

Date: 24.07.2020

To,

The Hon'ble Home Minister,
North Block, Central Secretariat,
New Delhi

Subject: Representation to seek formulation of a uniform policy to provide the practicing advocates loan up to Rs. 5,00,000/- (Rupees Five Lakh Only) payable in 36 equal monthly installments with moratorium period of one year, by exercising your learned office's extraordinary power under the Disaster Management Act, as Advocates are not able to exercise their fundamental right to livelihood since the month of March 2020 and allow physical filing of cause/case along with online filing and formulate policy to provide infrastructural backup to all Bar Associations and make virtual hearing more user friendly to make access to legal system convenient in this phase of National Health Emergency.

Most respectfully showeth:

1. The Petitioners herein are the practicing advocates of different courts in Bharat. The petitioners are moved by the saddened news of suicides by several young advocates reportedly due to the acute financial crisis in this phase of National Health Emergency.
2. That most of the advocates practice independently and have set up their small offices, team of juniors, court clerks and peons etc., thus each advocate's average practice takes care of the provisions for at least five households. The situation of hunger and food insecurity is especially dire in the supporting staffs (clerks, stenographers, office boy, Photocopying staff, stamp vendors etc.) at a time like this; not extending assistance to the supporting staff is causing more distress and is in violation of the fundamental right to food as protected under Article 21 of the Constitution of India.
3. There are advocates who are doing practice single handedly and go through unique kind of struggle to set up their practice and hardly earn their pocket expenses during initial years. There are sections of Advocates who are in the category of daily wage earners, and not going to court physically means no earning, which means no food for them and their families. Due to the continued lockdown of courts, Advocates' fundamental right to live with dignity, right to work and right to livelihood are being infringed. What is really shocking is that no provision/remedy to lessen the hardships suffered by the Advocates is being thought of by the Central Government yet. That so far the livelihood is concerned the advocates community earn from their daily appearances/drafting etc. in the different courts and tribunals established by law and associated with them are Typists, photocopiers, clerks, notary, oath commissioners etc. The Right to Life is guaranteed in Constitution of India under Article 21. Further Article 19(1) (g) guarantees right to practice any profession, which is regulated by the

Advocates Act for the Advocates.

3. That the Advocates community is prohibited from taking up any other profession /employment. They can only practice in courts after enrolling with respective Bar Councils. The practicing advocates are only permitted to either teach or to be a part time reporter. The Colleges are not functional during these times and the news papers are closing down editions. It is a catch 22 situation for the Advocates.

4. That the advocates are the lifeline of the legal system and as we cannot think of a society without legal system similarly we cannot presume legal system without advocates who safeguard the legal and constitutional rights of the society. Since the month of March lockdown was declared and all the institutions including courts were closed. After that, process of Unlocking started and in the process of Unlocking most of the services have started except the physical hearings in courts.

5. That *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180 is a case filed by pavement dwellers to resist eviction of their habitat by the Bombay Municipal Corporation, on the ground that the right to livelihood is born out of the right to life, and the same is paramount. The Court observed as under:

“....the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean, merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life an equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood.”

6. That it is pertinent to mention here that Advocates in different states have protested against the violation of Fundamental Right to livelihood which is causing further violation of fundamental right to live with dignity and ultimately fundamental right to life. There are reports wherein the Advocates have protested constitutionally by sharing their photographs selling vegetables, driving E-rickshaw and mending baskets. Some of them have even moved to their native villages and have started doing conventional jobs while some are searching for part time engagements. There are reports wherein several advocates have taken extreme steps like suicide.

7. That till today even after several representations to the concerned Ministry by various organizations, advocates, Bar Associations etc. no financial help package is issued by the Union of India to help the legal fraternity in these trying times. Furthermore, since most of the advocates being professionals do maintain average living standards and since ninety percent of them are above poverty line, the meager helping amount of Rs. 5,000/- or Rs.10,000/- is draining and exhausting the Bar

Councils financially and the same has even failed to address the financial difficulties of Advocates. Bar Councils though, are face of the Advocates but due to financial constraints are not able to extend meaningful helping hand towards its members and in this manner, even their goodwill as an organised congregation of Advocates is at stake. Able Advocates, Bar Associations and Bar Councils are also doing all the possible effort to support the legal and para-legal community but unable to provide any feasible help because of their limited capacities. Approaching different judicial forums also turned out immaterial in terms of needed financial support from the system.

8. That welfare Funds which are there to take care of contingencies is now under gaze to fix loss of daily income of Advocates, and even if this fund is used up to the last coin, it will not be enough to take care of the financial needs of an average Advocate. So placing welfare funds to run household of Advocates won't cause any benefit to us as a community rather will pull the financial security which otherwise Advocates have in case of any health emergency.

9. That Advocates don't get fixed salary like the Government employees in the sector but no one has bothered to give a thought to the financial hardships being faced by a common advocate in these hard times, in spite of being an officer of the Court.

10. That in the lockdown the Government has extended all kinds of help to labourers, constructions workers, auto rickshaw drivers etc. Free ration/provisions is being provided to people belonging to below poverty line and other people whose circumstances are warranting for. Budding entrepreneurs and startups are given loans, wherein the Government has stood up as surety or sharing the burden of interest by standing at the same pedestal where the borrower is standing. Needless to say the Government has allocated budget of thousands of crores for the same and as a responsible component of society we as a community, appreciate the same.

11. That the Government is doing all possible efforts to stop the organised/unorganised sector bleed financially and in that direction the Ministry of Home Affairs, Government of India vide Order dated 29.03.2020 (Ref : 40-3/2020-DM-I directed the State / UT Authorities are to take necessary action and to issue necessary orders to their District Administration / Police Authorities to ensure that all the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages to their workers, at their work place on the due date, without any deduction for the period their establishments are under closure during the lock down.

12. That in addition, Ministry of Labour & Employment, Government of India vide its letter dated 20.03.2020 has advised all the employers of Public / Private Establishments not to terminate their employees, particularly casual or contractual workers from job or reduce their wages. Since the order dated 29.03.2020 has been issued by the Home Secretary, Ministry of Home Affairs, Government of India while

exercising the power conferred under Section 10(2)(l) of Disaster Management Act 2015 (“DMA”) acting in the capacity as Chairperson, National Executive Committee, it is binding upon all concerned. Section 10(2)(l) of DMA empowers National Executive Committee to 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.

13. That loan may also be given on personal guarantee of the advocates by taking corporate guarantee from Bar Council of India or from respective State Bar Councils. The Government may also direct NATIONAL CREDIT GUARANTEE TRUSTEE COMPANY (‘NCGTC’ for brevity) by adding advocates also as one of its category to the existing schemes like Skill Development; Education loans; Factoring; Micro Units and Standup India for providing such loans under this scheme through suitable channels. These schemes are guaranteed by Emergency Credit Line Guarantee Schemes (ECLGS) which is launched by Government of India as special scheme in view of COVID – 19 crises. In addition to these above the Central Government can also extend health insurance coverage to all advocates as part of Ayushman Bharat Scheme and amidst this COVID-19 crisis, it may be very much useful for advocates and their families.

14. That one of the leading organisation of the lawyers, “*The Akhil Bhartiya Adhivakta Parishad*” has passed a resolution demanding the central government to issue appropriate directions to the Nationalised Banks to provide loans at concessional rate of interest to the needy advocates to mitigate the hardships due to Corona. The said organisation in its National Executive Meeting has adopted two resolutions to bring the plight of the advocates on surface. It has been stressed in the resolution that lawyers are hailed as the defence of social order and Justice and this very community is finding it difficult to sustain itself. The entire community, especially lawyers practicing before the trial courts are facing serious financial crisis due to Covid 19. That the resolution further demands the central government to allot and transfer sufficient amount to Central Bar Council for providing financial assistance to needy lawyers. It also demands the state governments which have not provided any money to state bar council till today, to extend financial assistance to lawyers and immediately disburse sufficient amount to the respective state bar councils for such financial assistance. ABAP also highlighted the issue of lack of medical facility in the Court premises and as a result of which some lawyers and their staff have lost their precious lives. ABAP demanded for the establishment of medical dispensaries at all Courts including the High Courts.

15. That further in a petition filed before the Hon’ble Supreme Court of India it has been prayed to direct the competent authority to prepare a "uniform national level scheme" under Advocates' Welfare Fund Act 2001 to deal with the situation like corona virus pandemic. The petition alleged that the Ministry of Law & Legal Affairs, which is primarily responsible for the effective establishment of the judicial setup in the country, has remained a "mute spectator" over the troubles being faced by the

lawyers and till date it has not taken any action.

16. That further the Bar Council of India has also moved to Supreme Court for seeking direction that the Government may grant to the advocates, interest free loans.

17. That the non-inclusion of the Advocates community in any kind of schemes launched by the Union of India under the Disaster Management Act amounts to violation of right to life and livelihood of around 15 lacs advocates families.

In the above mentioned facts and circumstances the signatories of this Petition request your learned good office to formulate a uniform policy to facilitate the practicing advocates as certified by the respective Bar Councils, Bar Associations/ Judicial Officers (Registrars in the case of High Courts) for providing loan up to Rs. 5,00,000/- (Rupees Five Lakh Only) payable in 36 equal monthly installments after moratorium period of one year, by exercising your extraordinary power under the Disaster Management Act, 2015.

Further we request your learned good office to formulate scheme to provide infrastructural backup like Modern Gadgets/ laptop/tablet/ good speed wifi/good bandwidth etc. to different Bar Associations to place the same in Lawyers Common Room so the advocates who do not have technical infrastructural support in their office may use the same adhering to all other precautionary measures of social distancing and we further request you to start the physical filing of cases/application/petition along with online filing throughout nation and relook the technical accuracy of Virtual Court hearings and make the same more user friendly for the advocates and litigants in general.

Regards:

Advocates of Bharat

CC for your kind information and necessary action, please:

1. Hon'ble Minister of Finance, Govt. of India
2. Hon'ble Minister of Law and Justice, Govt. of India
3. Dr. P K Mishra, Principal Secretary to the Hon'ble Prime Minister of India
4. Executive Chairman, National Disaster Management Authority, Govt. of India

Enclosures:

1.

https://m.timesofindia.com/india/rich-lawyers-not-willing-to-help-poor-colleagues/amp_articleshow/76365163.cms

2. The Advocates Association, Bangalore (AAB) has addressed a letter to the Chief Justice of the Karnataka High Court, Abhay S Oka highlighting the deplorable condition of lawyers in the state owing to the closure of Courts amid COVID-19 pandemic. <https://bit.ly/3d456EV>

3.

<https://www.barandbench.com/news/litigation/plea-in-sc-seeks-permission-for-lawyers-to-advertise-be-employed-on-retainers>

4.

<https://www.facebook.com/1029873177/posts/10220377238634286/?sfnsn=wiwspwa&extid=61gxICxrShJpGRjH>

5.

<https://www.latestlaws.com/latest-news/covid-19-abap-passes-resolutions-demanding-centre-to-issue-directions-to-nationalized-banks-to-provide-concessional-loans-to-advocates-in-need-and-seeking-basis-facilities-for-them/>

6.

<https://www.barandbench.com/news/litigation/supreme-court-issues-notice-to-bci-in-plea-seeking-permission-for-lawyers-to-advertise-be-employed-on-retainer-basis-during-covid-19>

7.

<https://www.barandbench.com/news/litigation/how-can-the-union-of-india-pay-compensation-to-bar-clerks-sc-refuses-to-entertain-plea-for-compensation-by-sc-bar-clerks-association>

8. Lawyer chucks gown, dishes up paani puri -

<https://www.newindianexpress.com/states/karnataka/2020/jul/17/lawyer-chucks-gown-dishes-up-paani-puri-2170901.html>

9.

<https://mumbaimirror.indiatimes.com/mumbai/civic/battered-by-lockdown-lawyers-leave-the-city-with-labourers/articleshow/76348838.cms>

10.

<https://timesofindia.indiatimes.com/city/rajkot/lawyers-protest-bci-rule-by-selling-veggies-outside-court/articleshow/76538916.cms>

11.

<https://mumbaimirror.indiatimes.com/coronavirus/news/lawyer-dies-by-suicide-in-ulhasnagar/articleshow/76654591.cms>

12.

<https://timesofindia.indiatimes.com/city/chennai/covid-forces-advocate-a-first-gen-graduate-back-to-weaving-baskets/articleshow/76241456.cms>

13.

<https://indianexpress.com/article/cities/delhi/amid-pandemic-courts-restrict-functioning-till-july-31-many-lawyers-head-home-in-search-of-work-no-cases-since-march-6511330/>

14. https://m.facebook.com/story.php?story_fbid=131908221900068&id=109270907497133
https://m.facebook.com/story.php?story_fbid=588999972041358&id=100027940821871

15.

<https://www.hindustantimes.com/delhi/hc-lawyer-commits-suicide/story-e84wcwNQkaOmbQvPpskSjI.html>

16.

<https://www.news18.com/news/india/depressed-over-losses-during-lockdown-thane-lawyer-kills-himself-2689167.html>