

**(2020) 12 PAT CK 0286**

**In the Patna High Court**

**Case No :** Criminal Writ Jurisdiction Case No. 367, 369 Of 2020

Md. Enamul Hasan And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

**Date of Decision :** 22-12-2020

**Acts Referred:**

Foreigners Act, 1946 — Section 3, 7, 7(1), 7(3), 13, 14, 14(A), 14(b), 14(c)

Epidemic Diseases Act, 1897 — Section 3

Disaster Management Act, 2005 — Section 6(2)(i), 10(2)(1), 51, 60

Industrial Disputes Act, 1947 — Section 2(j), 2(bb)

Registration Of Foreigner Rules 1992 — Rule 6, 6(1), 7(1)(f), 7(2)(f), 9, 14, 14(7), 18

**Citation :** (2020) 12 PAT CK 0286

**Hon'ble Judges :** Rajeev Ranjan Prasad, J

**Bench :** Single Bench

**Advocate :** P.K. Shahi, Alok Ranjan, Majid Mahboob Khan, Dr. K. N. Singh, Manoj Kumar Singh, Dr. Anjani Kumar, Alok Kumar Rahi, Manoj Kumar

**Final Decision :** Disposed Of

## Judgement

1. These two writ applications have been preferred for identical reliefs, hence as prayed by learned counsel for the parties, both the applications have

been heard together and are being disposed of by this common judgment.

Brief facts in Cr.W.J.C. No. 367/2020 (Md. Enamul Hasan & Ors. Vs. The Union of India & Ors.)

2. There are altogether 11 petitioners in this case. Petitioner no. 1 to 9 are foreign nationals, they came to India on tourist visa and at present these

petitioners are residing in a Hotel situated in Ward No. 24, Araria in the State of Bihar. Petitioner no. 10 and 11 are the permanent residents of the

same Districts. It is stated that petitioner no. 1 to 9 entered India by road through West Bengal, they visited the Nizamuddin Markaz, Delhi

prior to Tablighi Conglomeration, thereafter they reached Araria in the State of Bihar on 11.03.2020 and they were residing in â??Rawahi Markazâ??

since 15.03.2020. It is their further statement that from media reports they came to know on March 21st, 2020 that the Ministry of Home Affairs

(MHA), Govt. of India had asked the States to â??screen, quarantine and deportâ? the foreign nationals who attended the religious gathering

organized by the â??Nijamuddin Markazâ?? on 12-14th March, 2020. On 22nd March 2020 Janta Curfew was declared and from 24th of March the

nation-wide lockdown for 21 days was declared with an aim and object to check the spread of Covid-19 virus which had taken a form of pandemic.

3. It is their further case that the petitioners were stranded in â??Rewahi Markazâ??, they were screened by the administration and then the local

administration put them in quarantine and they remained quarantined at Rewahi Markaz for the mandatory period as per governmentâ??s Standard

Operating Procedures (SOPs). According to the petitioners, pursuant to the directions as contained in letter no. 91 dated 09.04.2020 issued by the

Ministry of Home Affair, Government of India the Bihar Police visited Rewahi Markaz on 12.04.2020 and registered the present F.I.R.

4. As per the First Information Report, on receiving information regarding the stay of foreign nationals in Rewahi Markaz when the police went to the

Markaz to find out the genuineness and inquired from the Maulana Tohid regarding the stay of foreign nationals, Maulana Tohid (petitioner no. 10)

disclosed that petitioner no. 1 to 9 had come on tourist visa and was staying there since 15.03.02020. According to the F.I.R. lodged by the Sub-

Inspector of Police Narpatganj Police Station, Maulana Tohid and Maulana Munif (petitioner no. 10 & 11) had told the informant that the nine

Bangaladesies nationals were staying in the Markaz since 15.03.2020, they were called in the Markaz by the Maulana and they are involved in spread

of religious ideologies.

5. It is alleged that when the informant asked the Maulanas as to why no information about the stay of Bangaladesies nationals in the â??Rewahi

Markazâ?? was made available to Narpatganj Police Station, the Maulanas were unable to satisfactorily answer the query of the informant.

6. The informant alleges that (i) none furnishing of information about their visit within the police station and (ii) getting involved in the spread of

religious ideologies by a foreign national who is visiting India on a tourist visa, are offences under Section 14 and 14(C) of the Foreigners Act, 1946

(hereinafter referred to as the "Foreigners Act" or "the Act of 1946").

7. Initially by filing this writ application petitioners prayed for following reliefs:-

(a) For issuance of an appropriate writ, order or direction for quashing the Narpatganj P.S. Case No. 158/2020 dated 12-04-2020 registered against

the petitioners under Section 14 and 14 C of the Foreigners Act 1946, whereby and where under petitioner Nos. 1 to 9 are directed, ordered, forced to

stay in India;

(B) For issuance of an order, writ or direction commanding respondents to deport petitioner Nos.- 1 to 9 to their respective country since due to the

present FIR they are compelled to live in India, though Visas though their Visas are cancelled;

(c) For any other relief or reliefs for which the petitioners deserve in the facts and circumstances of the case.

8. During the pendency of the writ application Chargesheet No. 139 of 2020 and Supplementary Chargesheet No. 379 of 2020 have been filed in this

case under Sections 14 and 14 (C) of the Foreigners Act. Learned Chief Judicial Magistrate, Araria has vide order dated 01.10.2020 taken cognizance

of the offences under the aforesaid provisions and summons have been issued to petitioners. The order taking cognizance has been brought on record.

Petitioners have filed Interlocutory Application No. 01 of 2020 seeking to challenge the Chargesheets and the order taking cognizance.

9. Interlocutory Application No. 01 of 2020 is taken on record. Let it be treated as part and parcel of the writ petition.

Brief facts of Cr.W.J.C. No. 369 of 2020 (Mohammad Rizwan & Ors. vs. Union of India and others)

10. In this writ application there are altogether ten petitioners. Petitioner No. 1 is the secretary of Jama Masjid Markaz at Araria in the State of Bihar.

He is an Indian National. Petitioner Nos. 2 to 10 are foreign nationals from Malasiya and Australia. Petitioner Nos. 2 to 10 are also residing in the

same hotel situated in Ward No. 24 at Araria. They have also entered India on tourist Visa valid for 90 days. It is there case that they had visited

India with a specific motto to know the Indo-Islamic Culture specially the social and religious activities of the Indian Muslims. They went to Hazrat

Nizamuddin Markaz, Delhi prior to Tablighi conglomeration and from there they reached Araria in the State of Bihar on 23.03.2020. It is their case

that due to nationwide lockdown since 24.03.2020, in the extreme situation they got stranded in Jama Masjid Markaz. There they were screened by

the administration, quarantined and kept in self-isolated rooms of Markaz for the mandatory period until they were arrested by Police. Against them

the present FIR being Araria P.S. Case No. 297 of 2020 was registered on 12.04.2020 under Sections 14 and 14 C of the Act of 1946 and because of

this FIR they are forced to stay in India, their Visas have been cancelled and they have been made to face the criminal trial. In this case as well

Chargesheets have been filed and learned Chief Judicial Magistrate, Araria has, vide his order dated 21.10.2020 taken cognizance of the offences

under Sections 14 and 14 (C) of the Foreigners Act and decided to issue summons to the petitioners.

11. As per the First Information Report, when police reached the Jama Masjid, Chandni Chowk, on enquiry from the Secretary of the Markaz

regarding stay of foreign nationals it was disclosed that eight Malaysian citizens and one Australian citizen were staying there since 21-03-2020.

Thereafter, all the foreigners were verified through the translator and they have been booked for the offences under Section 14 and 14 C of the Act of

1946 and for not giving information to the concerned Police Station as also for indulging in the activity of preaching in India while on tourist visas.

12. As stated above the petitioners have prayed for quashing of the First Information Report, the chargesheets and the order taking cognizance they

are also seeking a direction commanding the respondents to deport the petitioner Nos. 2 to 10 to their respective countries.

13. Interlocutory Application No. 01 of 2020 filed on behalf of the petitioners is taken on record and it will form part and parcel of the writ petition.

Submission on behalf of the Petitioners

14. Mr. P.K. Shahi, learned Senior Counsel assisted by Mr. Alok Ranjan and Mr. Majid Mahboob Khan, learned Advocates on record has led the

argument on behalf of the petitioners in both the writ applications. Learned Senior counsel has submitted that on perusal of the First Information

Report, without adding or subtracting anything out of that it may be held that no offence at all much less any offence under Section 14 and 14 C of the

Act of 1946 is made out against the petitioners. It is his submission that the order taking cognizance and issuance of summons has been passed in a routine and mechanical manner, hence the same is liable to be set-aside. Learned Senior Counsel has relied upon the judgment of Honâ??ble

Supreme Court in the case of Anand Kumar Mohatta and Ors. Vs. State (Govt. of NCT of Delhi) and Ors. reported in AIR 2019 SC 2 1a0nd submits

that the submission of chargesheets and order taking cognizance is no bar in quashing of the F.I.R.

15. Learned Senior counsel has taken this Court through the contents of the First Information Report and the terms and conditions printed on the Visas

as quoted in paragraph â??12â?? of Cr.W.J.C. No. 367 of 2020 and paragraph â??17â?? of Cr.W.J.C. No. 369 of 2020. It is submitted that as per

Visa conditions appended with the passport of the petitioners, the movement of the foreign nationals was only prohibited to the restricted/cantonment

area. The expressed conditions mentioned thereon reads â??not eligible for employment and not valid for prohibited/restricted and cantonment area,

not extendable and not convertible, each stay not to exceed 90 days.â??

16. Learned Senior counsel submits that there is no allegation that the foreign nationals who are petitioners in the writ applications have violated any of

these conditions. Submission is that by making a bald statements in the First Information Report that the Maulanas (petitioner Nos. 10 and 11) in Cr.

Misc. No. 367 of 2020 and petitioner No. 1 of Cr. W.J.C. No. 369 of 2020 told the informant who is a Police Officer that these foreign nationals were

involved in preaching of religious ideologies no case is made out much less any prima-facie case of indulging in preaching religious ideologies.

17. It is submitted that neither at the time of registration of the FIR the petitioners were found involved in any act of preaching the religious ideologies

nor in course of investigation the Police has collected any material in any form to show that these petitioners had addressed any gathering or had

indulged in preaching their ideologies. Not a single example of any such religious discourse if any delivered by these foreign nationals have been found.

In his submissions, thus, the order taking cognizance and issuance of summons is bad in law and the same is liable to be set-aside.

18. It is the submission of learned Senior counsel that by making a completely vague kind of allegations the foreign nationals who are some of the

petitioners in these two writ applications have been made accused and now they have been forced to stay in India to face trial.

19. Learned Senior Counsel for the petitioners submits that in this case Sections 14 and 14(C) of the Act of 1946 are not fit to be invoked; violation of

Visa's conditions may be a ground under Section 14(b) of the Act of 1946 but for attracting Section 14(b) of the Act of 1946 a definite act by a

foreign national which may be held to be in violation of the conditions of valid Visa is required to be established. In his submissions, a mere bald

allegation without there being any material to show that the foreign nationals were involved in preaching religious ideologies would not even prima-

facie attract the application of Section 14(b) of the Act of 1946 and there would be no question of attracting the penalty as envisaged under Section

14-C for the act of abatement under Section 14 of the Act of 1946.

20. Learned Senior Counsel has relied upon the judgment of the Hon'ble Apex Court in the Case of State of Haryana Versus Bhajan Lal reported

in 1992 Suppl. (1) SCC 335. Further learned Senior Counsel has placed before this Court a copy of the judgment of the Hon'ble Division Bench of

Bombay High Court in the case of Konan Kodio Ganstone & Ors. Vs. State of Maharashtra (Cri. W.P. No. 548/2020 decided on 21.08.2020) in

which the Hon'ble Bombay High Court has been pleased to quash the first information report in respect of the three sets of writ petitioners who

were foreign nationals and had been arrested from three different Masjids in the State of Maharashtra during the nationwide lockdown period. The

allegations against them were that they were involved in performing religious rites and were giving speeches on the thoughts, philosophy of Muslim

religion. They had also come on Tourist Visa. It is submitted that the Hon'ble Division Bench of Bombay High Court has extensively gone into the

provisions contained in Section 14(b) of the Act of 1946, the general guidelines issued for issuing visa under Passport Act 1920 and the several

confidential circulars issued by the Ministry of Home Affairs, Government of India prior to the lockdown period and after clamping of the lockdown in

the country. After going through those materials on the record, the Hon'ble Bombay High Court held that even under the recent updated manual

of Visa, there is no restriction of foreigners in the visit of religious places and attending normal religious activities like attending religious discourses,

ordinarily tourist is not expected to follow the procedure laid down in para no. 19.8 of the Visa Manual, 2019 if he does not want to preach the

religious ideology etc. as mentioned in paragraph 1.25 of the Visa Manual. In this regard learned Senior Counsel has taken this Court through

paragraph 12 to 17 of the judgment rendered by the Honâ??ble Division Bench wherein all those circulars have been quoted and a finding thereon

has been recorded.

21. Learned Senior Counsel has further submitted that after going through the various orders and circulars issued from time to time by the Central

Government, the Honâ??ble Bombay High Court has held that a foreign national may visit Masjid and can go there to observe religious practice or to

offer only Namaz, there was also no material on the record to show that the Indians were prevented from accommodating persons in the Masjid or

from supplying meals to the persons including the foreigners.

22. Learned Senior Counsel has further taken this Court through the judgment of the Honâ??ble Bombay High Court, Nagpur Bench in Criminal

Application (APL) No. 453 of 2020 (Hla Shwe & Ors. Vs. State of Maharashtra). In this case an another Honâ??ble Division Bench has been

pleased to quash the first information report and the chargesheet in respect of the foreign nationals who were from Mayanmar and had been arrested

from Markaz Center at Mominpura, Nagpur.

23. It is submitted that there is yet another judgment dated 13.10.2020 of Honâ??ble Karnataka High Court in the case case of Kalyez Chingiz vs.

The State of Karnataka (Criminal Petition No. 200658 of 2020) wherein the Honâ??ble Court had occasion to consider a similar kind of plea. In this

case also the petitioners were being prosecuted for violation of the terms and conditions of their Tourist Visa. There was an allegation that these

petitioners were staying in Bhajimandi Masjid in Bidar after visiting India on Tourist Visa and they had been indulging in professing and propagating

the principles of Islam religion and thereby violated the conditions mentioned in the Visa issued in their favour for their entry and stay in India.

24. Learned Senior Counsel has further placed reliance on the judgment of another co-ordinate Bench of Honâ??ble Karnataka High Court rendered

on 05.08.2020 in the case of Farhan Hussain Vs. State by Thilak Park P.S. Tumkur City State of Karnataka in Criminal Petition No. 2376 of 2020 and

Ors. In this case as well the Honâ??ble Court had been pleased to quash the F.I.R. lodged under various provisions of the Indian Penal Code,

Section 14 of the Act of 1946, under Section 3 of the Epidemic Disease Act, 1987 and Section 51 of the Disaster Management Act, 2005. It is

submitted that the case of the present petitioners deserve consideration giving them the benefit of uniformity in justice. Learned Senior Counsel has

relied upon the judgment of Honâ??ble Supreme Court in the case of Bhajan Lal (supra). It is submitted that the present cases are covered under the

illustration provided under paragraph 102 of the judgment in Bhajan Lal (supra).

25. Mr. P. K. Shahi, learned Senior Counsel has then argued that so far as the another allegation that these petitioners had not furnished any

information regarding their stay within the police station area is concerned, the same is again baseless as the foreign nationals visiting the tourist places

under the different police station in different States are not required to furnish information as to their arrival to the different local police station within

whose jurisdiction they are visiting. It is submitted that the only requirement on the part of the foreign national is to submit a declaration which is

referable to Rule 14 of the Registration of Foreigner Rules 1992 (hereinafter referred to as â??the Registration Rules or Rules of 1992â??) in a

prescribed form (C) and it will appear from the relevant provisions of the Rules of 1992 that it is the Hotel and those places which are covered under

definition of â??Hotelâ? under Rule 14 (7) of the Rules of 1992 where foreign national stays are required to furnish information regarding the stay of

foreign nationals in their hotels, guest houses or other places of stay to the local police station. They are required to keep Register in prescribed form

â??Fâ?? referable to Rule 14 of the Foreigner Rules. According to learned Senior Counsel a â??Mosqueâ? or â??Markazâ? is not covered

under the definition of â??Hotelâ??. It is submitted that during the lockdown period there was a common appeal by the Administration to all the public

that they should stay wherever they are staying and should not venture out from their place of present stay. In these circumstances the foreign

nationals who are the petitioners before this Court were stranded in the Masjid/ Markaj and were unable to move out. There was no conglomeration

during this period as the general public were not permitted to assemble in Masjid to offer â??Namazâ??. It is, thus, submitted that even on this score

they have not violated any of the Visa's conditions and those who had accommodated the foreign nationals in 'Markaz' or 'Masjid'

cannot be prosecuted for abatement of offence under Section 14-C of the Foreigners Act.

26. It is further submitted that pursuant to the order passed by Hon'ble Supreme Court in Writ Petition (C) No. 600 of 2020, this Court has passed

order dated 14.10.2020 in Cr.W.J.C. No. 372 of 2020 for transfer of all the records of the cases pending in different civil courts in the State of Bihar

to Patna Civil Court. It is submitted that though the records of all the cases have been sent to Patna Court but there cases are presently pending

awaiting appearance of the petitioners.

Stand of the Union of India

27. Dr. K. N. Singh, learned Additional Solicitor General of India has appeared on behalf of the Union of India.

28. Learned Additional Solicitor General of India has opposed the writ applications. It is his submission that the allegations against the foreign nationals

are that of indulging in Tablighi activities while on tourist visa in India. It is his submission that the Government of India has a consistent policy that a

foreign national visiting India on tourist visa cannot indulge in preaching religious ideologies unless so permitted by the Government. There are detail

guidelines on this and violation thereof would attract Section 14(b) of the Foreigners Act. Learned Additional Solicitor General, however, accepts the

legal position emerging from a reading of Rule 6 and 7 (1) (f) of the Foreigners Rules that a foreigner visiting India would be required to submit a

registration report only when he visits for more than 180 days. In this case the Foreign nationals were having visa for 90 days only, so they were not

required to undergo the registration procedure.

29. Learned Additional Solicitor General has further argued that under Sections 3 and 7 of the Foreigners Act read with paragraph 16 of the

Foreigners Order 1948 as amended vide Foreigners (Amendment) Order 2016 the Management of the 'Mosque' or 'Markaz' would be

obliged to submit a report in the prescribed form 'C' to the Registering authority. It is submitted that so far as Foreigners Rule 1992 is

concerned, it has been amended vide Registration of Foreigners (Amendment) Rules, 2016 and by said amendment Rule 14 has been omitted

but the provision as regard reporting of stay of a foreign national has been duly incorporated under newly inserted paragraph 16 of the Foreigners

Order 1948.

30. Learned Additional Solicitor General has submitted that the Foreigners Order 1948 has a force of law and it is required to be followed . The

definition of word 'Hotel' has been provided therein, it is by way of inclusion clause, therefore, the word 'Hotel' has to be given an

extensive meaning so as to say that in case the management of 'Markaz' or 'Masjid' is providing lodging facility to a foreign national or a

team of foreign national on regular basis the facilities so provided to a traveller would be covered within the meaning of the word 'a boarding house;

or 'a rest-house'. It is submitted that by virtue of its use a premise, apartment or building attached to or situated within the same

compound/boundary in which the 'Markaz' or 'Masjid' is situated may be covered under paragraph 16 of the Foreigners Order

1948. The learned Additional Solicitor General has submitted that the contention of Mr. P. K. Shahi, learned Senior Counsel for the petitioners that the

foreign national is himself not required to go to each and every police station within whose jurisdiction he is visiting may be accepted but with a clear

rider that the management of the 'Mosque' or 'Markaz' would be legally bound to report the stay of foreign nationals in the said

'Mosque' or 'Markaz' to the competent authority within 24 hours of such stay. The Foreign nationals would be required to furnish all

required information to the Management of the 'Mosque' or 'Markaz' as the case may be.

31. It is submitted that over the period it has been noticed by the Government of India that team of foreign nationals visiting on tourist visa are staying

in the 'Markaz' and 'Mosque' and for the sole purpose of their stay the management of the 'Markaz' and 'Mosque' are

constructing buildings and other arrangements are being made in which large number of foreigners are staying, sometimes they are indulging in tabligh

activities in violation of visa guidelines and in such circumstances if it is held that the management of 'Mosque' and 'Markaz' are not

obliged to report the stay of foreign nationals to the Registering authority, the very aim and object of keeping complete information as to whereabouts

of foreign national inside India would be frustrated and it would be against the statements of objects and reasons behind bringing of Registration of

Foreigners Act, 1939 (hereinafter referred to as the "Registration Act" or "the Act of 1939") and the Act of 1946. It is submitted that the

Act of 1939 was enacted keeping in view the issues relating to national defence as also to answer the queries received from relatives of a foreigner in

India as to his whereabouts.

32. Learned Additional Solicitor General of India has then submitted that an extended construction is required to be given to the word "Hotel"

within which a "rest-house" is also specifically covered the places where foreign nationals are provided accommodation inside a "Markaz"

or a "Mosque" would come within the meaning of "a boarding house" or "a rest house". It is his submission that in these cases the

foreign nationals had been staying inside the "Markaz" and "Mosque" from a date prior to the imposition of Lock-down 1.0, but the

management of the "Mosque" and "Markaz" had not furnished the required information to the Registering authority, therefore, the

management of such "Markaz" and "Mosque" have acted in violation of law. It is his submission that the person in-charge of the

management of the "Markaz" and "Mosque" in these cases would be liable to be prosecuted and charges under appropriate provisions

may be framed against them at appropriate stage in the court of learned Magistrate. Learned Additional Solicitor General has prayed for giving a

purposive construction to the various statutes and the orders issued thereunder.

Stand of the State

33. A counter affidavit has been filed on behalf of the State respondents. It has been sworn by Dy.S.P. (Headquarter), Araria. The factual statements

made in the writ applications regarding the date of entry of the foreign nationals in India and their reaching to Rewahi Markaj and Jama Masjid are not

in dispute. It is alleged that they were staying since 15-20 days without giving any information to local police station and accordingly in the light of the

directions given in Memo No. 91 of Bihar Police Headquarter dated 09.04.2020 action was taken against all the accused persons and petitioner no. 1

to 9 (all foreign nationals) were arrested and forwarded to judicial custody in connection with Narpatganj P.S. Case No. 158 of 2020. As regards

Araria P.S. Case No. 297 of 2020, the counter affidavit states that the foreign nationals were staying in Jama Masjid, Markaj since 21.03.2020 without

giving any information to the local police station and in this case also the petitioner no. 2 to 10 (Cr.W.J.C.No. 369 of 2020) were arrested and

forwarded to judicial custody. Learned AAG 4 has submitted that the order taking cognizance and issuance of summons is in accordance with law.

34. In both the writ applications common stand has been taken that during investigation the case has been found to be true and accordingly

chargesheet has been submitted against the petitioners. A supplementary counter affidavit has been filed on behalf of the State giving present status of

these cases.

Reply of petitioners

35. In their rejoinder the petitioners have stated that as per F.I.R. the informant came to know that the foreign nationals are indulging in preaching of

religious ideologies but at the time of raid even the informant did not find the petitioners in any active participation in propagating of religion in Rewahi

Markaj and Jama Masjid. It is submitted that for the first time in the month of June, 2020 Visa norms were amended to include â??indulging in

Tablighi activitiesâ? as a specific Visa violation which attracted a penalty of \$500 fine and the amended guideline states â??foreign nationals granted

any type of visa and Overseas Citizens of India (OCI) card holders shall not be permitted to engage themselves in Tabligh work. There will be no

restriction in visiting religious places and attending normal religious activities like attending religious discourse. However, preaching religious ideologies,

making speeches in religious places, distribution of audio or visual display/ pamphlets pertaining to religious ideologies, spreading conversion etc. will not

be allowed.â??

36. Thus, it is the submission of learned Senior Counsel that even in the amended guidelines there is no restriction in visiting the religious places,

attending of normal religious activities and religious discourses. There was no ban in staying in a â??Markazâ? or â??Mosqueâ?. Thus, the stay of

the foreign nationals in mosque in the extra ordinary situation of hardships like the nationwide lockdown and the appeal to the public that everyone

should stay inside the house where they are presently staying, it cannot be alleged that by abiding by such appeal and remaining inside the

Markaz or Mosque the foreign nationals had indulged in violating Visa condition or that it may be a case of indulging in preaching of religious ideologies.

37. Learned Senior Counsel has submitted that in course of raid the informant has not collected any single material such as pamphlets, leaflets or any other instrument or cassettes or voice recordings showing that any of these foreign nationals who are petitioners before this Court were involved in preaching their religious ideologies.

38. By filing a second supplementary affidavit the petitioners have submitted that they have not violated the provisions of Foreigners Rule. According to them, the Rules relating to registration is not applicable on petitioner nos. 1 to 9 in Cr.W.J.C. No. 367 of 2020 and petitioner nos. 2 to 10 in Cr.W.J.C. No. 369 of 2020 because they have visited India on tourist Visa valid for only 90 days and not more than 180 days. No registration would be required to the tourist Visa holders who have visited India for less than 180 days. In this regard proviso to Rules 6 and 7 (1) f) have been relied upon.

39. In Cr.W.J.C. No. 367 of 2020 the petitioners have also relied upon the provisions contained in the revised Travel Arrangements between Bangladesh and India and it has been stated that in terms of Clause ( C) long term multiple entry tourist visas may be issued to the nationals of either country visiting the other to meet relatives, friends or children studying in recognized institutions, pilgrimage or for any other legitimate purpose for a period not exceeding one year. However, the foreigner cannot stay for a period of more than 90 (ninety) days in one stretch on a tourist visa.

According to the further conditions nationals of one country, visiting the other country on a valid Visa, who wish to stay for a continuous period exceeding six months will be required to register within 14 days of arrival with the respective FRRO/relevant authorities and obtain residential permit.

The copy of Revised Travel Arrangements has been brought on record as Annexure 8 to the second supplementary affidavit.

40. Let it be recorded a fresh that in this case as back as on 30.09.2020 this Court had granted three weeks time to the Union of India to file counter affidavit. These matters were listed thereafter on 19.10.2020 and 20.10.2020, thereafter, matters were adjourned after noticing that the investigating

agency has submitted a chargesheet but the parties were not aware whether cognizance has been taken and summons have been issued to the petitioners. This Court directed that if the order taking cognizance has already been passed in this case, learned counsel for the petitioners shall place the same on the record with an appropriate application. No such order was brought on record earlier by any of the parties. This Court was given to understand that no order taking cognizance has been passed. The matters were heard finally on 10.12.2020 and judgment was reserved. While preparing for judgment this Court found that certain clarity as regards submission of chargesheets and order taking cognizance must be called for, therefore, on 18.12.2020 the matters were though listed but adjourned on the request of learned counsel for the petitioners and learned AAG 4 to enable them to file affidavits as to whether or not order taking cognizance has been passed. Thereafter on 19.12.2020 the two interlocutory applications have been filed on behalf of the petitioners challenging the chargesheets and order taking cognizance in both the cases. Supplementary counter affidavit has also been filed on behalf of the State giving the present stage of these cases. It is stated that these case are pending for appearance of the accused.

41. Learned counsel for the parties have been heard today.

Consideration

42. This Court has noticed from the submissions made on behalf of the learned counsel for the parties that the whole matter clusters around a question as to whether the F.I.Rs. in question are disclosing violation of Visa conditions in terms of Section 14(b) of the Act of 1946 or that the petitioners may be said to have abated the offence punishable under Sections 14, 14-A or 14-B so as to attract a penalty envisaged under Section 14-C of the Act of 1946. For a better appreciation of the allegations as contained in the F.I.Rs one of the F.I.R. (Narpatganj P.S. Case No. 158 of 2020) is being reproduced hereunder:-

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43. The provisions under which F.I.Rs. have been registered and cognizance is taken are quoted hereinbelow:

14. Penalty for contravention of provisions of the Act, etc. "Whoever

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no

specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable

to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound

thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

Explanation. "For the purposes of this section, the expression 'visa' shall have the same meaning as assigned to it under the Passport (Entry

into India) Rules, 1950 made under the Passport (entry into India) Act, 1920 (34 of 1920).

14-C. Penalty for abetment. "Whoever abets any offence punishable under section 14 or section 14A or section 14B shall, if the act abetted is

committed in consequence of the abetment, be punished with the punishment provided for the offence.

Explanation. "For the purposes of this section,

(i) an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of

the conspiracy, or with the aid which constitutes the offence;

(ii) the expression 'abetment' shall have the same meaning as assigned to it under section 107 of the Indian Penal Code (45 of 1860).

44. The Visa conditions as appearing from Annexure 2 series are as under:-

EACH STAY NOT TO EXCEED 90 DAYS

NO RESTRICTION ON ENTRY/EXIT (Road/Rail)

NOT VALID FOR PROHIBITED/RESTRICTED AND CANTONMENT AREAS

Change of Purpose Not Allowed.

45. Although in the present writ applications the conditions mentioned in the Visa guidelines have not been brought on record but the judgment of the

Honâ??ble Division Bench of Bombay High Court on which reliance has been placed on behalf of the petitioners duly contains a reference to the

General Guidelines issued for issuing Visa under the Passport Act 1920. From the General policy guidelines relating to Indian Visa as found on

[https://www.mha.gov.in/PDF\\_Other/AnnexI\\_01022018.pdf](https://www.mha.gov.in/PDF_Other/AnnexI_01022018.pdf) this Court would extract clause 5 and 15 of the General Guidelines as under:

â??5. Application for grant of visa An applicant for a visa shall have to submit an application on the on-line system in the standard visa application

form. For this purpose, the applicants may log on to <https://indianvisaonline.gov.in>. The foreigner should be present within the jurisdiction of the Indian

Mission/Post concerned at the time of making an application and grant of visa.

15. Restriction on engaging in tabligh activities Foreign nationals granted any type of visa and OCI cardholders shall not be permitted to engage

themselves in tabligh work. There will be no restriction in visiting religious places and attending normal religious activities like attending religious

discourses. However, preaching religious ideologies, making speeches in religious places, distribution of audio or visual display/pamphlets pertaining to

religious ideologies, spreading conversion etc. will not be allowed.â??

46. After noticing the visa guidelines, the Honâ??ble Bombay High Court in itâ??s judgment (Cri.W.P. 548/20 & Ors.) recorded in paragraph 11 as

under:-

â??11)A photocopy of general guidelines issued for issuing visa under Passport Act, 1930 is produced. Clause 15 of those Guidelines show that

though restrictions are put on the foreigners who come to India on tourist visa to prevent them from engaging in Tabligh activity, there is no restriction

on them to visit religious places to attend the normal religious activities like attending religious discourse. However, preaching the religious ideology,

making speeches in religious places, distribution of audio or visual display/pamphlets pertaining to religious ideologies, spreading conversion etc. is

prohibited. Along with another compilation, the State has produced details of visa granted by India and this is also a photocopy produced along with

affidavit in the compilation by the State along with the other record in which

eligibility for getting tourist visa is mentioned at clause No. 18. It is mentioned that tourist visa can be granted to a foreigner whose sole objective of visiting India is recreation, sightseeing, casual visit to meet friends or relatives, attending a short term yoga programme, short duration medical treatment, but the activity does not contain other purpose or other activity.

There is no need to go into the other details of eligibility conditions.â??

47. In paragraph 12 Honâ??ble Bombay High Court has reproduced some of the circulars issued by the Ministry of Home Affairs, this Court finds it

useful to reproduce those circulars from paragraph â??12â?? of the judgment of the Honâ??ble Bombay High Court as under:-

â??Confidential

Circular No. 206

No. 25022/82/96-F-I

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS.

10-4-96

To

Home Secretaries of all the State Governments and U.T. Administration.

It has come to notice that some foreigners who enter India on the strength of Tourist Visas, indulge in religious/Tabligh work against the Visa

rules/regulations and thus render themselves to action under the Foreigners Act, 1946. State Governments are required to keep a watch on the

activities of such foreigners and as and when any of foreigner coming on Tourist Visa is found indulging himself in religious activities/Tabligh work,

action should be taken against him under the Foreigners Act and he should be deported to the country of his origin under the powers already delegated

to the State Govts. A report should also be sent to this Ministry so that such persons are put on 'Prior Reference Category' for the purpose of grant of

Visa to them in future.

(SUBHASH MEHTANI)

Under Secretary to the Govt. of India.

Copy forwarded for similar action to:-

1. FRRO, Delhi, Hans Bhawan, New Delhi.

2. FRRO, Calcutta, 237 Acharya Jagdish Chandra Bose Marg, Calcutta.
3. FRRO, Head Police Officer, Annexe-II, near Crawford Market, Bombay. I
4. CHIO, 9-Village Road, Nungambakkam, Madras- 260034.

(SUBHASH MEHTANI)

Under Secretary to the Govt. of India.

Internal Distribution.

Copy to F. II, F. III, F. IV, F. V, F. VI, F. VII, F. VIII.

(SUBHASH MEHTANI)

Under Secretary to the Govt. of India.â??

Clarification of circular dated 10.4.1996 was given in another circular issued on 20.11.1996 and it is as under:-

CONFIDENTIAL

NO. 25022/82/96-F.I.

GOVERNMENT OF INDIA. BHARAT SARKAR MINISTRY OF HOME AFFAIRS/GRIH  
MANTRALAYA (FOREIGNERS DIVISION)

Lok Nayak Bhavan

Khan Market, New Delhi 110003

November 20, 1996

To

Home Secretaries of all State Governments/

Union Territory Administrations.

Sub:- Action against foreigners indulging in religious/tabligh work.

Reference is invited to this Ministry's letter of even number dated 10.04.96 addressed to Home Secretaries of all State Government/Union Territory

Administrations on the above subject (copy enclosed for ready reference). In the letter under reference, it was mentioned that foreign nationals who

enter India on tourist visas and indulge in religious/tabligh work should be detected and action including their deportation under the Foreigners Act

should be taken. It is clarified that attending tabligh jamat ijtemah (congregations) does not amount to tabligh work prohibited under instructions

contained in the letter under reference. However, tabligh work does include place to place preaching, speaking from tabligh platform/canvassing

during congregations etc and action against foreign nationals indulging in these activities has be to taken.

(SUBHASH MEHTANI)

Under Secretary to the Govt. of India.

Copy to:-

1. Shri. N.C. Padhi, Joint Director, IB
2. Shri. P.N. Dixit, Deputy Director (I), IB
3. FRRO, Delhi, Mumbai and Calcutta
4. CHIO, Madras

Copy also forwarded to all Indian Missions/Embassies/Posts abroad. It is requested that provisions contained in para 111 of the Visa Manual must be

kept in view while dealing with applications for grant of visa for Tabligh work. All such applications together with necessary details are required to be

referred to Ministry of Home Affairs for prior clearance.

Internal distribution

F. I to F. III Sections.

The third circular was issued on 3.11.2011 and it was as under:-

SECRET

MOST IMMEDIATE

No. 25022/116/2011-F.I

Government of India

Ministry of Home Affairs

(Foreigners Division)

Jaisalmer House, 26 Man Singh Road, New Delhi-110 Oil, 03 November, 2011.

To

(i) Home Secretaries of all State Governments/Union Territory Administrations.

(ii) FRROs Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad and Amritsar.

Subject:-Action against foreigners indulging in religious/Tabligh work.

Sir,

Please refer to this Ministry's circular No. 206 (File No. 25022/82/96-F. I) dated 10.04.1996 and subsequent letter of even number dated

20/22/11/1996 on the above mentioned subject (copies enclosed for reference).

2. It has been reported that the instructions issued by the Ministry vide above mentioned circulars are not being followed strictly.

3. It is reiterated that State Govts./UT Administrations should keep a close watch on the activities of foreigners entering India on the strength of

Tourist' Visa and including in religious/Tabligh work. As and when any foreigner is found indulging himself in any religious activity/Tabligh work,

action must be taken against him under the Foreigners Act, and he/she should be deported to the country of his/her origin under the powers already

delegated to State Govts/Uts. Immediately after the deportation of the foreigners, a proposal should be sent to the Ministry of Home Affairs

(Foreigners Division) for placing the name of the said foreigner in the Black List.

4. You are requested to enforce the instructions strictly. Yours faithfully,

(P.V. Sivaraman)

Director (Foreigners)

Copy to:

(1) Joint Secretary (PV), Ministry of External Affairs

(2) Joint Director, Bureau of Immigration

(3) Deputy Secretary (R&AW), Cabinet Secretarial (P.V. Sivaraman)

Director (Foreigners)

Copy also forwarded to:

(1) JS (F) Dir (I&O/DS (F)/US (F)/US (OC1)

(2) All Sections in Foreigners Wing

(P.V. Sivaraman)

Director (Foreigners)

The fourth circular was issued on 15.4.2015 and it is as under:-

SECRET

Gurbachan Singh

Additional Director

D.O. NO. 3/SMAC (MUM) 2015

Subsidiary Intelligence Bureau,

(Ministry of Home Affairs)

Government of India

Mumbai-400051

Dear Shri. Kohatriya,

Dated: April 15, 2015

It has been noticed that there is a significant increase in the number of foreign Tabligh Jamaats (TJs) visiting India, mostly from Indonesia, Malaysia,

Myanmar, Sri Lanka, Saudi Arabia, Algeria, France, UAE, Qatar, Bangladesh and Egypt on Tourist Visa. Such teams usually stay at various

mosques/madarsa and engage themselves in religious preaching, which is clear violation of Visa Rules.

2. In this regard, MHA vide their Nos. 25022/82/96-F.I. dated April 10, 1996 no. 25022/82/96-F.I. dated November 20, 1996 and No. 25022/116/2011-

F.I. dated November 03, 2011 (copy enclosed) has issued guidelines to State Governments and Union Territories to keep a close watch on the

activities of foreigners entering India on Tourist Visa and found indulging in religious/Tabligh work.

3. It is therefore requested that the concerned authorities in the state may be sensitized to follow the guidelines already issued by the Union Home

Ministry, so that foreigners do not indulge in other activities violating visa provisions.

Yours

(Gurbachan Singh)

Shri Swadhin Kshatriya, IAS,

Chief Secretary,

Govt. Of Maharashtra,

Mumbai.

End: As stated above.

Below a copy of letter No. 3/SMAC (MUM) 2015-43, dated 15.04.2015 received from Shri. Gurubachan Singh, Additional Director, Subsidiary

Intelligence Bureau (Ministry of Home Affairs) Government of India, Mumbai regarding ""Watch on the activities of foreign nationals.

All the concerned authorities may be informed accordingly.

No. MIS-0615/CR-488/FOR-I,  
Home Department,  
New Administrative Building,  
9th floor, Opp. Mantralaya,  
Mumbai-400032.

Dated: 09.06.2015

Copy for information and necessary action to:

- 1) Foreigners Regional Registration Officer, Mumbai (Deputy Commissioner of Police, Special Branch-I & II, C.I.D. Mumbai).
- 2) Deputy Commissioners of Police, Special Branch, Pune (C.I.D.), Thane (C.I.D.), Nagpur (C.I.D.), (Foreigners Registration Officers).
- 3) Deputy Commissioners of Police, Nashik/Aurangabad/Solapur/Navi Mumbai-Vashi/Amravati, (Foreigners Registration Officer).
- 4) All Superintendents of Police in Maharashtra State (Foreigners Registration Officers)
- 5) Commissioner, S.I.D. Maharashtra State, Mumbai.
- 6) The Deputy Secretary, Home Department, Mantralaya, Mumbai-400032.
- 7) The Section Officer/F-II, Home Department, Mantralaya, Mumbai-400032.
- 8) Select File.

(V.P. Thorat)

Section Officer, Home Department,

Government of Maharashtra??

48. This Court finds from the Circular dated November 20, 1996 that the foreign nationals entering India on Tourist Visas, if found indulging in

religious /tabligh work, action including their deportation under the Foreigners Act should be taken. At the same time, the circular has clarified that

attending tabligh jamat ijtemah (congregations) does not amount to tabligh work prohibited under instructions. Tabligh work does include place to place

preaching, speaking from tabligh platform/canvassing during congregations etc and action against foreign nationals indulging in these activities is to be

taken.

49. It is evident from all the four circulars quoted hereinabove that right from beginning the Union Home Ministry has issued guidelines to keep a close

watch on the activities of the foreigners entering India on tourist Visa to ensure that the foreigners do not indulge in religious /tabligh work. At this stage it is important to note that in its circular dated April 15, 2015 the Ministry of Home Affairs, Government of India has taken notice of the fact that there is a significant increase in the number of foreign Tabligh Jamaats (TJs) visiting India, mostly from Indonesia, Malaysia, Myanmar, Sri Lanka, Saudi Arabia, Algeria, France, UAE, Qatar, Bangladesh and Egypt on Tourist Visa and that such teams usually stay at various mosques/madarsa and engage themselves in religious preaching, which is clear violation of Visa Rules.

50. At this stage, to this Court it appears that the guidelines issued by the Union Home Ministry, Government of India are in tune with the objects sought to be achieved by enacting the Registration Act, the Foreigners Act and the Orders issued under Sections 3 and 7 of the Foreigners Act. The purpose behind all these guidelines is to ensure that the Foreign nationals who are visiting India on Tourist Visa do not indulge in Tabligh work. The guidelines give them permission to attend Tabligh Zamaat (congregation) and such act of mere attending the Tabligh Zamaat does not amount to Tabligh work prohibited under the instructions. This is a clear meaning of this guideline and the circulars. This Court would therefore consider the first allegation of violation of visa conditions in the light of circulars and guidelines discussed hereinabove.

Another issue which has arisen in this case as regards reporting of foreign nationals by the keepers of the premises in which they have been allowed to stay is also required to be examined keeping in view the aims and objects of the various statutes such as the Act of 1939, the Foreigners Act/ Act of 1946, the Registration Rules framed under Section 3(E) of the Act of 1939 and the Foreigners Orders 1950 as amended vide Foreigners (Amendment) Order 2016.

51. It is important to note here that the circulars dated April 15, 2015 gives an impression that the Government is well aware of the fact that the foreign nationals visiting India on Tourist Visa from some of the countries are usually staying at various "Mosque"/ "Madarsa". The Government of India in its Ministry of Home Affairs has not banned or restricted stay of foreign nationals on Tourist Visa in the "Mosque"

/ â??Madarsaâ??. It is however, one thing to say that there is no ban or restriction on the stay in these places but would be a different and distinct thing to say that the Management of the â??Mosqueâ?? and â??Markazâ?? are not required to report the stay of foreign nationals on Tourist Visa in the premises of the â??Mosqueâ?? or â??Markazâ??. Since the arguments have been made before this Court that there would be no requirement on the part of the Management of the â??Mosqueâ?? or â??Markazâ?? to report such stay to the Registering Authority/competent authority in accordance with the provisions contained in the enactments of the orders referred hereinabove, this Court would examine this aspects of the matter in this order at appropriate stage.

#### Violation of Visa Conditions by Foreign Nationals

52. From the aforesaid discussions, this Court has found that the first allegation against the foreign nationals is that of violating Visa conditions by indulging in tabligh activities. They have been sought to be prosecuted for violation of the Visa Conditions as it is an offence under Section 14(b) of the Act of 1946. This Court has already recorded hereinabove that the Government of India /BOI has not banned or imposed any restriction in the matter of boarding/staying of a foreign national on Tourist Visa in the premises of the â??Markazâ??. What has been banned /prohibited is their indulgence / participation in the act of preaching, speaking from Tabligh platform/canvassing during congregation etc. only those foreign nationals are required to be prosecuted who have been found involved in the prohibited activities.

53. In these two cases the foreign nationals were staying in the â??Markazâ?? and the â??Mosqueâ?? respectively with effect from a date before imposition of the Lock-down 1.0. Before imposition of the Lock-down at no point of time the â??BOIâ?? /local Police Station identified these foreign nationals as those involving in religious/tabligh work. They have not been seen addressing any congregation or preaching religious ideologies. In course of investigation also police has not collected any material in any form to take a prima-facie view that these foreign nationals who are before this Court had indulged in religious/tabligh work.

Lockdown 1.01 declared

54. In India, with the outbreak of the Pandemic COVID-19 nationwide complete

lockdown was enforced. In this regard the first order issued by the Ministry of Home Affairs, Government of India is to be kept in mind. The order reads as under:

â??No.40-3/2020-DM-I(A)

Government of India

Ministry of Home Affairs

North Block, New Delhi-110001

Dated 24th March, 2020

ORDER

Whereas, the National Disaster Management Authority (NDMA), is satisfied that the country is threatened with the spread of COVID-19 epidemic,

which has already been declared as a pandemic by the World health Organisation, and has considered it necessary to take effective measures to

prevent its spread across the country and that there is a need for consistency in the application and implementation of various measures across the

country while ensuring maintenance of essential services and supplies, including health infrastructure;

Whereas in exercise of the powers under section 6(2)(i) of the Disaster Management Act 2005, the National Disaster Management Authority

(NDMA), has issued an Order No. 1-29/2020-PP (Pt.II) dated 24.03.2020 (Copy enclosed) directing the Ministeries/Departments of Government of

India, State/Union Territory Government and State/Union Territory Authorities to take effective measures so as to prevent the spread of COVID-19

in the country.

Whereas under directions of the aforesaid Order of NDMA, and in exercise of the powers, conferred under Section 10(2)

(1) of the Disaster Management Act, the undersigned, in his capacity as Chairperson, national Executive Committee, hereby issues guidelines, as per

the Annexure, to Ministeries/Departments of Government of India, State/Union Territory Governments and State/Union Territory Authorities with the

directions for their strict implementation. This Order shall remain in force, in all parts of the country for a period of 21 days with effect from

25.03.2020.

Home Secretary

To,

1. The Secretaries of Ministries /Departments of Government of India
2. The Chief Secretaries/Administrators of States/Union Territories (As per list attached)

Copy to:

- i. All members of the National Executive Committee.
- ii. Member Secretary, National Disaster Management Authority.â??

â??Annexure to Ministry of Home Affairs Order No .40-3/2020-D dated  
( )24.03.2020

Guidelines on the measures to be taken by Ministries/ Departments of Government of India, State/Union Territory Governments and State/ Union

Territory Authorities for containment of COVID-19 Epidemic in the Country.

1. Offices of the Government of India, its Autonomous/
2. Subordinate Offices and Public Corporations shall remain closed. Exceptions:  
Defence, central armed police forces, treasury, public utilities (including petroleum, CNG, LPG, PNG), disaster management, power generation and transmission units, post offices, National Informatics Centre, Early Warning Agencies
3. Offices of the State/ Union Territory Governments, their Autonomous Bodies, Corporations, etc. shall remain closed.

Exceptions:

- a. Police, home guards, civil defence, fire and emergency services, disaster management, and prisons.
- b. District administration and Treasury
- c. Electricity, water, sanitation
- d. Municipal bodiesâ?"Only staff required for essential services like sanitation, personnel related to water supply etc.

The above offices (SI. No 1 & 2) should work with minimum number of employees. All other offices may continue to work-from-home only.

4. Hospitals and all related medical establishments, including their manufacturing and distribution units, both in public and private sector, such as dispensaries, chemist and medical equipment shops, laboratories, clinics, nursing homes, ambulance etc. will continue to remain functional. The

transportation for all medical personnel, nurses, para-medical staff, other hospital support services be permitted.

4. Commercial and private establishments shall be closed down. Exceptions:

a. Shops, including ration shops (under PDS), dealing with food, groceries, fruits and vegetables, dairy and milk booths, meat and fish, animal fodder.

However, district authorities may encourage and facilitate home delivery to minimize the movement of individuals outside their homes.

b. Banks, insurance offices, and ATMs.

c. Print and electronic media

d. Telecommunications, internet services, broadcasting and cable services. IT and IT enabled Services only (for essential services) and as far as possible to work from home.

e. Delivery of all essential goods including food, pharmaceuticals, medical equipment through E-commerce.

f. Petrol pumps, LPG, Petroleum and gas retail and storage outlets.

g. Power generation, transmission and distribution units and services.

h. Capital and debt market services as notified by the Securities and Exchange Board of India

i. Cold storage and warehousing services.

j. Private security services

All other establishments may work-from-home only.

5. Industrial Establishments will remain closed. Exceptions:

a. Manufacturing units of essential commodities.

b. Production units, which require continuous process, after obtaining required permission from the State Government

6. All transport services " air, rail, roadways " will remain suspended. Exceptions:

a. Transportation for essential goods only.

b. Fire, law and order and emergency services.

7. Hospitality Services to remain suspended Exceptions:

a. Hotels, homestays, lodges and motels, which are accommodating tourists and persons stranded due to lockdown, medical and emergency staff, air

and sea crew.

b. Establishments used/ earmarked for quarantine facilities.

8. All educational, training, research, coaching institutions etc. shall remain closed.

9. All places of worship shall be closed for public. No religious congregations will be permitted, without any exception.

10. All social/ political/ sports/ entertainment/ academic/ cultural/ religious functions / gatherings shall be barred.

11. In case of funerals, congregation of not more than twenty persons will be permitted.

12. All persons who have arrived into India after 15.02.2020, and all such persons who have been directed by health care personnel to remain under

strict home/ institutional quarantine for a period as decided by local Health Authorities, failing which they will be liable to legal action under Sec. 188 of the IPC.

13. Wherever exceptions to above containment measures have been allowed, the organisations/employers must ensure necessary precautions against

COVID-19

14. In order to implement these containment measures, the District Magistrate will deploy Executive Magistrates as Incident Commanders in the

respective local jurisdictions. The Incident Commander will be responsible for the overall implementation of these measures in their respective

jurisdictions. All other line department officials in the specified area will work under the directions of such incident commander. The incident

Commander will issue passes for enabling essential movements as explained.

15. All enforcing authorities to note that these strict restrictions fundamentally relate to movement of people, but not to that of essential goods.

16. The Incident Commanders will in particular ensure that all efforts for mobilisation of resources, workers and material for augmentation and

expansion of hospital infrastructure shall continue without any hindrance.

17. Any person violating these containment measures will be liable to be proceeded against as per the provisions of Section 51 to 60 of the Disaster

management Act, 2005, besides legal action under Sec. 188 of the IPC (As per Appendix).

18. The above containment measures will remain in force, in all parts of the country, for a period of 21 days with effect from 25.03.2020.

55. It is evident that during Lockdown 1.0 there was a complete prohibition on movement of people and all those who had arrived into India after

15.02.2020 had to remain under strict house/institutional quarantine.

56. During the first Lockdown period the Ministry of Home Affairs, Government of India issued two circulars in form of office memorandum. Those

are being reproduced hereunder:

SECRET

No. 25022/25/2020-F.I.

Government of India

Ministry of Home Affairs

Foreigners Division

\*\*\*\*\*

Major Dhyani Chand National Stadium,

New Delhi-110002

Dated: 31.03.2020

OFFICE MEMORANDUM

Subject: Action against foreign nationals who have reportedly participated in Tabligh activities under the guidance of Tabligh Jamat Hq. at

Nizamuddin, Delhi-regarding.

\*\*\*\*\*

It has come to notice of this Ministry that about 2000 foreign nationals, reportedly on tourist visa, from over 70 countries are in India for Tabligh works

under the guidance of Tabligh Jamat (TJ) headquarter at Nizamuddin (Delhi). Majority of these foreign nationals belong to Bangladesh (493),

Indonesia (472), Malaysia (150) and Thailand (142). It has also been reported that the TJ headquarter is reportedly in the process of calling the foreign

nationals involved in Tabligh activities from different states and sending them back to their respective countries.

2. As per para 1.25 of the Visa Manual, 2019, foreign nation is granted any type of visa and OCI cardholders shall not be permitted to engage

themselves in tabligh work unless they are granted specific permission in accordance with para 19.8 of the Visa Manual, 2019. As per para 19.8 of

the Visa Manual, 2019, all applications from foreigners intending to visit India in

connection with tabligh work or for training in such work, shall be referred to MHA before a visa is granted.

3. In view of above, Bureau of Immigration is requested to identify the foreign nationals who participated in tabligh activities on tourist or other kind of

visa. Without obtaining permission of MHA for this purpose. Bol shall also initiate necessary penal action against them for violation of visa conditions

under intimation to this Ministry. FRROs/FROs may be directed to proceed as per law in this regard. They should immediately contact the relevant

police authority under The Foreigners Act, 1946 for action in the matter as soon as the COVID-19 health issues regarding these foreigners are sorted

out.

4. This issues with the approval of competent authority.

(Manoj Kumar Jha)

Deputy Secretary to Government of India

Tel: 23070168

To,

The Additional Director,

Bureau of Immigration,

East Block, R.K. Puram,

New Delhi-110066.

Copy for information to Joint Secretary (IS), MHA w.r.t. their letter no. 11011/15/2020-MHA C/R dated 28th March, 2020.

Immediate

No. 25022/25/2020-F.I

Government of India/Bharat Sarkar

Ministry of Home Affairs/Grih Mantralaya

(Foreigners Division)â??

\*\*\*\*\*

Major Dhyani Chand National Stadium

New Delhi, Dated: April 02, 2020

Office Memorandum

Sub: Action against Foreign Nationals who participated in Tabligh Activities on Tourist Visa.

Please refer to the MHA OM No. 25022/116/2011/F.I dated 03/11/2011 and OM No. 25022/25/2020-F.I. dated 31/03/2020 (copies enclosed) and

Bureau of Immigration (BOI) letter No. 25/Imm-I/2020 (1)-102 dated 1st April, 2020 (copy enclosed) on the subject cited above.

2. It has come to the notice of MHA that 960 foreigners of different nationalities as identified on the basis of their travel documents have been found

to be involved in Tabligh Jamaat activities on the strength of their Tourist Visa in the premises of Tabligh Jamaat Markaj, Nizamuddin, New Delhi.

Their Tabligh activities have endangered many lives in the ongoing COVID-19 public health emergency. They have violated the provisions of Para

1.25 read with Para 19.8 of the Visa Manual, 2019. They are also liable under the provisions of Sections 13 and 14 of The Foreigners Act, 1946.

3. In view of the above, it is advised that legal action against all these foreigners and Indian nationals involved in the matter must be taken under the

provisions of The Foreigners Act, 1946 as well as for violation of statutory orders issued under The Disaster Management Act, 2005 and for offences

committed under relevant Sections of IPC as applicable in this matter. It may also be ensured that the protocols issued by the Ministry of Health &

Family Welfare are fully adhered to while taking action in the matter.

Ends: As above

(Pratap Singh Rawat)

Under Secretary to the Government of India

To

Sh. S.N. Shrivastava, Commissioner, Delhi Police, Jai Singh Road, New Delhi.

Copy to:

DGPs of all States & UTs with a request to initiate similar appropriate action in their respective areas against violators of the provisions of The

Foreigners Act, 1946 and orders issued under The Disaster Management Act, 2005.

(Pratap Singh Rawat)

Under Secretary to the Government of India??

57. It is crystal clear from above quoted office memorandum that at first

instance the â??BOIâ?? has to identify the foreign nationals who participated in tabligh activities on tourist visa and â??BOIâ?? has to take penal actions for Visa violation. The â??BOIâ?? has not come out with any identification as regards these petitioners. No such facts have been placed before this Court.

58. At this stage, this Court would also extract paragraph 15, 16 and 17 from the judgment of the Honâ??ble Bombay High Court in so far as those

paragraphs contain the relevant provisions of the Visa Manual and the correspondences made by Bureau of Immigration (Ministry of Home Affairs),

Government of India dated 03.04.2020 and 06.04.2020. Paragraph 15, 16 and 17 are quoted hereunder for a ready reference:

â??15. Then the State has produced the Visa Manual which is updated upto 30.9.2019 and which is mentioned as 'confidential' document. Para No.

1.25 of this Manual and para No. 19.8 of this Manual are as under:-

1.25 Restriction on engaging in tabligh activities

Foreign nationals granted any type of visa and OCI cardholders shall not be permitted to engage themselves in tabligh work unless they are granted

specific permission in accordance with para 19.8 of this Visa Manual. There will be no restriction in visiting religious places and attending normal

religious activities like attending religious discourses. However, preaching religious ideologies, making speeches in religious places, distribution of audio

or visual display/pamphlets pertaining to religious ideologies, spreading conversion etc. Will not be allowed.

19.8. Foreigners visiting for tabligh work

All applications from foreigners intending to visit India in connection with tabligh work, or for training in such work, shall be referred to the Ministry of

Home Affairs before a visa is granted. The Mission/Post must send full particulars, including details about the applicant, institution/organization

sponsoring the applicant, the organization/institution where the foreigner intends to work, the places proposed to be visited, details of financial status,

etc. All such foreign nationals shall mandatorily report to FRRO/FRO concerned within 14 days of arrival in India irrespective of the duration of the

visa.

These paras are mentioned in aforesaid two recent circulars by the Central Government.

16. Copies of two more correspondence made by Bureau of Immigration (Ministry of Home Affairs), Government of India dated 3.4.2020 and

6.4.2020 are produced by the State and they are as under:-

CONFIDENTIAL

Rajeev Rajan Verma

Commissioner

No. 25/Imm-I/2020 (1)-107

BUREAU OF IMMIGRATION

(Ministry of Home Affairs)

Government of India

New Delhi, the April 03, 2020

Subject:-Action against Foreign Nationals who reportedly participated in Tabligh Activities on Tourist Visa-Additional List.

This is in continuation of our earlier communication of even number, dated April 01, 2020 on the subject cited above. Enclosed please find an additional

list of 315 (three hundred and fifteen) foreigners who have been identified, who participated in Tabligh activities at the Tabligh Jamaat Markaz,

Nizamuddin Delhi, before moving out to various states and districts in India; and who have still not departed from India. With the instant list of 315,

now a total of 1275 (960+315) foreigners have been identified who were associated with Tabligh activities. It is noteworthy that all the above

mentioned foreigners came to India on Tourist Visas and are in violation of Visa provisions.

2. The list is being shared with all State and UT law enforcement agencies so that those foreigners who may be found in their respective jurisdiction,

may be tracked down for action.

3. MHA has already provided guidelines on action to be taken vide their OM NO. 25022/25/2020-F.I. dated April 02, 2020 (copy enclosed).

4. These foreigners are also being blacklisted, preventing their future entry into India.

(Rajeev Ranjan Verma)

Commissioner

The Chief Secretaries/Administrators of all States and UTs

The Additional Chief Secretaries (Home) of all States and UTs

The Directors General of Police/Commissioners of Police of all States and UTs.

Copy for information to:

Shri Sanjeeva Kumar

Special Secretary

Ministry of Health & Family Welfare

Government of India

Shri Anil Malik

Additional Secretary/F

Ministry of Home Affairs

Government of India

Ms. Punya salla Srivastava

Joint Secretary

Ministry of Home Affairs

Government of India

Shri. Adarsha Swalke

Joint Secretary

Ministry of External Affairs

Government of India

Shri. Pankaj Agarwal

Joint Secretary

Cabinet Secretariat

Government of India

Shri. Lav Agarwal

Joint Secretary

Ministry of Health & Family Welfare

Government of India

All FRROs

Rajeev Ranjan Verma

Commissioner

CONFIDENTIAL

Rajeev Rajan Verma

Commissioner

No. I/Comm/BoI/2020-1146

BUREAU OF IMMIGRATION

(Ministry of Home Affairs)

Government of India

New Delhi, the April 06, 2020

Subject: Action against foreign nationals who reportedly participated in Tabligh activities on Tourist Visa-reg.17. The aforesaid material produced on

the record shows that even under recent updated Manual of Visa, there is no restriction on foreigners for visiting religious places and attending normal

religious activities like attending religious discourses. Ordinarily tourist is not expected to follow the procedure laid down in para No. 19.8 if he does

not want to preach the religious ideologies etc. as mentioned in para No. 1.25.â??

The information pertaining to foreigners of different nationalities who were identified on the basis of travel documents, found involved in Tabligh

Jamaat activities, and have still not departed from India have been shared with all the states and UTs vide our letters of even number dated April 01,

03 & 04, 2020. MHA has also issued instructions to take legal action against all these foreign nationals vide MHA OM No. 25022/25/2020-F.I. dated

April 02 & 03, 2020.

2. The foreigners mentioned in the above lists participated in Tabligh jamaat activities at Markaz in Nizamuddin, Delhi and travelled to various states

and participated in Tabligh activities in various districts while staying in mosques affiliated to the Tabligh jamaat. In addition to these foreign nationals,

some other foreigners may also be located in your respective jurisdiction, who participated or conducted Tabligh activities in different parts of the

country in recent months. They may be residing in mosques or nearby locations, State Police may conduct survey of all such locations to identify such

foreigners by checking their travel documents and take legal action as per the above mentioned MHA Oms.

3. States/UT17. The aforesaid material produced on the record shows that even under recent updated Manual of Visa, there is no restriction on

foreigners for visiting religious places and attending normal religious activities like attending religious discourses. Ordinarily tourist is not expected to

follow the procedure laid down in para No. 19.8 if he does not want to preach the religious ideologies etc. as mentioned in para No. 1.25.â??s Police

headquarters are requested to kindly intimate the legal action initiated against such foreigners in the format enclosed at Annexure I. This report may

be forwarded to us on daily basis on the mail ID [ajay.kumar62@gov.in](mailto:ajay.kumar62@gov.in) with info to [ddboi-mha@nic.in](mailto:ddboi-mha@nic.in) and [jdboi-mha@nic.in](mailto:jdboi-mha@nic.in).

4. The details of Look Out circulars (LOCs) and Blacklists (BLs) forwarded in the matter may also be provided in the above mentioned daily report.

Further, the requests for issuance of Look Out Circular (LOC) and Blacklist (BL) may be forwarded in duly filled LOC and BL proforma enclosed at

Annexure-II & III on the mail ID [boihq@nic.in](mailto:boihq@nic.in).

(Rajeev Ranjan Verma)

Commissioner

The Directors General of Police/Commissioners of Police of all States and UTs

Copy for information to:-

1. Shri Anil Malik, Additional Secretary/F, MHA
2. Ms. Punya Salila Srivastava, Joint Secretary, MHA
3. Shri Lav Agarwal, Joint Secretary, MH & FW.

17. The aforesaid material produced on the record shows that even under recent updated Manual of Visa, there is no restriction on foreigners for

visiting religious places and attending normal religious activities like attending religious discourses. Ordinarily tourist is not expected to follow the

procedure laid down in para No. 19.8 if he does not want to preach the religious ideologies etc. as mentioned in para No. 1.25.â???

59. From the aforementioned discussions, this Court would come to a conclusion that the communication as contained in letter dated 03.04.2020 talks

of finding out and tracking down all those foreign nationals who had visited India on Tourist Visa, had moved out to different States and Districts in

India and were involved in Tabligh Zamaat activities firstly in the premise of Tabligh Zamaat Markaz Nizamudin, New Delhi and thereafter, in

different places. Since they cannot indulge in sch activities without obtaining permission from the Ministry of Home Affairs, Government of India for

this purpose, penal action were required to be taken against them. Here, in the opinion of this Court the act of identification of the foreign nationals

would involve collection of some material against them to show their involvement in tabligh activities.

60. In these cases Mr. Anjani Kumar, learned AAG 4 assisted by Mr. Alok Kkumar Rahi, learned Advocate has taken this Court through the entire

case diary recorded in course of investigation. It appears that in course of investigation save and except the members of the Police party who were

present in course of raid in the â??Markazâ?? and the â??Mosqueâ?? respectively no other independent witness has been examined. No material in

form of Audio/Video cassettes, leaflets or pamphlets have been found in possession of these foreign nationals. There is absolutely no material in the

case diary to even prima-facie suggest that these foreign nationals had indulged in preaching of their religious ideologies or that they had addressed

any congregation on the â??Markazâ?? and the â??Mosqueâ?? platform. The allegation of preaching religious ideologies is thus not supported by

any material. It is an unfounded allegation. In absence of any material, it appears to this Court that the learned Chief Judicial Magistrate, Araria has

taken cognizance of the offences and decided to issue summons to these foreign nationals in a routine and mechanical manner.

Reporting regarding stay of foreign nationals on Tourist Visa in the â??Markazâ?? and the â??Mosque

61. These two writ applications have raised an issue of utmost importance inasmuch as it is the contention of the petitioners that the foreign nationals

as well as the petitioner no. 10 and 11 in Cr.W.J.C.No. 367 of 2020 and petitioner no. 1 in Cr. W.J.C. no. 369 of 2020 were not obliged to report

regarding the stay to the local police station or the competent authority. There is no material before this Court to take a view as to what is the role of

the petitioner nos. 10 and 11 or of the petitioner no. 1 in the two writ applications respectively but because it has been argued before this Court that

the Management of the â??Markazâ?? or the â??Mosqueâ?? are not obliged to report the stay of foreigner nationals, in order to answer this issue,

this Court would be required to go into the provisions regarding Registration of Foreign Nationals visiting India and the duties imposed on the

Management/keepers of the premises in which the foreign nationals are staying usually during their travel in India.

62. In today's hearing, this Court once again requested learned Additional Solicitor General of India to assist on this point. Mr. Alok Ranjan,

learned counsel for the petitioners and Mr. Anjani Kumar, learned AAG 4 have also reiterated their submissions.

63. The Foreigners Act / Act of 1946 was enacted taking note of the fact that till that time there was only permanent measures governing foreigners

was specifically provided under the Act of 1939 and the Foreigners Act 1864. The Act of 1939 provided for the making of rules to regulate

registration of foreigners and formalities connected thereunder, free movement or departure from India. The Act of 1864 provided for the expulsion of

foreigners and their apprehension and detention pending removal and for a ban on their entry into India after removal. It was found that the powers

under the Foreigners Act 1864 were ineffective and inadequate and therefore, there was a need of permanent legislation. It is in that background the

Act of 1946 was brought into existence and powers have been conferred upon the Central Government to make provisions by issuing order(s) either

generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting,

regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.

64. Section 3 of the Act of 1946 provides for the power to make orders. Section 3(2) (e) is one of the subjects for which the Central Government may

issue orders. Under this provision the Central Government may issue orders providing that the foreigner shall comply with such conditions as may be

prescribed or specified: (i) requiring him to reside in a particular place; (ii) imposing any restrictions on his movements; (iii) requiring him to furnish

such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified.

The Central Government may make provisions for any matter which is to be or may be prescribed and for such incidental and supplementary matters

as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

65. Section 7 of the Act of 1946 is in the nature of a general provision which provides for an obligation on hotel keepers to furnish particulars. Sub-

section (1) of Section 7 imposes a duty on the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is

provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodated in such premises, as may be prescribed. Under sub-section (2) every person accommodated in such premises is obliged to furnish to the keeper thereof the informations required under sub-section (1) and then under sub-section (3) of Section 7 the keeper of such premises shall maintain a record of information furnished by him under sub-section (1) and all the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed and shall at all times be open to inspection by any police officer or by any person authorized by the District Magistrate.

66. In exercise of its power under Sections 3 and 7 of the Act of 1946, the Central Government has issued various orders and one of them is the Foreigners Orders, 1948 which has been amended recently vide Foreigners (Amendment) order 2016.

67. The Foreigners (Amendment) Rules 2016 notifies the prescribed authority for purpose of Section 7 of the Act of 1946. The Registration officer has been made the prescribed authority. In the principal order, after paragraph 14, paragraph 15 and 16 have been inserted. A perusal of paragraph 16 would show that it provides for a responsibility upon every keepers of hotel to require every visitor to the hotel to furnish the particulars necessary for recording, and sign, on his arrival at the hotel, his name and his nationality in a register maintained for the purpose in Form B and if such visitor is a foreigner the keeper shall further require him (a) on his arrival on the hotel to furnish the other particulars specified in Items 4 to 11 of the said Register: and (b) at the time of his departure from the hotel to furnish the particulars necessary for recording in the said register, the date and time of his departure and the address to which he is proceeding. In sub-paragraph (6) of paragraph 16 it is provided that the keeper of the hotel shall, as soon as may be but not more than 24 hours, after the arrival of a foreigner, transmit the copy of Form C duly completed from the particulars furnished by the foreigner, to the Registration Officer.

68. In the newly inserted paragraph 16, a sub-paragraph (7) defines "hotel" and according to this "hotel" includes any boarding-house, club,

dak-bungalow, rest house, hostel, paying guest house, sarai, rented accommodation, hospital, or other premises of like nature, furnished or unfurnished,

where lodging or sleeping accommodation is provided for reward. Here it may be noticed that the meaning of word "hotel" has been provided by

way of an inclusion clause and it includes any boarding house, rest house and even a hospital. The meaning of word "hotel" is in two parts. In the

first part the places have been identified, any boarding house, club, dak-bungalow, rest house, hospital, paying guest house, sarai, rented accommodation

and hostel are falling under the first part. It is evident from a bare reading of this part that by virtue of the very purpose for which places are meant,

they are expected to accommodate amongst others any traveller and he may be a foreign national for purpose of stay. These are the establishments

covered under the meaning of word "hotel". It does not matter whether the person/foreign national staying in these places are staying for

consideration or reward. In the same part while the word "paying" and "rented" have been prefixed with the guest house and

accommodation respectively, no such words have been prefixed before the word "boarding house", "rest house", "club",

"sarahi", "hostel" and "hospital". Therefore, to this Court it appears that if a foreign national stays in a "sarahi", "boarding

house", "rest house", "hostel" or "hospital" free of cost it does not mean that the keeper of these places may avoid his/their

responsibility to furnish information in form "C" to the Registration Officer.

69. In the second part of the definition by using the word "or" such other premises have been sought to be covered which are of like nature,

they may be furnished or unfurnished but are providing lodging or sleeping accommodation for reward, they would be covered under the meaning of

word "hotel".

70. What is important to appreciate is that the places covered under the first part are not having any restrictive meaning. If a person /foreign national

stays in any rest house, dak-bungalow or a hospital or in any of the places mentioned in first part of the definition, the foreign national would be obliged

to provide all required information and the keeper of such places shall be liable to report the stay in form "C". It is only the second part of the

definition where "other premises of the like nature" is qualified by the words "provided for reward". Thus, to cover any other premises

who are not falling in the first part of the definition it would be seen whether those premises are of like nature and is providing the accommodation for

lodging and sleeping purposes is being provided therein for reward.

71. The Hon'ble Supreme Court has considered in its various judgments the inclusive kind of definition and the scope of extending the ordinary

meaning of term defined. In *Bharat Co-operative Bank (Mumbai) Ltd. vs. Co-operative Bank Employees Union* reported in (2007) 4 SCC 68 the

Hon'ble Supreme Court considered the difference between the inclusion and exhaustive definition and observed:

"When in the definition clause given in any statute the word 'means' is used, what follows is intended to speak exhaustively. When the word

'means' is used in the definition it is a 'hard-and-fast' definition and no meaning other than that which is put in the definition can be assigned to the

same. On the other hand, when the word 'includes' is used in the definition, the legislature does not intend to restrict the definition: it makes the

definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring

within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word 'means' followed by the word 'includes' in

definition of "banking company" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and

would cover only those banking companies which fall within the purview of the definition and no other."

72. In the case of *N.D.P. Namboodripad (Dead) by Lrs. Vs. Union of India & Ors.* reported in (2007) 4 SCC 50 the Hon'ble Supreme Court

observed:

"The word 'includes' has different meanings in different contexts. Standard Dictionaries assign more than one meaning to the word

'include'. Webster's Dictionary defines the word 'include' as synonymous with 'comprise' or 'contain'. The Illustrated Oxford

Dictionary defines the word 'include' as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. The Collins Dictionary

of English Language defines the word 'includes' as: (i) to have as contents or

part of the contents: be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises" or "consists of".

73. In the case of *Hamdard (Wakf) Laboratories Vs. Deputy Labour Commissioner & Ors.* reported in (2007) 5 SCC 281 it was held as under:

"When an interpretation clause uses the word "includes", it is prima facie extensive. When it uses the word "means and includes", it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the word or expression."

74. In the case of *Banglore Water Supply & Sewerage Board Vs. A. Rajoppa & Ors.* Reported in AIR 1978 SC 548 : 1978 SCR (3) 20 the

Hon'ble Constitution Bench of the Supreme Court was considering the definition of the word "industries" under Section 2(j) of the Industrial

Disputes Act 1947. Hon'ble Mr. Justice M.H. Beg, the then Chief Justice of India presided over the Bench though found himself in general

agreement with the line of thinking adopted and conclusions reached by Hon'ble Mr. Justice V.R. Krishna Iyer (as his lordship then was) the then

Hon'ble C.J.I. added his own reasons and indicated his lordships approach to a problem where relevant legislation leaves so much for

determination by the Court as to enable the judges to perform a function very akin to a legislation. Paragraph 6, 7 and 8 from the judgment in case of

*Banglore Water Supply* (supra) are quoted hereunder for a ready reference:

"6. Thus, in order to draw the "circle of industry", to use the expression of my learned brother Iyer, we do not find even the term "workman

illuminating. The definition only enables us to see that certain classes of persons employed in the service of the State are excluded from the purview of

industrial dispute which the Act seeks to provide for in the interests of industrial peace and harmony between the employers and employees so that the

welfare of the nation is secured. The result is that we have then to turn to the preamble to find the object of the Act itself, to the legislative history of

the Act, and to the socio-economic ethos and aspirations and needs of the times in which the Act was passed.â??

â??7. The method which has been followed, whether it be called interpretation or construction of a part of an organic whole in which the statute, its

objectives, its past and its direction for the future, its constitutional setting are all parts of this whole with their correlated functions. Perhaps it is

impossible, in adopting such a method of interpretation, which some may still consider unorthodox, a certain degree of subjectivity. But, our attempt

should be not to break with the well-established principles of interpretation in doing so. Progressive, rational and beneficial modes of interpretation

import and fit into the body of the old what may be new. It is a process of adaptation for giving new vitality in keeping with the progress of thought in

our times. All this, however, is not really novel, although we may try to say it in a new way.â??

â??8. If one keeps in mind what was laid down in Heydon's case (1584) 76 ER 637 referred to by my learned brother Iyer, the well known principle

that a statute must be interpreted as a whole, in the context of all the provisions of the statute, its objects, the preamble, and the functions of various

provisions, the true meaning may emerge. It may not be strictly a dictionary meaning in such cases. Indeed, even in a modern statute the meaning of a

term such as ""Industry"" may change with a rapidly changed social and economic structure. For this proposition I can do no better than to quote Subba

Rao J. speaking for this Court in *The Senior Electric Inspector v. Laxmi Narayan Chopra* (1962)3SCR146:(AIR 1962 SC 159):

â??The legal position may be summarized thus : The maxim *contemporanea expositio* as laid down by Coke was applied to construing ancient statutes

but not to interpreting Acts which are comparatively modern. There is a good reason for this change in the mode of interpretation. The fundamental

rule of construction is the same whether the Court is asked to construe a provision of an ancient statute or that of a modern one, namely, what is the

expressed intention of the Legislature. It is perhaps difficult to attribute to a legislative body functioning in a static society that its intention was

couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more

reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be

unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern

Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might

attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human

activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the

words are capable of comprehending them.â??

75. Now keeping in view the aforesaid discussions a question arises as to whether a place inside the premises of the â??Markajâ?? or

â??Mosqueâ?? specially meant for stay of foreign nationals visiting India on tourist visa from some of the countries would fall within the meaning of

the word â??boarding houseâ?? or the â??rest houseâ??. To this Court it appears that in case these premises are found to be involved in being used

as a â??boarding houseâ?? or a â??rest houseâ?? for the travelers coming from foreign country then by virtue of their use the keepers of such

premises shall be responsible to comply with the requirements of reporting as envisaged under the Foreigners Order, 1948 as amended up-to-date.

76. Prior to enactment of the Act of 1946, the Act of 1939 was already in existence. Section 3 of the Act of 1939 conferred rule making power on the

Central Government for any of the purposes mentioned in clause (a) to (g) of sub-Section (1) of Section 3. Clause (e) provides one of the purposes

being for requiring any person having the management of any hotel, boarding house, sarai and any other premises of like nature to report the name of

any foreigner residing therein for whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may

be prescribed. Section 5 of the Act of 1939 is the penal provision and it says that any person who contravenes or attempt to contravene or fails to

comply with any provisions of any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one

year or with fine which may extend to one thousand rupees or with both or if not a foreigner, with fine which may extend to five hundred rupees.

77. The Statement of Objects and Reasons of the Act of 1939 would show that it was enacted with the purpose to keep all times complete information

as to number and whereabouts of foreigners in the country. This speaks of the requirement of keeping such information not only for purpose of national defence but also to reply to the queries as to the whereabouts of foreigners in India.

78. By virtue of powers conferred under Section 3 of the Act of 1939 the Central Government framed Rules of 1992. Under Rule 6 thereof the procedure for registration of foreigners visiting India has been provided. Rule 6(1) lays down that every foreigner entering India or resident in India shall present in person or through an authorized representative to the appropriate registration officer specified in Rule 7, a report which is called a registration report within the time specified in that rule but proviso to sub-Rule (1) of Rule 6 states that no such report shall be necessary in the case of a foreigner who enters India on a visa valid for a period of not more than 180 days and who does not remain in India beyond such period. Rule 6(1) read with Rule 7(1)(f) and 7(2)(f) would show that the foreigners who visit India on visa valid for a period of 180 days or less is not required to undergo the registration procedure. In the present case, therefore, the foreign nationals who have entered India on tourist visa valid for 90 days have not undergone the registration procedures though they have submitted a declaration as required upon their landing in India. Under Rule 9 of the Rules of 1992 any Foreign national would be obliged to produce his passport or any proof of identity if called upon by a Magistrate or a Police Officer not below the rank of head constable.

79. On this point even learned Additional Solicitor General has submitted that because of proviso to sub-Rule (1) of Rule 6 of the Foreigners Rules, 1992 these foreign nationals would not be required to undergo the registration procedure.

80. Rule 14 of the Foreigners Rules earlier imposed an obligation on the part of the hotel keepers to furnish a report in prescribed form with respect to every visitor to a hotel and if such visitor is a foreigner the hotel keeper shall require him to furnish the other particulars specified in items 4 to 10 of form F which is known as hotel register. Under Rule 14(7) for purpose of Rule 14 the word "hotel" included any "boarding house", "club", "dak-bungalow", "rest house", "paying guest houses", "sarai", or other premises of like nature. This Court would,

however, hasten to add that Rule 14 and Rule 18 together with form *Form 14*, form *Form 18* and form *Form 19* prescribed under Rules of 1992

have been omitted by the Registration of Foreigners (Amendment) Rules 2016 published in the Gazette of India Extraordinary Part 2 -Section 3- sub-

Section (1) published on March 18, 2016. Here it is to be noticed that simultaneously while omitting Rule 14 and the prescribed form *Form 14*

therefrom the Central Government issued Foreigners (Amendment) Order 2016 which has already been discussed hereinabove.

81. In the aforementioned background when this Court considers the aims and objects of the different statute, the Rules and the Orders issued by the

Central Government, it is crystal clear to this Court that everywhere the intention of legislatures and the executives is to know the whereabouts of the

foreign nationals who are visiting India on a visa valid for any duration. The Act of 1939 specifically says that it is an issue of national defence besides

that the information is required for answering the queries which are being received from the relatives of the foreign nationals. While omitting Rule 14

from the Foreigners Rules 1992, the Central Government simultaneously issued the Foreigners (Amendment) Order, 2016 and inserted thereunder the

responsibility of the keepers of a hotel and definition of hotel as provided under sub-Rule (7) of Rule 14 of the Foreigners Rule has been brought with

certain modification under the Foreigners Order 1948. In fact the Foreigner (Amendment) Order 2016 has been issued in exercise of power conferred

under Section 3 read with Section 7 of the Act of 1946.

82. This Court finds that the newly inserted paragraph *16* in the foreigners order contains the definition of word *hotel* in wider sense

keeping in view the purposes of the Foreigners Act and the Registration Act. Section 7 of the Act of 1946 talks of only those premises which are

providing accommodation for lodging and sleeping for reward but a bare reading of Section 3 (2) (e) and the order issued thereunder would show that

the intention of the legislatures and executives is to cover all such places which are being used as *boarding houses*, *rest houses*,

*hostels*, *hospitals* and even as *paying guest house*; and *rented accommodation*.

83. It is only to avoid any argument that the premises other than a boarding house, club, Guest house, hostel and other places covered under Part I,

which are providing accommodation towards lodging and sleeping to a foreign national for reward may not be covered under the definition of word

“hotel” under sub-paragraph (7) of paragraph 16, it has been specifically mentioned that other premises of like nature which are providing lodging

and sleeping facility for reward would come within the meaning of the word “hotel”. The word “like nature” shall take its colour from the

words like “rest house”, “boarding house”, “hostel” etc. whether furnished or unfurnished, in case those premises are being used for

any purpose of like nature and allows boarding and lodging of a foreign national, the keeper of such premises would be obliged to report the stay to the

registering authority and it will be open for any police officer to visit such places for purpose of inspection of the records as envisaged under sub-

section 3 of Section (7). In the opinion of this Court, any other interpretation would frustrate the very aims and objects of the statute. In no case a

foreign national who has entered India on a tourist visa and stays in a “Mosque” or “Markaz” or “Madarsa” may be allowed to

contend that he would not be required to furnish information in terms of paragraph 16 of the Foreigners Order 1948 (as amended vide Foreigners

(Amendment) Order 2016) to the keepers of the premises. The foreign nationals are, however, not under obligation to furnish form “C”. In the

present case the allegations that the foreign nationals had not reported about their stay to the local police station is a misconceived kind of allegation

and based on misconception of law.

84. At the same time this Court is of the considered opinion that the management of the “Mosque”/ “Markaz” / “Madarsa” cannot

take a plea that they are not obliged to report the stay of a foreign national in their premises to the Registering Authority and/or that they cannot allow

Police Officer or an authorized person to inspect the records. This Court has noticed that the “BOI”/Ministry of Home Affairs, Government of

India is aware of the fact that the foreign nationals from some of the countries in course of their stay in India are being accommodated in the

“Mosque”/ “Markaz” / “Madarsa”. In the facts of these cases, it appears to this Court that the Management of these

“Mosque”/ “Markaz” have created infrastructures in form of buildings/ apartments either attached to the “Mosque”/ “Markaz”

or in the vicinity inside the premises and those infrastructures are being managed by the management of the â??Mosqueâ?/? â??Markazâ??. These infrastructures are being used as a boarding house/rest house. The foreign nationals are being accommodated in such infrastructures / buildings /apartments by the management of the â??Mosqueâ?/? â??Markazâ??. therefore by applying an extended meaning those places would be covered within the meaning of word â??boarding houseâ?? and â??rest houseâ??. It does not matter whether the foreign nationals are being provided such accommodations for boarding and lodging free of any charge or in lieu of consideration or reward. Any attempt to contend that in case of free stay of foreign nationals in such premises the keepers of such premises would not be liable to keep the Register in form â??Bâ?? or furnish information to the Registering authority in form â??Câ?? under Foreigners Order 1948 would frustrate the object of the various statues discussed hereinabove and it would defeat the very object of keeping complete information as to whereabouts of the foreign national who has entered India on any kind of Visa. The submission of learned Senior Counsel for the petitioners on this issue is not acceptable to this Court. A purposive construction is required to be given keeping in view the intention of the legislatures and the executives which are duly reflecting from the various statutes, orders, circulars and guidelines discussed hereinabvoe.

85. In the light of the discussions made hereinabove, this Court comes to a conclusion that so far as the foreign nationals (petitioner nos. 1 to 9 of Cr.W.J.C. No. 367 of 2020 and petitioner nos. 2 to 10 of Cr.W.J.C. No. 369 of 20200) are concerned, their prosecution for the offences alleged under Section 14 and 14-C of the Act of 1946 has no basis to proceed. Accordingly, the order taking cognizance and issuance of summons as also the entire criminal prosecution against them is hereby quashed.

86. Since this Court has found from the admitted facts on the record that the foreign nationals were staying in the â??Markazâ?? and the â??Mosqueâ?? respectively in these cases from a date prior to the imposition of the lock-down 1.0 but the same was not reported to the competent authority by the management of the â??Markazâ?? and the â??Mosqueâ?? respectively and that a prima-facie case has been found to issue summons to petitioner nos. 10 and 11 in Cr.W.J.C. No. 367 of 2020 and to

petitioner no. 1 in Cr.W.J.C. No. 369 of 2020, this Court would not interfere with the impugned orders in so far as it relates to them. This is, however, made clear that this Court has not examined the role of these petitioner nos. 10 and 11 and petitioner no. 1 respectively and as such it would be open to these petitioners to take all such pleas which may be available to them at the time of framing of charge.

87. The respondents are directed to take steps forthwith to deport the foreign nationals who are petitioners in these two writ applications to their respective countries, if they are not wanted in any other case or are required to stay in India because of any order passed by a competent authority and/or a court of law.

88. The writ applications are disposed of accordingly.