

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. \_\_\_\_\_ OF 2020

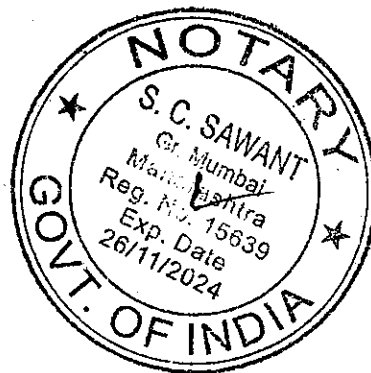
**District: Mumbai**

In the matter of Article 226 of the  
Constitution of India ;

Bar Council of Maharashtra and Goa, ]  
having address at 2<sup>nd</sup> floor, Extension ]  
Building, High Court, Mumbai 400 032 ]  
Through its Secretary. ]  
] ]  
] ]  
]... Petitioner

Versus

1. Union of India ]  
Through ]  
Ministry of Home Affairs, New Delhi. ]
2. Union of India ]  
Through ]  
Law & Justice and Company Affairs ]  
Ministry, New Delhi. ]
3. State of Maharashtra ]  
Through ]  
Secretary, Law & Justice, ]  
Mantralaya, Mumbai. ]
4. State of Maharashtra ]  
Through ]  
Chief Secretary, ]  
Mantralaya, Mumbai. ]
5. Maharashtra State Disaster Management] Authority, ]



Mantralaya, Mumbai. ]  
 6. Bar Council of India, ]  
 Through its Secretary, ]  
 21, Rouse Avenue Institutional Area, ]  
 New Delhi – 110 002. ] ... Respondents

**TO,**  
**THE HON'BLE CHIEF JUSTICE AND OTHER**  
**HON'BLE PUISNE JUDGES OF HON'BLE HIGH**  
**COURT OF JUDICATURE AT MUMBAI,**

**HUMBLE PETITION OF THE**  
**PETITIONER ABOVE NAMED.**

**MOSTH RESPECTFULLY SHWETH:**

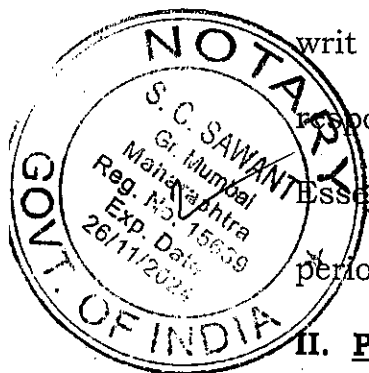
**I. PARTICULARS OF THE CAUSE/ORDER AGAINST WHICH THE**  
**PETITION IS MADE :-**

1. This Petition is filed as a Public Interest Litigation under Article 226 of the Constitution of India, 1950.
2. The petitioner herein is approaching this Hon'ble High Court seeking writ of Mandamus or writ in the nature of Mandamus directing the respondent to consider the members of the petitioner in the list of Essential Service Provider, who are permitted to travel during the period of unlock phase.

**II. PARTICULARS OF THE PETITIONERS :**

3. The present Petitioner No.1 herein is a Statutory Authority established under the provisions of the Advocates Act, 1961. The Petitioner No.1 herein is representative of all advocates who are registered with the Petitioner, who have spread in the States of Maharashtra as well as Goa and Union Territory of Dadra Nagar Haveli as well as Diu and Daman.

**III. PARTICULARS OF THE RESPONDENTS:**



4. The respondents are the State within the meaning of Article 12 of the Constitution of India, 1950.

**IV. DECLARATION AND UNDERSTANDING OF THE PETITIONER:**

5. That the present Petition is being filed by way of Public Interest Litigation and Petition is filed in the interest of persons with disability at large. Thus, the interest of disabled persons at large is involved in the present case.

6. That the entire litigation costs, including the advocate's fee and other charges are being borne by the petitioner.

7. That a thorough research has been conducted through RTI Act in the matter raised through the Petition. Such revealing information is annexed with the Petition as hereinafter referred.

8. That to the best of petitioner's knowledge and research, the issues raised were not dealt with or decided and that a similar or identical petition was not filed earlier by it.

9. That, the petitioner has understood that in the course of this Petition the Court may require any security to be furnished towards costs or any other charges and the petitioner shall have to comply with such requirements.

**V. FACTS IN BRIEF:**

10. The Petitioner No.1 herein have 1,75,000 lawyers who have registered with the present Petitioner No.1 herein. Under the scheme of the

Advocates Act, 1961, the Petitioner No.1 herein have a duty to promote the welfare of advocates along with other duties. The Petitioner submit that the functions of the Petitioner No.1 are as under.

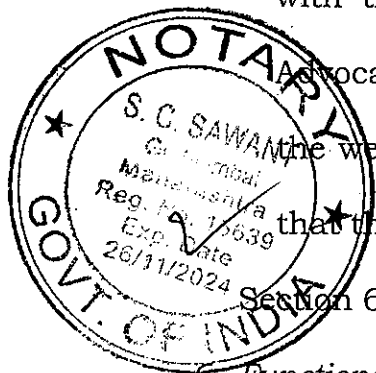
Section 6 of Advocates Act, 1961

6. Functions of State Bar Councils.—

(1) The functions of a State Bar Council shall be—

(a) to admit persons as advocates on its roll;

(b) to prepare and maintain such roll;



(c) to entertain and determine cases of misconduct against advocates on its roll;

(d) to safeguard the rights, privileges and interests of advocates on its roll;

1(dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section clause (a) of sub-section (2) of section 7;]

(e) to promote and support law reform;

2(ee) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and paper of legal interest;

(eee) to organize legal aid to the poor in the prescribed manner;]

(f) to manage and invest the funds of the Bar Council;

(g) to provide for the election of its members; 3[(gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;]

(h) to perform all other functions conferred on it by or under this Act;

(i) to do all other things necessary for discharging the aforesaid functions.

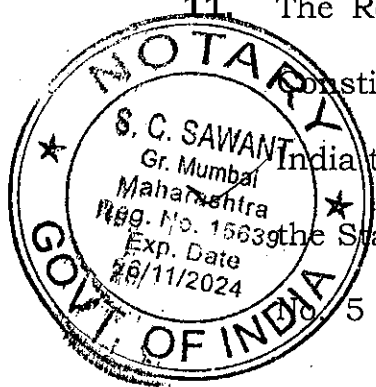
4[(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of—

(a) giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;] 5[(c) establishing law libraries.]] 6[(3) A State Bar Council may

receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.]

11. The Respondents are State within the meaning of Article 12 of the Constitution of India, 1950. Respondents Nos.1 and 2 are Union of India through concerned Departments. Respondents Nos. 3 and 4 are the State of Maharashtra through concerned Departments. Respondent 5 is the Authority established under the provisions of Disaster

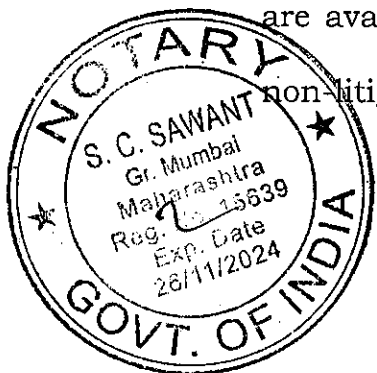


Management Act, 2005 and the last Respondent is a Statutory Authority as well as body established under the provisions of the Advocates Act, 1961.

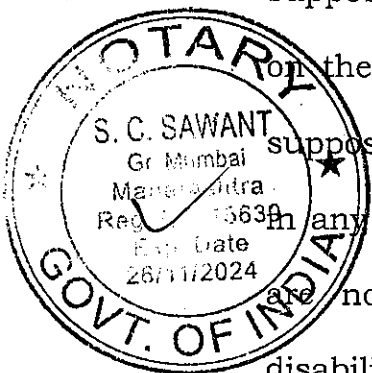
12. The Petitioner submits that in the entire country, there are around 20 lakhs lawyers who are registered with different State Bar Councils like the Petitioner herein. Lawyers are the legal service providers. These lawyers are either engaged in the cases which are pending before different courts established in India or engaged for the non-litigation works of the litigants and clients. The Petitioner submits that as per the National Judicial DataGrid Statistics, as on today, 24260569 (9253889 Civil cases) and (24260569 Criminal cases) number of cases are pending in the entire country. The said Petitioner is concerned with the territorial jurisdiction of the States of Maharashtra, State of Goa and 2 Union Territories mentioned hereinabove, the details about the cases which are filed and pending before these 4 territorial areas are as under.

Sr. No.	Area	Total Number of Cases	Civil	Criminal
1.	State of Maharashtra	4102480	1269173	2833307
2.	State of Goa	50703	22249	28454
3.	Dadra Nagar Haveli	3260	1517	1743
4.	Diu & Daman	2387	1161	1226

13. Thus, the Petitioner submits that in respect of these matters which are mentioned hereinabove, the Members of the present Petitioner herein are availed and engaged by the litigants. Apart from these case, the non-litigant services are also availed.

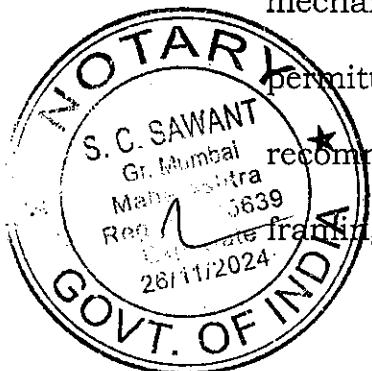


14. So far as the position of the lawyers is concerned, it is already well established that the lawyers are referred in the Constitution of India, 1950 itself. Lawyers is the 'class', has been referred in Article 22 of the Constitution. Thus the services of lawyers are finding support from the Chapter from the Fundamental Rights. Petitioner submit that the word 'legal practitioner' is used in Article 22 as right to consult and to be defended by a legal practitioner of his choice guaranteed to a person who has been arrested. Thus, the Petitioner submits that the service which, the members of the Petitioner No.1 and Petitioner No.2 are the services which are recognized in the Chapter of Fundamental Rights viz. Chapter-III of the Constitution of India, 1950.
15. The Petitioner submit that under the scheme of the Constitution of India, 1950 the Judiciary is a separate Chapter under the Constitution viz. from Article 214 to 231 and Article 233 to 237, which are with reference to Subordinate Courts. Perusal of the scheme of Judiciary is concerned, it can be seen that indirectly the lawyers are covered in the said Chapter. The Petitioner submits that it is well said that from amongst the lawyers, the Hon'ble Judges are selected and appointed. Therefore, indirectly in the above referred Chapter, legal practitioners are covered.
16. Under Article 39-A of the Constitution of India, in the Chapter of the Directive Principles of State Policy, there is a corresponding duty of equal justice and free legal aid conferred on the State. The State is supposed to secure with the operation of legal system promote justice on the basis of equal opportunity. In addition to this, the State is supposed to provide free legal aid by suitable Legislation or scheme or in any other way to ensure that the opportunities for seeking justice are not denied to any citizen by reason of economic or other disabilities. The Petitioner submits that in Article 21, there is guarantee which is given by Constitution about life and personal



liberty except according to the procedure established by law. Not only that the members of the Petitioner No.1 are having a right under Article 19.

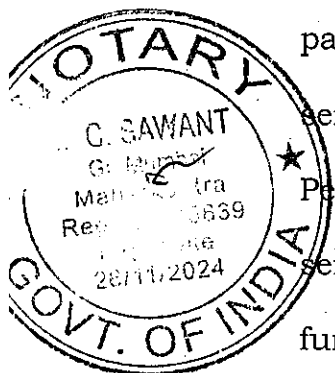
17. The Petitioner submits that the role of advocate in Judicial system has been highlighted by various judgments from time to time. Hon'ble Supreme Court and High Courts in unequivocal words held that the lawyers are officers of the Court and their assistance is an integral part of the process of administration of justice. The Petitioners crave leave to refer and rely upon different judgements at the time of oral hearing.
18. In these circumstances, Hon'ble Supreme Court of India has further gone to the extent of holding that the lawyers are as such cannot go on strike and the lawyers as such are officers of the court. The Petitioner craves leave to refer and rely upon the Judgment of the Supreme Court in AIR 2003 SC 739 between Capt. Harish Uppal Versus Union of India &Ors. at the time of oral hearing.
19. Thus, according to the Petitioner, the status of Essential Service Provider is already conferred on the lawyers by virtue of the judicial interpretation. Accordingly, different Hon'ble High Courts framed Rules including the Bombay High Court which have laid down that mechanism of redressal of grievances is provided as advocates are not permitted to go on strike. The Petitioner submits that there have been recommendations of essential services given by Bombay High Court by framing the Rules mentioned hereinabove in the said petition.



20. The Petitioner submits that in the recent times, on account of the pandemic corona covid-19, there has been restriction on movements of citizens at large. However, when the railway facilities were provided to certain employees providing essential services, a representation was made by the Petitioner No.1 on 19<sup>th</sup> June, 2020 requesting the Ministry of Home Affairs of the State of Maharashtra to allow the advocates and the staff of the Bar Council to travel in the local trains under emergency services. Hereto annexed and marked as **EXHIBIT-EXH:A** "A" is the copy of the said representation dated 19<sup>th</sup> June, 2020.

21. The Petitioner submits that unfortunately there is no decision taken by Government of Maharashtra till today nor such decision has been communicated to the Petitioner. The Petitioner further submits that so far as the State of Maharashtra is concerned, Maharashtra Essential Services Maintenance Act, 2017 (the said Act) has been passed by the State of Maharashtra. The definition of 'essential services' is given at section 2(a) of the said Act. According to the Petitioner, the members of the present Petitioner are rendering public services and thus, they are covered by the definition. The said Act further defined the word 'strike' under section 2(b) of the said Act.

22. It is further submitted that there is a provision, which also made restraining the Essential Service Provider to go on strike. The same logic is already made available by Hon'ble Supreme Court of India in respect of the services of the lawyers as mentioned hereinabove. The Petitioner submits that in view of this fact, the word 'officers of the court' include members of the Petitioner and it has been held that the members of the Petitioner are officers of the court. It is, therefore, submitted that 'restricted' meaning cannot be given to the definition, more particularly, section 2(a)(iv) of the Maharashtra Essential

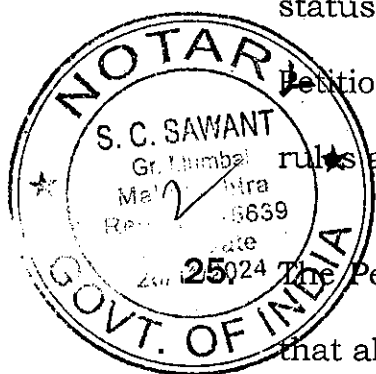




Services Maintenance Act, 2017. The Petitioner craves leave to refer and rely upon the said provision at the time of oral hearing.

23. The Petitioner further submits that by exercising the rule under section 49 of the Advocates Act, 1961. The said rules have been framed by Bar Council of India, which lays down duties to the court as well as the duty to the opponent and the litigant also.

24. Considering the same, it can be further inferred that the status of the officers of the court as well as public servant is conferred on the lawyers. The rules framed by Bar Council of India go to show that whether duty to enter legal aid as well as there is a corresponding duty to the court. Therefore, it is submitted that by exercising the power under section 49 of the Advocates Act, 1961, a status of public service is conferred on the members of the Petitioner herein as well as the status as officers of the court is conferred on the members of the Petitioner. The Petitioner craves leave to refer and rely upon the said rules at the time of oral hearing.



The Petitioner further submits that in this circumstances, it is learnt that already one judgment was delivered by the Division Bench of this Hon'ble High Court (Coram: S.S. Shinde and MadhavJamdar. JJ.) on 10<sup>th</sup> July 2020 in the case of Imran Mohammad S.Shaikh versus State of Maharashtra. However, the legal submissions as well as judgment of the Hon'ble Supreme Court of India has not been considered in the said judgments. Therefore, the Petitioner submits that judgment dated 10<sup>th</sup> July 2020 is not good law and requires reconsideration of the said view. Copy of the said order dated 10<sup>th</sup>July, 2020 is annexed

Ex B herewith and marked as **EXHIBIT-"B"**

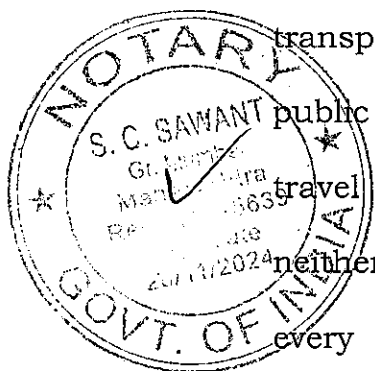
26. The Petitioner further submits that a representation was made by the Petitioner in the said petition, more particularly, in view of the liberty

granted at para-6. It is learnt that however, till today, the said representation is pending with the State of Maharashtra and the representation made by the Petitioner is also pending. In view of the same, appropriate direction is required to be issued.

27. The Petitioner submits that the advocates are treated as the officers of the court and the court is providing access to justice in the process of administration of justice. Consequently, it is submitted that all members of the present petitioner are entitled to get treatment under Essential Service Provider, add a travel permission under the directions which are issued from time to time.

28. The Petitioner further submits that it is the case of the Petitioner herein that all members of the present Petitioner are not well equipped to travel to the court complexes by using the personal or private transport. Majority of the members of the Petitioner are relying on the public transport. It is not possible for the members of the Petitioner to travel by the private mode of transportation on every occasion. It is neither possible nor advisable to travel by private mode of transport on every occasion. Considering the distance between the place of residence and the court complexes spread throughout Maharashtra, it is necessary to adopt the public transport. However, the Respondents have not permitted this advantage at par with other Essential Service Provider. In view of the same, the Petitioner has left with no option but to file this petition.

29. The Petitioner further submits that all 25 elected representatives of the present Petitioner in their Full House meeting held through video conference on 26<sup>th</sup> July 2020 have passed a resolution to file appropriate Writ Petition before this Hon'ble Court and accordingly this petition is filed. For seeking justice to 1,75,000 lawyers in the States of Maharashtra and Goa and 2 Union Territories



mentioned hereinabove. The Petitioner craves leave to refer and rely upon the Full House resolution at the time of oral hearing.

30. The Petitioner further submits that after the order was passed on 10<sup>th</sup> July 2020 mentioned hereinabove, by this Hon'ble Court (Coram: S.S. Shinde & Madhav Jamdar, JJ.) the Police Authorities spread in Maharashtra started obstructing the advocates who were trying to reach the court complexes in the State of Maharashtra. The members of the Petitioner have made complaint to the elected representatives of the Petitioner and it is submitted that there is urgent need of distinguish the judgment dated 10<sup>th</sup> July 2020. Therefore, this petition is filed.

31. The Petitioner submits that it is learnt that in other petitions filed before this Hon'ble Court, order was passed by this Hon'ble Court on 31.07.2020. (Coram: Chief Justice and S.V. Kothwal JJ.) By virtue of the same, State of Maharashtra was directed to decide the representations. Copy of the said order dated 31.07.2020 is annexed herewith and marked as **EXHIBIT-"C"**.

The Petitioner submits that it is learnt that in pursuance of the order mentioned above, State of Maharashtra was pleased to pass an order through Secretary, Disaster Management as well as Relief and Rehabilitation on 05.08.2020. Copy of the said order dated 05.08.2020 is annexed herewith and marked as **EXHIBIT- "D"**.

33. The Petitioner submits that on the official website of this Hon'ble Court, an amended Standard Operating Procedure, direction is issued on 15.09.2020. By virtue of this, all Courts are supposed to function in two shifts and various directions are issued. Accordingly, copy of the said Standard Operating Procedure dated 15.09.2020 is annexed herewith and marked as **EXHIBIT- "E"**.

Exh'E

34. The Petitioner submits that it is further learnt that in the Petition which was pending before the Hon'ble High Court, an order was passed permitting travel of advocates by local trains for attending physical hearing of the Hon'ble High Court on certain terms and conditions. Copy of the said order dated 15.09.2020 (Coram: Chief and G.S. Kulkarni JJ.) is annexed herewith and marked as **EXHIBIT-**

EXH.F **"F"**.

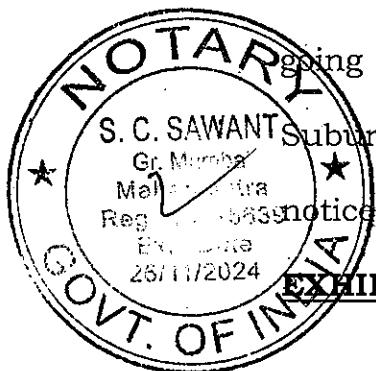
35. The Petitioner submits that in the local Newspaper dated 20.09.2020, a news is published informing that State of Maharashtra has taken a decision permitting Bank employees to travel on local trains. Copy of the said news in the local newspaper is annexed and marked as

EXH.G

**EXHIBIT- "G"**. Apart from that, Western Railway has published a further news being the public notice stating that Western Railway is going to operate 500 special Suburban services over Mumbai Suburban section with effect from 21.09.2020. Copy of the said public notice in the Newspaper dated 20.09.2020 is annexed and marked as

**EXHIBIT- "H"**.

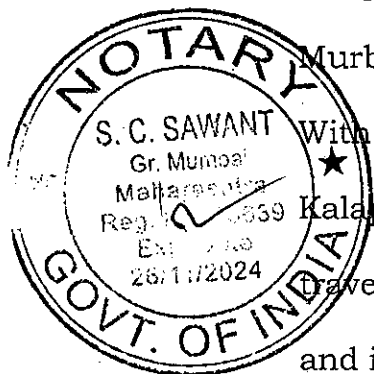
EXH.H



36. The Petitioner submits that in M.M.R.D.A. region which includes Mumbai city and suburban as well as Thane, Palghar and Raigad Districts, there are around 25,000 lawyers. Most of them are mostly practicing in the nearby Court Stations. However, for the matters before other Court Stations, some of them are relying on the Railway services. It is submitted that most of them are not having daily matters in the other Court complexes, but several of them travel by local trains either for reaching to the Court complexes or to their offices. Roughly around 2000 lawyers may travel in the present situation purely on Western, Harbour and Central Railways.

37. The Petitioner submits that it is learnt that so far as Western Railway is concerned, 1365 local trains in a day out of which from 21.09.2020, there will be 500 trains which will be run by Western Railway. Similarly, so far as the Central Railway is concerned, which includes Harbor also, it is learnt that only 353 trains are being run by the Railway out of 17743. Therefore, according to the Petitioner, permitting the lawyers to travel by train is not caused much burden on the administration.

38. The Petitioner submits that by this time the restrictions on Inter-District travel are relaxed. No e-passes are required. However, the Railway local trains are not made available for lawyers. There is tremendous hardships which is caused to lawyers. It is submitted that for the Court complex at Vasai, the lawyers from Palghar, Wada, Jawahar and up to even Dahisar and Borivali are attending the Court complexes. Similarly, for Kalyan Court complex, advocates from Murbad, Shahpur, Wada, Ambarnath as well as Thane are appearing.



With reference to Panvel court complex, the advocates from Karjat, Kalapur, Uran are attending the court complex. It is submitted that travel by other modes other than local train requires substantial time and it is a hurdle in getting access to the justice.

39. The Petitioner further submits that in respect of Delhi High Court, judgment has been delivered by Delhi High Court, in which it is specifically held that the advocates' services are essential services. In view of the same, it is submitted that appropriate order is required to be passed in favour of the present petitioner herein. As on today, on account of the lock down as well as restrictions to unlock, a large number of members of the present petitioner have suffered substantially. The advocates are finding it difficult to earn their livelihood. The right to life and liberty of the advocates is also at stake. The legal services are essential services. In view of the same,

there should not be restriction on the lawyers in approaching the court complexes and rendering services for non- litigants work also.

**VI. SOURCE OF INFORMATION:**

40. The petitioner submits that the petitioner has received the information which is collected personally.

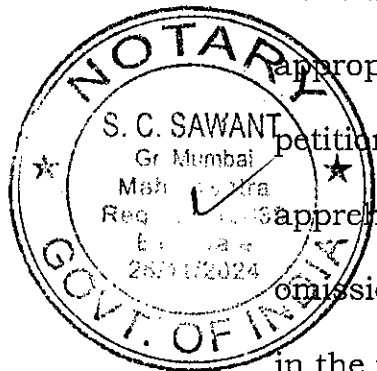
**VII. ANY REPRESENTATIONS MADE :**

41. The petitioner submits that the petitioner has made various representation/complaints to the respondent herein.

**VIII. NATURE AND EXTENT OF INJURY CAUSED/APPREHENDED**

42. The petitioner submits that the respondents herein have failed, avoided and neglected to take appropriate action on the basis of the representations made by the present petitioner herein. However, no action has been taken, and therefore, this petition is filed invoking jurisdiction of the Hon'ble High Court under article 226 of the Constitution of India, 1950.

43. Considering the same, it is submitted that at the earliest possible, appropriate order is required to be passed in favour of the present petitioner herein. The petitioner submits that the petitioner are apprehending great loss to the public at large as large as because of omissions and commissions of the respondent. Considering the same, in the interest of public at large this petition is filed.



**IX. DOCUMENTS RELIED UPON :**

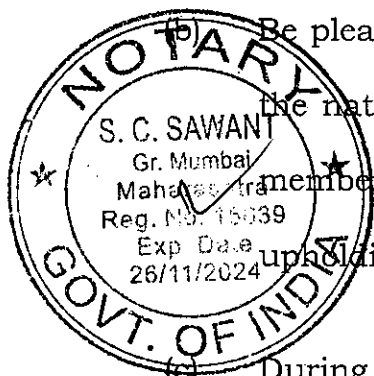
44. The petitioner is relying on the documents as per the list of documents/index annexed with this Petition.

**X. OTHER REGULAR PARTICULARS IN RESPECT OF DELAY, JURISDICTION, EFFICACIOUS REMEDY, CAVEAT, LEAVE TO AMEND ETC.**

45. The petitioner submits that there is no delay in filing this petition.

46. The petitioner submits that this Honourable High Court is having necessary jurisdiction to try and entertain the present petition.

47. The petitioner has paid the appropriate Court fees.
48. The petitioner has not filed any other petition before this Honourable High Court or before the Honourable Supreme Court of India touching the subject matter of the present petition.
49. The petitioner has no efficacious and alternate remedy except to file the present petition.
50. The petitioner craves leave to add, amend, delete, modify and/or alter the above petition as and when required.
51. The petitioner has not received any caveat notice.
52. Therefore, the Petitioner prays as under;
  - (a) Be pleased to hold and declare by passing appropriate Writ of Mandamus or Writ in the nature of Mandamus directing the Respondents herein to include the members of the Petitioner No.1 in the list of Essential Service Provider, who are permitted to travel during the period of unlock phases.
  - (b) Be pleased to direct the Respondents by a Writ of Mandamus or Writ in the nature of Mandamus directing the Respondents not to obstruct the members of Petitioner No.1 while approaching the court complexes for upholding the right of access to justice of the citizens.
  - (c) During pendency of the petition, be pleased to direct the Respondents to issue suitable directions permitting travel of the members of Petitioner No.1 for the legal purposes by using the local train transport.
  - (d) Interim or ad-interim reliefs, if any.
  - (e) Any other relief be granted in favour of the present Petitioner.



And for this act of kindness, the Petitioner herein was duty bound ever pray.

Mumbai dated this 24<sup>th</sup> day of September, 2020.

~~Petitioner No.1~~  
**Secretary**  
**Bar Council of Maharashtra & Goa**

~~Advocate~~ for the Petitioner