

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**WRIT PETITION No. /2020 (GM-PIL)**

**BETWEEN:**

**LETZKIT FOUNDATION® ... Petitioners**

**AND:**

**State of Karnataka & Ors. ... Respondents**

**Chronological Events with Brief Facts**

<b>Sl.No.</b>	<b>Date</b>	<b>Particulars</b>
01	01.04.1976	Karnataka Prohibition of Beggary Act, 1975 comes into force
02	01.01.2015	Juvenile Justice (Care and Protection of Children) Act, 2015 is enacted.
03	31.12.2019	Novel Corona Virus erupts in China and the WHO labels Novel Corona Virus as pandemic.
04	25.03.2020	To contain the spread of the Virus, Government of India imposes lockdown across the country. Amongst others, one of the condition imposed is that children below the age of 10 years shall not come out to open except for essential purposes and in subsequent notification it was further provided that such persons shall not attend even permitted functions including marriages
05	05.05.2020	Legal Notice cause to the Respondents and the 3 <sup>rd</sup> Respondent acknowledges its receipt.
06	18.05.2020	Lockdown 4.0 restrictions commences across the Country
07	19.05.2020	Notification issued permitting movement of public transport vehicles from 7 am to 7 pm
08	24.05.2020	This writ petition is being filed

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**BRIEF FACTS:**

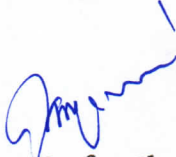
1. Whether fear of Corona virus is there or not, children are being pushed to market items like pens, ear buds etc. at traffic junctions. Further they are forced to beg from the occupants of the vehicle waiting clearance of signal. Thus the life of the children is put to risk.

2. Children of workers engaged in construction work stop attending to classes once their parents shift place of job on competition of the job as such children do not get admission to other schools in the middle of the academic year.

Hence this petition filed in public interest to protect the rights of the children.

Bengaluru

24<sup>th</sup> May,2020

  
Advocate for the Petitioner  
Puthige R Ramesh  
395/Kar77

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**(ORIGINAL WRIT JURISDICTION)**

**WRIT PETITION No.**

**/2020 (GM-PIL)**

**Between:**

LETZKIT FOUNDATION®  
No.518, "Guru Nivas"  
8<sup>th</sup> Cross, III Phase,  
J.P.Nagar, Bangalore 560078  
by its Managing Trustee

**PETITIONER**

**AND:**

1. State of Karnataka,  
By its Principal Secretary,  
Social Welfare and Labour Department  
Vikasa Soudha, Dr. B.R.Ambedkar Road,  
Bengaluru 560 001.
2. The Director,  
Department of Women and Child Development,  
First Floor, MS Building,  
Dr.B.R.Ambedkar Veedhi,  
Bangalore - 560001
3. The Director,  
Primary Education, New Govt Offices  
K.R.Circle, Dr.B.R.Ambedkar Veedhi,  
Bangalore - 560001
4. Bruhath Bengaluru Mahanagar Palike,  
by its Commissioner,  
N.R.Square,  
Bengaluru - 560 002
5. The Chairman,  
Central Relief Committee,  
Department of Social Welfare,  
Magadi Main Road,  
Bangalore - 560 091

**RESPONDENTS**

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**MEMORANDUM OF WRIT PETITION UNDER ART.  
226 OF THE CONSTITUTION OF INDIA**

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The Petitioner respectfully submits as under :-

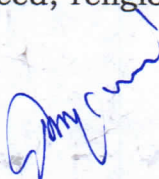
**1. Re-Lis :**

(a) The Petitioner prays leave of this Hon'ble Court to prefer this writ petition in public interest so as to protect the interest of the children moving around the streets of Bangalore in the guise of marketing small items like pens, ear buds etc at traffic junctions. Children in the country can be classified under three categories. The first are those who grow under the guidance and love of their parents many of whom in cozy environment. The second are those children who also grow under the guidance of parents but in an environment unfit for human living and throwing away to wind all safety norms. The third and the last are those who get separated from the custody of their parents and grow as per the dictates of those who look after them. In this writ petition, the Petitioner is expressing the concern principally of those coming under the second and third category.

(b) As this writ petition is being filed in Public Interest without seeking any personal relief, the Petitioner undertakes not to withdraw the same and prays for an order on merits.

**2. Re. Objects of the Petitioner LETZKIT FOUNDATION**

(i). The Petitioner is a duly registered Trust with following objects to be achieved without any discrimination on the basis of any caste, community, creed, religion, sex, language and the objects



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are not for the benefit of any particular or specified community, group, caste, sex or religion.

ii). To arrange educational and awareness programmes for the poor and deserving children in Govt. schools and rural areas.

iii). Distribution of potable water in rural places.

iv). To render aid, assist, take care of, provide for sustenance, education, employment of physically or mentally challenged persons.

v). To render legal aid available under law, to approach competent authorities and Hon'ble Courts with representations / petitions seeking relief for the benefit of general public, the aged, women and children in particular apart from espousing the causes relating to animal welfare.

vi). To spread health and hygiene awareness among the general public.

vii) To associate with the State Government, Central Government voluntary and non Government service organisations established in India to achieve the objects and to enter into Memorandum of Understanding agreements etc and to organise conventions, conferences and other events for professionals, training programmes and camps to achieve the objects of the trust.

**3. Re. Respondents :**

(a) The 1<sup>st</sup> Respondent is the State of Karnataka and has a duty to protect the interest of children especially those who are denied basic amenities. The 2<sup>nd</sup> Respondent is the Director of the Department established solely to look after the welfare of the

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women and children in the State. The 3<sup>rd</sup> Respondent is incharge of primary and secondary education. The 5<sup>th</sup> Respondent has been entrusted with the job of looking after those who do not have shelter.

(b) The 4<sup>th</sup> Respondent the Bruhath Bangalore Mahanagara Palike, for short, hereinafter referred to as "the BBMP" is established under the provisions of Karnataka Municipal Corporation Act, 1976 for short hereinafter referred to as the "KMC Act" and has a duty to collect Cess from the property owners of the City of Bangalore towards the welfare of the shelter less and to make over the same to the 4<sup>th</sup> Respondent after collecting its administrative charges on percentage basis from the cess thus collected.

(c) The submissions being made in this writ petition and the prayer sought thereon is required to be answered by the aforesaid Respondents and as such all the Respondents arrayed supra are necessary parties.

**4. Re-Facts:**

(a)(i). Children are the greatest human resource in the country, and a measure of the country's social development lies in its children's well-being. India's children are still subjected to child maltreatment and abuse, regardless of the limited measures taken to avoid it.



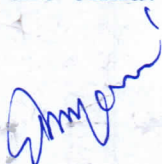
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(ii). India has some 440 million children; they make up over 40 percent of the population. Many infants face a dangerous birth and struggle to survive. Many more suffer from poverty and traumatic childhoods and fail to achieve their full potential.

(iii). Childhood development between the age of 5 to 18 is considered a most critical period of life that influences the quality of health, well-being, learning and behaviour across the life span. This is a time of tremendous opportunity as well as tremendous susceptibility to adverse factors. The path that development takes in each person is critically dependent on the level of stimulation, encouragement, and nutrition that the child receives in family, community and care environments.

(iv). Abuse and neglect of children is referred to as Child maltreatment and is unfortunately made for the benefit or advantage of someone else which often results in the child being treated unjustly, cruelly and harmfully.

(v) 'Child maltreatment', includes all types of physical and emotional ill-treatment, sexual abuse, neglect and exploitation which lead to significant or potential harm to the health, development or dignity of the child. There are five subtypes of child



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maltreatment and they are physical abuse; sexual abuse; negligence and inadequate treatment; emotional abuse; and exploitation.

(vi). Physical abuse of children are many a times committed by school teachers, although it was for a better academic outcome from the student but the same is also one form of child maltreatment. The sad part is several children who are without proper guidance are forced to take up jobs which they are not supposed to do.

(vii). Both boys and girls at tender age are subjected to sexual abuse and such abuse are detrimental to the development of physical or mental health, employment, confidence or social-emotional growth of the child.

(viii). Regardless of intent, the child will succumb to abuses and it may scar their behaviours permanently. Knowing the information and understanding of parents is very necessary to take the required measures to minimize the incidence of child maltreatment in the Indian community.

(ix). Supposed to take care of the interest of the children, the Government has assigned to the 2<sup>nd</sup> Respondent the focal responsibility for child rights and development.

(b). All citizens under the age of 18 are referred to as juvenile and are protected under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015, for short hereinafter referred to as "Juveniles Act". Further the rights of the children are guaranteed not only by several articles of the constitution of India but also by international legal instruments which the 1<sup>st</sup> Respondent has accepted through constitutional reforms.

(c). Constitution of India provides certain rights for the children, which have been expressly provided for their protection. Child rights go beyond human rights and exists to ensure that people around the world are treated equally and correctly, and to promote the welfare of the children under different angles.

(d) As on date, some of the rights which specifically protect the rights of the children as guaranteed by the Constitution are listed hereunder for ready reference:

- Article 21A of the Constitution guarantees the right to free and compulsory elementary education for all children in the age group of 6 and 14 years.

- Article 24 of the Constitution protects the children below the age of 14 from any hazardous activity.

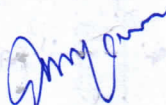
- Article 39 of the Constitution mandates that the child shall not be employed for a job unfit for its age or strength even on grounds of economic necessity.

- Article 39F of the Constitution ensures that the child shall be afforded fair opportunities and facilities to grow in a safe manner and under conditions of equality and dignity and assured protection of children and young people against abuse and moral and material abandonment.

(e) In addition to above rights specifically taking care of the children, there are several other provisions which are declared fundamental rights such as Articles 14,15, 21 and 23 which ensures that no person shall be discriminated such as on grounds of equality, discrimination, and right to life etc.

(f) At the cost of repetition it is submitted that even assuming that a person below the age of 18 has committed a crime he cannot be punished under the general laws including Indian Penal Code but his case has to be dealt with under the provisions of the Juveniles Act.

(g)(i) With respect it is submitted that the rights of the children especially of those without proper care are more violated



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than complied with as mandated in the constitution. These violations can be judicially taken note of if one were to pass few traffic junctions in the city of Bangalore.

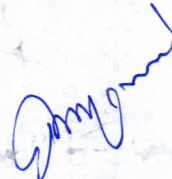
(ii) The infants are carried by certain ladies as if she is begging for the sake of the infant.

(iii) Children in the age group of 5 to 10 are made to vend pens, earbuds, toys, flowers etc. at traffic junctions.

(iv) Certain grown up children are made to market sunshields and mobile accessories, again at traffic junctions.

(v) Persons marketing aforesaid products increase by several folds during the week preceding Republic day and Independence day when they will be assigned the job of marketing the new product – Tricolour. That apart during the month of December different varieties of calendar are carried for sales by the children.

(h)(i) Unfortunately, some of the children are made not only to market varieties of products but are also made to beg from motorists. They are even made to paint themselves to resemble Lord Hanuman. The act of those who force the children to do such acts



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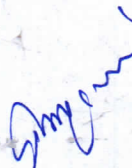
violates the provisions of Karnataka Prohibition of Beggary Act, 1975, for short hereinafter referred to as "the Beggary Act".

(ii) As regards the prohibition in the Beggary Act, it is useful to notice that the 4<sup>th</sup> Respondent which has the authority to collect property Tax in respect of all properties both residential and commercial situate in the city of Bangalore, the 3<sup>rd</sup> Respondent collects Cess towards Beggary eradication.

(iii) To ensue that the job entrusted to the 4<sup>th</sup> Respondent is faithfully followed, the 4<sup>th</sup> Respondent gets an incentive to keep a percentage of the Beggary Cess collected by it towards its administrative expenses.

(iv) This Hon'ble Court had an occasion to come across a case where the 3<sup>rd</sup> Respondent had kept to itself not only a percentage of Beggary Cess to which it is entitled but also the entire Beggary Cess collected.

(v) On becoming aware of the above illegalities committed by the 4<sup>th</sup> Respondent, this Hon'ble Court in WP No. 10075/2007 in the case of B.Krishna Bhat Vs. State decided on 08.09.2011 was pleased to observe thus:



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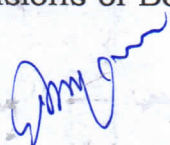
“..... It is not open to the BBMP after having collected the Beggary Cess to retain it for itself. Such an action would undoubtedly, amount to misappropriation thereof, which would lead to serious penal consequences.....”

(vi) This Hon'ble Court accordingly directed immediate transfer of the entire money on a time bound basis and further directed that the BBMP shall henceforth continue to deposit the full amount every quarter without any deviation. A true copy of the said order passed in WP 10075/07 is herewith produced and marked as **Annexure A**.

(i)(i) It is respectfully submitted that notwithstanding constitutional protections and legal pronouncements, the status of several children continues to be pathetic.

(ii) As submitted supra, the aforesaid children are exploited by making them work, denied educational opportunities and further they are forced to beg at traffic junctions.

(j). The submissions made as to violation of constitutional rights of children could have been substantiated by the Petitioner by producing photographic evidence but has refrained from so doing so as to maintain the privacy and personal identity of the children and to see their dignity is not tarnished. Further it is relevant to notice that for violating the provisions of Beggary Act it is not the children



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who are required to be punished but those who compel the children to do such illegal acts.

(k)(i). After noticing the forced labour on the children and the way they are made to work, the Petitioner got issued a legal notice on 05<sup>th</sup> May 2020 to the Respondents seeking protection of the children within 15 days from the date of receipt of the notice. A true copy of the said notice is herewith produced and marked as **Annexure B.**

(ii). The said notice has admittedly been served on the Respondent on 05<sup>th</sup> May 2020 itself, . However as no remedial action is taken to curb the menace of begging as well as violation of Child rights, this writ petition is being filed.

(l). At the cost of repetition, it is submitted that for the aforesaid sorry state of affair, it is not the children who are to be blamed but those care takers of the Children coupled with the failure of the Authorities to act who are to be proceeded with .

**5. Re - Writ Rules :**

(a). The Petitioner prays leave to prefer this writ petition being left with no other alternative and efficacious remedy to seek relief in respect of the prayers made.

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(b). On the same cause of action, the Petitioner has not preferred any other petition, appeal, application etc. and no such proceedings are either pending or disposed.

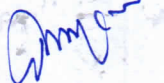
6. A writ prayed for may please be issued on the following amongst other

**GROUND**S

7. The Petitioner respectfully submits that the manner in which society is looking after the children in general and certain categories of children referred to supra in particular are opposed to several constitutional provisions which protect the rights of persons upto the age of 18 years. The Authorities have failed to protect such children as a result of which their privacy and dignity continues to be offended.

8(a). Article 21 of the Constitution ensures protection of life and personal liberty. The Hon'ble Supreme Court in the case of BANDHUA MUKTI MORCHA Vs. UNION reported in 1984 (3) SCC 161 and 1991 (4) SCC 177 has ruled that right to live with human dignity enshrined in Article 21 ensures protection of tender age of children from abuse. Further, it is ruled that the said children have to be developed in a healthy manner and in conditions of freedom and dignity providing educational facilities.

(b). Similar view is reiterated by the Apex Court while examining the scope of Art.21 of the Constitution in the cases of



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PANDIT PARAMANAND KATARA .v. UNION OF INDIA AND OTHERS  
and DEVIKA BISWAS .v. UNION OF INDIA AND OTHERS  
respectively reported in 1995(3) SCC 248 and 2016(10)SCC 726.

9(a) Presumably in the light of direction of the Hon'ble Supreme Court in the aforesaid case that has resulted in bringing an amendment to the constitution of India as a result of which now it is the duty of the State to provide free and compulsory primary education to the children. However, it is unfortunate that Art. 21 A is followed more in beach than in compliance.

(b) It is useful to notice at this stage that in almost all the States in the country including the State of Karnataka, the children going to primary and secondary education in State owned as well as State aided educational institutions are provided free mid-day meal and the same is supposed to have been prepared keeping in mind nutritious factor. Further, the said children are given various facilities such as books, uniforms, bicycles etc. By not taking serious action to ensure compulsory attendance of all the children in educational institutions they are deprived of free mid-day meal and other facilities.

(c) Article 24 and 39 of the constitution mandates that the children shall not be employed especially in hazardous activities. Several children can be seen near construction sites as well as on the roads undergoing asphaltting of roads. It can be taken for

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granted that dust is created and mixing of tar results in the release of chemical gas. Further, children even below the age of 10 are employed in welding shops. Thus, the health of the children and their eye sight are severely affected.

**10.** Article 39F of the Constitution directs that no children shall be abused. Unfortunately, no action is taken even when it is clear that the children are employed for various activities including performing of circus thereby endangering their life. Still the Authorities have turned blind eye for such abuse.

**11.** At the cost of repetition it is submitted that apart from the fundamental right guaranteed in the Constitution even directive principles of State Policy mandates various protection for children. These provisions are again ignored in its implementation.

**12(a).** The unfortunate children are made to beg at traffic junctions. Even though Beggary Act prohibits begging, no action is taken in protecting the interest of children forcibly pushed to begging.

(b). Though the Beggary Act does not enable children to be arrested even if they are found begging, the provisions of the Act enable the arrest of those who push the children into begging.

(c) On the floor of the house, while admitting the apprehending of several persons including children for begging, the



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Hon'ble Minister for social welfare of the 1<sup>st</sup> Respondent has stated thus:

“As per the act, any male or women beggars above the age of 16 can be arrested on beggary charges. However, children and transgender beggars do not come under the purview of the act. Even though they do not come under the act, during 2016-17 alone, we have arrested 132 transgender beggars and conducted preliminary inquiries. They were subsequently let off with a stern warning not to resort to begging again.

Anjaneya further said, We have taken up Operation Smile and Operation Muskan to put an end to children, women and particularly transgender community members resorting to begging on the city streets, particularly at traffic junctions....”

(d). As noticed supra, the Beggary Act is a social legislation which compels apprehending of those found begging not as having committed any criminal act but to ensure that they are properly trained / educated depending upon their age and educational qualifications in the Rehabilitation Centre of the 5<sup>th</sup> Respondent. It is useful to notice that the 5<sup>th</sup> Respondent has a duty to inform the care taker of the person apprehended by it to give an affidavit of undertaking that they will properly look after such persons and if no body is prepared to give such an undertaking, then the 5<sup>th</sup> Respondent itself will look after the welfare of such persons in the manner contemplated in law.

13(a). As regards providing permanent facilities to the children, it requires to be noticed that their parents who work in



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temporary working conditions such as in construction industry, even if a child is forcibly admitted to a nearby school and the child is sincere in attending to the classes, the child will have no other option but to discontinue its studies once its parents complete their assigned job and move to a different location.

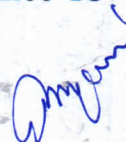
(b). For example if a construction work is going on in North Bangalore, the child may be studying in a school close by. However, it will have no other option but to discontinue attending to the classes once its parents move to other part of Bangalore, say South Bangalore.

(c). Visualizing such a scenario the Authorities should enable such children to join another school even if it were to be in the middle of the academic year. Not providing such a facility will not only deprive the child of education but will also deprive it of nutritious food.

**14.** The Respondents have failed to act even after receipt of the legal notice caused by the Petitioner.

**15. GROUNDS IN SUPPORT OF INTERIM PRAYER.**

(a) Since February this year, there is a prohibition not only for senior citizens but also for the children below the age of 10 years from coming out in public. Such a step is rightly taken as it is feared that these children are easily amenable to be infected with Corona Virus. However, since 18<sup>th</sup> May 2019 the lockdown has been



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substantially liberalized permitting movement of private vehicles from 7 AM to 7 PM without the need of obtaining prior permission from the Authorities. Further, since 19<sup>th</sup> May 2020 even public transports are permitted to move on the roads of Bangalore. Thus, these children who were stuck in the house are now back to their forced job of selling at traffic junctions. Thus, unless the Authorities take strict vigilance, the very purpose of having prohibited these children from coming to public limelight gets frustrated.

(b) Further, the next academic year will commence in a short period and unless suitable directions are issued to educational institutions immediately, to the Authorities the children may not get proper admissions.

(c) It is thus humbly submitted that this Hon'ble Court may be pleased to grant an interim order as prayed for.

### **PRAYER**

Wherefore for the submissions made supra, this Hon'ble Court may be pleased to:

(i). Issue an appropriate writ or order or direction directing the respondents to ensure that the children are not permitted to market items such as toys, earbuds, flowers etc., on the streets of Bangalore in general and at Traffic junctions in particular;

(ii) Direct the 3<sup>rd</sup> Respondent to issue suitable directions to all educational institutions so that they will not deny admission to

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children coming in the middle of the academic year if the parents of such children had to shift the place of work; and

(ii) grant all other consequential relief including cost deemed fit in the circumstances of the case in the interest of Justice and equity.

### **INTERIM PRAYER**

Pending disposal of the aforesaid writ petition and for the submissions made supra, this Hon'ble Court may be pleased to direct the Respondents to ensure that the children will not market items such as toys, earbuds, flowers etc., on the streets of Bangalore in general and at Traffic junctions in particular to meet the ends of Justice.