issued

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General Administration (Secret Section) Department

G.O(Rt.) No. 1762/2020/GAD Dated, Thiruvananthapuram, 05.06.2020

Read:- 1. Order No.40-3/2020-DM-I(IA) dated 30.05.2020
2. GO(Ms) No.106/2020/GAD dated 01.06.2020.
3. SOPs dated 04.06.2020 Ministry of Health & Family Welfare Dept.

Order

In relaxation of restrictions / regulations in the form of Lock Down, Ministry of Home Affairs as per Order read as paper 1 above has allowed the functioning of various sectors from 8th June-2020 in the country. It was *interalia* ordered that the SOP for the functioning of these sectors will be issued separately. These instructions, under the provisions of Disaster Management Act-2005, were adopted in the State as per the government order read as paper 2 above.

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Now Ministry of Health & Family Welfare Department, as per paper read as 3 above, has issued SOPs for reopening and operation of Hotels/other hospitality units, restaurants, shopping mails, offices, religious and other places of worship etc. from 8th June -2020.

Government are pleased to adopt those SOPs, copies of which are enclosed, for the functioning of hotels/other hospitality services, restaurants, shopping malls, offices, religious and other places of worship etc. in the State from 8th June-2020 subject to the additional conditions as annexed herewith.

District Collectors, District Police Chiefs and other heads of departments shall ensure that the SOPs are strictly followed while these sectors become operational. The violators shall be booked and penalized under the provisions of Disaster Management Act, IPC, Police Act and any other existing laws as deemed fit.

(By Order of Governor)
DR. VISHWAS MEHTA
CHIEF SECRETARY

To
Additional Chief Secretary, Home & Vigilance Department"

ANNEXURE

"Additional restriction in the State

A. Religious and other places of worship

i. Number of persons at a time may be decided on the basis of the area of religious/worship place. 15 persons per 100 sq ft. can be taken as a parameter. In any case, number of persons shall not exceed 100 at a time.

ii. Anna daanam, Distribution of Prasad, Chandan, Bhasmam etc. or blessings by touching shall not be permitted.

iii. Water through taps alone shall be used for cleaning body parts. Taking water from a common tank using mugs etc. shall not be allowed.

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iv. Entry of persons from nearby areas alone shall be encouraged. Worship places in town areas, where travellers are likely to gather, should discourage the crowd. Name and details of persons coming to places of worship along with the visiting time may be recorded in a register kept in each place. The person should bring the pen for this purpose.

v. E-token system with time stamping for crowd control and demarcation for social distancing also shall be promoted.

vi. All the places of worship shall be cleaned on the first day.

vii. Special gatherings or festivals or mass gatherings of any religious nature shall not be allowed till 30th of June-2020.

Viii. Virtual queue system shall be put in place in Shabarimala with maximum 100 persons at a time in temple with 50 at a time for darshan.

ix. Thermal scanner testing shall be ensured in Nillakal."

57. *Inter alia*, Government of Kerala have restricted the persons at a given time, on religious places/places of worship for public as 15 per 100 sq. metres and subsequently, clarified the same by issuing G.O.(Rt.) No.2066/2020/GAD dated 24.06.2020 [Exhibit-P5(a)], to the effect that the advice given therein that '15 persons per 100 square ft. can be taken as parameter' for deciding the number of persons at a time allowable in a place of worship, may be corrected and read as '15 persons per 100 square meter can be taken as a parameter. Along with that, it is also clarified that the regulation of maximum 100 persons at a time, which has been stipulated in the SOP, is for each prayer/namaz/pooja in that place of worship and not for different phases of same prayer/namaz/pooja.

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58. Though harping on the expression "large congregations" occurring in clause (iv) in Phase III in Exhibit-P3 notification dated 30.05.2020, directions in the Guidelines for Phased Re-opening (Unlock 1), issued by the Ministry of Home Affairs, Government of India, Condition No.(xvi) of the SOP on preventive measures to contain spread of COVID-19 in religious places/places of worship dated 4.6.2020, and clause (9) of the notification dated 30.05.2020, Mr. K. P. Pradeep, learned counsel for the petitioner, contended that State/UT Governments shall not dilute the guidelines issued under the Disaster Management Act, 2005, by the Central Government however by issuing Exhibit-P5 Government order dated 5.6.2020 and Exhibit-P5(a) order dated 24.06.2020, State Government have violated clause (9) of the notification dated 30.05.2020 and diluted the same, which according to the petitioner is violative of Article 254 of the Constitution of India, we are not inclined to accept the same.

59. On the contrary, as rightly contended by the learned Additional Advocate General, Government of Kerala, by issuing G.O.(Rt.) No.1762 / 2020/GAD dated 05.06.2020 (Ext.P5) and G.O.(Rt.) 2066/2020/GAD dated 24.06.2020 [Ext.P5(a)], clarifying the number of persons and area, have imposed only additional restrictions, in places of worship/ religious places.

60. In clause (iv) in Phase III of Exhibit-P3 notification viz., social/

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political/sports/entertainment/academic/cultural/religious functions and other large congregations, no date for restarting was decided as on 30.05.2020. Guidelines for Phased Re-opening (Unlock 1) as regards Phase III activities cannot be diluted with Phase I.

61. In exercise of the powers under Section 38 of the Disaster Management Act, 2005, the State Government is empowered to frame Guidelines/Regulations to prevent the spread of COVID-19. Though the petitioner has contended that large public gatherings are permitted by the State Government, the same is categorically denied by the learned Additional Advocate General.

62. Material on record further discloses that in exercise of the powers conferred under Sections 6(2)(i) & 10(2)(1) of the Act, 2005, National Disaster Management Authority has decided to re-open more activities in a calibrated manner, in areas outside the containment zones and to extend the lockdown in the containment zones upto 31.07.2020. Accordingly, they have issued Order No.40-3/2020-DM-I(IA) dated 29.06.2020. As activities in religious places/places of worship for public have already been opened in Phase I, as early as on 30.05.2020, followed by SOP dated 4.6.2020, by the Ministry of Health and Family Welfare, Government of India, New Delhi, the same is conspicuously absent in the Guidelines for Phased Re-opening

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(Unlock 2). Notification dated 29.06.2020 (Exhibit-P4) issued by the Government of India, Ministry of Home Affairs is extracted hereunder:

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

North Block, New Delhi-110001
Dated 29 June, 2020

ORDER

Whereas, an Order of even number dated 30.05.2020 was issued for containment of COVID-19 in the country, for a period upto 30.06.2020;

Whereas, in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed the undersigned to issue an order to re-open more activities in a calibrated manner, in areas outside the Containment Zones and to extend the lockdown in Containment Zones upto 31.07.2020;

Now therefore, in exercise of the powers conferred under Section 10(2)(1) of the Disaster Management Act 2005, the undersigned hereby directs that guidelines on Unlock 2, as annexed, will be in force upto 31.07.2020.

Sd/-
Union Home Secretary
and, Chairman, National Executive Committee (NEC)"

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Guidelines for Phased Re-opening (Unlock 2)

[As per Ministry of Home Affairs Order No. 40-3/2020-DM-I (A) dated 29 June, 2020]

1. **Activities permitted during Unlock 2 period outside Containment Zones**

   In areas outside Containment Zones, all activities will be permitted, except the following:

   (i) Schools, colleges, educational and coaching institutions will remain closed till 31 July, 2020. Online/ distance learning shall continue to be permitted and shall be encouraged.

   Training institutions of the Central and State Governments will be allowed to function from 15 July, 2020, for which Standard Operating Procedure (SOP) will be issued by the Department of Personnel & Training (DoPT).

   (ii) International air travel of passengers, except as permitted by MHA.

   (iii) Metro Rail.

   (iv) Cinema halls, gymnasiums, swimming pools, entertainment parks, theatres, bars, auditoriums, assembly halls and similar places.

   (v) Social/ political/ sports/ entertainment/ academic/ cultural/ religious functions and other large congregations.

   Dates for re-starting the above activities may be decided separately and necessary SOPs shall be issued for ensuring social distancing and to contain the spread of COVID-19.

   Domestic flights and passenger trains have already been allowed in a limited manner. Their operations will be further expanded in a calibrated manner.

2. **Night curfew**

   Movement of individuals shall remain strictly prohibited between 10.00 pm to 5.00 am throughout the country, except for essential activities, including operation of industrial units in multiple shifts, movement of persons and goods on National and State Highways, loading and unloading of cargo and travel of persons to their destinations after disembarking from buses, trains and airplanes. Local authorities shall issue orders, in the entire area of their jurisdiction, under appropriate provisions of law, such as under Section 144 of CrPC, and ensure strict compliance.

3. **National Directives for COVID-19 Management**

   National Directives for COVID-19 Management, as specified in **Annexure I**, shall continue to be followed throughout the country.

4. **Lockdown limited to Containment Zones**

   (i) Lockdown shall continue to remain in force in the Containment Zones till 31 July, 2020.

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(ii) Containment Zones will be demarcated by the District authorities after taking into consideration the guidelines of Ministry of Health & Family Welfare (MoHFW) with the objective of effectively breaking the chain of transmission. These Containment Zones will be notified on the websites by the respective District Collectors and by the States/ UTs and information will be shared with MOHFW.

(iii) In the Containment Zones, only essential activities will be allowed. There shall be strict perimeter control to ensure that there is no movement of people in or out of these zones, except for medical emergencies and for maintaining supply of essential goods and services. In the Containment Zones, there shall be intensive contact tracing, house-to-house surveillance, and other clinical interventions, as required. Guidelines of MoHFW shall be effectively implemented for the above purpose.

(iv) Activities in the Containment Zones shall be monitored strictly by the State/ UT authorities, and the guidelines relating to containment measures in these zones shall be strictly implemented.

(v) States/ UTs may also identify Buffer Zones outside the Containment Zones, where new cases are more likely to occur. Within the buffer zones, restrictions as considered necessary may be put in place by the District authorities.

5. **States/ UTs, based on their assessment of the situation, may prohibit certain activities outside the Containment zones, or impose such restrictions as deemed necessary.**

However, there shall be no restriction on inter-State and intra-State movement of persons and goods including those for cross land-border trade under Treaties with neighbouring countries. No separate permission/ approval/ e-permit will be required for such movements.

6. **Movement of persons with SOPs**

Movement by passenger trains and *Shramik* special trains; domestic passenger air travel; movement of Indian Nationals stranded outside the country and of specified persons to travel abroad; evacuation of foreign nationals; and sign-on and sign-off of Indian seafarers will continue to be regulated as per SOPs issued.

7. **Protection of vulnerable persons**

Persons above 65 years of age, persons with co-morbidities, pregnant women, and children below the age of 10 years are advised to stay at home, except for essential and health purposes.

8. **Use of *Aarogya Setu***

(i) *Aarogya Setu* enables early identification of potential risk of infection, and thus acts as a shield for individuals and the community.

(ii) With a view to ensuring safety in offices and work places, employers on best effort basis should ensure that *Aarogya Setu* is installed by all employees having compatible mobile phones.

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(iii) District authorities may advise individuals to install the *Aarogya Setu* application on compatible mobile phones and regularly update their health status on the app. This will facilitate timely provision of medical attention to those individuals who are at risk.

9. **Strict enforcement of the guidelines**

(i) State/ UT Governments shall not dilute these guidelines issued under the Disaster Management Act, 2005, in any manner.

(ii) All the District Magistrates shall strictly enforce the above measures.

10. **Penal provisions**

Any person violating these measures 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 Section188 of the IPC, and other legal provisions as applicable. Extracts of these penal provisions are at **Annexure II.**

63. Adopting the same Government of Kerala, have issued G.O.(Ms) No.127/2020/GAD dated 30.06.2020, which reads thus:

"ORDER

As a measure to contain the spread of COVID-19 pandemic in the country, Ministry of Home Affairs, Government of India as per order read as paper 2 above has issued guidelines for phase-2 unlocking of general lock down, to extent the general lock down in containment Zones and also to regulate activities in a planned manner outside containment zones.

In exercise of powers conferred under Sec. 20(3) of the Disaster Management Act-2005, the undersigned in his capacity as Chairperson, State Executive Committee of State Disaster Management Authority, hereby orders that the regulations and guidelines in the above order of Ministry of Home Affairs would be applicable to the entire State of Kerala.

All District Collectors, District Police Chiefs and Heads of Departments should ensure the strict implementation of the

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guidelines and regulations ordered above so as to facilitate the containment activities of Novel Corona Virus (COVID-19) in the State.

The present system of notifying the containment zones by State Disaster Management Authority will continue. The District Collector shall ensure strict enforcement of restrictions by the Police and Health Authorities as per the guidelines issued by the Central and State Governments. The District Collectors are also authorized to take appropriate measures, including additional restrictions, if any, required in the containment zones to prevent the spread of disease.

(By Order of the Governor)

DR. VISHWAS MEHTA
CHIEF SECRETARY"

64. We cannot be oblivious of the fact that Mass in a Church is conducted at a particular time, prayer in a Mosque is performed at a particular time and so also worship in a Temple. One will have to give a meaningful intent when the Central Government have issued guidelines for opening activities in religious places/places of worships for public, whether a person belongs to it is Hindu/Muslim/Christian or any other religion. Though contentions are made on bona fides of the petitioners, who are advocates, we are not inclined to delve into the same. Contentions that there is an absolute bar on religious assembly is not accepted.

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65. Giving our anxious consideration to the pleadings and Government orders issued, by both Central, as well as State Governments, and the statutory provisions, we are of the considered view that the petitioners have not made out a case for issuance of a writ of mandamus, as prayed for.

Writ petition is dismissed. No costs.

Sd/-
S.MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P.CHALY
JUDGE

krj

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APPENDIX

PETITIONER'S EXHIBITS:-

P1	COPY OF THE NOTIFICATION NO.6640/LEG.H1/2020/LAW DATED 27.3.2020 ISSUED BY THE GOVERNMENT OF KERALA.
P2	COPY OF THE SRO NO.453/2020 DATED 2.7.2020 ISSUED BY THE GOVERNMENT OF KERALA.
P3	COPY OF THE ORDER NO.40-3/2020-DM-1(A) DATED 30.05.2020 ISSUED BY THE GOVERNMENT OF INDIA.
P4	COPY OF THE NOTIFICATION NO.40-3/2020-DM-1(A) DATED 29/06/2020 ISSUED BY THE GOVERNMENT OF INDIA.
P5	COPY OF THE GO(RT) NO 1762/2020/GAD DATED 05.06.2020 ISSUED BY THE GOVERNMENT OF KERALA.
P5A	COPY OF THE GO(RT) NO 2066/2020/GAD DATED 24.06.2020.
P6	COPY OF THE STANDARD OPERATING PROCEDURE DATED 04.06.2020 ISSUED BY THE GOVERNMENT OF INDIA WITH RESPECT TO REOPENING OF RELIGIOUS PLACES.
P7	COPY OF THE GO (MS) NO.127/2020/GAD DATED 30/6/2020 ISSUED BY THE GOVERNMENT OF KERALA.
P8	COPY OF THE NEWS REPORTED IN ON-MANORAMA DATED 22.04.2020
P9	COPY OF THE PRESS RELEASE OF THE HON'BE CHIEF MINISTER PUBLISHED ON 23.07.2020 IN MATHRUBHUMI ENGLISH ONLINE.

RESPONDENTS' EXHIBITS:-NIL

//TRUE COPY//

P.A. TO C.J.