

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5609 of 2020

Parul Prasad, W/o Shri Rakesh Prashant, Resident of Bihari Kunj, Makhania Kuan, Patna, P.S. Pirbahore, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Main Secretariat, Patna.
2. The Principle Secretary, Home Department, Government of Bihar, Main Secretariat, Patna.
3. The Principle Secretary, Department of Social Welfare, Government of Bihar, Main Secretariat, Patna.
4. The Director General of Police, Government of Bihar, Patna.
5. The Secretary, Department of Home Affairs, Government of India, New Delhi.
6. The NITI Aayog through its Chief Executive Officer, Sansad Marg, New Delhi.
7. The Chief Executive Officer, NITI Aayog, New Delhi.
8. The Director, Social Welfare, Government of Bihar.
9. The District Magistrate, Darbhanga.
10. The District Magistrate, Patna.
11. The Secretary Disaster Management, Govt. of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Parul Prasad (In Person)
For the Respondent/s	:	Mr. Dr. K. N. Singh, ASG
		Mr. S. D. Sanjay, Senior Advocate
		Mr. P.N.Shahi, AAG-6
		Mr. Patanjali Rishi, AC to AAG-6
		Mr. Ratnesh Kumar, CGC

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-09-2020

Two issues arise for consideration of this Court:

- (1) Whether guidelines of the NITI Aayog to the Chief Secretaries of the State governments are in nature



of advisory communication or did it make it mandatory on the State government to engage CSOs/NGOs/voluntary organizations into the realm of relief operations?

(2) Whether the civil society organizations have a right to be involved in relief operations during the times of crisis and disaster management, for ensuring the reach of relief to each needy person, especially in light of the Covid-19 response strategies issued by the international organizations, including the WHO and endorsed by the United Nations?

Facts and Procedural History

2. On April 22, 2020, Learned advocate Ms. Parul Prasad, by way of the present Public Interest Litigation, brought to this Court's notice the issue of the rights of Civil Society Organizations (CSOs) and Non-Government Organizations (NGOs) to aid and supplement the efforts of the State in providing relief to the needy during the pandemic.

3. The petitioner submitted that due to the sheer size and population of the State of Bihar, even with the State government's continued efforts, they were unable to reach each and every person in need. It was therefore in the interest of the rights of the persons in need that a large number of voluntary organizations, CSOs and NGOs who were genuinely interested



in helping out and we're in an excellent position to assist the State government, be engaged in the relief operations.

4. The petitioner brought on record, two letters of the Chief Executive Officer of NITI Aayog, Amitabh Kant, dated March 30, 2020, and March 30, 2020, respectively, issued in his capacity as the Chairman of the empowered Committee under Disaster Management Act 2005. The first letter was addressed to about 800 recognized CSOs and NGOs from across the country, stressing their pivotal role in joining and assisting the local and State administrations in critical areas and requesting their coordinated efforts to work closely with the State authorities on the ground, especially in critical areas. The second letter was addressed to all State governments intimating them of the request to CSOs and NGOs and directing them to include these organizations in the relief operations conducted in the States.

5. The petitioner also brought on record another set of two letters dated April 8, 2020, and April 10, 2020, issued by NITI AYOOG directing the States to appoint Nodal Officers at the State and District levels for coordination with CSOs and NGOs.

6. The petitioner also brought to this Court's notice, guidelines and directions issued by recognized international organizations such as the World Health Organization (WHO) and



endorsed by the United Nations for strategic public health response for Covid-19 at the national and local levels. The Covid-19 Strategy Update dated April 14, 2020, by the WHO, while laying down the National Strategies to respond to Covid-19 provides that each country must continue to implement a national action plan, which must include civil society organizations and national NGOs to extend the reach of public health and socioeconomic interventions.

7. The petitioner submitted that many NGOs and CSOs are willing to aid and assist the State Government, however, were working under Corporate Social Responsibility (CSR) or foreign funding, and hence were bound by the mandatory requirement of transparency and accountability on where are how the funds are being utilized. This required that their volunteers remain present where the goods and food were distributed and money was being utilized.

8. However, the district administration of Bihar refused lockdown travel passes to organizations and had requested them to deposit the relief goods at allotted stores, which would then be distributed by the State authorities. The petitioner also brought to the notice of this Court, news article dated Aril 15, 2020, pointing out the problems being faced by



old-age homes, shelter houses, and orphanages in the State of Bihar, in accessing essential supplies to meet their requirement during the period of lockdown.

9. Accordingly, the petitioner prayed for the following reliefs:

- (i) Direction to the State of Bihar to follow directions and guidelines of the NITI Aayog for allowing representatives of the CSOs and NGOs to aid and supplement the efforts of the State in extending help for the needy during the pandemic
- (ii) Directions to permit the representatives of CSOs and NGOs to accompany State officials to ensure transparency in distribution of relief materials provided by the CSOs
- (iii) Directions for the appointment of Nodal Officers at State and District levels to coordinate and regulate the work with CSOs & NGOs
- (iv) Directions to the State to ensure that arrangement of food and essential articles are made for Orphanages, Old Age Homes and Shelter Homes for the disabled, at the earliest.

10. On April 23, 2020, the petitioner brought to the record, representations made by CSOs and NGOs before the district authorities which were remained pending before them. The petitioner further requested for dedicated toll-free helpline numbers to be installed for dealing with the problems arising



from the pandemic, faced by Orphanages, Old Age Homes and Shelter Homes for the disabled.

11. The Learned AAG submitted that communications of the NITI Aayog were not binding on the State Authorities. Accordingly, directions were issued to the relevant authorities to file their representations before this Court.

12. By way of his affidavit dated April 30, 2020, the Learned Chief Secretary of Bihar apprised this Court of the steps taken by the Government for engaging CSOs and NGOs in relief operations as:

- (i) All organizations and individuals desirous of providing relief assistance were requested to cooperate and provide resources through the Red Cross Society and guidelines for all organization desirous of helping were issued.
- (ii) District magistrates were informed that representations from these organizations to be considered.
- (iii) In accordance with the communication by the NITI Aayog, Assistant Director, Social Security of every district was appointed as the Nodal Officer to coordinate efforts of local organization, and Joint Director, Social Welfare directorate was appointed as the State Nodal Officer.
- (iv) Pursuant to this Court's directions, a weblink was added in the Bihar Social Welfare Department



website for the registration and coordination of all organized and unorganized members of Society, who were desirous of offering help.

- (v) A dedicated toll-free helpline for Covid-19 relief as well as dedicated toll-free helplines for children, women, disabled persons and widows were installed and duly publicized for the service of the needy people.

13. The Court was also apprised of the various initiatives being undertaken by the Government to ensure and monitor the COVID-19 relief situation on the ground.

14. This Court was assured that the State, being conscious of the unfortunate situation brought about by the pandemic, was committed to full and dedicated support of every citizen of the Society, and all necessary efforts for were underway. The disaster victims were a priority for the State and were having the first right to the State exchequer for their needs. Despite this, learned Chief Secretary maintained that any direction by the NITI Aayog on the involvement of and taking help/ support from CSOs were entirely advisory in nature and were only meant as a suggestion to supplement the State effort with possible collaborations.



15. During the pendency of this PIL, the State of Bihar suffered from flooding of the Kosi river, causing devastation in ten districts of the State. For relief operations in flood-hit areas, the State disallowed direct relief operations by CSOs and NGOs in the flood-hit areas.

16. The Learned Assistant Director of Social Welfare Department, in his supplementary affidavit submitted before the Court that this decision was taken after an assessment of the gravity of the situation on the ground. Owing to the huge and devastating impact of the floods on the many stranded and homeless persons, continued effort and meticulous planning was essential. That despite the well-meaning efforts of the CSOs and NGOs in setting up temporary food kitchen and shelters, the State did not have the authority to hold them accountable to the nature or duration of aid provided. It was therefore decided that the arduous nature of relief management would be better handled if organized by the State authorities, who had the primary responsibility towards the people. For this, the State had set up mega relief camps and proper kitchens governed by SOPs and complete with transparency, out of the CM Relief Fund. All organizations desirous of providing assistance were directed to the District Red Cross Societies. They could also assist with



training, capacity building, information, education and communication activities in the State. It was further reiterated that all citizens of the State of Bihar were being taken care of within the State machinery.

Opinion of Court

17. We will now address the two issues before this Court.

18. The first one is the nature of the letter of NITI Aayog for involving CSOs and NGOs and whether it was binding on the State?

19. The National Institution for Transforming India, also called NITI Aayog, was formed via a resolution of the Union Cabinet on January 1, 2015. NITI Aayog is the premier policy 'Think Tank' of the Government of India, providing both directional and policy input.

20. An important evolutionary change from the past, NITI Aayog acts as the quintessential platform of the Government of India to bring States to act together in the national interest, and thereby fosters Cooperative Federalism.

21. The official website in its overview has made it clear that the role of NITI Aayog is that of think tank limited to giving directions and policy inputs which means that such



directions/recommendations can be acceptable to the Central Government or State Government or may not be acceptable to the Central Government or State Government.

22. In connection to states, the function is limited to foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation Government policies, guidelines, instructions, subject matter of the present *lis*, which have not been framed under any statute or provision of the Constitution of India, are not considered as statutory in nature, and are instead in the nature of executive instructions/administrative guidelines and compliance thereof cannot be enforced through courts.

23. The State has repeatedly asserted that these communication and/or guidelines issued by the NITI Aayog are purely advisory in nature and leave in the open to the State to adapt their own policies keeping in view the ground realities of the State. We are inclined to accept this view. The NITI Aayog is the premier policy 'Think Tank' of the Government of India providing the Government with both directional and policy inputs as well as technical advice on issues. However, the guidelines/ communication issued by the NITI Aayog,



specifically in the instant case, was not backed by any statutory authority.

24. In the case of **Poonam Verma v. Delhi Development Authority, (2007) 13 SCC 154, (Para 27)**, the Hon'ble Apex Court held that guidelines by their very nature did not fall into the category of legislation, direct, subordinate or ancillary and therefore were advisory in nature.

25. This was also followed by the Hon'ble Apex Court in its recent decision of **Praneeth K v. University Grants Commission (UGC) 2020 SCC OnLineSC 592, (Para 66)**, where the communication at issue was a letter of UGC directing universities to compulsorily conduct final examinations by a fixed date. The advisory nature of the guidelines issued by the UGC was vehemently argued before the Court. However, stating that guidelines/directions become binding when issued in exercise of statutory powers vested in the authority, it was held that the universities were mandated to adopt the guidelines.

26. The Supreme Court of India in **GJ Fernandez vs. State of Mysore & Ors. [AIR 1967 SC 1753]**, considered the question of whether the instructions contained in the Mysore Public Work Department Code, has statutory force or not. The Court held that in order for executive instructions to have the



force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution provides, therefor. Since, in the present case, the code had not been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution, the Court held it to be in the nature of administrative instructions and not statutory rules. Such administrative instructions, which have no statutory force, can therefore confer no right on any member of the public to ask for a writ against Government by a petition under Article 226 of the Constitution.

27. In the instant matter, there is nothing in the letter of the NITI Aayog dated March 31, 2020, to show that it comes in the exercise of a statutory authority vested in the NITI Aayog.

28. In fact, it is the stand of the NITI Aayog itself that the letter to the state government was advisory in nature and not binding on the state government in view of the statement in para 8, 11 & 15 of the Counter Affidavit filed on behalf of UOI, Home Affairs under the signature of Sri Rajesh Budgujjar, Under



Secretary, Foreign Division, Ministry of Home Affairs dated 13.05.2020.

29. We, therefore, agree with the State that they are free to formulate their own policy with respect to the engagement of CSOs and NGOs.

30. The second issue that remains for consideration now is whether the CSOs and NGOs have an enforceable right against the State to be engaged in relief operations.

31. At the outset, this Court has acknowledged the importance of the issue brought forth in the present petition. The pandemic has brought great hardships for the people, including loss of livelihood to a large number of people who now require assistance for their daily food and essential supplies. Undoubtedly, every person has a right to receive effective help, which ensures to them a right to life and livelihood guaranteed under Article 21 of the Constitution. This includes a right to food and other essentials. As aforementioned, in times of disaster, the civil Society has always stepped in to provide relief and assistance and has always worked towards ensuring socioeconomic rights of the most vulnerable. Therefore, it is a matter of significance that a continued relationship of mutual



trust exists between the State and these organizations in providing help to the needy.

32. The role of the civil Society in helping vulnerable groups and persons in need cannot be undermined. This also stands fully acknowledged by the Hon'ble Apex Court in the case of **Public Union for Civil Liberties (PUCL) v. State of T.N. (2004) 12 SCC 381**:

“5. In modern days civil Society is playing a greater role in nation building exercise. The commendable roles played by NGOs in very many situations strengthen the confidence of general public in NGOs. Always the State may not be in a position to reach out to the needy. As we have experienced in the past, civil Society could efficiently fill up this gap. Now it is time for more interaction between civil Society and State machinery in implementing social service schemes. The services of philanthropic organizations or NGOs could very well be utilized for rehabilitating released bonded labourers. State could give necessary financial assistance under proper supervision.”

33. Here, we take a step back to discuss the overall positive impact on governance that emerges when all stakeholders of Society are woven into the operations, essentially making the governance of the country a participative process.

Historical Perspective

34. In India, Article 51-A (h) lays the foundation for participative governance under the Indian Constitution. By



providing that it is a fundamental duty of every citizen to develop "humanism" and a "spirit of inquiry and reform", the Constitution calls upon the citizens to better engage with the State. Fundamental duties were added to the Constitution by way of the 42nd Amendment to the Constitution. Although not appearing originally in the Constitution, the idea of participation of citizens in a democracy, as a fundamental duty of every Indian, is in no way alien to the Indian Society and culture. It has always been a guiding pillar for the forefathers of the nation as well as of the Constitution of India.

From Swami Vivekananda who observed that:

"It is the duty of every person to contribute in the development and progress of India",
to the father of the Nation, Mahatma Gandhi, who emphasized that every right came with a corresponding duty for the citizens:

“A duty well performed creates a corresponding right”,
and the father of the Constitution, Shri B.R. Ambedkar, who observed that:

"Democracy is not merely a form of Government. It is primarily a mode of associated living, of conjoint communicated experience. It is essentially an attitude of respect and reverence towards our fellow men".

35. Citizen participation in a democracy has, therefore been a guiding principle for the Indian democracy. This



can be ensured through the engagement of civil Society, as has been done by the Hon'ble Apex Court in various situations. It gives rise to an obligation and forms part of the rule of law of the country.

Part IV and Part IV-A of the Constitution of India

36. Further placing reliance on Part IV and IV-A of the Constitution of India, Article 51 (c) makes directive principle for the State to foster respect for international law in the dealings of organized people:

“**51.** The State shall endeavour to—

... **(c)** foster respect for international law and treaty obligations in the dealings of organized peoples with one another;”

Further, Article 51A (h) makes it a fundamental duty of every citizen to develop humanism, and a spirit of inquiry and reform:

“**51A.** It shall be the duty of every citizen of India

—

...(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;”

(emphasis supplied)

37. In the case of **Vishaka v. State of Rajasthan (1997) 6 SCC 241, (Para 7)** in reference to Article 51 (c), the Hon'ble Apex Court held that in the absence of domestic law



occupying a field, to formulate effective measures, the contents of international conventions and norms would be significant in interpreting the guarantee of fundamental rights under the Constitution. The Court further held that it was accepted rule of judicial construction that due regard must be given to international convention and norms ought to be read into them when there is no inconsistency between them, and there is a void in domestic law.

38. This was further elaborated by the Hon'ble Apex Court in the case of **R.D. Upadhyay v. State of A.P. (2007) 15 SCC 337, (Para 41)**, where the Court observed that international conventions become enforceable when they elucidate and effectuate fundamental rights, and would be read as part of domestic law, so long as there was no inconsistency between the international convention and domestic law.

39. Most recently, the Hon'ble Apex Court in the case of **K.S. Puttaswamy v. Union of India (2017) 10 SCC 1, (Para 154)** has also observed the need for fostering respect for international law in domestic policies, stating that:

“154....India is a responsible member of the international community and the Court must adopt an interpretation which abides by the international commitments made by the country particularly where its constitutional and statutory mandates indicate no deviation. In fact, the enactment of the Human Rights Act



by Parliament would indicate a legislative desire to implement the human rights regime founded on constitutional values and international conventions acceded to by India.”

(emphasis supplied)

40. From the cases discussed above, it is clear that international norms can be enforced as part of domestic law where the domestic law is silent on the issue when they correspond to fundamental rights of citizens under the Constitution, by way of Article 51 (c). However, at present, the issue before us is solely whether the State can be directed, by way of mandamus, to include CSOs and NGOs in the folds of relief operations across the State of Bihar, for the enforcement of Article 51 (c).

International Perspective

41. Internationally, for some States, the prerogative of participative governance forms a part of their Constitution.

South Africa

42. South Africa's commitment to include citizens and members of civil Society is reflected as part of clauses in the Constitution of South Africa. In terms of both decision-making and governance, participatory democracy is established. Under Chapter 4, it stipules that:

"57. (1) The National Assembly may—



[...] (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement"

43. Identical clauses guide the rule-making power of the National Council of Provinces (Section 70) and the rule-making power of the provincial legislature (Section 116). The Constitution also provides that civil society members be part of Committee that provide recommendation on legislations. (Section 193(6)).

44. Further, the Constitution under Chapter 7 provides for a participatory governance.

"**152.** (1) The objects of local Government are—
[...] (e) to encourage the involvement of communities and community organizations in the matters of local government"

European Union

45. The Treaty on Functioning of the European Union (TFEU), which is one of the two treaties forming the constitutional basis of the European Union, by way of its Article 15 provides that:

"**25.** 1. In order to promote good governance and ensure the participation of civil Society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible"



46. Under Article 300, provide that civil Society be part of the Union advisory bodies:

"**300.** [...] 2. The Economic and Social Committee shall consist of representatives of organizations of employers, of the employed, and of other parties representative of civil Society, notably in socioeconomic, civic, professional and cultural areas"

47. On perusal of the general international perspective on the engagement of CSO and NGOs, we see that the United Nations and its various wings have close working relations with NGOs and CSOs, which supplement their efforts in carrying out actions in furtherance of their mandates, and for assistance in humanitarian interventions for States. The guidelines of the WHO in its Covid-19 preparedness strategies, direct all countries to establish national strategies and implement National Action Plans, and one of the core pillars of the plans highlights the need for coordination and planning efforts, which included interventions by NGOs and CSOs. The United Nations in its Report titled, *Shared Responsibility, Global Solidarity: Responding to the Socioeconomic Impacts of Covid-19* from March 2020, established that to accelerate the global response to Covid-19, the involvement of and partnerships with civil society organizations and community-based organizations was pivotal.



Good Governance and *Salus Populi (Est)*

Suprema Lex

48. The concept of governance encompasses the decision-making, policy-making and implementation processes in Society. Good governance directly flows from this concept of governance and consists of ensuring the rule of law, effectiveness and accountability in governance processes.

49. In the case of **Manoj Narula v. Union of India (2014) 9 SCC 1, (Para 74-76)** the Hon'ble Apex Court was pleased to invoke the maxim of *Salus Populi (est) suprema lex*, to stress that in a democracy, it was the public interest that is at the heart of good governance. The Court observed that the principle of constitutional morality means for all to bow down to the norms of the Constitution. Constitutional morality guided the institution building in the country. It stood as the bedrock on which the Constitution of India, a living instrument with capabilities of enormous dynamism, could grow in hand with the progression in Society. Holding that good governance was a facet of constitutional morality, the Court observed that:

"82. In a democracy, the citizens legitimately expect that the Government of the day would treat the public interest as primary one and any other interest secondary. The maxim *salus populi suprema lex*, has not only to be kept in view but also has to be revered. The faith of the people is embedded in the root of the idea of



good governance which means reverence for citizenry rights, respect for fundamental rights and statutory rights in any governmental action, deference for unwritten constitutional values, veneration for institutional integrity, and inculcation of accountability to the collective at large. It also conveys that the decisions are taken by the decision making authority with solemn sincerity and policies are framed keeping in view the welfare of the people, and including all in a homogeneous compartment. The concept of good governance is not a Utopian conception or an abstraction. It has been the demand of the polity wherever democracy is nourished. The growth of democracy has been dependent upon good governance in reality and the aspiration of the people basically is that the administration is carried out by people with responsibility with service orientation."

50. The Hon'ble Apex Court has time and again reiterated the maxim of *Salus Populi (est) suprema lex*, upholding that regard for public welfare was the highest law. **[Sayyed Ratanbhai Sayeed v. Shirdi Nagar Panchayat (2016) 4 SCC 631, (Para 59), State of Haryana v. Eros City Developers Pvt Ltd (2016) 12 SCC 265, (Para 16), Lala Ram v. Union of India (2015) 5 SCC 813, (Para 8), G Sundarrajan v. Union of India (2013) 6 SCC 620 and others (Para 226)]**

51. In the case of **Ramlila Maidan Incident, In Re (2012) 5 SCC 1**, the Court observed that fundamental rights, directive principles and fundamental duties had to be seen together to ensure good governance and action in the public interest:



"22. Thus a common thread runs through Parts II, IV and IV-A of the Constitution of India. One part enumerates the fundamental rights, the second declares the fundamental principles of governance and the third lays down fundamental duties of citizens. While interpreting any of these provisions, it shall always be advisable to examine the scope and impact of such interpretation on all the three constitutional aspects emerging from these Parts."

52. In the case of **Charan Lal Sahu v. Union of India (1990) 1 SCC 613**, the Hon'ble Apex Court observed that:

"63. ...It is comprehended in the maxim *salus populi suprema lex* - regard for public welfare is the highest law. It is not a rule, it is an evolution. This power has always been as broad as public welfare and as strong as the arm of the State, this can only be measured by the legislative will of the people, subject to fundamental rights and constitutional limitations. ..."

53. The United Nations Development Program (UNDP) has stressed on eight characteristics that would ensure good governance in any State, these are – (i) participatory, (ii) consensus-oriented, (iii) accountable, (iv) transparent, (v) responsive, (vi) effective and efficient, (vii) equitable and inclusive and (viii) follows the rule of law.

Participative Governance and the Engagement of Civil Society in Welfare Operations

54. The first and foremost in the UNDP's list is a participative and consensus-oriented approach. This is what we



refer to as participative governance. Thus, in a democracy, good governance and public interest, can best be ensured only with the involvement of the various stakeholders and institutions, including the participation of citizens and the civil Society.

55. Active citizen participation is the hallmark of a vibrant democracy. The Hon'ble Apex Court has time and again stressed on the need for the State to involve and engage members of civil Society in their endeavours. A Government-citizen partnership ensures accountability, transparency and the welfare of the people. The State cannot act in isolation, more so when dealing with the needs, the welfare of the people on the ground and it comes in the best interest of the welfare of the people to have a participative engagement in governance processes.

56. In a plethora of cases, the Hon'ble Apex Court has recognized the role of civil Society in ensuring good governance in the country. Over the years the Court has directed the State to engage the civil society organizations in their efforts to ensure utmost welfare of numerous vulnerable groups [**K.S. Puttaswamy(Aadhar) v. Union of India, (2019) 1 SCC 1, (Para 1403), Videos of Sexual Violence & Recommendations, In Re (2018) 15 SCC 551 (Para-103), (Para 103), National**



Campaign Committee for Central Legislation on Construction Labour (NCC-CL) v. Union of India (2018) 5 SCC 607 (Para 12 of Annexure-1, order dated November 10, 2017), Rajesh Sharma v. State of U.P. (2018) 10 SCC 472 (Para-18) (Misuse of Section 498A of the IPC), Sampurna Behrui v. Union of India (2018) 4 SCC 433, (Para 64 & 94.3) (Implementation of Juvenile Justice Act), Exploitation of Children in Orphanages in Tamil Nadu, In Re, (2017) 7 SCC 578, (Para 25 & 97) Bachpan Bachao Andolan v. Union of India (2011) 5 SCC 1, (Para- 55) and Public Union for Civil Liberties (PUCL) (supra) (Para 5 & 6) (Rehabilitation of Banded Labour)].

57. In another set of cases, the Hon'ble Apex Court has directed involvement of civil Society through their participation in expert committees that help monitor and aid the policy-making actions of the State [**In Re, Outrage as Parents End Life after Child's Dengue SMW (C) No. 1/ 2015, S Rajaseekaran (II) v. Union of India, (2018)13 SCC 516 (Road safety committees) (Para 94.6), Exploitation of Children in Orphanages, In Re (supra), E.R. Kumar v. Union of India (2017) 12 SCC 779 (Committees for ensuring construction**



and operation of night shelter)] (Para 12 of the order dated December 12, 2014 (2017) 12 SCC 785).

58. In **K.S. Puttaswamy(Aadhar) v. Union of India (5-J) (supra)**, the Hon'ble Apex Court observed the need for civil Society's continuous engagement for better outcomes where a project as essential as Aadhar is concerned, as:

"1403. ...Hearing the voices of civil Society must be an integral part of the structural design of a project, such as Aadhar. In the absence of credible mechanism to receive and respond to feedback, the State has to depend on its own personnel who may not always provide reliable and candid assessments of performance and failure."

59. In **National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) (supra)**, **(Para 12)** the Court in its orders observed that the engagement of NGOs that worked on the ground was critical to ensure effective management and implementation of statutory provisions for construction labour.

60. In **Sampurna Behrui (supra)**, **(Para 62)** the Court expressed a pressing need for coordination between the State and civil Society through NGOs, to form institutions (State Child Protection Society and District Child Protection Units), that would discharge the wide-ranging functions under the Juvenile Justice Act.



61. In **S Rajaseekaran (II) (supra), (Para 94.6)** the Hon'ble Apex Court was faced with the issue of an increasing number of deaths by road accidents. To deal with the issue, the Court had directed the appointment of Road Safety Committee that made recommendations. One recommendation of the Committee which was adopted by the Court was the Constitution and setting up of Road Safety Councils and District Road Safety Committees by the State Governments within the specified timeframe. The role of the District Committees was to hold regular and periodic meetings to review road safety issues and take corrective measure. The Court agreed that it was essential to include members of Civil Society from the district as part of the Committee.

62. In **E.R. Kumar (supra), (Para 12)**, the Hon'ble Apex Court upheld the right to food, shelter and basic amenities, directing the State to plan for construction and operation of night shelters for the homeless persons through Committees constituted for the purpose. The Court observed that it was essential for the nomination of civil society members who would best know the needs on the ground. The Court stated that:

"12. We expect that the Civil Society representatives will be dispassionately nominated by the Hon'ble Minister, Housing and Urban Poverty Alleviation as mentioned in the document."



63. The importance of coordinated efforts of the State with the civil Society go back to, and are best highlighted by the Hon'ble Apex Court in **Bachpan Bachao Andolan** (supra). Commenting on the success of the Integrated Child Protection Scheme, the Court stated that:

"55. The most outstanding feature of this scheme [the Integrated Child Protection Scheme] which needs to be implemented on a full-time and firm basis is the Government-civil society partnership. This will involve active involvement of the voluntary sector, research institutes, training institutes, law colleges students, advocacy groups and the corporate sector. It should be the duty of the health secretary of each State Government, including under the Chairmanship of the Health Secretary, Government of India to have a blueprint for implementing the Government-civil society initiative."

(emphasis supplied)

64. Finally, we reiterate the sentiment of the Hon'ble Apex Court in **Public Union for Civil Liberties (PUCL) (supra), (Para 5)** where the Court was pleased to point out that in many situations, the NGOs had a better position to reach out to the needy than the State itself and therefore the state ought to leverage such services of the Civil Society. We have already reproduced the relevant part in the earlier part of our judgment.



65. As discussed, the role of the Civil Society in a democracy cannot be understated to address the miseries brought about by the pandemic, but however a coordinated effort of all functionaries is paramount.

66. The second issue is answered accordingly.

67. No other submission made on behalf of the parties.

68. In the light of the above, we direct for the State to consider, enforcing, to the extent possible:

- (i) Actively interact and coordinate with NITI Ayog ensuring implementation of principles of good governance, which, in turn, would enable citizens, achieve and fulfill the Constitutional goal of social justice.
- (ii) Allow CSOs and NGOs to conduct relief operations, including in the form of distribution of food and other materials, in the State. The civil Society forms the fourth institution in a democracy. They cannot be indefinitely excluded from relief operations in times of crisis. Where concerted efforts by the State are necessary, CSOs and NGOs be included within the folds of the State operations.



- (iii) Integrate the participation of CSOs and NGOs as part of the policy framework formulated by the State.
- (iv) Strive to form policies which allow CSOs and NGOs to work in direct partnership with the State, especially socioeconomic welfare policies, such as those directed towards child education and nutrition, juvenile justice, women rights, transgender rights etc.
- (v) Formulate SOPs, guidelines and codes of conduct to be adopted by the State as well as CSOs and NGOs in their performance of welfare and relief operations. Accountability of all institutions is essential. This will also ensure meaningful participative governance.
- (vi) Leverage the information and knowledge-bases of CSOs and NGOs. These organizations are a source of valuable knowledge and expertise on social issues, that can enhance the quality of decision making and relief operations conducted by the State. Their expertise would help identify the most vulnerable groups and areas that need immediate attention.
- (vii) Create publicly accessible repositories of recognized CSOs and NGOs, maybe even organized in terms of their area of efforts (childcare, environment, education,



health, women rights, transgender rights, etc) and involve them in relevant projects.

(viii) Conduct regular consultations at every stage of relief work, with relevant CSOs and NGOs working at the ground level and are versed with the needs of the people. These consultations could be used as a forum for feedback and opinions to ensure the welfare of the people best.

(ix) Create a website/other online platforms for interaction with non-state actors, and as a forum for data and information sharing with the various stakeholders.

(x) Have a regular dialogue, collaboration and coordination with CSOs and NGOs at all stages- of policy/ scheme formation, implementation and monitoring results.

(xi) Further we do suggest, hope and expect, that the State itself makes optimum use of all the aid and assistance being extended by all organizations, and by engaging them, to ensure that relief reaches to the maximum number of persons, including in the farthest corners of the State of Bihar.



69. We highly appreciate the assistance rendered by the petitioner, Ms. Parul Prasad, a practising advocate of this Court, in highlighting a contemporary issue of vital importance and significance.

70. Accordingly, the present petition is disposed of.

71. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

pallavi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	11.10.2020
Transmission Date	

